

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21st DAY OF MAY 2009 AT 9:00 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: Meg Wolgamood, Robert Homan, Tom Lantz, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Larry Harrell, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Dan Piehl, Planner; Mick Slater, 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 16th day of April be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Lantz/Miller*) that the legal advertisements, having been published on the 9th day of May 2009 in the Goshen News and on the 11th day of May 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/Homan*) 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 (*Homan/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 **Richard L. Yaw** for a Special Use for warehousing and storing for a construction business in an A-1 district (Specifications F - #44) on property located on the West side of CR 13, 500 ft. South of CR 32, common address of 63095 CR 13 in Harrison 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 #20091536*.

There were 13 neighboring property owners notified of this request.

Loren Sloat, Attorney, 102 Heritage Parkway, Nappanee, was present representing the petitioner. A packet of information was submitted to the Board by Mr. Sloat including maps, photos of the property, site plan, and a list of proposed conditions [*attached to file as Petitioner Exhibit #1*]. Mr. Sloat explained that this property is located just south of five points in Harrison Township by the fire station. When the storage building on the property was built, it was a gravel road. The petitioner has been in the construction business since the 1960's and he bought the property

in the early 1970's when he built the house and the shop. The building hasn't been there long enough for it to be grandfathered in and there had never been a Special Use permit obtained.

The petitioner came in last month to request a Special Use for a tower, but it was tabled until today's meeting to allow the petitioner to address the business on site. Mr. Sloat asked the Board if they want to consider the requests together or separate and the Board said separate.

Mr. Sloat went through the pictures in the packet at this time. The petitioner has lived in this area for a long time and he has been the Harrison Township Trustee for around 25 years. He operates his business out of this location and his only employee is his son. Most of the construction equipment is kept on site.

The petitioner's representative then showed the Board a site plan displaying the location of the storage area, which is consistent with what the staff has requested. The petitioner will not be stockpiling any type of construction material. They will be storing some equipment and concrete forms outside from time to time, which would be limited to the area around the building.

A list of proposed conditions is included in the packet and Mr. Sloat feels they are in a position to have the request approved. He indicated the petitioner is also present in the audience if the Board has any questions.

Mrs. Wolgamood questioned the wording in proposed condition number two. Mr. Sloat said the business has been there for 30 years and he figured it could be there as long as the construction business is operated by the owner/occupant of the residence on site. He feels the request could be perpetual until that condition is not met. He would like the request to be approved indefinitely so the petitioner doesn't have to come back for a renewal.

Mrs. Wolgamood asked if the staff had seen site plan #2 prior to today and Mr. Sloat indicated no. Mr. Harrell indicated he has no issues with the site plan. He had been out to the property before and he always thought it was a legal entity. He doesn't see anything different from what they already knew.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said he prefers not to state "perpetual" in the conditions.

When leaning towards approval, Mr. Homan explained the Board will usually approve the requests indefinitely unless there is a valid complaint received, or they approve it for three or five years.

Mrs. Wolgamood said she feels uncomfortable not having a time limit placed on the approval because then the staff doesn't check for compliance. If Mr. Yaw no longer lives there, then the business could possibly be extended by one of the neighbors. She feels they need to have some sort of way of looking at it.

Mr. Hesser suggested five years and the Board agreed.

Mrs. Wolgamood indicated site plan #2 should be tied to the approval, which is the site plan that was submitted at today's meeting.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for warehousing and storing for a construction business in an A-1 district (Specifications F - #44) be approved in accordance with the Staff Analysis with the conditions submitted by the petitioner's representative (as amended by the Board) imposed as follows:

1. Approved as per site plan submitted on May 21, 2009, which is labeled as "Site Plan #2."
2. The Special Use Permit shall be for the concrete construction business owned and operated by owners/occupant of residence on site.
3. Exterior lighting to be limited to security, dusk to dawn type lighting.
4. One unlighted 2 ft. x 2 ft. sign.
5. No retail sales on site.
6. No stockpiling of aggregate materials or demolition debris on site.
7. Storage limited to area designated on Site Plan #2 as labeled.
8. Staff review in five (5) years to verify compliance with the conditions.

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

8. 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.

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

There were 15 neighboring property owners notified of this request.

Loren Sloat, Attorney, 102 Heritage Parkway, Nappanee, was present on behalf of this request. Mr. Sloat explained that the existing radio tower has been there for a number of years and has a height of 48 ft., but it is actually 60 ft. to the very tip of the radio antenna. The petitioner has used this tower for radio communications for his business over the years. Mr. Yaw needs a tower that is 110 ft. tall because the wireless connection is by a ground signal across the trees. The tower needs to be higher because it has to travel across the woods. Approving this request would give the petitioner wireless internet service for the business and allow internet activities to take place as the petitioner is the Township Trustee. The wireless company is willing to contribute their part for the internet service to benefit the governmental unit. He also indicated that the staff would receive the specifications for the tower.

Mrs. Wolgamood asked if the 110 ft. includes the spiral that goes up and Mr. Sloat said yes, that would be the apex of the tower.

Mr. Hesser questioned if this is subject to the tower policy or should it be. Mr. Harrell said it should be, but it is a policy and those can be set aside because it's not a law that it has to be that way. The staff asks for the collapsibility of the tower so they know that it will collapse instead of fall over.

Mr. Hesser asked if this will comply with the tower policy and Mr. Harrell said he doesn't believe it will comply with the setbacks, but it has been there for a long time. The staff is talking about reviewing the policy because it currently doesn't allow for towers in industrial areas. They have been bending the policy a lot because it is impossible to put a tower in an industrial area and comply with the policy.

Mr. Hesser asked if this tower is too close to other buildings even though it's not in an industrial area. Mr. Harrell said the only thing within that area is the petitioner's house and the fire station.

Mr. Sloat explained that the tower will be constructed on a five ft. deep concrete pad. Mr. Hesser explained that the two issues he is concerned about are the collapsibility of the tower

and co-location. Mr. Harrell clarified that this tower would not be available for co-location because it's not heavy enough to be considered a commercial tower.

Mr. Sloat said it would only be for internet access with radio communications for the business.

Mr. Kolbus explained that most are built for selling it to different carriers and this is a personal tower.

Mr. Homan asked if someone is installing the tower and Mr. Sloat said the petitioner will do the concrete work since they are in a concrete business. The people they are buying the tower from will be installing it.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a wireless communications facility (radio tower) (Specifications F - #31.50) approved in accordance with the Staff Analysis with the following conditions imposed:

1. The manufacturer's specifications to be provided for the file.
2. All required building permits and inspections must be obtained.

