

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 18<sup>th</sup> DAY OF JUNE 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, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Larry Harrell, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Dan Piehl, Planner; Ann Prough, Code Enforcement Officer; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Miller/Wolgamood*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21<sup>st</sup> day of May be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Wolgamood/Miller*) that the legal advertisements, having been published on the 6<sup>th</sup> day of June 2009 in the Goshen News and on the 8<sup>th</sup> day of June 2009 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

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

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

5. A motion was made and seconded (*Wolgamood/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 **Gary & Linda Eby** for a Use Variance to allow for warehousing and storing in an R-2 district for a plumbing contractor business and for a 32 ft. Variance to allow for the construction of a storage building 43 ft. from centerline of the right-of-way of CR 45 (Ordinance requires 75 ft.) on property located on the Northeast corner of CR 45 & Mary Street, 700 ft. Northwest of CR 13, being lots 74, 75, & 76 of Sunny Side 2nd , common address of 23833 CR 45 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 #20091711*.

There were 35 neighboring property owners notified of this request.

Mr. Harrell indicated that this street is also known as Hammond Avenue, which would only require a 50 ft. setback. The staff talked it over and they are going to leave it up to the Board as to whether or not they want to reduce this to a seven ft. Variance.

Gary Eby, 59203 Parkshore Drive, Elkhart, was present on behalf of this request. Mr. Eby explained that he would like to build on the existing foundation because it is settled in. He has had someone in the concrete business look at the foundation and they said it was fine. Mr. Eby said they would put in a new floor and build a new structure there.

If he has to move the structure to comply with the 75 ft. setback, it is going to put the building within ten ft. of the property line due to CR 45 running at an angle. The petitioner plans to landscape around the property with some rocks, oriental grasses, and trees.

Mr. Hesser questioned the existing portion of the structure and Mr. Eby explained that there is still part of the building standing, which is in good shape.

Mr. Homan questioned how tall the proposed building will be and Mr. Eby said it will have 16 ft. walls. He said it shouldn't end up much taller than what the church was. Mr. Eby also indicated that he went around to all of the neighbors and nobody has a problem with it. They were excited to find out about what he is planning to do.

Mr. Harrell indicated that the county had a tear down order prepared for the church. They tried to put a daycare in the building last year in the current condition that it's in, but the staff immediately stopped.

Mr. Homan asked Mr. Harrell if he is aware of the condition the foundation is in and he indicated no, but the Board could request a letter from someone stating that it is in good condition.

Mr. Hesser then asked the staff to elaborate on the setback Variance. Mr. Harrell explained that the Zoning Ordinance states there should be a 50 ft. setback from a named street and a 75 ft. setback from a county road. He explained that a lot of the streets have a name and a county road. The map names the street as CR 45 and Hammond Avenue.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood indicated she doesn't have an issue with what the petitioner wants to do, but she would not be in favor of saying yes to the street being Hammond Avenue because it is CR 45. There are addresses along that road that are CR 45, so she prefers granting what has been requested. She's afraid they will start precedence in the area if they go by the street name of Hammond Avenue.

Mr. Miller said he would feel more comfortable with verification that the foundation is viable.

Mrs. Wolgamood indicated the Board doesn't know where the landscaping would go or how it would be laid out.

Mr. Homan indicated he has no issues with the request and he doesn't feel the Variance would cause any safety issues.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for warehousing and storing in an R-2 district for a plumbing contractor business be approved with the following conditions imposed:

1. A landscape plan to be submitted to the staff prior to the issuance of a building permit.
2. All required permits and inspections to be obtained.
3. A verification of the viability of the foundation is to be completed.

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

A motion was then made and seconded (*Hesser/Homan*) that the request for a 32 ft. Variance to allow for the construction of a storage building 43 ft. from centerline of the right-of-way of CR 45 (Ordinance requires 75 ft.) be approved with no additional conditions imposed. After a unanimous roll call vote was taken, the motion was carried.

8. The application of ***Rick Stevens*** for a Use Variance for a sewing business on property located on the East side of CR 35, 1,650 ft. South of SR 120, common address of 53316 CR 35 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 #20091748*.

There were 7 neighboring property owners notified of this request.

Present on behalf of this request was Carol Stevens, 53316 CR 35, Middlebury. Mrs. Stevens explained that she would like to have a small sewing business making handbags and horse blankets. She indicated that her daughter can explain the business more in depth to the Board.

Brandie Bell, 53531 SR 15, Bristol, was also present on behalf of this request. Ms. Bell explained that this building is a 30 by 90 ft. storage building. The 60 x 30 section of the building is used for the storing of classic and vintage cars and the 30 x 30 section will be used for the placement of sewing machines, a cutting table, and scissors. The business will be family operated and they will supply a small scale of handbags and feed bags for the agricultural industry, in conjunction with some horse blankets and saddle bags.

Sarah Neff, 53280 CR 35, Middlebury, was present in opposition to this request. Mrs. Neff pointed out her property on the aerial photo, which is the north of the petitioner. She has lived at this location for 31 years and she has tried to upgrade her property and be considerate of the neighbors. She and her husband bought the property to enjoy their country life with horses and peace and quiet. Mrs. Neff does not want a business next door to her because she feels the land values would deteriorate. Over the years, she has endured loud and dusty dirt bikes, ATV's, high powered guns, and various other distractions that have made it frustrating, stressful, and sometimes dangerous to her and her horses. She has tried to talk to the neighbors about the concerns.

In November, one of the other neighbors attempted to get approved for a petition to build trailers and Mr. Stevens was the first one to approach her husband about opposing to that petition. That particular petitioner withdrew his petition, but the Board indicated that he could re-apply in six months. She is concerned that if this is approved, it will open the door to having other businesses in the area.

Mrs. Neff explained that Mr. Stevens works in the RV business and has a paint booth in his pole barn. He sometimes works on his cars and other people's cars. Mr. Stevens had approached the neighbors with the fact that there was some financial trouble and he was helping his daughter with her upholstery business. He was going to put sewing machines in the barn for her to do her work, but he didn't say there would be extra people that would be there to work for her or with her.

On Memorial Day, there were six extra cars on the site and about half a dozen kids running around the properties. Some of the kids had dirt bikes and ATV's and they were riding across the neighbors' properties. Mrs. Neff's husband talked to the petitioner about the extra

people and Mr. Stevens indicated they are all family. On numerous occasions since that day, there have been extra cars parked outside. On at least two occasions, she has witnessed a van and a car back out of the barn and leave. Mrs. Neff asked if they are sewing already, then is the Board prepared for whatever else they might want to do.

Mr. Homan asked if they share a driveway or if they have separate driveways. Mrs. Neff indicated they are separate driveways, but they are close together.

Dorothy Rose, 53398 CR 35, Middlebury, was also present in opposition to this request. Mrs. Rose said the Board has letters in opposition from the neighbors and a signed petition against the request. She explained that people in the area are very much against this Use Variance. Some neighbors were reluctant to sign, but they voiced their objections about the business. Mrs. Rose said it appears that the petitioners have been operating the business the last two weekends, and it happened again this past weekend. Approximately six months ago, Mr. Stevens was the first to object to the petition for another neighbor who wanted to start a business in the area. Mr. Stevens had indicated that he did not want the zoning change and his peace in the country disturbed. It has also been stated that Mr. Stevens has mentioned doing other businesses out of this barn as well, such as an RV service repair center and a vehicle body repair/painting business. Overall, Mrs. Rose said she does not want a business in this area.

In rebuttal, Mrs. Bell said there has been no manufacturing up until this point. Memorial Day was a holiday when her brothers, sisters, nieces, and nephews were all at the property. There has been no manufacturing of any products on site and there hasn't been in any time she has been there. Mrs. Bell said she is in the RV industry on a full-time basis and she supplies soft goods, such as draperies and valances, for Lippert Components. This business would be completely separate. With the way the RV industry has been going, it is less than desirable to be involved in that industry at this point in time. She would like to let go of the RV industry day time job all together at some point in time. She said this would be done on a very small scale basis with four machines and no intention of going any further.

Mrs. Bell explained that her father is very much into the restoration of classic cars. Most of the work that he does is for leisurely purposes. He helps out his friends and he has done paint jobs for the Rose family that lives next door.

The petitioner explained that she has a son and Mrs. Stevens has a grandson and they do ride a four wheeler and a motorcycle on the property from time to time. The property hasn't been owned very long by the Stevens, so anything done before three years ago didn't have anything to do with them.

There was a van on site that belongs to her sister and brother-in-law, and they were meeting to decide what they would do if they couldn't reside in the building on this site for conducting the business.

