

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 16<sup>TH</sup> DAY OF APRIL 2009 AT 8:30 A.M.**  
**MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING**  
**4230 ELKHART ROAD, GOSHEN, INDIANA**

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

2. A motion was made and seconded (*Lantz/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19<sup>th</sup> day of March be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Lantz*) that the legal advertisements, having been published on the 4<sup>th</sup> day of April 2009 in the Goshen News and on the 6<sup>th</sup> day of April 2009 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

4. A motion was made and seconded (*Lantz/Miller*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.

5. A motion was made and seconded (*Lantz/Miller*) that the Board accepts the Staff Reports as evidence into the record. A roll call vote was taken and the motion was carried with a unanimous vote.

6. There were no postponements of business items.

7. The application of **Robert F. Burson** for a 30 ft. lot width Variance to allow for the construction of a residence (Ordinance requires 100 ft.) and a 3 to 1 depth to width ratio Variance to allow for the construction of said residence on property located on the Northeast corner of CR 17 and CR 20 in Washington 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091383*.

There were 31 neighboring property owners notified of this request.

Gordon Lord, Elkhart County Attorney, 130 N. Main Street, Goshen, was present representing the petitioner. Mr. Lord indicated that he represents the Elkhart County Highway Department and the Elkhart County Commissioners on a regular basis. He indicated that the petitioner and John Bowers, Manager for the Elkhart County Highway & Engineering Department, were also present in the audience. Mr. Burson owns property on the river and he is a participant in the CR 17 and Six Ban Bridge Improvement Project.

Mr. Lord explained that the county is rolling up the curb cuts that were previously there for Linton's. They are also rolling up the curb cut at McDonald's on CR 17 to make that safer

and getting rid of any curb cuts on the west side of CR 17. Indiana Department of Transportation (INDOT) has required the Commissioners to do some improvement work on SR 120. The curb cut on SR 120 is very close to the intersection and it is being forfeited, so the county is going to build a new service road on the east side of McDonald's through a lot that is already acquired. The service road will come back down and provide public access to a new and improved boat launch site.

The petitioner's representative explained that part of the new road going back is clipping off some of the land that Mr. Burson owns. They will be putting a new road in that serves the boat launch and as many as three homes once the work has been completed. The homes would have 800 to 900 ft. long lanes off of SR 120 to the river. A public road will serve Mr. Burson's home and he will have access to what is equivalent to a cul-de-sac. This will allow him to build a home and take advantage of the water property. Mr. Lord explained that the petitioner already owns a property to the south.

An aerial map of the property was then submitted to the Board by the petitioner *[attached to file as Petitioner Exhibit #1]*. Mr. Lord explained that McDonalds is on the southwest corner of the drawing. The area marked in yellow is property that the county has taken from Mr. Burson by the power of immanent domain. The petitioner is cooperating with the county very well, but they are going to take the land whether he likes it or not.

Mr. Lord then submitted another aerial photo showing a better view of the parcel *[attached to file as Petitioner Exhibit #2]*. He explained that the petitioner would like to build in the rectangular piece that is closer to the water. Mr. Burson realizes he needs to meet elevation standards with an effective septic system. He will cross those bridges when he gets there.

Mr. Burson has legal access to the proposed property by private roads that head south and go out to SR 120. When the project is completed, the county will have rolled up four residential curb cuts that were all staggered, modest, and very deep in going to the north on SR 120. The service road will be the basic replacement for all of those curb cuts. Mr. Lord feels this is a positive project for the county and the county supports Mr. Burson and appreciates his cooperation. He indicated they support the Staff Analysis.

Mrs. Wolgamood said Mr. Lord referred to the roadway in two different manners. She indicated he called it a service road and a public right-of-way. Mr. Lord explained it will be a true public dedicated road that will service the properties. The road will meet building construction standards and will be very wide, such as a boulevard style.

Mrs. Wolgamood asked if it will be maintained by the county and Mr. Lord said yes, the county will handle snow removal and paving.

It was pointed out by Mrs. Wolgamood that the staff map doesn't include what is shown on maps submitted by the petitioner.

She then questioned if the service area will be owned by Mr. Burson and Mr. Lord indicated yes. The neighbor immediately west of where Mr. Burson wants to build will be using the new road as well. Mrs. Wolgamood indicated he has been there a long time.

Mr. Lord said there is another property immediately adjacent to the boat launch owned by people named Cobb who have a residential structure. He explained they are legal and they do have a Variance. The county is acquiring the Cobb's property in full, so they will clean that up and merge what is needed with the boat launch.

Mrs. Wolgamood questioned which house it is and Mr. Lord pointed it out on the aerial photo. He explained that will be acquired by the county and has probably been sold to a private use that will use the cul-de-sac as well.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood indicated she has no issues with the request.

Mr. Miller feels this will clean up a lot of access issues.

Mrs. Wolgamood said she is glad to hear that this will be a dedicated right-of-way.

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 30 ft. lot width Variance to allow for the construction of a residence (Ordinance requires 100 ft.) and a 3 to 1 depth to width ratio Variance to allow for the construction of said residence be approved with no additional conditions imposed. A roll call vote was taken and the motion was unanimously carried.

8. The application of **Larry Yoder** for a Special Use for a home workshop/business for a bulk food store (Specifications F - #45) on property located on the East side of CR 43, 1,900 ft. North of CR 46, common address of 68100 CR 43 in Benton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091337*.

There were 11 neighboring property owners notified of this request.

Larry Yoder, 68100 CR 43, Millersburg, was present on behalf of this request. Mr. Yoder explained he would like to start up a bulk food store and re-package the food to sell retail. He would like to do that in the existing 36 x 54 shop.

Based on the Staff Report, Mr. Miller explained that there seems to be a compliance issue. He then asked if that is going to be cleared up.

Mr. Yoder said he called into the Planning and Development office last week to see if he could get that accomplished before today, but he was told to wait and see what the Board would recommend. The permit was pulled in 2004, so he wasn't sure what procedures he would have to take to get that done. He was hoping he could get the final inspections done and move on.

Based on the inspection report, Mr. Miller said it shows a footing inspection, foundation inspection, and framing inspection. He asked if there is a reason why the final inspections weren't called for. The petitioner indicated there isn't a reason, they just weren't called in.

Mrs. Wolgamood explained there was no verification before he built the new house that the old house on site was converted back into storage space. Mr. Yoder said that is correct, but indicated it had been converted to a storage area. She asked if that is where he is suggesting having the grocery store and the petitioner said yes.

Mrs. Wolgamood then asked to hear what the staff has to say. Mrs. Prough explained that Mr. Yoder called in last week and talked with Mr. Harrell. He told Mr. Yoder to hold off any action until today's meeting. She suggested that the petitioner work with Roy Nichols from the Building Department regarding inspections for the residence. Code Enforcement will work with him on the inspection of the accessory building to verify that the old residence has been

converted back into storage area. When the petitioner achieves compliance, then the staff can review the petition and make a recommendation.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller indicated he agrees with the staff and feels that the petitioner should bring the property into compliance and then come back before the Board.