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

9. The application of *Nappanee Missionary Church* for an amendment to an existing Special Use for a church to allow for a pavilion (Specifications F - #48) on property located a distance of 502 ft. off the North end of Rolling View Lane, North of CR 50, West of SR 19 in Locke Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091529*.

There were 4 neighboring property owners notified of this request.

Dan Jacobs, 70417 SR 19, Nappanee, was present representing the Nappanee Missionary Church. The church would like to construct a pavilion which will be three sided. They will have provisions for future bathrooms and electric, but they will only be putting up the pavilion at this time.

Mr. Hesser said there are several parcels on the drawing and asked which ones the church owns. Mr. Jacobs then pointed out the parcels on the aerial photo and explained that the church owns most of the area. There is farmland to the west and the north of the proposed property.

Mrs. Wolgamood asked if the pavilion will be accessed from CR 50 or the main entrance on SR 19. Mr. Jacobs explained the access will be through the parking lot off of SR 19.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said her major concern was that she didn't want 100 cars going off of CR 50 by the two existing residences. She would prefer them to access on SR 19 and Mr. Jacobs indicated that is the plan. There are very few people who know that there is an entrance on CR 50 apart from the people who go to church there.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for a church to allow for a pavilion (Specifications F - #48) be approved in accordance with the Staff Analysis with no additional conditions imposed. After a unanimous roll call vote was taken, the motion was carried.

10. 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.

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 #20091537*.

Mr. Harrell indicated that Mr. Pharis brought in a new site plan a couple of days ago. The staff reviewed the site plan and they feel it is acceptable.

There were 34 neighboring property owners notified of this request.

Barry Pharis, 1001 S. 9th Street, Goshen, was present representing Ora Lehman and sons. Mr. Pharis explained that Mr. Ora Lehman could not be present today because he is officiating at a wedding, but his sons, Lavern and Lavon Lehman, are present. This property is a 21 acre family farm where they raise ducks. Mr. Lavern Lehman and his wife live on the acreage adjacent to the proposed property. Hemminger Hills Subdivision wraps around from the west to the south and is also adjacent to this farm. Mr. Pharis indicated that he represented the developer of Hemminger Hills and the subdivision has dramatically grown over the last few years.

The petitioner is asking for a Special Use to stable horses with an indoor arena, which is an existing building. Mr. Ora Lehman would also like to have an outdoor arena area for riding and shows. All buildings that are shown on the site plan are existing buildings apart from the three-sided lean to buildings for the animals. He would also like to offer that 4-H members be able to raise animals to show at the 4-H fair.

Mr. Pharis explained that animal waste will be stored and some of it will be used on site for Mr. Ora Lehman's garden or Mr. Lavern Lehman's garden. Arrangements have also been made with several of the local farmers to dispose of a balance of the waste on their farms.

The facilities include one permanent port-a-potty, which will be located right next to one of the arena buildings. In the event that there would be any 4-H meeting or show on site, additional port-a-potties would be rented. The daily traffic is anticipated between 10 and 20 vehicles.

After Brads-Ko Engineering & Surveying reviewed this request and made some changes to the plan, they sat down with the staff to discuss it. The staff came to the determination that they were satisfied with the plan. The parking has been moved to the east and is proposed to be behind all of the buildings and near the arena.

Mrs. Wolgamood then asked if the Board has the revised site plan and Mr. Pharis indicated it was e-mailed to Mr. Nemeth. Mr. Pharis proceeded to explain the revised site plan to them.

Mr. Hesser asked the staff if they have received the revised site plan and Mr. Harrell said they have asked Mr. Pharis to make the presentation today on the new site plan. He explained

they didn't have time to get it in before the meeting because Mr. Pharis had to re-construct the site plan after meeting with the staff.

Mr. Hesser then asked if the staff feels the revised site plan is acceptable and Mr. Harrell indicated yes.

Mr. Nemeth indicated the staff is asking that the petitioner install two rows of staggered evergreen trees. There are existing trees along the west side that the staff would like the petitioner to keep maintained.

Mrs. Wolgamood asked if those trees are on the petitioner's property and Mr. Pharis said yes, for the most part. There are trees on the Hemminger Hills Subdivision lots as well.

Mr. Kolbus then indicated that Mr. Nemeth is going to check his e-mail at this time for the revised site plan.

With the revisions, Mr. Pharis feels this project is consistent with the spirit, purpose, and intent of the Zoning Ordinance. The property will have agricultural uses in an agricultural zone and it will not cause injury to the adjacent neighbors. He also feels that this will serve the public convenience and welfare. Many 4-H members live in cities or in subdivisions and are not able to raise animals in those areas. He also added that Jefferson Township provides Elkhart County with the largest number of subdivisions. Mr. Pharis asked that the Board agree with the staff's favorable recommendation.

Mr. Hesser asked how frequently they plan to remove the manure and Lavern Lehman, 16260 CR 18, Goshen, indicated that it depends on whether or not the crops are in or out as to whether it can be spread on the fields. He has spoken to the neighboring farmers about sharing some of the manure with them.

Mr. Homan asked how many acres they have total and Mr. Lavern Lehman indicated ten acres. They have a total of about 40 acres across the road and then there is another ten acres adjacent to Mr. Lavern Lehman's property. He explained there is a farmer in Bristol who wants to do all organic farming and he will be hauling away most of the manure.

Mr. Homan asked what other livestock they have on the property apart from what will be used for 4-H and Mr. Lavern Lehman indicated just horses and ponies. They currently have two horses and two ponies.

Mr. Lantz also suggested selling the manure to some of the people in the subdivision if they have gardens and Mr. Lavern Lehman indicated they could if it's composted. Mr. Homan feels that they should stay on top of cleaning up the manure since there are residential subdivisions in the area. Mr. Lavern Lehman said they have a pair of horses that are capable of carrying heavy loads.

Mr. Hesser asked if the sheds will be the type that can be moved and Mr. Lavern Lehman said yes. The purpose of that is because some people would like their animals to be in natural habitat instead of in a barn on concrete. He also explained that the areas will be fenced-in paddocks.

Mr. Pharis explained the petitioner wants to be able to teach children how to care for the 4-H animals properly.

Mrs. Wolgamood asked if there was a Special Use on this site a few years back regarding a recycling business and Mr. Pharis said yes, it has been moved to Michigan and sold. She questioned if that Special Use has been closed out and Mr. Harrell said yes.

G. Phillip Eddy, Sr., 16160 CR 18, was present in opposition to this request. Mr. Eddy explained that he lives next door to Mr. Lavern Lehman and he feels that the Lehman's are

extremely good neighbors. When it comes to the business side of things, he feels that Mr. Ora Lehman is less than stellar. To the best of Mr. Eddy's knowledge, nine out of ten of the conditions set by the Board were broke when the last Special Use was granted.