Mrs. Stevens indicated they have put in a cement driveway going up to their house and they have done several improvements to their house since they have bought the property. There are four businesses within a two mile radius of where the proposed property is. There are two heating and air conditioner businesses, a business that works on ambulances, and also a place that works on awnings.

Mr. Hesser asked where they are located and Mrs. Stevens said on CR 8. Mrs. Bell then indicated that there are also businesses on CR 35, which are the Elkhart County Beagle Club, Virgil Johnson Massage Therapist, and a Bed and Breakfast.

Mr. Lantz asked if she has exceedingly noisy sewing machines and the petitioner indicated no. She feels that lawn mowers are louder than the sewing machines. Mrs. Bell explained that you cannot hear them running from outside of the building and she has checked this.

Mrs. Stevens also indicated there is no ground pollution, air pollution, or noise pollution.

Mrs. Bell said there would be no traffic. If someone drives in, they would park up by the building or the house. There would only be two to three cars on site and there would be no shipping going on. Mr. Stevens has a pick up truck and they use that to move the sewing machines.

Most of the fabric is flat goods, so it can be carried in a car. The largest roll would be 54 inches long and it would fit in her car. Since the scale of the amount of product they are running is very low volume, they buy the fabrics for what they need. If she were making feed bags, it would be some type of burlap fabric. A horse blanket would require fleece fabric with a filler to go inside. Purses would be special ordered on EBay, so she would be going out and purchasing the requested fabric in the amount she needs.

Mr. Hesser asked where the sewing machines are now and the petitioner said they are in the barn. Mrs. Stevens said her husband had to make special tables for them, but they will be moved if they are not allowed to do this. They sewing machines are not being used at this time.

Mrs. Wolgamood asked if the 30 x 30 area is currently enclosed and separate from the other portion of the building and Mrs. Stevens said yes. Mrs. Wolgamood also questioned if it is heated and the petitioner said yes, with air conditioning. The building also has restroom facilities and water.

Mrs. Bell indicated the building has an overhead door and a service door with a cement driveway. All of that work has been completed with permits through the county. She also pointed out that the Steven's home and the Neff's home set very far back from the road from where this building is located.

Mr. Hesser said the house to the south appears to sit closer to the road than the others in the area. Mrs. Stevens said yes, that is the house they used to live in and own. Mrs. Bell said that home is approximately one and half acres in front of where the building sits. There are trees all around that home as well.

Mrs. Wolgamood asked the petitioner to repeat what the other businesses are in the area apart from the Bed and Breakfast. Mrs. Bell said Bee Hive Bed & Breakfast, Elkhart County Beagle Club, and Virgil Johnson Massage Therapist on CR 35.

The public hearing was closed at this time.

Mr. Lantz said he's not sure why everyone is so adamant against this request because it would be low key and wouldn't have a big impact on anything.

Mrs. Wolgamood said she wouldn't be totally against this request if it were a Special Use rather than a Use Variance.

Mr. Hesser said this operation would be a little bit bigger than a home workshop due to the number of employees.

Mrs. Wolgamood said she is aware that the Bed and Breakfast has a Special Use permit, but she is not aware of the other two businesses. She indicated the other two businesses are probably under Special Uses and not Use Variances.

Mrs. Wolgamood admires the petitioner's initiative, but she doesn't feel she could support a Use Variance.

Mr. Hesser said he agrees with that. The Board could continue it and have it alternatively be presented as a Special Use. He's not sure a home workshop would work.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance for a sewing business be denied. A roll call vote was taken and the motion was carried unanimously.

9. The application of **Jason R. Watts** for a Use Variance for a private off road track to ride ATV's in an R-1 district on property located on the South side of CR 16, 1,250 ft. West of CR 3, common address of 29230 CR 16 in Baugo 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 #20091747*.

There were 21 neighboring property owners notified of this request.

Mr. Kolbus indicated pictures of the property were included in the Board's packets, but the colored photos were passed around as well.

Jason Watts, 29230 CR 16 W, Elkhart, was present on behalf of this request. Mr. Watts explained that he requesting to allow his kids to ride ATV's on his property. There is a ditch that cuts off a third of his property and he has cleared a path back there so his kids can ride around in a circle. He has talked to all of the neighbors and nobody has an issue with noise. There was one complaint about people accessing Mr. Watt's property through a vacant lot, which he has stopped. He has a four year old son and an eight year old son, so the machines are small.

The petitioner explained that he takes care of his property and he doesn't want to deteriorate the value of the homes in the area. If the riding is a nuisance, then Mr. Watts indicated he stops them. He explained they don't ride very long and it is sometimes in the evening.

Mr. Miller questioned what time of day they normally ride and the petitioner said the kids can't get the machines out unless he is home. He and his wife both work, so if they ride them in the evening, then it may be between 6:00 p.m. and 7:00 p.m. He explained that they ride during the day on weekends sometimes, but not out of the ordinary hours. They don't do any riding at night when it's dark outside.

Todd Doty, 29199 Lantz Boulevard, Elkhart, was present in favor of this request. Mr. Doty explained that his property is caddy corner from Mr. Watt's property. He has never been affected by noise or dust from the property in question. The trains, Osceola Drag Strip, recycling centers, and industrial parks are louder than the ATV's. He doesn't see an issue with the kids riding on the property and he feels it's a good thing because it keeps the kids out of trouble. Mr. Doty then pointed out his property on the aerial photo.

Kevin Lemna, 29198 Lantz Boulevard, Elkhart, was also present in favor of this request. Mr. Lemna explained that he lives across the street from Mr. Doty. With the distance from Mr. Doty's property, it doesn't affect him at all. He doesn't have a problem with Mr. Watt's children riding on the track.

Also present in favor of this request was Cody Masuth, 29154 Lantz Boulevard, Elkhart. Mr. Masuth explained that he doesn't have a problem with the riding. He lives across the street and he likes to see other people enjoying doing that because he did it as a kid too. He doesn't

have a problem with the hours they are riding. Mr. Masuth then pointed out his property on the aerial photo.

Keith Mikel, 29227 Lantz Boulevard, Elkhart, was present in favor of this request. Mr. Mikel pointed out his property on the aerial photo and explained that his property abuts the proposed property. He said there have been trails in the woods for a long time and he doesn't have an issue with them riding on the property. The bikes are small ATV's and they don't make a lot of noise. The drag strip and the trains can clearly be heard from this location. Mr. Mikel also indicated this is a densely wooded lot and you can barely hear the ATV's when they go by. He said that none of the neighbors have a problem with this and it is a tight knit community.

Robert Spaugh, 29386 CR 16 W, Elkhart, was present in opposition to this request. Mr. Spaugh said he doesn't feel a race track has any business being in the middle of a residential area. He has land that adjoins the petitioner's property on the east and on the south. There is a lot of riding out there without anyone's permission. Mr. Spaugh built a house in 1964 and he has fought ATV's and motorcycles ever since he has lived there. He indicated the petitioner is riding on his property without any permission and on one of the neighbor's properties as well. He doesn't feel it does any good if you tell them they are trespassing.

Mr. Hesser asked him to point out his property on the aerial photo and Mr. Spaugh did so. He owns the lot to the west of the proposed property and several other lots in the area. He explained that there is a contractor that plans to build 101 houses in the area eventually and four lots have been sold to Habitat for Humanity. He is currently negotiating with them right now for a road across his property to come in from the west, but he's unsure where that will be located.

Mr. Spaugh said he came into the office to review the questionnaire a couple of weeks ago, and it states that none of the neighbors have a problem with this request. He indicated he was never asked about this issue. He doesn't have a problem with the kids, but he does have a problem with them riding. He is concerned that these bikes can be ridden seven days a week at all times of the day.

Other concerns are air pollution, noise pollution, and water pollution with the ditch in the area. The kid's friends may come over to the property and use their vehicles as well. He has seen vehicles hauled in from the west to ride on this property. Mr. Spaugh said he can't be watching 15 to 20 acres of land everyday for trespassers riding on his property. A bridge has been built to go across the ditch, which he pointed out on the aerial photo. He is worried about that being a water obstruction and he's not sure they had permission to do that. Overall, he is tired of the noise and he is strictly against this request. He also feels it will devalue the surrounding properties.

In rebuttal, Mr. Watts said he wasn't aware that Mr. Spaugh's property abuts up to his. He mows the entire ditch line because he wants it to look nice. He indicated his kids don't ride on Mr. Spaugh's property. There may be other kids that ride out there, but they aren't his kids because they stay on their own property.