Mrs. Wolgamood said she would second that with the notation that just because the petitioner brings his property into compliance does not mean that the Board is going to say yes to a bulk food store. They have to look at the request as a whole. The petitioner is not in compliance now and he needs to be.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for a bulk food store (Specifications F - #45) be tabled indefinitely until the property is brought into compliance with the original Appeal granted by the Board of Zoning Appeals in 2004 with the understanding that compliance would be a starting point for review by the Board of Zoning Appeals for this Special Use. After a unanimous roll call vote was taken, the motion was carried.

9. The application of ***Richard & Violet Yaw*** for a Special Use for a wireless communications facility (radio tower) (Specifications F - #31.50) on property located on the West side of CR 13, 415 ft. South of CR 32, common address of 63095 CR 13 in Harrison 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091344*.

There were 15 neighboring property owners notified of this request.

There was no one present for this petition and no notification had been received by the staff prior to today's meeting.

Mr. Homan indicated in situations such as this, the Board will usually table the request for one month and if no one shows up at that time, then the request is dismissed.

Mr. Kolbus said if no one is present next month, the Board will act on the petition in their absence.

There were no remonstrators present.

Mr. Miller asked if the neighboring property owners need to be re-notified and Mr. Kolbus indicated since there are no remonstrators present, they normally don't do that.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that this request for a Special Use for a wireless communications facility (radio tower) (Specifications F - #31.50) be tabled until the May 21, 2009, Board of Zoning Appeals meeting. A roll call vote was taken and the motion was carried unanimously.

10. At this time, Mr. Watkins explained that he and Jeff Burbrink are planning a field trip to Benton County to see the wind farms. They have a host from the area who spoke at a

Commercial Wind Energy Program in Kosciusko County and it was very informative. The plan is to leave at 7:00 a.m., drive through Benton County to look at the towers, and then meeting with Jimmy at 11:00 or 11:30 for about an hour. After meeting with Jimmy, they will eat lunch and then go over to the Technology Park to tour the energy section and nano-technology section. He explained it will be a long day and they won't return until around 6:00 p.m. As soon as he gets it all typed up, he will send it to everyone, but he wanted to give the Board plenty of time to think about it. If anyone wishes to attend, Mr. Watkins is asking for a response by the 24<sup>th</sup>.

Mrs. Wolgamood asked where Benton County is located and Mr. Watkins explained that it is just south of Lafayette near Purdue. It is about a two to two and a half hour drive from Goshen.

11. The staff item regarding ***James and Christine Goldsborough (Use Variance #20082993)*** was then presented by Mrs. Prough. She explained that it is not necessary to discuss or review this at this time. The staff is working with the petitioners and Mrs. Goldsborough is working on getting a detailed site plan to the staff. She is also planning to meet with the staff to review the conditions. Mrs. Prough asked that she try to do that within the next 30 days.

\* \* (*Mr. Hesser arrived to the meeting at this time.*)

12. The application of ***Sugar Grove Church*** for an amendment to an existing Special Use for a church to allow for changes to the parking area (Specifications F - #48) on property located on the East side of Old CR 17, 250 ft. South of CR 118, common address of 58512 Old CR 17 in Concord Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091356*.

There were 40 neighboring property owners notified of this request.

Bob Schrock, 25300 CR 4, Elkhart, was present representing DJ Construction on behalf of Sugar Grove Church. The church is planning to make some improvements to their facility this summer. The work is almost exclusively interior renovations with no additions or exterior wall changes. The church was asked to come before the Board to ask for the amendment because of the changes they would like to make to the parking lot. He also indicated that the last time the church came before the Board was for a sign in October of 2007. He reported that the church does plan to go forward with the sign this summer with all of the conditions accepted.

The Special Use amendment they are requesting is to allow for the expansion of the parking area. The church currently has 500 attendants with three different services. The parking additions that they plan to make will add 64 spaces, bringing the total to 232. There are also plans to do some maintenance on the existing stone lot in front of the cemetery. Mr. Schrock said the church appreciates the staff's recommendation for approval.

The petitioner's representative explained that there is a buffer existing between the parking lot and the neighbor. The church appreciates that buffer, so they plan to maintain that. He also indicated that the church plans to obtain permits from the Elkhart County Highway and Engineering Department as requested. Mr. Schrock said they appreciate the consideration for approval.

Mr. Schrock also explained the site plan to the Board at this time.

Mr. Hesser asked if staff is satisfied with the existing buffer and Mrs. Prough said the staff did discuss that issue. The staff is concerned about the expansion to the north because there will be cars coming west to exit. The staff suggested having the trees extend down further to the east of where they are now. Mrs. Prough said they are concerned that as the cars exit, the lights may filter into the residences to the south.

A site plan and pictures of the property were submitted to the Board at this time *[attached to file as Petitioner Exhibit #1]*.

Mr. Homan asked the petitioner if they have any problems installing a few more trees and the petitioner indicated they would accept that.

Mrs. Wolgamood asked if the new limestone area in front of the cemetery will be parking and Mr. Schrock said it currently is. There is limestone there and they are going to dress it up. They aren't adding anything there apart from doing some maintenance.

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/Miller*) 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 changes to the parking area (Specifications F - #48) be approved with the following conditions imposed:

1. A buffer of five (5) ft. trees or fencing to be placed between the parking lot and the residence to the south to provide a buffer from automobile lights.
2. All required Elkhart County Highway permits must be obtained.

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

13. The application of *Crystal Smith (L.C. Purchaser) and Gabriela Zimmerman (L.C. Holder)* for the renewal and amendment to expand an existing Special Use for a kennel with indoor pens and outdoor walking area (Specifications F - #15.10) on property located on the 1,420 ft. North off of CR 8, 870 ft. West of Barrington Lane, common address of 21513 CR 8 in Washington Township, zoned A-1, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091363*. She explained that a letter was received from the Health Department regarding an on-site sewage disposal system, which is required and is not in place at this time. Mrs. Prough spoke with Mr. Hartsuff from the Health Department yesterday and she still didn't have a permit for the septic system.

There were 25 neighboring property owners notified of this request.

Crystal Smith, 21513 CR 8, Bristol, was present on behalf of this request. She indicated that the sewage was completed and they came out and looked at it. She made sure it was the way they wanted it with the two tanks and the gravel before they covered it. The soil people came back out and looked at it that same day as well.

Mr. Homan asked how long ago that was and Ms. Smith indicated before it was before it snowed and estimated before December.

Ms. Smith said the only thing she wants to negotiate in her request is the time because some of her senior pets and puppies have a difficult time holding it until the next morning with being outside for the last time at 5:00 p.m.