Mr. Eddy feels that the petitioner should be required to install the row of trees on the west side of the property before the Board grants the request. In looking at the petitioner's past, Mr. Eddy doesn't feel the trees would be put in if the Board asks him to do it after the request is approved.

As far as the animals are concerned, Mr. Eddy doesn't want to have goats or pigs next door to him. The proposal refers to "farm animals, etc." and he asked if that will allow the petitioner to have llamas, emus, or ostriches. He feels it is being left a little too wide open and he would prefer to see it narrowed down.

Overall, he would like to see the trees planted before the Board satisfies the petitioner's request. Mr. Eddy is opposed to this request because of the petitioner's history. He feels Mr. Lehman is a marvelous neighbor, but he is a tough businessman and not a man of his words. He also asked for a clarification as to whether this would be on Mr. Ora Lehman's property or Mr. Lavern Lehman's property.

Mr. Hesser asked how he is distinguishing between the two properties and asked if there are different parcels involved. Mr. Eddy said that is correct and he would like to know who owns what. Mr. Hesser explained that the parcel outlined in white is the property in question.

At this time, the revised site plan of the property from Brads-Ko Engineering & Surveying was submitted to the Board by the staff *[attached to file as Staff Exhibit #2]*.

Mr. Eddy would like to specifically see what the 4-H animals will be and whether or not the petitioner has adequate space for them as far as pasture. The issue he is concerned about is Mr. Lehman's past history and he feels the Board should deny this request.

Mr. Homan asked what his concern is about the goats and Mr. Eddy indicated the smell more than anything.

David Blough, 57446 CR 29, Goshen, was present in opposition to this request. Mr. Blough explained he has a family farm that has been immediately across from the proposed property for 40 years. The southern most access to the 193 acres that he owns between CR 29 and CR 31 is immediately across from the petitioner's property.

Mr. Blough feels the Lehman's are good people, but execution has been an issue and Mr. Ora Lehman has had a habit of changing quite often. He understands that anybody who is in the agricultural business is looking for some way of enhancing revenue, so he salutes the Lehman's for that. He is involved with two other horse operations in the immediate area. One of them is to the west one mile on CR 18 and the other one is around the corner on CR 31. He feels there is already excess capacity for this type of a business.

Mr. Blough always wants to respect people's property rights, but he has some real issues with Mr. Ora Lehman. He and his wife sold a homestead to the petitioner a number of years ago and they were not treated fairly at the closing. There was also a property that he transferred to his daughter and son-in-law where they put their septic system and clothes lines on property that Mr. Blough still owned. He has been working with the petitioner for three years regarding that issue and wanted to give the petitioner a quick claim deed and sell the land to him on land contract, but he won't answer the letters. Mr. Blough asked how the Board is going to get the petitioner to conform to this issue.

In rebuttal, Mr. Pharis explained that what happens in the past is important, but he doesn't think it's indicative of the future. The county has inspectors who can check the compliance of a Special Use permit. If the petitioner doesn't comply with the site plan and conditions, then there are repercussions. If the Board makes a favorable decision, then they will probably set a time limit where the petition is required to come back before the Board.

Mr. Pharis said his involvement with Mr. Lehman was after the wood chip business and the petitioner has done what he has asked him to do. After the sawmill was no longer operating, they tried to convert that to a recycling business, but complaints were received from the neighbors at that time. Mr. Lehman then went out and bought property that was zoned M-1 to have his recycling business there.

After Mr. Pharis sat down with the petitioner and his sons, he explained to them that they would have to do this right because they are next to one of Mr. Pharis's subdivisions. He doesn't want to hurt his clients and he thinks the Hemminger Hills subdivision becomes a very good source of the people who may need to utilize this request for 4-H animals as they can't have them in the residential zone.

Mr. Pharis said the petitioner can live without having certain animals. He understands that a bunch of pigs would be a problem. He's not sure about the odors for goats, emus, or llamas, but this would only be for 4-H animals. He hopes that the Board doesn't say no to sheep and calves.

Mr. Homan asked when they might be housing animals for 4-H. Mr. Pharis said as the word has gotten out, some people have contacted the petitioner about stabling horses, which has nothing to do with 4-H. The stable buildings are already in place and Mr. Ora Lehman also had someone contact him about raising beef cattle. There are a few that would be coming in right away, but the bulk of this will take around one year to develop.

Mr. Lantz said one of the best things the petitioner can do to take care of some of the concerns is put some of the trees in place first. He suggested going with a Norway spruce instead of a pine tree so it's a little denser.

Mrs. Wolgamood feels that 40 animals is a lot, but Mr. Lantz said it depends on the animal. She agrees with Mr. Eddy and Mr. Blough regarding the fact that they shouldn't leave the range of animals wide open if the request is approved.

The public hearing was closed at this time.

Mrs. Wolgamood explained she agrees wholeheartedly with Mr. Lantz that before any building permits are issued for any of the shelters, then the trees should be in place and planted. She feels the staff should verify compliance with that before releasing any permits for construction, including the parking lot and driveway.

She also thinks a time frame for review before the Board needs to be done. Mr. Lehman needs to know that he would be in jeopardy of losing the Special Use if he didn't comply with the conditions.

Mrs. Wolgamood agrees with the concept, but history indicates that the Board should make sure the petitioner keeps his ducks in a row.

Mr. Homan said the Board has an improved site plan that is acceptable according to the staff. They would like to have the improvements accomplished before the Lehman's are boarding any livestock and limiting traditional large agricultural animals, which would be horses, cattle, sheep, and goats. He would exclude swine and poultry because of the obvious impact on the residential property immediately adjacent on the farm.

Mr. Kolbus questioned if the Board wants to place a time frame on the request for renewal. Mr. Homan said there won't be any 4-H impact until next year, so having a one year renewal wouldn't make any sense. He feels having a two year or a three year Board renewal would work.

Mr. Hesser indicated he has a couple of concerns. He doesn't like being given the site plan the day of the hearing and he doesn't like changing the recommendation on the day of the hearing. When that happens, it turns into a staff recommendation for approval with no proposed conditions.

If the Lehman's wanted to put other animals on their property, they could right now as long as they belong to them. The Board can control the animals in this situation because it's a Special Use for boarding the animals. He feels it is hard to come up with a list of conditions when they haven't been analyzed or reviewed by the staff.