Mr. Lantz asked if his kids are the only ones riding on the property and the petitioner said other neighbor kids have come over to his property before, but he doesn't allow that anymore.

The public hearing was closed at this time.

Mr. Hesser asked what restrictions can be placed on a Use Variance. He asked if they can limit it to the occupants of the premise and Mr. Kolbus indicated yes. The request can be limited to immediate family members residing in the residence on the premises. The size of the bikes and stocked mufflers can be limited. The Board can limit the area the petitioners are

allowed to ride on as well. Mr. Kolbus said the Board may want the petitioner to address security for the riding area, which would ensure that it's not being accessed by other people.

Mr. Lantz indicated he understands the remonstrator's concerns. He feels they would have to condition this request very strictly if it were approved. As the kids get bigger, then the bikes will get bigger.

Mr. Hesser said this is for a Use Variance, so there is a little bit of a hump to get over in regards to the uniqueness of the property. If the Board were to approve this request, then there would be a lot of conditions. His inclination would be to deny the request or table it to give the petitioner an opportunity to come up with a list of proposed conditions.

Mr. Kolbus indicated that the petitioner could work with the staff on some conditions.

Mrs. Wolgamood asked Mr. Watts what the CC's of the motorcycles are the petitioner said one of the motorcycles and one of the four wheelers are 50 CC's, and he also has another four wheeler that is 90 CC's. Mr. Watts indicated he also has a larger four wheeler that he uses to plow his driveway.

Mr. Miller feels that if a family buys property, then they should be able to do what they want to do on it. In this specific case, he would be in favor of tabling the request to see what conditions they would be willing to put on it.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) that this request for a Use Variance for a private off road track to ride ATV's in an R-1 district be tabled until the July 16, 2009, Board of Zoning Appeals meeting provided the petitioner submits a list of proposed conditions to the staff by July 6, 2009, and Mr. Robert Spaugh be re-notified of the meeting date and time and be given a copy of the list of proposed conditions submitted by the petitioner. The motion was carried with the following roll call results: Homan – no; Wolgamood – yes; Lantz – yes; Miller – yes; Hesser – yes.

10. The application of ***Cornelia Varga*** for a Special Use for an agricultural use for the keeping of three (3) chickens on a tract of land containing three acres or less and in an R-1 district (Specifications F - #1) on property located on the North side of Edwards Road, 575 ft. East of Pleasant Place, common address of 26763 Edwards Road in Osolo Township, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091699*.

There were 22 neighboring property owners notified of this request.

Cornelia Varga, 27663 Edwards Road, Elkhart, was present on behalf of this request. Mrs. Varga is asking to have three hens on her property in a fenced area. The place where the chickens sleep is very clean because she wants them to be healthy. She feeds the chickens well and they are not noisy at all. The reason she wants the hens are for eggs because she cannot afford to buy them. Since April 11<sup>th</sup> when they got the chickens, two of them have laid eggs every day. She is able to eat good eggs every day without worrying about what the chickens ate or how they lived.

The neighbor from across the street called in to complain about the chickens and her husband told him that they work very hard to take care of the chickens. Their intention was good from the beginning and the petitioner indicated she doesn't like disturbance of any kind. Behind



her property, one of the neighbors has had a horse there since 1991. She doesn't feel the horse decreased the value of the neighborhood and she doesn't feel the three hens would either.

Roger Malcolm, 26735 Edwards Road, Elkhart, was present in favor of this request. Mr. Malcolm said he lives next door to the petitioners and he feels the chickens are kept very clean. He was disappointed when they got rid of the rooster. The petitioner is a good neighbor and he is in favor of them keeping their chickens.

The public hearing was closed at this time.

Mr. Lantz indicated he doesn't have an issue with this request and Mrs. Wolgamood agreed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Hesser*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for an agricultural use for the keeping of three (3) chickens on a tract of land containing three acres or less and in an R-1 district (Specifications F - #1) be approved with the following conditions imposed:

1. Approved for three (3) chickens (hens) only.
2. Approved as per site plan submitted.

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

11. The application of **Mark & Paula Steiner** for a Special Use to allow for a wind turbine including a 55 ft. pole (Specifications F - #31.50) on property located on the East side of Ash Road, 1,113 ft. South of CR 40, being lot 8 of Stickel Subdivision, common address of 66208 Ash Road in Olive 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 #20091753*.

There were 5 neighboring property owners notified of this request.

Mr. Harrell indicated that the proposed location of this wind turbine may be in the way of the field system. The drainage ditch across the back of the property also needs to be addressed prior to the issuance of a permit.

Mrs. Wolgamood asked if it is a legal drainage ditch and Mr. Harrell indicated it is a drainage tile.

Glen Smith, Wind Wire, 66050 US 31 S, Lakeville, was present representing the petitioners on behalf of this request. A packet of pictures was submitted to the Board at this time showing images of various wind turbines *[attached to file as Petitioner Exhibit #1]*. Mr. Smith explained that this tower will stay five feet away from the easement. The pole is made so that if it were to collapse with 180 mph winds, then it would fold in amongst itself. He explained that the base would never collapse. All of the letter conformities have been received from the utility companies and the construction companies. The ditch and the drainage tile will not be affected. Mr. Smith also indicated that they have a licensed electrician who will be doing the work.

Mr. Hesser asked if the electricity that is provided goes into the grid and Mr. Smith said no, it goes into the home first and then the unused electricity goes into the grid. Nipsco is forced by state law to purchase the unused power back from the homeowner.

Mrs. Wolgamood said the only unanswered question is the field system, but the Health Department will check that.

Mr. Homan indicated this would not comply with the current tower policy regarding the collapsibility issue. If the Board were to approve this request, then they would be varying from the policy.

Mr. Lantz asked how tall the tower is and Mr. Smith said the pole is 45 feet, but they look for a clearance of 55 feet.

Mr. Homan pointed out that a similar situation such as this had been denied due to being on a smaller lot. It is very possible that the tower may have been within 20 feet of the lot line and located exactly as this one is. He then asked the petitioner if the tower could be relocated anywhere else on the property.

Mark Steiner, 66208 Ash Road, Wakarusa, indicated he wants to put the wind turbine in the southeast corner of the property. If it is placed in that location, then it will be out of the play area and kept away from anybody else. The neighbors don't have an issue with the tower being in that location.

Mr. Homan indicated he would feel better if the tower could be 50 ft. back from the south property line.

Mrs. Wolgamood asked the petitioner how much road frontage he has. Mr. Steiner indicated he believes it is 165 or 170. Mrs. Wolgamood clarified that lot seven has 140 feet of road frontage. If the petitioner were required to have the tower back 50 feet from the south property line, then he would still have ample space.

Mr. Harrell indicated it would depend on where his field system is located.

Mr. Lantz said they could move it at least 50 ft. from the south lot line, and then it wouldn't affect the field system. Mr. Steiner said if he has to do that to get electricity, then he will.

Mrs. Wolgamood asked if there are any trees or small buildings in that location that would cause him not to be able to place it there and the petitioner indicated 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 (*Lantz/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use to allow for a wind turbine including a 55 ft. pole (Specifications F - #31.50) be approved with the following conditions imposed:

1. The location of the wind turbine to be approved by the Health Department prior to the issuance of a building permit.
2. All building permits and inspections to be obtained.
3. The tower should meet the minimum setback requirement of 50 ft. from the south property line.

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

12. The application of **Robert & Virginia Grimshaw** for a Special Use for a roadside stand for the sale by the owner/producer of fruits, vegetables and plant nursery products raised on the premises (Specifications F - #54) on property located on the Southeast corner of US 6 and CR 133, common address of 14394 US 6 in Benton Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091750*.

There were 9 neighboring property owners notified of this request.

Virginia Grimshaw, 14394 US 6, Syracuse, was present on behalf of this request. Mrs. Grimshaw explained that she would like to have a produce stand on her property that would be owned and operated by family. She presently has a greenhouse and they are thinking about selling plants next year that would be raised on the property.

Mrs. Wolgamood asked the petitioner what months of the year the business would be operating. Mrs. Grimshaw indicated it would operate from May through October, with May being really early.

Mr. Hesser asked if this produce will be grown on her property and the petitioner said most of it will be. She sells some of the produce at the Wakarusa Produce Auction and she sometimes buys produce to resell.

Mrs. Wolgamood pointed out that the site plan indicates there is a turn around on site and Mrs. Grimshaw said that is correct.