She has also had two dogs jump over the fence, so she would like to do an expansion of the fence. She wants to put in doggy doors with the flaps so that when the dogs exit the doors, they would be in a maintained area with an alleyway and a barricade fence. If they were going to get out after the expansion of the fencing, then they would have to go past three fences. Ms. Smith said if she is required to have a building permit to do that, then she is fine with that. The existing fencing on the property is not as secure as she would like it to be.

Mrs. Wolgamood asked if she is asking for additional dogs and Ms. Smith said she was, but she understands the Board is against it. She indicated she could go another year as is, but it puts her at a financial strain. If she has a family that has three Shih-Tzu's, a Labrador, a Maltese, and a Bulldog, then that is already six dogs for one family. She is concerned that if she has two more families come that each has two dogs, then she would have to reject them because she would already be at her limit.

Mrs. Wolgamood asked if she is asking for the sign to be changed and the petitioner indicated the sign can stay within the Board's confinements. She goes by appointment only and she doesn't do a lot of advertising. Ms. Smith said she's not in the phonebook, so she doesn't need a large sign. She only needs people to recognize where the driveway is because it is quite a long driveway with heavy traffic on CR 8. She had a wooden sign in the shape of a dog bone that rotted out, which was no bigger than the mailbox.

Mr. Homan asked how the dogs got loose from the property and Ms. Smith said it was a tall 99 pound dog that jumped right over the existing fence. She wants to avoid that from happening again because he was an intact male dog who found a golden retriever female who was also intact. The other dog that got loose was one of Ms. Smith's personal dogs that wanted to chase the bunnies.

A copy of the floor plan of the building and a site plan showing the proposed fencing was submitted to the Board at this time *[attached to file as Petitioner Exhibit #1]*.

Mr. Homan asked how tall the fence is and Ms. Smith said she believes it is six feet tall. She explained it is buried under the ground about 12 inches so they can't dig underneath it. A Bouvier is a tall and muscular dog that can jump the fence, but the average dog won't be able to jump the fence. She would like to avoid that from happening in the future.

Ms. Smith then submitted a brochure for Hidden Acres Pet Retreat along with the services that are provided *[attached to file as Petitioner Exhibit #2]*.

Mr. Miller asked if the separate septic system for the business is installed and Ms. Smith indicated yes, it was inspected. They gave her very specific instructions with the materials list already in place on how it had to be done.

Mr. Hesser questioned if the site plan included with the packet shows the existing fencing and Ms. Smith explained that what is shown in pink on the submitted exhibit (Petitioner Exhibit #1) is what she would like to fence in the future. Ms. Smith said the exhibit shows how the building is set up inside. They would like to put the extra large doggy doors with the security flaps in the exterior rooms to allow the dogs to go out to a private yard. The dogs won't be able to be unobserved or have the capability to go over a fence and be free. They would have to go over their private yard fencing, then there's an alleyway, and also a barrier fencing that surrounds the entire building.

Mr. Hesser asked if the site plan submitted with the packet is what she is proposing or what is existing. The petitioner further explained the site plan to the Board and what she is proposing.

Ms. Smith then showed the Board a copy of the septic system paperwork, but it was not submitted for the record.

Mr. Homan said one thing he noticed was that on the original approval, the hours listed were 8:00 a.m. to 6:30 p.m., Monday through Saturday. On the amended request, she is asking for appointment hours. Ms. Smith said she has set her business so that it is by appointment only. This helps eliminate a lot of traffic coming in and out randomly and she knows when to expect her customers to arrive and how long they will be there. She feels this is courteous for the neighbors, clients, and pets. By having appointments on Sunday, it will help alleviate the extra traffic on Monday mornings. She is very selective as to which pets get to go home on Sunday evenings. If they are being groomed, then they won't be able to go home until Monday morning. If they won't be getting groomed, she would like to get them out on Sunday evening because it causes less traffic the next day. She would only allow for appointments between 4:00 and 6:00 p.m. on Sundays.

In her amendment request, Mrs. Wolgamood pointed out that she indicated exotic pets, pocket pets, and traditional pets. She is also asking for an increase in employees from one to three.

Mrs. Wolgamood said the other issue she had is that there are two site plans in the packet. One of them shows the existing building across the property line. What the petitioner submitted is proposing to extend even further beyond that point. The survey of the property shows that the building is not on the property and she feels the Board certainly needs to address that issue.

Joel Putnam, representative from the Pheasant Ridge Homeowners Association, 21643 Brockton Court, Bristol, was present in opposition to this request. Mr. Putnam explained the Homeowner's Association still has the same concerns as what they did last year. He agrees that it is a fine use of a facility, but he doesn't like it in the neighborhood. The location of where the business is located is right next to the public park area in the neighborhood where all of the kids congregate and play.

Another concern of Mr. Putnam is that the existing building is already over onto Pheasant Ridge's property. If an additional fence went up, then it would be even more so on their property.

Mr. Putnam indicated he is concerned about the hours of operation. He understands that appointments would be better for the dogs, but he doesn't want to see it extend to late night hours where people would be coming and going. Where Ms. Smith accesses the easement off of Pheasant Ridge's property, all of the homeowners along that lane would see the headlights coming at night, especially during the winter hours. He doesn't mind the appointments as long as the appointment hours are established.

The doggy doors aren't as much of a concern, but they will allow the dog the ability to go outside and bark at anytime. He feels they should have a lock on the inside of the door.

The last thing Mr. Putnam would like to address is to make sure the sewage situation has been taken care of. As a Homeowner's Association, they are trying to protect the value within the Pheasant Ridge Subdivision and the residents who live along the easement road that grants access to this piece of property.

Mr. Hesser asked if the subdivision prohibits pets and Mr. Putnam said no. There are dogs in the neighborhood and they are supposed to be on a leash when they go for a walk.



Mr. Homan indicated proximity seems to be the biggest issue in terms of the kennel in relation to other residences in the neighborhood. Mr. Putnam then pointed out the location of the tennis court, volleyball court, basketball court, and the playground on the aerial photo.

Mr. Hesser also asked him to point out the access easement on the aerial photo and Mr. Putnam did so. He explained that Pheasant Ridge owns the property of where the road is traveling north.

Greg Lee, 53691 Ridgeview Lane, Bristol, was present on behalf of this request. Mr. Lee indicated he lives directly north of the proposed property. His backyard butts up against the fencing and the dog compound is approximately 10 to 12 feet south of his property line. The kennel is about 75 feet south of his home and his biggest concern is that dogs bark continuously. He feels this is a constant nuisance hearing dogs bark at all times during the night and he doesn't care to have 99 pound dogs get loose with children around. From Mr. Lee's property, he has a straight sight into the kennel building and he doesn't agree with it.

Mr. Homan asked him to point out his property on the aerial photo and Mr. Lee did so. He then asked if there is any type of barrier between his property and the property in question. Mr. Lee indicated there is about 15 feet of scrub brush trees, which blocks the view during the summer, but everything can be seen in the winter months.

In rebuttal, the petitioner indicated she had addressed the easement issue at the last public hearing. She said the owner of the property had purchased the rights to the easement when she bought the property. Ms. Smith would like to use the barricade fencing along the back as well as the chain link because of the two residences to the rear. She feels that the playground and tennis courts are sometimes noisier than the dogs in the kennel.

The petitioner indicated that ninety percent of her clientele is from Pheasant Ridge subdivision. Mr. Wayne, who was on the Pheasant Ridge Homeowners Association, has used her kennel in the past. She also named a couple of residences along the easement road who also use her kennel.

Barricade fencing would help alleviate some of the noise from the barking. Ms. Smith isn't sure whether or not she can afford to put the pine trees up this year. She feels that buffer would also help alleviate some of the noise.

Ms. Smith explained that the pocket pets come in their own travel cages. Pocket pets are animals such as ferrets, birds, bunnies, turtles, snakes, hamsters, guinea pigs, and cats. They are smaller animals that are much easier to take care of because they don't have to go outside. The petitioner also feels they are a lot less noisy.

Mrs. Wolgamood then questioned the number of employees. Ms. Smith said she would like to offer a couple of jobs to the City of Elkhart. She would offer seven to thirteen dollars per hour. She would like to have one full-time employee and one part-time employee. Ms. Smith has a 15 year old that helps in the kennel as well. If she were to have some extra help, it would help keep things cleaner and it would reduce the noise because animals would be able to be attended to quicker.

Ms. Smith explained that the doggy doors do lock from the inside. This allows her to put one group of dogs out and lock them out while she cleans up their area and gets them food.

Mr. Hesser said the submitted drawing shows the property with the building itself going over the boundary line, which would make the fence go even further over the boundary line. The petitioner indicated it's even with the driveway and they haven't gone any further than what they

are already using. The driveway runs right along the side of the kennel and it's already cleared out. She won't have to move anything, but she will need to extend the six feet of fencing.

Mr. Hesser asked if she received something from the Elkhart County Health Department indicating they had approved the septic system. Ms. Smith said indicated she has a letter, but it's her only copy.

Mr. Homan asked what the date is on the document and the petitioner indicated March 25<sup>th</sup>, 2008. They completed it in 2008 and she got the supplies in April/May. She said it took her a while to afford to hire a bobcat to come in and dig the huge trench out. She then had to pay someone to do all of the plumbing and piping and pay for rocks. In October/November, she had everything put together, but there were some problems with the height and draining.

Mr. Nemeth then indicated the letter from the Elkhart County Health Department was written on March 31, 2009. They have not issued a permit to have the kennel septic installed. The Health Department would like to know who installed it because that work shouldn't have been done without a permit.

The public hearing was closed at this time.

Mr. Homan said he's not ready to take action on the submitted site plan drawing today. He also explained that there is a letter from the Health Department dated March 31, 2009, that talks about the March 2008 Health Department visit. They talk about the need to have an on-site disposal system. They go on to say that the soil borings have been done and some of the prep work has been done from the county's side, but the file has remained inactive since then. He explained that she must've had the contractor come in, but she never actually got a permit. Without a permit, she doesn't have a legal septic system and there weren't any final inspections done. The letter further states that the petitioner needs to get proper permits and inspections from the Elkhart County Health Department for the disposal system. He feels that should be in the file before the renewal request is done.

Mr. Homan then indicated the Board doesn't usually do site plans for people on the spot during the hearing. He understands the purpose of her request, but there has been a material change to the site plan. He would rather see the site plan submitted to the staff for a review and be properly planned before any action is taken.

Mr. Kolbus said the site plan is irrelevant if the Board isn't planning on granting the amendment. There are a number of other issues that need to be addressed because she may be violating her original Special Use approval.

Mr. Hesser said he would be inclined to deny or not consider the amendments based on the comments that were made. He doesn't have a problem with the renewal, but he feels the septic issue needs to be addressed. He is also concerned that she may not be compliance with the current conditions of the original Special Use. He suggested having the staff work with the petitioner to seek appropriate amendments with an appropriate site plan.

Mr. Miller said he feels the Board needs to know who owns the driveway.

Mrs. Wolgamood indicated she would be more than willing to go along with what the staff has recommended.

Mr. Homan said that would not give her the expansion unless it was brought back as a separate item.

Mrs. Wolgamood said the petitioner could re-file for another amendment once she gets all of her ducks in a row. If the home workshop/business is not currently in compliance with the

original conditions, then Code Enforcement can take care of those issues. The petition can be brought back before the Board by Code Enforcement and it could be rescinded.

Mrs. Wolgamood said she doesn't see anything in the previous approval stating that she is required to get a septic system, but it may have been a separate issue with the Health Department. She feels the petitioner is giving an effort and taking the neighboring property owners' concerns into consideration. Mr. Lantz indicated he agrees with Mrs. Wolgamood.

According to Mr. Hesser, he doesn't feel this should be approved on a permanent basis because there are some issues that he's not satisfied with and he would like to see those issues dealt with.

Mrs. Wolgamood suggested asking for a review by the staff in six months and having them bring that review back to the Board as a staff item, along with a renewal at the end of the year.

Mr. Homan indicated he doesn't agree with the expansion idea, but he feels the appointment idea would be lower impact than any of the other amendment requests. That would be an expansion of the hours of operation.

Mr. Hesser indicated she is asking for a lighted sign instead of an unlighted sign. When the Board is dealing with Special Uses like use, they generally don't allow lighted signs.

Mr. Homan said he would like to add appointment hours on Sundays. Mrs. Wolgamood said she wouldn't have a major problem with a few hours on Sunday. The petitioner indicated it would be 4:00 p.m. to 6:00 p.m.

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 the renewal of the existing Special Use for a kennel with indoor pens and outdoor walking area (Specifications F - #15.10) be approved with the following conditions imposed:

1. Approved in accordance with the Staff Analysis with all previous conditions (as amended by the Board) to remain in effect as follows:
  - a. Sign limited to four (4) sq. ft. per side and unlighted.
  - b. All dogs must be confined inside an enclosed building after 5:00 p.m. or placed on a leash if outside the confined area.
  - c. All barking should be held to a minimum.
  - d. Approved for a period of one (1) year with renewal by the Board of Zoning Appeals.
  - e. Drop off and pick up hours are to be 8 a.m. to 6:30 p.m., Monday through Saturday. Appointments for pick ups and drop offs are to be 4:00 p.m. to 6:00 p.m. on Sunday.
  - f. A total of nine (9) dogs are allowed on the property at any one time, including the owner's three (3) personal dogs.
  - g. Approved for the owner/occupant of the residence on site.
2. Staff review in six (6) months to verify that the petitioner is in compliance with the conditions. If there are any problems, then the petition may be brought back before the Board.
3. The petitioner is to submit a copy of the completed certification of the sewage disposal system from the Health Department for the file within sixty (60) days.

The motion further reflects that the request for an amendment to expand the existing Special Use was denied by the Board in accordance with the Staff Analysis. A roll call vote was taken and the motion was unanimously carried.

14. The application of *Martin Ntende* for a Special Use to allow for a wind generator including a 50 ft. tower (Specifications F - #31.50) on property located on the South side of CR 40, 162 ft. East of Canal Street, being Lot 51 of Original Plat Waterford, common address of 19122 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091361*. Mrs. Prough then submitted a copy of a letter from John Peffley in the remonstrance to this request, which is in the file for review. A copy of the letter was also given to the petitioner.

There were 40 neighboring property owners notified of this request.

Martin Ntende, 19122 CR 40, Goshen, was present on behalf of this request. Mr. Ntende explained that he would like to relieve his family of the high Nipsco bill of the last few years by installing a 30 to 50 ft. tall windmill. He wants to go about 50 ft. because of the height of the trees. His reason for coming before the Board is to figure out some way of affording the utility costs that he has to deal with every day.

Mr. Lantz explained that wind generators are new to Elkhart County. He asked the petitioner if he is going to put the windmill on a four by four wood post. Mr. Ntende said he was doing a lot of research at the time of applying for the Special Use and tried to figure out how you put one up. He was considering using a four by four post, but since then, he has done the research and found out that there are existing engineering posts used for traffic lights that could be used for this purpose. These types of posts have been installed all around the area.

Mr. Ntende indicated that someone who lives less than a mile away from him saved \$200 in one month on utilities by having a wind tower. That person has a three acre plot of land, so Mr. Ntende realizes there is a distinction.

Mr. Lantz asked what size structure he would put the windmill on and the petitioner said the base will be at least a foot or more in order to go with the 50 ft. tower. If he is going to go with the 30 ft., then it is exactly one square foot.

The petitioner understands that people in the area are concerned because he wouldn't want a windmill to land on his property, but he's not aware of any engineered windmills that have fallen. He feels he owes this to the community to have something that is valuable and works well.

Mr. Lantz asked if the structure would have a six foot span on the blade and the petitioner said it would depend on which windmill he uses. There have been several that he has been considering, but the six foot span seems to be restrictive.

The windmill that Mr. Lantz had looked at had a six foot span with approximately one foot poles. He said it was about 35 to 40 feet tall that costs around \$15,000. The windmill was quiet, but he feels there would be some location issues for this particular request.

Mr. Ntende then added that he would like the Board to pass on the information as they get it regarding windmills. He feels the Board of Zoning Appeals is on top of all of the considerations and it would be valuable to the community to know what their options are. He is clueless as to what it would take for the community to do this.

Mr. Hesser asked the petitioner if he has any information on the noise generation. The petitioner indicated that the windmill Mr. Jensen has, which is less than two miles away, is called a Wind Wire. That particular company has indicated that it sounds like the sound of a whisper at

a 100 ft. distance. There is one in Concord Township, which he hasn't been able to track down, and there are also two of them at First Federal Banking in Mishawaka. Mr. Ntende indicated you can get on the First Federal Banking website to see how much electricity they saved.

Mr. Hesser asked if the windmills cause any interference with electronic devices such as television or radio signals. The petitioner said he doesn't think so, but he's not sure because he hasn't done that kind of research yet.

Anita St. Germain Miller, 19082 Michigan Road, Goshen, was present to voice some concerns. Ms. St. Germain Miller indicated she lives about half a block away from the proposed property. She is not really opposed to this request, but she does have a lot of questions. She questioned who supervises building of wind generators in Elkhart County and if this is independent of the builder or the contractor. The proposed lot is approximately 66 by 100 and has tall trees. She explained that the neighborhood also has electrical wires that run very close and asked if those issues are considered when installing a tower.

Ms. St. Germain Miller asked if there are dangers of the electrical backflow to homes or neighbors in regards to surge or power. She also questioned the cost of the wind generators because she feels it would take a long time to make up for the cost of them.

Don Florea, 25434 CR 24, Elkhart, was present in favor of this request. Mr. Florea feels wind generators are going to become very popular and how they are handled now makes it easier in the future. The windmill that Mr. Florea wants to put up is totally different from Mr. Ntende's windmill. He indicated there have not been problems with the windmills falling on anyone's house, but the biggest concern is the electrical lines. All of the towers have to be inspected by the electrical inspector.

Mrs. Wolgamood asked if his property is located on CR 24 and Mr. Florea said yes. He explained that his neighbor to the west has installed a windmill.

At this time, Mr. Ntende said he feels that he has the same concerns as the neighbors do. He has a precious three year old daughter that he would not want to put in jeopardy. He empathizes with the neighbors and he wants to protect the neighborhood. Mr. Ntende would like the Board to give him some guidance. If the Board says no to the request, he asked what that does for the community and how they will live six months from now. Lastly, he explained that the option of relocating is not an option for him.

Mr. Lantz said the Board is addressing this for one of the first times in an area like this. He questioned what the Board would do if the other 20 houses in the subdivision decided they wanted wind generators as well. Mr. Ntende feels that is a good point.

Mr. Hesser asked the staff if the concern is primarily because of the urban location and the height of the tower. Mrs. Prough said yes and another concern is a safety issue. The photos show electrical overhead lines that run right behind the house in the alley that people use quite frequently.

If the request were approved, Mr. Miller asked if the Board could put a contingent on it that the power company has to sign off. Mr. Lantz said he believes they are required to do that.

The public hearing was closed at this time.

Mr. Lantz said he feels the petitioner needs a little more information. The Board could possibly reconsider the request later if the petitioner could be a little more specific about what he wants to do and if the Board knows what they want to do with wind generators in residential areas. The Board isn't sure where they are headed with this since it's new in residential areas.

The wind towers Mr. Lantz has seen are quiet, but they are located out in the country. He doesn't feel comfortable approving this request as it stands now.

Mr. Homan indicated this would not conform with the current tower ordinance because of the proximity to the boundary lines and Mr. Kolbus said that is correct. Wind generators are becoming very popular very quickly and guidelines need to be developed for that, but Mr. Homan indicated the Board can only follow the current regulations.

Mr. Hesser said he agrees with Mr. Homan. He likes the idea of the wind generator, but it causes an issue with it being placed in a very densely populated area. He feels this would be a potential safety issue and what was presented today by the petitioner is substantially different than what was indicated in the questionnaire.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use to allow for a wind generator including a 50 ft. tower (Specifications F - #31.50) be denied as they feel this is not an appropriate location to place a tower/wind generator. A roll call vote was taken and 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 ***Middlebury Community Schools*** for a renewal of an existing Special Use for five modular classrooms and an amendment to allow for the placement of an additional modular classroom (Specifications F - #38) on property located on the Northwest corner of Northridge Drive and CR 16, common address of 57853-1 Northridge Drive in Middlebury Township, zoned A-1/B-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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091340*.

There were 28 neighboring property owners notified of this request.

Craig Baker, 56853 Northridge Drive, Middlebury, was present representing the Middlebury School Corporation. Mr. Baker said the school would like to keep their portable classrooms in place. Each one of the portable classrooms costs \$43,000 and they are currently unoccupied. The school purchased them in the period from 2001 to 2004 and they would like to keep them on site. He feels they will have to use them again in the future and they still look very nice.

Mrs. Wolgamood asked if there are six portable classrooms on site now and the petitioner said yes. Mr. Baker said the new classroom is labeled #6 on the site plan and is already in place.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood asked why the Board continues to grant Special Uses for more and more modular's and then make them come back for renewal. She asked why they aren't granted for an indefinite period of time.

Mrs. Prough said that started because the school started coming in and asking for the classrooms to be temporary until they completed a building project. There has always been a

time limit because the intent was always that the classrooms be removed upon the completion of the construction project.

Mrs. Wolgamood asked if that is what is being suggested here and Mr. Baker explained they do have one portable classroom that was given an indefinite waiver, which is used for computer storage and as a maintenance facility. She asked if that is one of the six portable classrooms and Mr. Baker said it is a different one that is behind the administration building.

Mr. Lantz questioned whether or not it's easy to sell the portable classrooms and Mr. Baker said no. They typically cost a lot of money to move one of them and set them elsewhere, so corporations usually end up selling them for one dollar.

Mr. Kolbus asked what the state requires for the portable classrooms and Mr. Baker indicated he can't answer that question. The state hasn't made them move any of them, and some other corporations have had them for a very long time.

Mr. Homan asked if they are placed on permanent foundations and the petitioner said no, they use concrete pillars that are set on blocks with tie downs. The portable classrooms can be moved.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a renewal of an existing Special Use for five modular classrooms and an amendment to allow for the placement of an additional modular classroom (Specifications F - #38) be approved as per site plan submitted with no time frame being placed on this approval. A unanimous roll call vote was taken the motion was carried.

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

16. The application of **Joseph & Sheila Kline** for a Special Use for a home workshop/business for a bent and dent salvage grocery store (Specifications F - #45) on property located on the South side of CR 50, 186 ft. West of CR 143, common address of 71153 CR 50 in Benton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091339*. She also indicated that a phone call was received from a neighboring property owner, Alan Lerch, who was not able to respond in writing, but he does have a concern about the business due to traffic and the property values. A copy of the phone call conversation is available for review in the file and a copy of that was given to the petitioner.

There were 7 neighboring property owners notified of this request.

John Spalding, 106 Lincoln Way East, Mishawaka, was present representing the petitioners. Mr. Spalding indicated the petition is for a home workshop/business for a bent and dent salvage store. There are stores similar to this in rural areas in Bourbon, Indiana and SR 119, which do serve the area.

In this area, there is some concern with run-off from the water that occasionally floods the field to the north. By putting in this store and the hard surface for the parking and driveways, the petitioners would retain all of the run-off on site and into a pond. The petitioners would improve the drainage into an existing tile system that runs to the east of the proposed property.

On Tuesday, April 7<sup>th</sup>, 2009, the petitioners sat outside and monitored the traffic from 9:30 a.m. to 5:00 p.m. They also counted traffic on Saturday, April 11<sup>th</sup>, from 8:30 a.m. to 3:00 p.m. The petitioners noted that they had a total of 632 vehicles on Tuesday with ten of them being semis. On Saturday, there were 758 vehicles driving on CR 50, so there is a lot of traffic on that street already. Mr. and Mrs. Kline feel that they won't increase the traffic count, but they would like to tap into that traffic count. The petitioners have kids as well, so they don't want to cause any concern that some of the kids or families in the area could get injured.

Mr. Spalding said part of the reason they would like to have the traffic on CR 50 is because it is in close proximity to where the petitioner's live. They don't have vehicles, so it would be a lot easier for them to get to that facility since it is adjacent to where they live. The area between the residence on the corner of CR 143 and CR 50, the petitioners intend to build a green fence with pine trees and a privacy fence to help shield the surrounding residence from their business.

Mr. Homan questioned where the petitioners live and Mr. Spalding pointed out the property on the aerial photo.

Mr. Lantz asked the petitioner's representative to go over the drainage issue again. Mr. Spalding explained that a lot of the water is running north on the property towards the ditch. He said there is a tile that runs along the property line. The intent is to help divert that water and get it to drain to the ditch as well as retain their own water that they would create by their hard surface.

Mrs. Wolgamood said she failed to see the reasoning for location of the proposed business at this location verses south of the petitioner's home. The impact of where the petitioners are suggesting the business be located is impacting the neighbor hugely. Mr. Spalding indicated it would cause a visibility issue because there is a private road in the area.

It was indicated by Mr. Homan that the site plan shows the parking lot and the septic area right up to the property line. He asked if that is correct or whether it is misrepresented. Mr. Spalding said the site plan is a rough schematic that was done by the petitioner's contractor. The septic field size has yet to be determined as well as the size of the parking lot. He explained that is the property line where the petitioners intend to build the green fence and the wooden privacy fence.

Mr. Lantz asked if the location could be moved and Mr. Spalding said the property falls off dramatically as you go towards the west on CR 50, so the closer they can get to the east side of the property, then the better it will be for drainage purposes. The petitioner's representative indicated some type of buffer would be put up by Mr. and Mrs. Kline.

Maurice G. Moser, 2255 W. Union Street, Ligonier, was present on behalf of this request. Mr. Moser indicated that he and his wife own the farmland that is east of the proposed property across CR 143. They feel the property needs to be maintained agricultural.

Nancy Lerch, 10536 CR 50, Ligonier, was also present in opposition to this request. She explained she does not want her property value to decrease. Her family moved to this location to be in the country and not next door to a store. She does not want the increased traffic and having a store next door would increase the possibility of theft to her home. It may also result in people stopping at her property when their hours are closed.

Mr. Hesser asked who she acquired her property from and Mrs. Lerch indicated she lived in the area before the petitioners moved in.



In rebuttal, Mr. Spalding indicated they are not rezoning the property. They are asking for a Special Use, so the property would remain as an agricultural status.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said he remembers the hearing for some type of bent and dent operation, but he's not sure how comparable that situation may have been. He is quite concerned that there is an existing property owner in remonstrance right next door in an A-1 area.

Although the petitioners have asked for a Special Use for a home workshop/business with 22 acres, Mrs. Wolgamood feels it would give the appearance of a commercial business since the residence is not on site. She doesn't feel this qualifies as a home workshop/business and she would be willing to go along with the staff's recommendation. Mr. Miller agreed.

Mr. Lantz said he would support home workshop/businesses more than anybody. He has a problem with this location and the neighbors don't normally complain with any great extent. He feels it would be upsetting to live in the country and have a store next door. If the location of the business was next to the petitioners' residence, then the situation may have been looked at differently.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for a bent and dent salvage grocery store (Specifications F - #45) be denied in accordance with the Staff Analysis. A unanimous roll call vote was taken and the motion was carried.

17. The application of **Donald R. Florea** for a Special Use to allow for a wind generator including a 60 ft. tower (Specifications F - #31.50) on property located on the South side of CR 24, at intersection with Peppermint Drive, common address of 25434 CR 24 in Concord Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091362*.

There were 16 neighboring property owners notified of this request.

Don Florea, 25434 CR 24, Elkhart, was present on behalf of this request. Mr. Florea explained he has plans in process to build a wind generator. He and his neighbor are working together on this one and it will be very similar to his neighbor's. The petitioner indicated his wind generator would only be 60 ft. tall, verses his neighbor's 80 ft. tall wind tower. He is trying to address some of the concerns in the community and install a device that is cost effective. Mr. Florea hopes to see a three to five year payback that produces low end electricity and regulates safety.

Mrs. Wolgamood asked the petitioner to point out his neighbor's tower on the aerial photo and the petitioner did so at this time.

Mr. Florea then asked about the field day regarding wind generators, which was talked about earlier in the meeting by Mr. Watkins. Mr. Kolbus clarified that the field day is only for the Board members.

Mr. Florea said he agrees with Mr. Homan on the collapsibility issue. He feels if the tower is built properly in the first place, then it won't be an issue, so he isn't concerned about that.

Mr. Lantz asked if this would be a commercially made unit and the petitioner said it will be half. The tower will have bigger blades with a different generator system in it. He would like to take advantage of low winds and high winds with a stepping system.

He also asked how many miles per hour the wind needs to be blowing and Mr. Florea said around four or five miles per hour. When he gets up to 15 to 20 miles per hour winds, he will be looking at about 38 to 40 amps.

Mrs. Wolgamood questioned whether or not building permits are required for the wind towers and Mrs. Prough indicated yes, but only an electrical permit. Building codes don't regulate the structure of the towers at this time.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said today has pointed out how urgently Elkhart County needs to look at the issue of wind generators. When looking at the tower guidelines, he feels this meets the requirements. Mr. Hesser said he agrees with that because this request is in a very wide open area and there is already a windmill in the area. He said the Board needs to know where the "in between" point is at, but he doesn't have a problem with this request.

Mr. Kolbus said when these studies are completed, they may realize that Elkhart County is not a good wind economy and they have to have larger blades to take full advantage of what we do have. He feels that would be a good point to look at as to how big the blades should be.

Mrs. Lantz indicated it meets the requirements of the current tower policy.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use to allow for a wind generator including a 60 ft. tower (Specifications F - #31.50) be approved as per site plan submitted. After a roll call vote was taken, the motion was unanimously carried.

18. The application of **Matthew E. Bontrager** for a Special Use for a home workshop/business for small engine repair service and sales (Specifications F - #45) and a developmental Variance to allow the total square footage of accessory structures (8,432) to exceed the total square footage in the primary structure (3,072), a difference of 5,360 sq. ft. on property located on the East side of SR 13, 1,690 ft. South of CR 46, common address of 68832 SR 13 in Benton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091343*.

There were 7 neighboring property owners notified of this request.

Matthew Bontrager, 68832 SR 13, Millersburg, was present on behalf of this request. Mr. Bontrager explained he is requesting to have a Special Use for a small engine repair business. He bought the property in April of 2004 and he has been searching for an occupation so he can utilize the buildings on the property. He worked for a small engine repair business for a couple of years and then did repairs on his own for one year.

The petitioner said he acquired a shop in January of 2009 and was advised of this application for a Special Use for a home workshop/business. He has made an effort and talked to all of his neighbors to ask them about this. All of the neighbors were in favor of it to his knowledge. They have cars going day in and day out, so he's not sure how much traffic goes through the area each day. Mr. Bontrager said he plans to benefit from this traffic because that would be his means of advertisement.

The Developmental Variance is something the petitioner is not aware of and how that works. All of the buildings on the property were built prior to the time when he purchased the property. Mr. Bontrager explained he is open to any opinions or comments because he is new to this. He would like to have an occupation where he can work at home since the building would be right next to his house. He has researched this thoroughly as a business and he has found that it does have benefits for himself and the community.

Mrs. Wolgamood asked if he will be doing sales and service of new or new and used. Mr. Bontrager said it will be new and used. He will repair whatever he can make a living off of if it is contained within his area. If he has someone come in with a lawnmower that isn't working, he might indicate to the customer that it isn't worth fixing. At that time, he may offer ten dollars for the lawnmower and tell the customer they can trade it in for a new one. He would try to fix the mower that was traded in, but otherwise it would be taken to the scrap yard.

Mr. Hesser asked if all of the buildings were existing when he bought the property and the petitioner indicated yes. He then asked the staff what would happen if the Board didn't approve the Developmental Variance. Mrs. Prough said it depends on what the petitioner uses the buildings for. If it's used for agricultural purposes and the square footage of the accessory structures doesn't exceed the square footage of living space, then Mr. Bontrager would be fine.

Mr. Hesser said the petitioner is planning on using a relatively small part of the one of the buildings for a workshop area. He has one listed as a storage shed and one listed as an agricultural building, but what happens to the 40 x 96 storage shed. Mrs. Prough said if the Board does not approve the home workshop/business, they would still need to act on the Developmental Variance if the petitioner still wants to use the buildings for personal/domestic storage. He would still be exceeding the square footage of living space.

In the questionnaire, Mrs. Wolgamood explained it indicates that the accessory structures are being used for storing of boats, etc. She asked if those are all his personal things and the petitioner said yes. There is a big tool shed that he doesn't have nearly full. The person he bought the property from owns 160 acres behind him and they wanted to get rid of the proposed property because they don't need it.

Mrs. Wolgamood asked if he is planning to have any outside display at all. Mr. Bontrager said the main thing he wants is a sign by the road with some signs along the building to benefit from the traffic.

She also asked if there will be any semis coming to the property and the petitioner indicated no, it would only be small engines from UPS or FedEx.

The Board asked if he would be the only employee and the petitioner said he may request to have one. He may be able to employ two service technicians, but he plans on having himself as an employee with possibly some part-time help.

Mr. Homan asked if the concrete is existing and the petitioner said yes. The buildings were all torn down by the previous landowners.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan asked how many square feet the building is and it was indicated that the building is 3,248 sq. ft.

Mr. Hesser explained that the Developmental Variance concerns him because sometimes agricultural buildings are built and then a subsequent user buys the property and doesn't use them for agricultural purposes. That causes an issue of non-compliance when the buildings are used for other reasons. He feels that if someone were asking for permission to put up these buildings, then it would be a different story.

He then asked the staff what the primary objections are to this use. Mrs. Prough said the primary reason for this is that it is located in an agricultural zoning district. She explained that this request is a permitted use in a B-3 district and there was concern about noise, possible odor generated from the repairs, and some increased traffic.

Mr. Hesser asked if the adjoining lot to the south is a residence and Mrs. Prough indicated no, those are agricultural buildings.

Mrs. Wolgamood asked if any new buildings have been constructed on the three acre tracts to the north of the proposed parcel and the petitioner said no, there are no new homes on them.

Mr. Lantz feels noise will only be an issue if you are driving by. The petitioner is blessed with a lot of buildings and he won't have any problem with having no outside storage because he has a lot of room to store stuff. If the number of employees is limited to one outside employee, then Mr. Lantz doesn't have an issue with the request.

Mrs. Prough also explained that the Indiana State Highway Department has contacted the Planning and Development office and they are requesting that the petitioner apply for a curb cut through them. Mr. Bontrager has also been referred by the staff to the Elkhart County Highway & Engineering Department because he would be changing the use. She feels that should be something the Board should consider if they are leaning towards granting approval.

Mr. Miller indicated he feels this is in a good location.

Mr. Homan said there would not be a lot of visual impact because there is no new construction going on. If the Board were to approve it, then he feels one of the conditions should be that any building currently being used for personal storage should remain only that.

Mr. Hesser said the home workshop/business aspect of the request should be limited to the building identified on the site plan. With respect to the Development Variance, all of the other buildings on site are to be used for personal use.

The Board was also concerned that the signage may be a violation.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that this request for a Special Use for a home workshop/business for small engine repair service and sales (Specifications F - #45) and a developmental Variance to allow the total square footage of accessory structures (8,432) to exceed the total square footage in the primary structure (3,072), a difference of 5,360 sq. ft., be approved based on the following findings:

1. Will be consistent with the spirit, purpose and intent of the zoning ordinance.
2. Will not cause substantial and permanent injury to the appropriate use of neighboring property.

3. Will substantially serve the public convenience and welfare.

The following conditions were imposed:

1. The home workshop/business be limited to the building as stipulated on the submitted site plan.
2. The curb cut be approved by the State Highway & Engineering Department and the Elkhart County Highway & Engineering Department as they may require.
3. One (1) 2 x 2 double-faced and unlighted sign to be permitted. No other signs will be permitted.
4. Approved for the owner/occupant of the residence on site.
5. No outside storage permitted with respect to the home workshop/business.
6. Approved for a period of three (3) years with a renewal before the Board.
7. Days and hours of operation are to be Monday through Friday, 7:00 a.m. to 5:00 p.m., and Saturday, 8:00 a.m. to 12:00 p.m.
8. The home workshop/business shall be operated only by occupants of the residence and by no more than two (2) employees, associates, or partners who do not occupy the residence.
9. The retail sales on the site be 700 square feet inside the existing building.

The motion was carried with a unanimous roll call vote.

A motion was then made and seconded (*Wolgamood/Homan*) that the request for a Developmental Variance to allow the total square footage of accessory structures (8,432) to exceed the total square footage in the primary structure (3,072), a difference of 5,360 sq. ft., be approved with the understanding that this request is approved for the existing buildings only and those buildings are to be used only for personal storage other than the one that was designated in the Special Use. The motion was then carried with a unanimous roll call vote.

19. The application of **Lawrence Ramer** for an 8 ft. Variance to allow for an addition to an existing accessory building 2 ft. from the rear property line (Ordinance requires 10 ft.), and a Developmental Variance to allow the total square footage of accessory structures (11,860) to exceed the total square footage of the primary structure (3,648), a difference of 8,212 sq. ft. on property located on the North side of CR 38, 2,185 ft. West of CR 11, common address of 25445 CR 38 in Harrison Township, zoned A-1, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083434*.

There were 3 neighboring property owners notified of this request.

Mrs. Prough explained that Mr. Ramer's petition was tabled in March to allow him to submit a site plan to the staff. He had originally requested Variances and there is a business on site. She said the staff received a letter from Attorney Loren Sloat asking that this matter be tabled again. The petitioner had been notified by the planning staff that he needs to pursue a Planned Unit Development (PUD). They have contracted with Blake Doriot to work on that and the petitioner plans to submit a PUD for the property. Mr. Sloat has asked that the request be tabled until the PUD is filed and action has been taken on it.

Mr. Hesser asked the petitioner if what was presented is consistent with his request. Lawrence Ramer, 25445 CR 38, Goshen, was present on behalf of this request and indicated yes.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) this request for an 8 ft. Variance to allow for an addition to an existing accessory building 2 ft. from the rear property line (Ordinance requires 10 ft.), and a Developmental Variance to allow the total square footage of accessory structures (11,860) to exceed the total square footage of the primary structure (3,648), a difference of 8,212 sq. ft., be tabled until the August 20, 2009, Board of Zoning Appeals meeting. A roll call vote was taken and the motion was unanimously carried.

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

21. There were no audience items.

22. At this time, Mr. Watkins gave a brief update on the Zoning Ordinance re-write. There were 11 different groups of people invited to a series of meetings and around 100 people showed up and participated. The comments that were received from the interview process were very positive. The only meeting he was disappointed with was the public group because there were only three people and a reporter that showed up for that meeting. One of the things the consultant did during the interview process was asked everyone to fill out a questionnaire. Mr. Watkins felt it would be appropriate for everyone on the Board of Zoning Appeals to fill one out. There is a front and back side to the questionnaire and it takes about five minutes to answer the questions. The proposal of the survey is to find out what people think about zoning in general. At the end of the two day session, it was decided to make the surveys available for the public. They are available at the Planning and Development counter and the Commissioner's Office counter. There was an ad put in the newspaper regarding the questionnaires.

Mr. Kolbus asked if there have been any responses to that and Mr. Watkins said yes, two things have happened. Mr. Doriot took the forms to a Farm Bureau meeting and he received several back from that. It looked like the responses were all over the Board, which you can expect with any public group. Three have been filled out in the Public Services Building and he's not sure what has happened at the Commissioner's Office. The surveys will be collected for two weeks. He will use the surveys and the comments from the interview sessions to create draft one of the new Zoning Ordinance. Mr. Watkins indicated he expects that draft to be pretty comprehensive. The intent is for the Steering Committee to look at draft one and come up with reasonable standards for Elkhart County. He suspects that will lead to more meetings and a second draft, which will then lead to a third draft. He is expecting that this will be a year long process, but they are moving forward.

Mr. Watkins indicated that Mr. Nemeth has been working on a sign amendment for the digital signs that are popping up all over the place. Secondly, Mr. Kanney is diligently working on wind generations. He hopes to get something done on both of these issues before the final Ordinance is done.

23. Mrs. Wolgamood indicated that Mr. Harrell is going to be retiring in August of this year.

24. The meeting was adjourned at 11:19 A.M.

Respectfully submitted.

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Kate A. Keil, Recording Secretary

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Randy Hesser, Chairman

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Tom Lantz, Secretary