If you live in a rural area like this and you live next to a farm, Mr. Hesser doesn't feel you can object very strongly to having animals next door to you. Horses are going to be significantly different than pigs, goats, or cattle. When you've had an issue with enforcement before, he doesn't feel comfortable stating that the petitioner can have a set amount of animals. For example, the Board could grant the petitioner 40 animals, but if they don't restrict it, then they could end up with 40 cows. If the petitioner had 40 cows on the property, that would be significantly different from having 20 horses and 20 cows. He doesn't feel comfortable trying to address all of those issues right now in a way that is going to be enforceable.

Mrs. Wolgamood asked if he is hinting towards tabling and Mr. Hesser said at least. He likes the idea and he thinks it's a good thing, so he doesn't want to deny it. He feels there is a need for specific and enforceable conditions. Mrs. Wolgamood agreed.

Mr. Lantz said it will be hard to control numbers and types of animals. He feels the trees will be a significant expense.

Mr. Hesser doesn't have a problem with the concept at all, but he feels the Board needs to have things laid out specifically in a manner so they are understandable and enforceable.

Mr. Homan said he doesn't see a need to open the public hearing in the future. He would be in favor of tabling this request to give the staff time to digest today's testimony and bring it back to next month's meeting.

The Board would like to have a revised Staff Report in the packet for next month.

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 to board agricultural animals and operate an arena for instructions of 4-H members be tabled until the June 18, 2009, Board of Zoning Appeals meeting, to allow the staff to add detail (proposed list of conditions) to their recommendation. A roll call vote was taken and the motion was carried unanimously.

11. 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, 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 #20091492*.

There were 28 neighboring property owners notified of this request.

Alan Esko, 29813 CR 2, Granger, was present on behalf of this request. A packet of information was submitted to the Board at this time by the petitioner including a response to the Staff Analysis, one photo, a petition in support of the request with four valid signatures, a copy of the property survey, information regarding Midwest Bio-Systems, and a table of contents for the Municipal Yard Waste Composting Facility Operator's Reference Guide and Handbook *[attached to file as Petitioner Exhibit #1]*. After conversation with the staff, Mr. Esko made some improvements to his site plan by adding in the windrow compost design alignments going east to west.

The petitioner continued to explain that the main objective of the Special Use permit is to provide an opportunity for Mr. Esko to earn an income in the landscaping and lawn service businesses. His equipment for the lawn service and landscaping will be mowers, a couple of trucks, and some tow behind trailers. They will be situated around or in the pole barn that is referenced on the site plan. The yard waste that is generated from the business activity will be brought over to the acreage as indicated and windrow compost piles will be created in an east/west orientation. None of the compost piles will be less than 50 ft. from any property boundary and he has included dimensions on the site plan.

He is planning to put a vegetation barrier along the north side property boundary where the residential subdivision was planned. His idea of a vegetation barrier is at least 20 ft. wide and will be a dense hedgerow of lilac bushes. The property to the west, where the compost piles will be staged, is currently empty and is a former pasture field. The property to the east has a vegetable garden and pasture field.

In addition to the yard waste compost beds, Mr. Esko plans on constructing vermiculture, which is the raising of red worms in shallow beds. The beds will be about five feet wide, 30 feet long, and one foot deep. The final product that is generated from the leaf composting operation will be used to fill the shallow vermiculture worm beds, as well as a stockpile of the final mulch product that will be staged in the pasture field. That material is used in the vermiculture product beds and the landscaping business for tree planting, re-sodding, or re-seeding.

In that regards, it's a recycling operation where yard waste is brought onto his property and goes through the composting process. That material is then used in the vermiculture beds and the landscaping business. The material from the final product of the vermiculture beds will be additional red worms through their propagation and the worm castings. The worm castings are a commodity product to be sold to the agricultural and home gardening markets.

Mr. Esko understands that there is a lot of concern about leaf composting, but only yard waste is going to be brought onto the property. There have also been concerns about other landscape contractors dumping their product on his property and he indicated that will cease. It will be his yard waste only that will be used in the composting process. Once the material is brought onto the property, he will evaluate it to perceive the relative nitrogen content to create proper mixing of the carbon nitrogen ratio. He will follow the standard operating procedures and guidelines of the Midwest Bio-Systems and Gannett Fleming's Operator's Reference Guide and Handbook.

The petitioner explained that he has included a copy of the Midwest Bio-Systems webpage in the packet of information earlier submitted. They provide workshops and they

manufacture the equipment that is necessary for digestion composting, as well as site plans. They have the personnel and the experience to design proper composting activities. Also included in the packet is the table of contents of the Gannet Fleming Engineers & Planning Municipal Yard Waste Composting Facility Operating Reference Handbook. He feels he has done his homework and he plans on putting forth the effort that is necessary to provide continuous monitoring of the compost stockpiles in regards to proper aeration, temperature, moisture, and odor. The petitioner explained there will be a natural and organic type of odor that will be generated, but it can be controlled through proper aeration.

The construction of the mulch and vermiculture beds will be within the next 30 days. The material that has been observed and photo documented are not his final composting beds. In addition to that, there is also a grant writing process required for the high end composting equipment expenditures. The vegetation barrier is an immediate concern and occurrence.

Mr. Esko then went through his comments regarding the Staff's Analysis (the entirety of this portion of the presentation is included in the submitted exhibit). The staff has indicated that this request is inconsistent with the spirit, purpose, and intent of the Zoning Ordinance due to the odors and esthetic appearances next to a residential subdivision. Mr. Esko feels that since the property is zoned A-1, the land use allows for livestock which would also emit offensive odors.

In regards to Staff Analysis comment #2, which states that this will cause substantial and permanent injury to the neighboring properties as indicated by four complaints received during the last five years pertaining to odors, etc., the petitioner said only one of the complaint has relevance to this request. That particular complaint was regarding the deposition of leaves on his property. One of the irrelevant complaints was from the previous owners who lived at this property and another one was regarding the sales of eggs and dairy products, which he no longer operates. The last complaint was about open burning of barn waste, but Mr. Esko doesn't have a livestock operation and he doesn't do open burning. None of the referenced complaints were for odors, so he sees no evidence for a claim of substantial harm or permanent injury. He feels the neighboring subdivision is creating a nuisance by dumping their yard waste on a dead end street section. Mr. Esko is trying to do things in a more ecological and manageable way.

Staff Analysis Comment #3 indicates that this request will not substantially serve public convenience and welfare. Mr. Esko doesn't feel this comment is within the purview of the Planning & Zoning Department unless they have performed an economic analysis of his business. In regards to public convenience, he asked the Board to look at the photos to see what the citizens are resorting to because there are no adequate means of yard waste recycling. His operations are a service industry to both residential and commercial markets. Several of his clients are elderly and rely on these services. The petitioner hires Cleveland Township Volunteer Firefighters to supplement their income. Mr. Esko explained he is also a Cleveland Township firefighter and he respects the hazards associated with fire. He will use his expertise and knowledge of firefighting to make sure there are no hazards with the yard waste compost piles.