The questionnaire indicates that the produce stand would be mobile and Mrs. Wolgamood asked if it would be removed at the end of the season and the petitioner said yes. The site plan shows a proposed 20 x 100 building and Mrs. Wolgamood asked if that already exists. The petitioner said that building will be a second greenhouse, but it hasn't been constructed yet. The building permit has been pulled, so they have one year to construct it.

Mrs. Wolgamood asked if the existing greenhouse is 18 x 35 and Mrs. Grimshaw said yes.

The location of this property was questioned by Mr. Hesser and the petitioner clarified the exact location.

It was noted that the sign is not shown on the site plan and Mrs. Wolgamood asked where that will be located. Mrs. Grimshaw said she is unsure of how big and where they want the sign to be located. Mrs. Wolgamood asked if she would meet the required setbacks and the petitioner said yes.

Mrs. Grimshaw asked if the sign can be smaller than 4 x 5 and Mr. Harrell said yes. The sign can be smaller, but not any larger than 4 x 5.

The staff indicated in the conditions "as per site plan submitted" and Mrs. Wolgamood asked which site plan they are referring to since there are two of them. Mr. Harrell indicated that the more professional site plan is the correct one.

Mrs. Wolgamood said knowing this is a mobile unit; the site plan is showing that the unit will be 90 feet from the centerline of the right-of-way. She asked what the proper setback is and Mr. Harrell said it would 120 feet to the centerline of the right-of-way, but this would be considered a non-permanent structure because it can be moved at any time. A Variance would not be required since the structure is mobile.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if they should limit this to the owner and Mrs. Wolgamood suggested yes.

Mr. Hesser asked if they should say no outside employees and Mr. Harrell said they have about five teenage boys who will help out.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for a roadside stand for the sale by the owner/producer of fruits, vegetables and plant nursery products raised on the premises (Specifications F - #54) be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
  2. No outside employees.
  3. All state and local highway permits must be obtained.
  4. Signage limited to one (1) 4 x 5 ft. double-faced, non-illuminated sign, which is to meet the required setback of the Elkhart County Zoning Ordinance.
  5. The days and hours of operation are to be Monday through Friday, 9:00 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 2:00 p.m.
  6. Approved as per site plan submitted (more professional site plan attached to the file).
  7. The petitioner is to comply with the parking space requirements of the Elkhart County Zoning Ordinance.
  8. All vehicles entering and exiting the site must use the turn-around driveway provided.
  9. No parking allowed on US 6 from any vehicle affiliated with the Special Use.
  10. The mobile produce stand is to be allowed ninety (90) ft. from the centerline of the right-of-way as indicated by Mr. Harrell.
  11. The business is to be limited to the months of May through October.
- A roll call vote was taken and the motion was unanimously carried.

13. The application of ***Derrick & Kelli Hendricks*** for a Special Use for an agricultural use for the keeping of three (3) goats on a tract of land containing less than three acres in an R-1 district (Specifications F - #1) on property located on the North side of Willowbend Boulevard, 820 ft. West of CR 14, being lot 39 of Whispering Valley 6th Subdivision, common address of 19911 Willowbend Boulevard in Jefferson Township, came on to be heard.

One photo of the property was submitted to the Board by the staff [*attached to file as Staff Exhibit #1*].

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091662*.

There were 18 neighboring property owners notified of this request.

Present on behalf of this request was Derrick Hendricks, Kelli Hendricks, and Joel Hendricks, who all reside at 19911 Riverbend Boulevard, Bristol. Mr. Joel Hendricks explained that he is eleven and a half and he wants to be a Veterinarian because he loves animals. He loves being a part of the 4-H goat club. He hopes that the Board will listen to his parents because they are here to support him and his goals.

Mr. Derrick Hendricks then submitted updated photos of the property [*attached to file as Petitioner Exhibit #1*]. He explained there is not a permanent structure on site that houses the goats and it is a temporary pen. The panels that were used are construction panels that they would set up at a construction site. They can easily be removed and torn down at any time. The goats are housed in nothing more than a dog house with a lean to attached to it.

On behalf of their son and in the spirit of the 4-H experience, Mr. and Mrs. Hendricks are here to request a Special Use permit for three small pigmy goats used only for the Elkhart

County 4-H Fair. Mr. Derrick Hendricks explained that the first page of the Elkhart County 4-H program states that the nation's largest out of school education program for youth is 4-H. They have a beautifully landscaped home in the back of a subdivision in the county. Behind their property is a large ten acre wooded area. The goats have a top notch pen and lean to at the rear of their property in which their son participated in the building. The neighborhood is behind this request one hundred percent as shown on the signed petition that was verified by the Auditor's Office. Every neighbor within the 300 ft. radius, minus the one anonymous complaint, has signed the petition in support of Mr. Joel Hendricks' project.

Mr. Tom Pletcher, who is the developer of Whispering Valley Subdivision, has seen the project and has written a letter with his full support. The goats have been a huge joy to those who have visited. Mr. Joel Hendricks has been incredibly disciplined and is thoroughly enjoying his project and the 4-H goat club. He and his younger brother get up on their own at 5:50 a.m. each morning before school to feed and care for the goats. Mr. Joel Hendricks is a straight "A" student and he participates in outside activities including soccer, running, and the archery club. The Elkhart County 4-H goat club has become the player in developing him into a well rounded individual.

The Staff Report states that three small pigmy goats used in a 4-H project will not be consistent with the spirit, purpose, and intent of the Zoning Ordinance, which is designed to separate agricultural uses from residential. Mr. Derrick Hendricks indicated that his son's three small goats are not being used for agricultural purposes. They are not running a goat operation in their backyard. The goats are only used for 4-H purposes and the development of Mr. Joel Hendricks, his siblings, and the neighboring kids. He explained they are not milking, selling, or breeding the goats. Pigmy goats are often used for rehabilitation of patients with cancer, sick children, and the elderly.

Secondly, the Staff Report states that the goats will cause substantial and permanent injury to the appropriate use of properties by setting a precedent and allowing agricultural uses in a residential subdivision. They are not setting a precedent for other children in the area to go out and get goats. They are only guilty of setting a precedent for the further education of the 4-H experience and all that it has to offer. If they are causing permanent damage by allowing agricultural use in a residential subdivision, then all of the kids and families involved in the 4-H rabbit club and reside in this neighborhood are also in violation of the Elkhart County Zoning Ordinance. Mr. Derrick Hendricks indicated they had their home appraised last month and the appraisal came back significantly higher even in this poor economy. When they acquired to the appraiser if the 4-H goat project would hinder their property value or neighboring properties, the answer was a resounding no. The words "substantial and permanent injury" are such strong words for small goats used only for a 4-H fair project, which is part of an education process for our youth.

Lastly, the Staff Report indicates that the three small goats would not substantially serve the public convenience and welfare by allowing an agricultural use in an R-1 residential zoning district in a residential subdivision. The definition of agricultural is "the commercial production of." There is no commercial production happening on this property. Since they have had the goats, they have not hindered or hurt anyone. They are clean animals used only for education, growth, and development. The goats are well taken care of, loved, and they love to be loved. He explained that they are proven to be better pets than many other domesticated animals. The goats do not hinder the landscape and they can barely be seen by the road. When Mrs. Prough

visited the property, she couldn't even tell that they had goats on their property. The only occasion the goats are heard is when they hear the boys in the backyard and they want attention. Once they are petted and loved, then they are quiet. Mr. Derrick Hendricks thanked the Board for their time.

Mrs. Hendricks then indicated that she is really proud of her son.

Mrs. Wolgamood questioned the waste from the goats and asked what they do with it. Mr. Hendricks said the manure is very little and it is composted and then distributed around the base of the white pine trees and in the garden. The neighborhood dogs produce more waste than the goats do.

Mrs. Wolgamood also asked how tall the goats get and Mr. Joel Hendricks said the average pigmy goats don't get any bigger than 20 inches tall.

Mr. Hesser asked if there are dogs on premises in addition to the goats and the petitioners indicated yes. The dogs are housed inside, but they do have an outside kennel.

When questioned how many dogs they have, Mr. Derrick Hendricks indicated three. One of the dogs is a four pound Yorkshire Terrier and they have two German Shorthairs.

Mr. Hesser asked if the goats are considered domestic pets or agricultural. Mrs. Wolgamood said the goats would be considered a farm animal.

Mrs. Prough then read the definition of "agricultural" from the Zoning Ordinance, which states, "Agricultural uses includes the raising and keeping of all "large" livestock such as horses, cows, ponies, goats, sheep, or swine, or the raising and keeping of "small" livestock such as chickens, ducks, geese, or rabbits."