Mr. Hesser asked if there have been problems with that in the past and Mr. Esko said yes, but he has not done any burning since 2004.

Mr. Homan asked how long he has been operating this business here and the petitioner said since spring of this year. Mrs. Wolgamood asked if he had done the landscaping business prior to that and Mr. Esko indicated that is correct. He is trying to be proactive and get the Special Use permit into the works.

The acreage of the proposed property was questioned by Mr. Homan and Mr. Esko indicated there are 5.18 acres.

The petitioner has also included a copy of the petition in favor of this request in the earlier submitted packet of information. In regards to the opposition letter by Mrs. Strickland, the petitioner indicated he talked to her and she misunderstood the request. She understood that there would be a general contractor coming on site and providing a construction storage yard, but Mr. Esko reassured her that this would be an agri-business operation and not a general contractor operation. Mr. Esko felt that Mrs. Strickland was alright with the request after he explained himself. He then asked the Board that the denial be dismissed and they consider approving this request.

Mrs. Wolgamood asked the petitioner to point out where the three people live who signed the petition in support of the request. Mr. Esko explained that Hazen Amos lives immediately west, Brian & Susan Ketchum live immediately south, Bruce McCrory lives southeast across the street, and Nevin McElwrath lives immediately north. Mr. McElwrath is in favor of a stockade fence and a vegetation barrier along the north property line. Mr. Esko also explained that Vicki and Mike Rogers, who live directly north of the proposed property, sent in a letter in favor of the request.

Craig Twiford, 50661 CR 3, Elkhart, was present in favor of this request. Mr. Twiford indicated he is present as a character witness. He has known the Esko's for about ten years and they attend the same church. He knows that any operation or project they are going to take over will be done properly. They would definitely make sure that their neighbors are not offended by what they are doing and make sure the operation is done correctly. The petitioners have fostered many children in the area and he feels they are good people who deserve an opportunity to do business in Elkhart County.

Janice Jordan, 29740 Prairieview Farms Boulevard, Elkhart, was present in opposition to this request. A packet of photos showing the leaf piles were submitted to the Board at this time by Mrs. Jordan *[attached to file as Remonstrator Exhibit #1]*. She and her husband moved to this location in the fall of 2005 and Mr. Esko started a leaf hauling and leaf burning business, which caused the fire department to respond to numerous fires that got out of hand. This not only costs the fire department, but it costs the tax payers an unnecessary expense as well. The Environmental Protection Agency (EPA) told him that he cannot burn the leaves, but he has to dispose of them, so the petitioner decided to cultivate them. It's now 2009 and she explained that the leaves are still there in waste high piles.

Mrs. Jordan indicated there are thirteen children of school age, which include four toddlers and two new babies in the adjoining subdivision. There are also several elderly people with health problems. She feels that the petitioner has done nothing but stick a forklift in the piles of leaves, which causes them to create more dust and mold. The petitioner has not cultivated the leaves and they are still there. She feels this is a health hazard for the children and the grown-ups as well. Mrs. Jordan has asthma which she treats daily and she also has to have allergy shots often due to dust, mold, and grass.

She feels the proper procedures need to be followed to have a business. The petitioner needs to clean up the mess he already has. Mrs. Jordan doesn't want the petitioner to bring the waste to their back door to dispose of it. She feels he should take it to the dump and dispose of it in the proper manner. She also explained that when he came around to the neighbors with the

petition, he indicated it would be a while before he could put up the fence. Lastly, Mrs. Jordan asked that the Board deny this request.

Mr. Lantz asked her to point out her property on the aerial photo and Mrs. Jordan did so, which is located north of the petitioner.

He also asked if she is affected by the leaves on the other side of the road and Mrs. Jordan indicated there is a cul-de-sac at the dead end road and she doesn't dump leaves there. She doesn't feel anyone has dumped there and indicated it's all in the petitioner's backyard.

Mike Wruple, 29824 Prairieview Farm, Elkhart, was present to voice some concerns regarding this request. One of his concerns is odor and it can be detected more on extremely warm days. The smell gets stronger as you move towards the fence line. The petitioner has indicated there has to be a 50 ft. boundary between the piles and the fencing, but the leaves are currently much closer than that. Mr. Wruple is also concerned about fire because there have been several fires in the time they have lived there. He has lived at this location for around four years and one of the fires that had started was due to spontaneous combustion. The fire was nearly to the fence before the fire department came and put it out. He is concerned about the possibility of that happening again and having the fire cross a property line while being unattended.

Another issue Mr. Wruple has with this request is the visual image of the piles. He believes he has the longest rear border stretch of the petitioner's property and he has not been happy to see the piles. Mr. Wruple has not made formal complaints regarding that, but he is very concerned about what the petitioner is trying to do here. Due to the expenses, the petitioner may not be able to put up the vegetation barrier right away and Mr. Wruple feels that is unacceptable. Some type of visual barrier needs to be put in place and a very definite timeline needs to be put on that. He also wondered if a privacy fence would be sufficient because he has a two story home. He would prefer some type of very dense and relatively tall vegetation.

Lastly, in regards to the dumping that Mr. Esko talked about, Mr. Wruple feels it is very minimal. He has never dumped in that spot and he doesn't see neighbors regularly doing that. The builder in the subdivision has used that as a spot to place loads of gravel as they put in septic fields and he understands that since it's a fairly new subdivision. He is concerned about the impact of the business on the marketability of the neighborhood because he feels this would be detrimental to the community that he lives in.

Mr. Homan asked how long the subdivision has been there and Mr. Wruple said approximately five years. He explained that his house was the second one to be built in the subdivision.

In rebuttal, Mr. Esko said there was a fire in 2005 that was because of a poor judgment decision on his part. He explained that is no longer taking place and the record proves that there haven't been anymore fires on his property. The petitioner said he has no leaves in the paddock, but there is a raw material stockpile that he plans on using for his windrows going east and west. There are old finished leaf compost piles that will be moved further south. Any new windrow piles will be at least 50 ft. from the rear property line.

Mr. Hesser asked the petitioner if there are some now that are closer than 50 ft. and Mr. Esko indicated yes, those are the older and completed compost piles.

Mr. Homan indicated the history shows a business has been at this location since 2004 and the petitioner said he has only been operating since spring of this year. He asked what the difference is and the petitioner said it wasn't an official business before. He was bringing leaves

onto his property from a contractor to supplement his income. Mr. Esko was borrowing a bobcat and spreading out the leaves in the area.

Mr. Homan asked the petitioner if he has fencing around his property and Mr. Esko said yes, a livestock wire fencing that is about four feet in height.

Mr. Lantz asked how long he has lived at this location and the petitioner said since 2001.

Mr. Kolbus suggested having the petitioner address a time limit for the fence or vegetation buffer since that had been a big concern of the neighbors. Mr. Esko indicated he would install a 20 ft. vegetation barrier of lilac bushes. The bushes are not installed yet, but in the interim until they are full grown, he has no objection to putting a fence up as a barrier along the existing agricultural fence.

The public hearing was closed at this time.

Mrs. Wolgamood feels the petitioner has answered all of the questions of the neighboring property owners had talked about. If this request were to be denied, she feels the Board needs to give him a time frame to clean up the property.

When the petitioner found out he was not in compliance, he ceased the operations. She has no issues with the landscaping business because he has a barn big enough to keep all of his equipment in. She feels that the visual barrier and odors are the most important priorities. She would think that the grass clippings smell bad as well.

Mr. Lantz said a quick fix would be a solid wood fence of some sort rather than the trees. He feels that one or the other would be a compliment to the neighbors and it would take care of the visual aspect that they have a problem with.

Mr. Homan indicated the composting seems to be the issue and not the landscaping business. He asked the staff if they could pull the request apart and exclude the composting. There is sufficient space in the building to run the landscaping business from.

Mr. Miller feels something definitely needs to be done about the barrier between the petitioner and the neighbors.

Mr. Kolbus asked if the Board is ready to grant the composting and if they are ready to put a list of conditions on it today. There are a number of things that need to be looked at to come up with a list of conditions.

Mr. Hesser said he doesn't necessarily have an issue with the composting use, but he does have an objection to how it's being handled. He's also not sure he understands the history of the property. Mr. Hesser understands that they are not in violation of IDEM's regulation because this was referred to them and nothing happened.

Mr. Harrell said it will depend a lot on the outcome of what the composting turns out to be. The business has the potential of growing and may turn into something bigger in the future. The building department gets grass complaints every day of the week and sometimes they attract snakes and mice. If the petitioner is going to go with vegetation, then he feels it should be five ft. tall with eight ft. centers, and doubled rowed.

Mr. Hesser feels the neighbors have legitimate concerns and he would like to see some of the issues addressed a little more before making a decision.

Mrs. Wolgamood indicated that the height, width, and length of the composting are shown on the site plan submitted today.

Mr. Lantz asked if the height of the piles was mentioned anywhere and Mrs. Wolgamood indicated five feet high.

Mr. Homan said there have been problems with this site in the past and the location doesn't seem too good for what they are doing here. Unless there was a material change and the ability to accomplish a material change to the operation, Mr. Homan doesn't feel he can support the request.

He would like to see the landscaping business come back and operate out of the accessory building with the appropriate restrictions, but he's not going to be able to be supportive of the leaf composting at this point.

A motion was then made (*Homan*) to deny the request in accordance with the Staff Analysis, but it did not carry due to a lack of a second.

Mr. Hesser said his inclination would be to continue the request provided the petitioner provides a site plan and proposed conditions to the staff. He asked that those items be submitted in sufficient time before the meeting to allow staff to review them.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Wolgamood*) that 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 tabled until the June 18, 2009, Board of Zoning Appeals Meeting, with the following condition imposed:

1. The petitioner is to submit a revised site plan and a list of proposed conditions to the staff no later than June 8, 2009.

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

12. The application of ***Don Hoover*** for a Special Use to allow for a wind turbine including a 52 ft. pole (Specifications F - #31.50) on property located on the East side of SR 15, 966 ft. South of CR 42, common address of 67666 SR 15 in Jackson 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 #20091538*.

Mrs. Wolgamood asked what type of permits and inspections need to be obtained. Mr. Harrell indicated they would need to pull a permit for the foundation and electrical hook-up.

There were 25 neighboring property owners notified of this request.

Glen Smith, Contractor from Wind Wire, P.O. Box 10208, South Bend, was present representing the petitioner. Mr. Smith pointed out the property on the aerial photo and showed where it extends out to. A packet of information was submitted to the Board at this time by the petitioner's representative including aerial photos, a site plan, specifications for the tower, the Declaration of Conformity, the certificate of compliance, and specifications for the monopole foundation *[attached to file as Petitioner Exhibit #1]*. Mr. Smith explained that on page three of the submitted packet, it shows a rough sketch of where the unit is going to sit, which will be 100 ft. from each property line. The sketch also shows the electrical line going into the home. Page four of the packet shows the technical specifications of the tower which indicates the survival wind speed. The noise is 40 decibels and Mr. Smith said a tree with leaves makes more noise than the tower will. This is an AC model and everything levitates, so the only noise is when the blades go around and there is no friction. Page five includes some more technical issues for the tower including the weight. The towers are guaranteed to stand for five years without any maintenance. The Declaration of Conformity is also included in the packet, which is very

important because it has to conform to the utility specifications. The tower is federally regulated and Wind Wire is endorsed by AEP and Nipsco. This tower is listed with underwriting laboratories and everything is designed accordingly. The pole is built by Valmont and that company does make their poles so they collapse upon themselves. Any smell or waste from the tower feeds right into the homeowner's panel.

Mr. Hesser asked if this goes directly to their house and the petitioner's representative said yes.

Mr. Smith said they have put up 50 of these towers between Detroit, Indianapolis, and Chicago. They currently have 20 more that are going to be installed.

Mr. Hesser asked what the cost of the towers are and the petitioner said \$15,000 to \$17,000. This particular tower picks up more than 30 percent more consistency from the wind, so it runs about \$16,700.

Mr. Smith explained that Wind Wire can monitor what is happening with this unit up to 1,000 away. If there is a problem with it, a laptop will be hooked up to the power surge and it will shoot up into the unit where the manufacturer can release the break.

Mrs. Wolgamood asked about the location of the tower and Mr. Smith pointed out the location on the aerial photo at this time.

Mr. Lantz asked what the worst thing is that can happen if the tower goes bad six years later. He asked what goes bad on them and Mr. Smith said the worst thing that could happen is that the motherboard could go down, which costs about \$900. Approximately ten years after the tower has been installed, the bearings need to be greased.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood indicated the petitioner's representative has answered all of the Board's questions. She feels the information he gave the Board was far superior to any of the wind tower presentations they have heard in the past.