When Mrs. Wolgamood asked when the goats were brought on site, the petitioner said mid-April. She also asked when the goats would be removed from the site and Mr. Derrick Hendricks said after the fair. The fair is the third week of July, so they would be gone at the end of July.

If the goats are no longer there, then she asked what they will do with the structure. The petitioner indicated that the structure could be torn down in a matter of five minutes.

Mr. Hesser asked the petitioner if they plan to do this again in the future if the request is granted. Mr. Derrick Hendricks said if the request is granted on an annual basis, then he would like his kid to continue in 4-H.

Leslie Donnelly, 55652 Whisperwynd Lane, Bristol, was present in favor of this request. She has been a neighbor of the Hendricks' for almost 15 years and she can attest that their property is immaculate. You would not notice any goats being on the property if you didn't go in the backyard to see them. She feels that some of the dogs in the neighborhood are a lot more a nuisance than the goats are. The Hendricks' are not in the habit of troubling their neighbors and they go out of their way to help their neighbors. Mrs. Donnelly said her children have enjoyed the goats. She then indicated that she is in direct violation of this same covenant because she houses four rabbits that she breeds for 4-H every year. She has a very strong interest in this being approved. With everything going on in the schools and in the world, it would be a shame to take this 4-H experience away from the youth.

Also present in support of this request was Mike Miles, 19875 Willowbend Boulevard, Bristol. Mr. Miles indicated he lives two doors down from the Hendricks' property. He has two dogs that are larger than the pigmy goats that the Hendricks' care for. He certainly supports them and this endeavor for 4-H.

Mary Ann and Mike Cross, 4-H Leaders, 60757 CR 9, Elkhart, were present in favor of this request. Mrs. Cross explained that there is a strong dedication of family and youth with a child wanting to learn. When family, children, and livestock are involved, kids don't get into trouble. The county is spending a lot of money to rehabilitate youth, but if more youth were involved in 4-H, then there would be less youth that are troubled. She asked the Board to give this request strong consideration.

Mr. Cross indicated that Mr. Joel Hendricks has been at all of the practice shows and demonstrations, so he has learned to care for the animals himself. One of these goats will go through the auction at the 4-H sale. All of the goats will not get any bigger than 20 inches and they are very small pets.

Tina Golebiewski, 55529 Willowbend Boulevard, Bristol, was present in opposition to this request. Mrs. Golebiewski pointed out the location of her property on the aerial photo at this time, which is located next door to the west of the property in question. She explained that her family did not ask to deal with a neighborhood conflict and this one was created by the petitioners. She has known the Hendricks family since she moved into the Whispering Valley Subdivision in 1998. Their children played together, they shared meals together, and they celebrated birthdays together. Last summer, Mr. Derrick Hendricks and his kids swam in their swimming pool, but this spring they have built a pen for goats that has been the root of a divisive and painful conflict including many neighbors. She then stated that she has not made the anonymous complaint.

As an educator herself, Mrs. Golebiewski knows that 4-H provides a wonderful opportunity for children to learn about animals and themselves. She believes that 4-H also promotes good judgment, ethical behavior, friendship, and fairness. She doesn't feel it is intended to create conflict or to teach children to work around the rules. Her family is remonstrating against the granting of a Special Use permit to allow goats on any property within the Whispering Valley Subdivision because it is unfair to neighbors, unfair to the animals, and it is unfair to the 4-H participants. Mrs. Golebiewski said her main concern is that such a Special Use permit would be unfair to all of the other residents of the subdivision. The Whispering Valley neighborhood is considered a subdivision in Elkhart County and as such does not allow for agricultural use of the properties within.

Mrs. Golebiewski said she purchased a home in this neighborhood based on the existing zoning requirements and she doesn't think it would be fair to change them now. It is her understanding that a homeowner in a residential neighborhood in Elkhart County must have at least three acres of land in order to raise livestock for any purpose. She doesn't believe that any of the lots in Whispering Valley Subdivision are that size and she knows that the Hendricks' lot is certainly not three acres. The second addition to Whispering Valley Subdivision has a covenant which states that no animals, livestock, or poultry of any kind shall be raised or kept on any lot. There are also restrictions within the covenant relating to detached buildings, prohibited structures, and nuisances. Mrs. Golebiewski said she would like to see the rules followed along with others in the neighborhood. She feels it would also set a precedent if the Board were to approve this request. Her family lives in a nice home in a nice neighborhood and they don't want to live next door to goats. She doesn't want to hear them inside or outside of their home because it is an embarrassment and it brings down the appeal and value of their property. As the neighbor living adjacent to the property in question, she is the most affected by the situation. The

Hendricks' already have three dogs that occasionally get lost, so she can draw some conclusions from that.

While she applauds the Hendricks' interest in 4-H, she doesn't feel a subdivision is the best setting for raising goats. She knows very little about raising livestock herself, but her cursory review of information tells her that goats require a lot of exercise, enjoy frequent human interaction, appreciate exercise equipment to jump on, and like to play. Based on what she has seen, she doesn't think the petitioners' goats are allowed outside of their pen unless on a leash. In addition to a separate shed and dog run, the Hendricks' livestock pen is probably about ten by ten, which is a small enclosure for so many goats. The National Pigmy Goat Association website states that pigmy goats are considered livestock and are often not allowed within city limits. Pigmy goats require protection from the weather and a safe place to romp and play. A small eight by eight ft. shed with an attached 20 x 20 ft. pen is adequate for two goats. Mrs. Golebiewski said she must admit that the three goats are as cute as can be, but they are extremely noisy.

For some reason, the livestock pen was built with the opening facing the Golebiewski's home. The goat pen, which because it is temporary, is also unsightly and it may be closer to her living room than it is the Hendricks' living room. She can certainly hear the livestock noises over the television in her living room while her family is trying to relax in the evening. There have been times when she has blinked her eyes open in the early morning hours to a cacophony of goat bleeps. According to Kay James, owner of Yellow Rose Farm Nigerian Dwarf Goats, people hoping to get goats should talk to their neighbors beforehand as goats are affectionate creatures that follow their owners like puppies and sometimes cry when the owner leaves. Also, according to the Pioneer Meadows Pigmy Goats website, goats are escape artists due to their high intelligence. She is also concerned about the odor, waste disposal, and unsightliness of a livestock pen within a subdivision.

The Goat Connection website, prepared by Robert. E. Graves, advises that suburban sheep and goat owners should plan housing and manure management carefully to avoid problems with neighbors and health officials. She indicated that flies and odors are the most common complaints. The current setting is not only unfair to the animals, but it is also unfair to other children who participate in 4-H and board their livestock because they live in a subdivision. She has spoken to several 4-H families recently who have told her that they pay boarding fees or make other arrangements to take care of their animals. While 4-H is meant to be a learning experience, she doesn't feel it is meant to teach children to skirt the rules or raise animals in a manner that is convenient rather than what is best for the animals.

Mrs. Golebiewski said the petitioners started building the livestock pen in the early spring. The construction noise is what actually prompted her to inquire about their intentions. When her husband commented to Mr. Derrick Hendricks that goats didn't seem appropriate for the neighborhood and wouldn't be good for property values, the petitioner was offensive in response. At that point, all neighborliness flew out the window because she feels it was Mr. and Mrs. Hendricks' responsibility to approach her first to let her know what they had planned. When the goats arrived in early April, Mr. and Mrs. Hendricks were advised by Elkhart County that their livestock were not allowed. She has had to deal with the livestock and her family is hoping that today's Board decision will provide them with some prompt relief.

Mr. Hesser indicated the Board has a letter from the developer of the subdivision who states that there are no restrictive covenants recorded for this subdivision. Mrs. Golebiewski said



she has a copy of the covenants that were given to her when she initially purchased her property. The covenants are called "Whispering Valley 6<sup>th</sup> Second Edition" which is where they live. A copy of the covenants was then submitted to the Board by Mrs. Golebiewski *[attached to file as Remonstrator Exhibit #1]*.

Mrs. Wolgamood indicated the issue is whether or not the covenants have been recorded and Mrs. Golebiewski indicated she doesn't know that.

Mr. Lantz asked Mrs. Golebiewski if the Hendricks' had two German Shepherds in the goat pen, would she still feel it is unsightly. She said she's not an animal person and she feels that three dogs is plenty.

In rebuttal, Mr. Hendricks said they have done their due diligence and there are no restrictive covenants or deed restrictions in Whispering Valley 6<sup>th</sup> Subdivision. They were never recorded and that has been verified with the Elkhart County Recorder's Office.

Mr. Hesser asked the petitioner if he was given a copy of those covenants when he bought the property and Mr. Derrick Hendricks indicated no.

As far as some of the other issues raised, Mr. Derrick Hendricks said they live in the country. There are agricultural fields that surround them with woods to the rear. Three small pigmy goats don't make that much noise, and even when they do, you can't hear it from the road. He doesn't feel he has singled anyone out and he has just presented the facts to the Board.

Mrs. Golebiewski then submitted a petition in remonstrance to this request *[attached to file as Remonstrator Exhibit #2]*. She indicated that she has video footage showing the noise level, but she feels the petition is what is important. The location of the homeowners who signed the petition in remonstrance to this request were then pointed out on the aerial photo.

Mr. Derrick Hendricks indicated that the same individuals have signed the petition in favor of the request and their petition has been verified by the Auditor's Office.

The public hearing was closed at this time.

Mr. Hesser said as he was reading through the materials, he thought there would surely be a covenant that prohibits the goats. He indicated that even if the Board denied the request, they would still be able to keep the goats through the fair season.

Mr. Lantz suggested limiting the approval to the 4-H season. He feels that dogs would be more of a nuisance than the goats because they would be barking and there would be more waste to deal with.

Mr. Harrell said one thing the staff had to consider is that they are farm animals. The staff had to consider whether or not another neighbor would come in and request to have sheep or a calf for 4-H purposes. Approving this request would be setting precedence in the neighborhood.

Mrs. Wolgamood explained that the Board looks at these requests on an individual basis. If someone else wants to apply for the same request, then that is absolutely their right.

Mr. Homan explained that there have been many of these types of requests in the past and usually the properties are in A-1 zonings.

The Board examined said request, and after due consideration and deliberation, a motion was made (*Wolgamood*) that this request for a Special Use for an agricultural use for the keeping of three (3) goats on a tract of land containing less than three acres in an R-1 district (Specifications F - #1) be approved based on the following findings:

1. Will be consistent with the spirit, purpose and intent of the Zoning Ordinance provided it is granted for this season only. At the end of July, the three (3) pigmy goats and

temporary structures are to be removed from the site. The waste affiliated with these three (3) goats be composted and the petitioners are to make sure there are no odors coming from the compost.

2. Will not cause substantial and permanent injury to the appropriate use of the neighboring properties if the Special Use is granted only for this season and terminated at the end of July.
3. Will serve the public convenience and welfare as an education for the youth.

Mr. Hesser questioned why Mrs. Wolgamood didn't adopt the Staff Analysis. Mrs. Wolgamood explained that if the Board were to deny the request, they would have to specifically state that everything be terminated by a certain date. She feels that if the Board doesn't have an issue with the goats being there through this season, then they should approve it rather than deny it.

The motion then died due to lack of a second.

A motion was then made and seconded (*Hesser/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for an agricultural use for the keeping of three (3) goats on a tract of land containing less than three acres in an R-1 district (Specifications F - #1) be denied with the goats to be removed from the property by August 1, 2009. The motion did not carry due to the following roll call results: Homan – yes; Wolgamood – no; Lantz – no; Miller – no; Hesser – yes.

Mr. Miller said he lives in a subdivision very similar to this one and there are a lot of dogs that bark a whole lot louder than the noise that goats make. Given the context of the request and the amount of petitioners who are in favor of the request, he doesn't have an issue with it. He feels that the petitioners have done their due diligence, but they are having a neighborly issue.

After further discussion, another motion was then made and seconded (*Miller/Lantz*) that based on the following findings that this request will be consistent with the spirit, purpose and intent of the Zoning Ordinance, it will not cause substantial and permanent injury to the appropriate use of neighboring properties, and it will substantially serve the public convenience and welfare, this request be approved with the following conditions imposed:

1. Approved for three (3) pigmy goats for 4-H use.
2. The waste from the pigmy goats is to be composted with the odor being controlled.
3. The time period shall be from April through August of each calendar year.
4. Approved for a period of three (3) years with a renewal before the Board at that time.

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

14. The application of *Neil & Stacy Stewart* for an Appeal to allow for the construction of an accessory structure prior to the construction of a residence on property located on the East side of SR 13, 2,914 ft. South of SR 120, being lot 3 of Anchor Ridge DPUD, common address of 53560 SR 13 in York Township, zoned DPUD A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091715*.

There were 4 neighboring property owners notified of this request.

Present representing the petitioners on behalf of this request was Shawn Kintigh from Square One Builders, 56199 Parkway Avenue, Suite #1, Elkhart. Mr. Kintigh explained that the

Stewarts are looking to construct a 52 x 44 accessory building. This building would be located approximately 3,000 feet off of SR 13. The building would be down a private lane in a development that has four lots. The building will be in the woods, so it won't be a visual nuisance or distraction to anyone.

Mr. Kintigh said it is every intention of Mr. and Mrs. Stewart's to build a primary residence at this location. They have had their house on the market for quite a long time without any success. The size of this building will require such a large home, the petitioners are not in a position where they can put the house up first and then build the pole barn. The primary use of this building will be for personal storage, but also for storing items that they can use to maintain the property without having to worry about hauling it back and forth. The petitioners would like to store their equipment in an effective manner.

The petitioner's representative indicated that this accessory building would serve some public interest because it keeps several people in the construction business employed. He also indicated that it will improve the property in question and bring the tax value up as well. A packet of written statements from some of the neighboring property owners in favor of this request were then submitted to the Board *[attached to file as Petitioner Exhibit #1]*.

Mrs. Wolgamood pointed out that there is a large building to the north of the proposed property on Anchor Ridge Drive. She asked what that building is and Mr. Kintigh indicated that is a pole building. She asked if that building is within this four lot subdivision and the petitioner said yes.

When asked by Mrs. Wolgamood if there are residences on any four of the lots, the petitioner's representative indicated that a residence was put on the lot immediately to the west of the property in question. Mr. Kintigh said that residence was built last fall.

Mrs. Wolgamood asked if the petitioners are looking at any type of a time frame as to when they will build the residence on site. Neil Stewart, 57525 CR 31, Goshen, indicated that his current home has been on the market for eight or nine months. As far as a time frame, he would love to build before winter, but he's not going to give the current property away.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Lantz indicated they don't normally allow people to build accessory buildings before their residences, but he doesn't have an issue with this request due to the way the market currently is.

Mr. Hesser explained he doesn't have an issue with this as long as they place a time limit on it. He also wants the owner to understand that they have to proceed with efforts to build a home on the property.

Mrs. Wolgamood asked if Marv Schmucker is the person who developed these four lots and the petitioner's representative said that is correct. She also asked if Mr. Schmucker lives on one of these four lots and he said yes. She pointed out that Mr. Schmucker was one of the people who submitted a letter in favor of the request.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that this request for an Appeal to allow for the construction of an accessory structure prior to the construction of a residence be approved based on the following findings:

1. Will not be contrary to the public interest.

2. Will not adversely affect other properties in the same zone or neighborhood, as the Board was provided with four letters from neighboring property owners, including the developer, who lives on one of the four lots indicating they don't have an issue with this request.
3. Exceptional or extraordinary circumstances and conditions do apply in this case which are unique in nature because the property has a private driveway and were no remonstrators against this request.
4. That a literal enforcement of the provisions of the Ordinance would deny the applicant the necessary preservations and enjoyment of any substantial property rights possessed.

The roll call resulted in the following results and the motion was carried: Homan – yes; Wolgamood – yes; Lantz – yes; Miller – yes; and Hesser – no.

15. The application of *Ora Lehman* for a Special Use to board agricultural animals and operate an arena for instructions of 4-H members on property located on the South side of CR 18, 1,622 ft. West of CR 31, common address of 16482 CR 18 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091537*.

There were 34 neighboring property owners notified of this request.

A motion was made and seconded (*Homan/Wolgamood*) that the public hearing be reopened. The motion was carried with a unanimous roll call vote.

Barry Pharis, 1009 S. 9<sup>th</sup> Street, Goshen, was present representing the petitioner. After the hearing from last month, there were two issues that needed to be discussed which include planting trees and the pigs. Mr. Lehman has had three nurseries tell him that it is too late in the season to plant the trees. Trees should be planted in the spring or in the fall. The petitioner found someone who was going to plant trees, but he was going to charge a premium and not offer any guarantees. Mr. Pharis said they are proposing that if the Board approves this request, then the petitioner will commit to accepting no animals for stabling or boarding until the trees are planted this fall. That would give Mr. Lehman the opportunity to prepare a brochure and get ready for the service they want to provide. In doing this, the petitioner will be prepared to accept animals in the fall when the trees are up. This would also give the petitioner time to do the work that is necessary on the arena building, complete the repairs that are necessary on the two structures, and some fence work that needs to be done.

The second issue was brought up by one of the neighbors regarding pigs. At first, it didn't seem like much of an issue, but then Mr. Pharis spoke with the petitioner about that when he got back. Mr. Lehman has a farm and he does raise pigs from time to time. He raises them in such a way that he can do the butchering over a Christmas season for him and his family. Mr. Pharis hopes that the Board will grant this request and set a number that the petitioner can have in the area for the Special Use.

Mr. Homan asked Mr. Pharis if he foresees any of the proposed conditions being a problem and Mr. Pharis said no.

After reviewing the minutes, Mrs. Wolgamood noted that the Board didn't discuss any lighting. She then asked Mr. Pharis if the petitioner plans on having any lighting because some events may go later than 9:00 p.m.

Mr. Pharis said that lighting isn't going to be an easy thing for the petitioner to do because this is an Amish family and they are not connected to electricity. They do have some generators that they will use for some of their farm activities, raising of the ducks, and personal hygiene. During the summer months, it is light until 9:00 p.m., so they won't need any outside lighting.

Ora Lehman, 16482 CR 18, Goshen, indicated he has four lights on the side of the building that shine up towards their house. Those lights run on a generator and they are not facing towards the subdivision or other residences. Mr. Lehman also indicated that those lights are pre-existing.

Mrs. Wolgamood asked what the need is for outside speakers. Mr. Harrell said the petitioner didn't request that, it was one of the staff's conditions. She suggested striking the second part of that condition.

The staff has indicated in condition #7 that the questionnaire as presented is to be accepted as a condition. When Mrs. Wolgamood read that, she read #2 of the questionnaire and on the second line, it states "cows, goats, sheep, etc." She suggested striking "etc." from that response. She is also concerned about question #5 because the hours of operation indicate that special events may go later. She feels that is leaving it wide open and it shouldn't be in there.

Mrs. Wolgamood also feels that the Board should be specific about limiting the number of pigs.

Lastly, Mrs. Wolgamood pointed out that proposed condition #8 should indicate that the site plan was revised.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser suggested re-wording #7 of the staff recommendation to be more specific. There have been some concerns from the neighbors about the petitioner going beyond what was permitted in the past. He feels they need to be very clear that the representations made in the questionnaire are set forth as conditions and restrictions of the Special Use.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use to board agricultural animals and operate an arena for instructions of 4-H members be approved with the following conditions imposed:

1. A double row of 5 ft. pines staggered 8 ft. on center should buffer any residential properties to the west.
2. There shall be no stockpiling of manure on site.
3. There shall be no parking along CR 18.
4. All parking must be within the premise.
5. There shall be no outside speakers.
6. All Health Department permits must be obtained.
7. The questionnaire (as amended by the Board) to be accepted as conditions and restrictions of the Special Use with the following clarifications:
  - a. Question #2 should indicate that there are to be a maximum of twenty (20) horses and twenty (20) cows, goats, and sheep, including a maximum of four (4) hogs being boarded by 4-H members.

- b. Question #5 should be limited to the hours of operation being seven (7) days a week, 7:00 a.m. to 9:00 p.m.
  8. Approved as per revised site plan submitted.
  9. The evergreens are to be planted and the parking area is to be constructed and finished before the petitioner boards any animals.
  10. The staff is to verify compliance with condition #9 before the Special Use operates.
  11. Approved for a period of three (3) years with a staff review at that time to verify compliance with the conditions.
- The motion was then carried with a unanimous roll call vote.

16. The application of *Alan G. Esko* for a Special Use for warehousing and storing/construction storage yard for a landscaping and lawn service business, including leaf composting in an A-1 district (Specifications F - #44) on property located on the North side of CR 2, 1,200 ft. West of CR 5, common address of 29813 CR 2 in Cleveland Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091492*.

There were 28 neighboring property owners notified of this request.

A motion was made and seconded (*Homan/Hesser*) that the public hearing be re-opened at this time. The motion was carried with a unanimous roll call vote.

Mr. Hesser questioned if the staff has a recommendation because the staff report only states that the leaves are to be removed from the site in 90 days. Mr. Harrell said the staff still stands by their previous recommendation for denial and feel this is not a proper location for the operation.

Mrs. Wolgamood indicated a copy of a petition was submitted to the planning office on June 5, 2009, and she asked if that should be accepted since it was submitted after the public hearing. Mr. Kolbus said unless the Board wants to accept it, that document should have been submitted at the original hearing. The petition was tabled only for specific information and not to accept new petitions from the public. The Board decided that the document will not be accepted as evidence.

Alan Esko, 29813 CR 2, Granger, was present on behalf of this request. He said the Board should have copies of the revised site plan with a brief summary of that site plan. He feels that the site plan provides additional information regarding the size of the windrows. In his information, he also included operating hours and indicated what information sources he plans to utilize from Midwest Bio-Systems and reference handbooks. Mr. Esko said he is open for discussion regarding the privacy barrier on the north side of the property. He is willing to cooperate with the Board as much as possible. The petitioner is asking for some small signage to indicate that he would be selling red worms and worm casting products. Any leaf composting equipment brought on his property won't be any larger than any agricultural other agricultural equipment. The petitioner would need a tractor and a windrow leaf turner. He is not looking to create a VIM or a county composting operation.

Mr. Homan asked what the definition of a windrow is and Mr. Esko said it is a rectangular and cone shaped object that will stretch from east to west. The dimensions are approximately ten ft. at the base and sloping upwards to about five ft. nine inches.

Mr. Homan asked if there will be any other items in the windrows such as grass clippings or trash. Mr. Esko said the concept of yard waste would include grass clippings, leaves, and bark mulch.

Mr. Esko explained that he has included two pictures in the information submitted showing his effort to bring his property into compliance.

Mr. Lantz asked the petitioner if he could mow the areas in between the windrows and then take that additional grass and add it to the windrows. He feels that may help the property look a little more organized and less unsightly to the neighbors. Mr. Esko said a bush hog was on his property and he has performed that. He would be glad to incorporate that into the conditions.

Mrs. Wolgamood questioned the site plan where it indicates the dimensions will vary. She asked if he can be a little more specific on those dimensions. Mr. Esko said in paragraph six of his brief summary, he states that the stockpiles will be strategically located, but they will be no closer than 50 feet from any property boundary. The dimensions of the finished stockpile will vary, but the height will not exceed twelve feet. If he doesn't go any higher than twelve feet, then the base would have a radius no larger than fifteen or twenty feet.

When asked about question #6 regarding the number of stockpiles, Mr. Esko said he is looking at a maximum of around ten stockpiles.

Mr. Miller asked if there is a lot of off-gassing and Mr. Esko said there will be some as the windrows are turned over. There will be some carbon dioxide and nitrogen depending on the amount of green. Methane gas would be the most offensive to the neighbors, but he will follow the regulations of the Midwest Bio-Systems.

Mrs. Wolgamood asked if this business will be done on a full-time basis and the petitioner said yes.

James Crabtree, 29723 CR 2, Granger, was present in opposition to this request. Mr. Crabtree explained that the petitioner lets other lawn care companies come on site and dump leaves in this area. He doesn't feel anybody comes out to check the Special Use permits.

Mr. Homan asked when the last time was that he saw someone dump leaves on that property and Mr. Crabtree said last fall.

Janice Jordan, 29740 Prairieview Farms Boulevard, Granger, was also present in opposition to this request. Mrs. Jordan explained that these leaves have piled up year after year since she has lived there in 2005. The leaves have caught on fire several times and everyone in the entire neighborhood signed the petitioner in opposition to this request apart from one out of town family. The people in the area want the leaves removed and they don't want anymore debris brought in. Mrs. Jordan explained that the leaf piles are very unsightly and some of them stand as tall as she does.

In rebuttal, Mr. Esko said he addressed the issue of having outside contractors come to the property. He is willing to have a condition placed on the request that no outside contractors will be allowed to bring leaves on his property. The leaves will only be from his operation.

In regards to Mrs. Jordan's comments, she lives north of Mr. Crabtree and he doesn't believe she touches his property lines. Mr. Esko said he doesn't have any leaves at all on the 110 ft. east property line.

The public hearing was closed at this time.

Mrs. Wolgamood asked if there is a way of all of the lawn equipment being parked inside the barn and Mr. Esko said no.

Mr. Hesser asked if the petitioner is required to have a Special Use for storing equipment outside and Mrs. Wolgamood said no because this request is for warehousing and storing.

Mr. Homan indicated that the petitioner knows a lot about composting and yard waste, so he gives him a lot of credit for that. The petitioner is close to residential development and he doesn't see how those two things will ever co-exist in a way that doesn't adversely impact some or all of the parties. All of the issues brought up by the remonstrators are all related to the leaves.

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 warehousing and storing/construction storage yard for a landscaping and lawn service business, including leaf composting in an A-1 district (Specifications F - #44) be denied with the leaves to be removed from the property within ninety (90) days. A roll call vote was taken and the motion was carried with the follow results: Homan – yes; Wolgamood – no; Lantz – yes; Miller – yes; and Hesser – yes.

If the petitioner were to come back before the Board with a request that was limited to the operation of the business without the composting, then that would be a substantial change. The Board determined that if the petitioner re-applied, he would not have to wait six (6) months.

17. The application of *Nelson & Esther Lehman* for a Special Use for a home workshop/business for a variety store, coffee shop, and bakery (Specifications F - #45) and for a Developmental Variance to allow the total square footage of accessory structures (3,984) to exceed the total square footage in the primary structure (2,520), a difference of 1,464 sq. ft., on property located on the West side of CR 31, 380 ft. South of CR 36 in Elkhart Township, zoned A-1, came on to be heard.

One photo of the property was submitted to the Board by the staff [*attached to file as Staff Exhibit #1*].

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091534*.

There were 6 neighboring property owners notified of this request.

Nelson Lehman, 64037 CR 31, Goshen, was present on behalf of this request. Mr. Lehman explained that they would like to put up a bakery and a coffee shop for another income. They have dropped the request for the variety store. He is currently working at an RV factory and he plans on having one of his daughters help with the business.

Mr. Hesser asked if the Developmental Variance is still an issue and Mr. Harrell indicated no.

Mrs. Wolgamood asked if there is a house on this property and Mr. Lehman indicated there is a house on a separate tract. She questioned if there is a house on this particular piece of property and the petitioner said no.

When Mrs. Wolgamood asked how this can be a home workshop/business if there is no home on site, Mr. Harrell said there is a proposal for a residence and the permit process has been started.

Mr. Hesser indicated that the site plan shows a residence. Mr. Harrell said there is an agricultural building there now and the permit for the new home has been started.



Mr. Harrell asked if the bakery/coffee shop will be going into the existing barn and Mr. Lehman said no, a new building will be constructed.

Mrs. Wolgamood indicated she doesn't understand the site plan because it doesn't show the bakery. Mr. Harrell said that the architect who drew up the plans is present today.

Rob Martin from Barr Design Group, 412 S. 11<sup>th</sup> Street, Goshen, explained that the site plan shows the proposed house and the 40 x 60 building, which would house the bakery and the coffee shop.

Mrs. Wolgamood asked if that is the 40 x 60 building shown to the south of the property and Mr. Martin indicated yes. Mr. Lehman had originally planned the building to be 40 x 80, which included the variety store. Mr. Martin explained that the house may not be under construction yet, but at least the permits have been started.

Mr. Kolbus asked if the house is under construction and Mr. Lehman said no, they are waiting on the septic permit from the state.

When Mr. Hesser asked where the bakery will be located, Mr. Martin said it will be all the way to the south. A larger copy of the site plan was submitted to the Board at this time by Mr. Martin *[attached to file as Remonstrator Exhibit #1]*.

Mr. Homan asked how far away they are from finishing the house and the petitioner indicated he was unsure.

When Mr. Homan questioned whether the petitioner owns any property adjacent to this parcel, Mr. Lehman indicated yes and pointed it out on the aerial photo. His current residence is located on the corner of CR 36 and CR 31.

The public hearing was closed at this time.

Mr. Homan said it looks like the Board will be dismissing the variety store portion and the Developmental Variance from this request. The question is whether or not there can be a home workshop/business on site when the house isn't occupied yet.

Mr. Kolbus indicated it doesn't meet the definition, but the Board could place a condition that when the house is fifty percent or more completed, then the building permit for the bakery can be taken out.

Mr. Homan suggested stating that the petitioner cannot start conducting business as a home workshop until the certificate of occupancy has been issued rather than bringing the request back when they get the house done.

Mr. Harrell said he talked to the contractor and he is getting ready to build the house, but he couldn't be here today due to a wedding.

Mrs. Wolgamood indicated the Developmental Variance would still be needed.

Mr. Hesser said if the petitioner is asking that the Developmental Variance be withdrawn and the Board allows that, then Mr. Lehman wouldn't have permission to build a structure in excess of the residence. If the petitioners wanted to change that, then they would have to come back before the Board and request that. He said the Board could place a time limit on this request which would help the monitoring of it.

Mr. Homan asked if the bakery building already exists and Mrs. Wolgamood clarified that the 50 x 100 agricultural building is existing and will stay there. The proposed structure is the 40 x 80 building, which would be the coffee shop and the bakery. On the site plan included in the packet, it indicates a 2,520 sq. ft. proposed residence. She indicated she can only vote for denial since there is no house on site at this time.

Mr. Hesser said he understands Mrs. Wolgamood's concern, but he doesn't agree with it. He feels the Board should be deciding whether or not to give the petitioners permission to operate this business when they have an occupied home on site. He would have preferred this situation being done in a different order, but he is not opposed to what is being asked for.

Mrs. Wolgamood feels they are one step ahead because there is nothing on that property now.

Mr. Hesser suggested that he ask for the Developmental Variance before he builds the structure.

Mr. Kolbus said based on the original plan, if the petitioners don't put the garage in, then they will be alright because they are asking for the accessory building to be 40 x 60.

Mr. Hesser feels the Board needs to have a correct site plan. He doesn't object to approving this request without the house being built. If the whole thing is a part of one plan, then he doesn't object to it. When it's a plan that is inherently flawed by not asking for a Developmental Variance, he is hesitant to do that because he knows a problem would be created.

Mr. Homan asked Mr. Harrell if he has a copy of the floor plan for the house and Mr. Harrell indicated no, but said that information came from the contractor. The thing that will put the petitioner over the maximum square footage without a Developmental Variance would be the garage. Since they have cut down the accessory building to 40 x 60, he wouldn't need a Developmental Variance if they didn't build the garage.

When asked by Mr. Homan if the foundation is in yet, Mr. Harrell said no, but the contractor was getting ready and looking at the possibility of doing both foundations for each structure at one time.

Mr. Kolbus said the zoning clearance was included in the Board member's packets. The zoning clearance shows 2,520 sq. ft. for the home and 784 sq. ft. for the accessory. The petitioner will either have to not put up the garage or request a Developmental Variance.

Mr. Hesser suggested tabling the request to find out exactly what the petitioners want to do. Mr. Homan agreed and said he would like to see some more progress on the house.

Mr. Harrell explained that what he normally does with an accessory building and a house is allow them to excavate both structures at one time due to the expenses. He asked the Board if they want both structures built at the same time and built at the same stage, or do they want the house built first. Mr. Hesser and Mr. Homan agreed that they would like the house to be finished before the petitioners are operating a business.

Mr. Hesser suggested tabling the request and Mrs. Wolgamood indicated that the first request could have been altered and part of it could have been granted, but the Board denied it.

Mr. Homan said the definition of a home workshop is a clear definition, which includes that the resident resides on the property.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that this request for a Special Use for a home workshop/business for a variety store, coffee shop, and bakery (Specifications F - #45) and for a Developmental Variance to allow the total square footage of accessory structures (3,984) to exceed the total square footage in the primary structure (2,520), a difference of 1,464 sq. ft., be denied with no additional conditions imposed. The motion was carried with the following roll call results: Homan – yes; Wolgamood – yes; Lantz – yes; Miller – yes; and Hesser – no.

Mr. Martin questioned whether Mr. Lehman would have to wait the six month waiting period and he was directed to talk to the staff.

At this time, there was a brief discussion regarding the petitioner being unable to build his house due to the plans being sent to the State.

18. The staff item regarding *Edward Miller (Special Use #20083138)* was presented by Mrs. Prough at this time. She explained that on December 18, 2009, the Board approved a Special Use permit for an existing mobile home on property located on CR 56, east of CR 100. As part of the conditions of that Special Use, the Board wanted to make sure that a correct septic system was installed. The Health Department did issue a permit and it was approved on June 9<sup>th</sup>, 2009. Therefore, the petitioner is in compliance with the Health Department regulations.

Mrs. Wolgamood asked if the holding tank is no longer there and Mrs. Prough said the Health Department let him incorporate that into part of the septic system.

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

20. There were no audience items.

21. The meeting was adjourned at 12:18 P.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