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 turbine including a 52 ft. pole (Specifications F - #31.50) be approved with all specifications to be submitted for the file, and all permits and inspections to be obtained. After a unanimous roll call vote was taken, the motion was carried.

13. 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.

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

Mr. Harrell explained that the staff received a letter requesting that the petition be tabled until next month due to an Amish holiday.

There were 6 neighboring property owners notified of this request.

There were no remonstrators present.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/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 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 tabled until the June 18, 2009, Board of Zoning Appeals meeting to allow the petitioner to submit a detailed site plan accompanied by a floor plan. A roll call vote was taken and the motion was carried unanimously.

14. The application of *Marvin & Nancy Teitsma* for an Appeal for an existing second residence on a single zoning lot on property located on the South side of CR 8, 2,550 ft. West of CR 131, common address of 16046 CR 8 in Washington Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091520*.

There were 9 neighboring property owners notified of this request.

Richard Borkholder, B.C. Builders, 69590 CR 21, New Paris, was present representing the petitioners. Mr. Borkholder explained that the aforementioned house was a garage at one point in 1960. Someone had changed it to a house while they were building the cabin. The cabin was built in 1984 and the Teitsma's bought this property in 1994. They are looking to put some improvements into the cabin residence because it is under the required square footage. The septic system is connected with their existing house, but they would like to separate the septic systems. The petitioners would like to use this second residence only for family members at this point. There is a very small bathroom, so they would like to add onto that, as well as a garage and some additional living area.

Mr. Hesser asked when the log house was built and Mr. Borkholder said 1984. He also asked if there was no request then for a second residence and Mr. Borkholder indicated no, not at that point.

Mrs. Wolgamood indicated they did get permits for the log house, which date back to 1980. She asked if the proposed addition is a garage and part of a new bathroom. Mr. Borkholder said the new bathroom would be handicap accessible and a new bedroom may be added as well.

Brian Hoffman, 15992 CR 8, Bristol, was present to voice a concern regarding this request. Mr. Hoffman indicated his only concern about this request is the relativity to the east side property line and the visibility from his home. The petitioner's property is currently marked as a nature's reserve. The initial petition states that this would be for a sick mother, and he asked if this would be used as a rental property after the mother passes away. He also asked about the clearing of trees due to installing a new septic system. From the property line to the structure, the site plan indicates 125 ft., but he has measured that it will be around 97 ft.

Marvin Teitsma, 16046 CR 8, Bristol, was present on behalf of this request. Mr. Teitsma explained that the home would be used for a family member and there is no intention of using it for a rental property. They have had family members stay there on occasion, so it hasn't affected the area. He doesn't want any kind of disturbance in the area. Presently, he would like to have

his daughter live there because she is going through a divorce. After that, it would be used for a guest house. There is an open area behind the house where they can install a septic system. There are lots of trees in between, but the petitioners would like to put a screen of Norway Spruces between their home and the neighbor's house.

Mr. Hesser asked if the additions are necessary in order to make it handicap accessible and Mr. Borkholder said no. The house is currently less than 900 sq. ft., so in order to make it comply with the Zoning Ordinance, it needs to be at least 900 sq. ft. to be classified as a house.

Mr. Hesser said he is concerned that there would be two residences on one property and then it could be sold or rented to someone else down the road. He asked if the Board usually puts conditions on that and Mr. Harrell said the Board can't control whether or not it will be rented in the future. This property was looked at to see if it could ever be subdivided in the future, but most of the properties in the area are landlocked or on easements. There is no room to subdivide land off to make another lot.

Mr. Hesser asked if they can limit the approval to owner and family members, and Mr. Kolbus indicated yes.

At this time, the Board had further discussion regarding the difference between renting a second residence and a mobile home and whether the request can be limited to the owner/family members.

The public hearing was not closed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal for an existing second residence on a single zoning lot be approved as presented in the site plan, provided a valid septic system is installed for the structure, and all construction meets residential building codes. A roll call vote was taken and the motion was carried with the following results: Homan – yes; Wolgamood – yes; Lantz – yes; Miller – yes; and Hesser – no.

15. The application of ***Teresa Leighton*** for an Appeal to allow for the construction of an accessory structure without a primary residence on property located on the Southwest corner of North Shore Drive and Thompson Avenue, being Lots 19C & 20C of Bell's North Shore Unrecorded in Osolo Township, zoned R-2, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091518*.

There were 8 neighboring property owners notified of this request.

Teresa Leighton, 51134 North Shore Drive, Elkhart, was present on behalf of this request. Mrs. Leighton explained that her residence is directly across the street from the property in question.

Mr. Miller asked if this will be used for personal storage and the petitioner said yes. He also asked if they ever plan to put a residence on the property and the petitioner said no, absolutely not, because they have just finished building.

The petitioner said there are a couple of other lots in the area that have existing garages on them.

Mr. Miller asked if there are currently boats sitting on the property and the petitioner said yes. She and her husband allow the neighbors to store their boats on her empty lot. The petitioner would like to construct a garage that will fit their pontoon boat, riding lawn mower, fishing boat, and a jet ski.

Mrs. Leighton explained she owns two lots, but the garage will be built on the middle lot. The neighbors will still be able to store their boats on the lot they won't be building on.

Mr. Miller explained the site plan shows a 49 by 132 ft. lot and asked if that is the middle lot. The petitioner said yes, she acquired the property about a year and a half ago from Mr. Swathwood.

Mr. Hesser clarified that the petitioner owns lots 19C and 20C and there are already existing garages on lot 21C. Mrs. Leighton said the garage will be in aesthetics with the other garages in the area and it will match her home. She pointed out her home on the aerial photo at this time.

Mrs. Leighton indicated they checked with the neighbor to make sure they didn't have an issue with the proposed garage and they indicated it wouldn't be a problem at all.

Loel Nihart, 25799 Lake Drive, Elkhart, was present on behalf of this request. Mr. Nihart explained he has several properties on the lake and he has some concerns about this request. He feels that when the petitioners remodeled their current residence, they made it huge. He has concerns with the front setback of the house because he feels it is in the right-of-way.

Mr. Nihart is not sure that the petitioner had done everything perfectly legal in the past. He would like to know if the proposed garage is going to be one or two stories. Mr. Nihart explained he has spoken before the Board in the past about other requests as well. He would like the Board to be very particular on where the structure will sit on the property. Mr. Nihart then submitted a packet of photos of the petitioner's residence located across the street from the proposed property *[attached to file as Remonstrator Exhibit #1]*. He indicated that the date on the pictures is correct because it wasn't set right on the camera. Mr. Nihart said he doesn't agree with what the Board has approved in the past.

Mr. Hesser indicated that all of the comments are regarding the home across the street and Mr. Nihart said that is correct.

In rebuttal, Mrs. Leighton explained that the garage will only be a single story structure. She doesn't feel she needs to speak on the other property because that is not what is being discussed today. They had previously come before the Board regarding the property the residence is on and a Variance was approved. Mrs. Leighton said the garage will not have any storage above the garage. She indicated they will make the front of the garage even with the existing garages that are there. Her husband works for DJ Construction and he is very well aware of all of the zoning regulations that need to be followed.

Mr. Homan asked how tall the walls will be and Mrs. Leighton indicated she wasn't sure, but tall enough to fit their pontoon boat in.

The public hearing was closed at this time.

Mrs. Wolgamood asked if it's legal to store boats in an R-2 zone for other people. Mr. Harrell said he doesn't believe it is, but there isn't really anywhere to store them on the lake. A lot of people buy the lots across the street to store their boats.

She also questioned if the petitioner would need to stay a certain distance away from Cedar Crest Court since it has never been vacated. Mr. Harrell said technically yes, since it's still a named road. The site plan indicates 25 ft., but Mr. Hesser indicated they have not asked

for a Variance for that setback. He feels they should only deal with what's being asked for at this point.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/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 an Appeal to allow for the construction of an accessory structure without a primary residence be approved as per site plan submitted with the following conditions imposed:

1. The structure is limited to one (1) story only.
2. The structure is to comply with all of the setback requirements.

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

16. The application of **Jay Hochstetler** for an Appeal to allow for the construction of an accessory structure prior to the construction of a residence, a 3 to 1 depth to width ratio Variance, and a 60 ft. lot width Variance (Ordinance requires 100 ft.) to allow for said structure and future residence on property located on the South end of Wingham Court, 467 ft. East of Stonecreek Court in Jefferson Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091526*.

Mr. Harrell explained that when this area went to Plan Commission regarding a subdivision, the proposed property was set aside by the owners of the property to not be attached to the subdivision. The other lot has already been brought before the Board for action and there is a building on that property.

There were 7 neighboring property owners notified of this request.

Jay Hochstetler, 1324 South 8th Street, Goshen, was present on behalf of this request. Mr. Hochstetler said his father has a small personal woodshop in his Goshen residence. The plan was always for Mr. Hochstetler to build a building and for him and his father to use it together. Due to underlying circumstances, his parents are moving into Greencroft this summer, which is earlier than what they had planned. He would like to put the building up to have the equipment stored on the site and he has worked very hard to maintain the site. He has planted 600 to 700 trees on the property, mows the lawn, and he installed swales on the north and west sides of the property.

Mr. Hesser asked where the woodworking equipment is currently stored and the petitioner said in his father's basement.

Mr. Miller asked if there is an oversized outbuilding on one of the lots already and Mr. Hochstetler said Craig Stahly owns the lot to the west of him and there is a large building there.

Mr. Hesser asked if there is a residence on that lot and the petitioner said not at this point, but he knows that the homeowner has his current residence up for sale. Mr. Harrell indicated that this request is almost identical to what was granted for Mr. Craig Stahly.

The petitioner also indicated he has deliberately proposed to put the building back in the northwest corner so it is out of sight for any residences.

Mr. Miller asked if this will be used for strictly personal use and the petitioner said yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said his concern is that a residence may never get built there. He asked if there is anything they can do to verify a house gets built there in the future.

Mr. Kolbus said they have put time limits on these types of requests before. The Board could place a condition that the residence needs to be built within a certain number of years and if it is not completed by that time, then the accessory structure may have to be removed from the property.

Mrs. Wolgamood asked Mr. Harrell to estimate how big the building on Mr. Stahly's property is. Mr. Harrell said it is a fairly good sized building.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/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 an Appeal to allow for the construction of an accessory structure prior to the construction of a residence, a 3 to 1 depth to width ratio Variance, and a 60 ft. lot width Variance (Ordinance requires 100 ft.) to allow for said structure and future residence be approved with a review before the Board in five (5) years if no house has been constructed by that time. A roll call vote was taken with the following results: Homan – yes; Wolgamood – no; Lantz – yes; Miller – yes; and Hesser – yes.

Mrs. Wolgamood indicated the only reason she voted no was because of the time period. She has no problem with Mr. Hochstetler building the accessory building on this site.

17. The application of **Larry E. 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.

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

There were 11 neighboring property owners notified of this request.

The public hearing was opened at this time.

Larry Yoder, 68100 CR 43, Millersburg, was present on behalf of this request. Mr. Yoder explained that he would like to convert the old residence on site into a bulk food store. He is employed at an RV factory right now and he would like to have another source of income. He would buy food in bulk and re-package it for retail sales.

Mr. Miller asked if all of the inspections have been completed on the new home and the petitioner indicated yes.

Mr. Homan asked if any of the bulk purchasing requires outside storage and the petitioner said no.

The signage was questioned by Mr. Miller and the petitioner said he would like a 2 x 2, double-faced, and unlighted sign.

Mr. Hesser asked if there will be any other employees apart from family members and the petitioner said no.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Hesser*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special

Use for a home workshop/business for a bulk food store (Specifications F - #45) be approved with the following conditions imposed:

1. Approved as per site plan submitted.
2. Any additions to the building to be used for the Special Use shall be returned to the Board of Zoning Appeals.
3. All Elkhart County Health Department permits and Elkhart County Highway & Engineering permits to be obtained.
4. Approved for the owner/occupant of the residence on site.
5. The hours of operation are to be Tuesday through Friday, 8:00 a.m. to 5:00 p.m., and Saturday, 8:00 a.m. to 2:00 p.m.
6. Limited to two (2) employees who are occupants of the residence on site.

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

18. At this time, the Board had a discussion regarding revised site plans being submitted the day of the meeting. Mr. Kolbus feels the Board needs to come up with some type of a policy for those issues. He said the Board might consider tabling the requests when the site plans are submitted the day of the meeting because then they will have the appropriate time to review the material. Mr. Watkins indicated the Board needs to make a decision on what is being requested and not try to solve problems for the petitioners. The Board then further discussed this issue.

19. Mr. Watkins gave the Board a brief update on the Zoning Ordinance re-write. He has a Steering Committee of 14 people at this point and they hope to have a first draft ready by mid-June. Once that draft is completed and corrected, a second draft will be created which is a line by line review by the Steering Committee. Mr. Watkins explained they hope to have a third draft of the Zoning Ordinance by December.

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

21. There were no audience items.

22. There were no Staff/Board items.

23. The meeting was adjourned at 12:49 p.m.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary