

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16th DAY OF SEPTEMBER 2010 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 Chairperson, Doug Miller, with the following board members present: Meg Wolgamood, Tom Lantz, and Robert Homan. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Robert Nemeth, Planner; Kathy Wilson, Office Administrator, and James W. Kolbus, Attorney for the Board.
2. The approval of the minutes from the regular meeting of the Board of Zoning Appeals held on the 19th day of August was postponed until the October 21, 2010 meeting.
3. A motion was made and seconded (*Wolgamood/Lantz*) that the legal advertisements, having been published on the 4th day of September 2010 in the Goshen News and on the 6th day of September 2010 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 arrived at this time.*) * *

4. A motion was made and seconded (*Wolgamood/Lantz*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.
5. A motion was made and seconded (*Wolgamood/Lantz*) that the Board accepts the Staff Reports as evidence into the record. A roll call vote was taken and the motion was carried with a unanimous vote.
6. There were no postponements of business items.
7. The application of ***Tri County Land Trustee Corp/Marlin & Rosetta Miller*** for a Special Use for a commercial greenhouse in an A-1 district (Specifications F - #12), and a Special Use for a home workshop/business for the sale of bird houses and supplies (Specifications F - #45) on property located on the West side of CR 33, 1,400 feet South of CR 20, common address of 59279 CR 33 in Middlebury Township, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #59279County Road33-100820-1*.

There were neighboring property owners notified of this request.

Marlin Miller, 59279 CR 33, Middlebury, was present on behalf of this request. Mr. Marlin Miller explained they currently have three children in school and he is employed at a machine shop, which he has no intentions of discontinuing. They would like to start up a greenhouse to serve the public in the retail sales of flowers and vegetable plants. They also would like to have the ability to sell bird supplies such as feeders, bird seed, and bird houses. They would like to start the business now in hopes that when their children are out of school,

they will have the responsibility of maintaining it. He is not asking for a manufacturing facility as it will only be a retail outlet of those supplies. Mr. Marlin Miller also indicated he would like to sell small shrubs in the future.

There is an excavating business to the south and west of their property and the greenhouse would be close to the property line where that business is located. The two businesses would not interfere with each other and would provide supplies for people in the area.

Mrs. Wolgamood asked if the shrubs and potted plants would be grown or brought in from an outside source. The petitioner said they would be brought in from an outside source. She asked if all of those would be kept inside of the greenhouse and the petitioner said the greatest extent of those would be on an outside display.

She also asked if the seedlings would all come from their greenhouse or from an outside source. Mr. Marlin Miller said a lot of the flowers that are difficult to raise would be purchased as seedlings and would come in from nursery stock in Michigan. The vegetables would all be from their own greenhouse.

Mr. Doug Miller asked if the delivery trucks are semi's or small box trucks. The petitioner said they would be small box trucks. He indicated they have a U-shaped driveway, so there would be no backing out onto the county road.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Doug Miller asked if having someone bring in potted plants and shrubs would be an issue. Mrs. Prough said it wasn't clear in the application what the petitioner's intentions were for shrubs. The staff was unsure whether they would be displayed outside or inside the greenhouse, so they weren't comfortable making a recommendation on that. If the petitioner would like to have an outside display area, he should submit a revised site plan showing the designated area.

Mr. Homan said he feels it should be added to the site plan for clarification purposes. He wouldn't have a problem with the petitioner placing the potted plants outside of the greenhouse. The home workshop/business aspect of this petition seems to be focused primarily on retail sales of bird houses and accessories, but not the greenhouse part of it. As long as the scope of the outside storage for the potted plants and shrubs is identified, he doesn't feel this will be an issue. The retail sales of birdhouses and supplies isn't really involved with a commercial greenhouse, so he felt that part of the business needed to stay within the building.

Mrs. Wolgamood agreed and explained that under #18 on the questionnaire, the petitioner indicated he would like a small sign with possibly some at the main intersections. She said he needs to speak with the staff to make sure the proper permits are obtained and whether the additional signage would be allowable.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Homan*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for a commercial greenhouse in an A-1 district (Specifications F - #12) be approved with an amended site plan to be submitted showing the exact location that nursery stock (shrubs, evergreens, and small fruits) will be displayed outside of the greenhouse on the east side. Any items pertaining to the bird feeders or fertilizers are to be stored inside the greenhouse or inside of another building. No new curb cut to be created. The motion was carried after a unanimous roll call vote was taken.

Secondly, a motion was made and seconded (*Miller/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, the request for a Special Use for a home workshop/business for the sale of bird houses and supplies (Specifications F - #45) be approved in accordance with the site plan submitted and as represented in the petitioner's application. No new curb cut to be created. After a unanimous roll call vote was taken, the motion was carried.

8. The application of ***R & Y Farms (owner) and Melissa Jackson (operator)*** for a Special Use for a beauty shop (Specifications F - #46) on property located on the West side of CR 31, 2,600 ft. South of CR 36, common address of 64475 CR 31 in Elkhart Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #64475CR 31-100823-1*.

There were 7 neighboring property owners notified of this request.

Richard Miller, 1710 Amberwood Drive, Goshen, was present on behalf of this request. Mr. Richard Miller explained his family developed the 300 acres surrounding the proposed property. They tried putting in a horse riding trail, but it didn't work out due to the railroad tracks being so busy. There are several different businesses around this property such as a daycare center, a beauty salon, and a bake shop. Mr. Richard Miller indicated he doesn't want to put a house on this property because it is too close to the railroad tracks, so they are trying to figure out something to do with it. He feels allowing this business would help with county tax money.

Mr. Hesser asked what building is there now and the petitioner said it is a 50 ft. x 80 ft. building.

When Mr. Hesser asked what property is to the south of the tracks, Mr. Richard Miller said Quality Drive Away.

The petitioner indicated his daughter would be the only employee and she would only have about four customers per day.

Mr. Homan asked if horses were ever put in the structure. The petitioner said they were going to do a riding trail for handicapped kids, but it didn't work out. Mr. Homan said the building looks very commercial.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood noted the building is currently being used for personal storage and the petitioner is willing to install a septic system. The septic installer had indicated he would need to put in a mound system, and she felt that was an expensive way to go for a one or two chair beauty shop. If the petitioner is allowed to do this and he does put in the system, then she wondered if the Board would have obligations down the road. Mrs. Wolgamood said she agrees with the Staff Report. She then noted that the area south of the railroad tracks is all zoned manufacturing.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Lantz*) that this request for a Special Use for a beauty shop (Specifications F - #46) be approved in accordance with the site plan submitted and as represented in the application, based on the following findings:

1. Will be consistent with the spirit, purpose and intent of the Zoning Ordinance.
2. Will not cause substantial and permanent injury to the appropriate use of neighboring property as this is a fairly unique situation given the location of the property. The probability of a home being built on this property is fairly low. The petitioner has indicated they are willing to install a sewage disposal system. The petitioner will be required to meet all of the permit requirements.
3. Will substantially serve the public convenience and welfare by putting a beauty shop in the area for the residents.

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

9. The application of **Mark Osler** for a Special Use for the extraction and sale of gravel, sand or other raw materials (Specifications F - #10.00) on property located on the East side of CR 101, 2,300 ft. North of CR 28, common address of 60550 CR 101 in Baugo Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #60550CR 101-100823-1*.

A letter in opposition to this request from Carl & Jane Lechlitner was submitted to the Board by Mrs. Prough at this time *[attached to file as Staff Exhibit #2]*. Mrs. Prough indicated the petitioner's representative had been given a copy of the letter.

There were 8 neighboring property owners notified of this request.

The petitioner's representative stated he had no issues with the tabling of this request.

Keith L. Cook, 60678 CR 101, Elkhart, was present in opposition to this request. Mr. Cook said the petitioner has dug a lake and he feels the pile of dirt makes it look like a landfill. He is in favor of the petitioner hauling out the dirt that is there now, but he would like to see that he doesn't dig anymore. He doesn't want the petitioner to be able to sell indefinitely. Mr. Cook pointed out his property on the aerial photo, which is directly south of the property in question.

Chris Cormican, 29181 CR 28, Elkhart, was present in opposition to this request. Mr. Cormican indicated he owns 60 acres to the east of the property in question. He would like the petitioner to clean up the property because they don't need a full-time gravel pit placed there. He asked the Board to keep an eye on hours of operation and the water control issue.

Mrs. Wolgamood asked if he hears the vehicles or if there is dust created by them. Mr. Cormican said the area is agricultural, and he expects to hear tractors all night long seasonally. He indicated he hears them, but they don't bother him. Mr. Cormican asked that the hours of operation be kept under control and that the petitioner does not plan to have this for a long period of time.

Mr. Lantz asked if noise is his biggest concern and Mr. Cormican said heavy equipment usually has backup beepers and farm equipment usually doesn't. He would like to have peace and quiet on the weekends.

Brian Arbogast, 60649 CR 101, Elkhart, was also present in opposition to this request. Mr. Arbogast indicated he lives on the parcel directly across the street from the petitioner. He said the vehicles from the petitioner's property woke him up at 3:00 in the morning because they were running all night. They unload and load the heavy equipment right on CR 101. Mr. Arbogast feels they worked a long time to get CR 101 paved. Out in front of the driveway where

they run the vehicles in and out of, the pavement has been ruined. He noted you can hear the tailgate of a truck clamping down all day, even when you are inside of the house. He also has concerns about headlights shining in the house at night. Mr. Arbogast indicated he is very opposed to this request and he feels they should cease everything once the dirt is removed. He would like to come back next month and hear what the petitioner has to say.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Homan*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use for the extraction and sale of gravel, sand or other raw materials (Specifications F - #10.00) be tabled until the November 18, 2010, Board of Zoning Appeals meeting to allow the petitioner to submit a detailed site plan and address the following issues by November 1, 2010:

1. Setbacks from adjacent property lines for the proposed excavated and storage area
2. Size of the proposed excavated and storage area
3. Depth and slopes of the finished pond
4. Dust management plan
5. Copy of Soil & Water Pollution Prevention Plan (SWPPP) application
6. Estimated timeframe for completion of the pond
7. Security of the property
8. List of equipment to be used on the site
9. A complete history of the site is to be provided

The motion further reflects that all neighboring property owners are to be re-notified. A roll call vote was taken and the motion was carried unanimously.

10. The application of ***Robertson Chomphanuvong (owner) and Soukahn Keovilayvong (co-owner)*** for a Special Use for a church (Specifications F - #48) on property located on the North side of US 20, 500 feet West of CR 27, common address of 17341 US Highway 20 in Jefferson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #17341Us Highway20-100819-1*.

There were 7 neighboring property owners notified of this request.

Jeff Kimmel, 218 W. Washington Street, Suite 600, South Bend, was present representing the petitioners. Mr. Kimmel explained this was built as a residence, but there had been a prior use for business purposes. This location is ideal for a church and there will be no impact on the traffic patterns. The property is located right off of US 20 where there is already heavy traffic and there is plenty of parking available on site. The property contains over three acres and there are other commercial properties in the area. There is a bean field on one side of the property and a line of full grown trees on the other side.

Mr. Kimmel said the church is very small with only 42 members. Someday they might be back in front of the Board asking to expand, but this facility is adequate at the current time. This is a much lower intensity use than what had already been granted for the greenhouse business.

The petitioner's representative said he is a little confused by the staff's statement that this is a 24 hour operation. Mr. Kimmel indicated there is one person who lives in the building and he does not drive, so he is not going to and from the property. There are people that come

through the week to bring him meals twice a day, but he doesn't eat after 3:00 p.m. The church services are on Saturdays and Sundays and he is also available to meet with people for religious reasons.

Mr. Kimmel said this would substantially serve the public convenience and welfare considering this is a minority group and they have no other place to practice their religion. When you talk about granting or denying a church, the law requires that the zoning commission act in the least restrictive manner, so he feels denying it would be the most restrictive manner. He feels this would be very problematic legally for the county to deny the request.

Mr. Hesser asked if the services are done in the log building and Mr. Kimmel said yes. He also asked if the structure had been a greenhouse ever since it was erected and Mrs. Prough said no, it was built as a single family residence. The structure became a greenhouse in 1999 and Mrs. Prough indicated the house was built in 1988.

Mr. Hesser asked what the big tent is for and Mr. Kimmel said it's a summer tent for people to meet in the afternoons after services. When he questioned how long it had been up, the petitioner's representative said the better part of the summer. Mr. Kimmel said he's not aware of any complaints about the tent.

Mrs. Wolgamood questioned the hours of operation at this time. The petitioner's representative said almost no one comes in during the week. They have their service on Saturday and the primary service is on Sunday at 10 a.m.

Mr. Hesser asked if the services are held in the log building and Mr. Kimmel said yes. He indicated the building is a little small and sometimes the church members have to wait and rotate out to spend time with the priest. This building is all they can afford at the present time. Mr. Kimmel indicated he has attended the services and they are very peaceful and quiet.

Mr. Homan asked if improvements have been made to accommodate the parking spaces. Mr. Kimmel said fresh gravel could be placed, but it already has a good solid base. The driveway is very wide, so there is no problem backing in and out from both sides. He also noted there are about six parking spaces up by the building.

Edward Benchik, Attorney, 402 W. Washington Street, South Bend, was also present representing the petitioners. Mr. Benchik said he has been to the site himself and the church would result in a less intensive use from when it was operated as a commercial business under a previous Special Use. The federal statute called "The Religious Land Use and Institutionalized Person's Act" of 2000 was a law passed unanimously by Congress. The Statute was intended to require that a governmental entity that places a substantial burden on religious exercises has to demonstrate that the imposition of the burden on the church is in furtherance of a compelling government interest and is the least restrictive means of furthering that compelling government interest. He and Mr. Kimmel respectfully submit to the Board that denying the Special Use permit is not the least restrictive means of furthering the government's interest, but is in fact the most restrictive means because denial of the Special Use permit means that the religious purposes these members came to the United States in order to practice freely won't be available to them.

Mark Dawson 56679 SR 15, Bristol was present in favor of this request and was speaking for himself and John Moore, 60904 Ash Road, Osceola. Mr. Dawson explained he works for Mr. Moore, who owns the property to the south of the parcel in question. Mr. Dawson indicated that he and Mr. Moore have no issues with this request. He feels it is quieter now than what it

has been when it was a greenhouse or a gift shop. He travels this road every Sunday morning and he doesn't see traffic becoming an issue.

Mr. Lantz asked if it would create any issues if the church wanted to expand in the future. Mr. Dawson said if they wanted to attend church on a Tuesday afternoon at 3:00 p.m., then some traffic issues might be caused as US 20 is very busy in the afternoon. If they were to expand in the future, then that would be a different issue.

Dave Jordon, 56925 CR 27, Goshen, was present to voice his concern. Mr. Jordon indicated he owns the property to the east and north of the property in question. He indicated he doesn't have a problem with the church, but he does have a concern about the clay ground. When he built his house, he had to double the size of the drain field to accommodate a three bedroom home. He is afraid it might impact the environment if that issue is not worked out.

Lynn Kauffman, 56841 CR 27, Goshen, was also present to voice a concern. Mr. Kauffman said he doesn't have any problem with the church being there, but he does have an issue with the noise level. He has had to go to the property two separate times and ask them to turn the music down. He also noted a police officer was called out there at one point due to the noise level. He would like the noise be contained with the church building.

Mr. Lantz asked if some of the services are held outside in the tent and Mr. Kauffman said yes, some of them were.

In rebuttal, Mr. Kimmel said the actual services are very quiet. There have been some community gatherings where there has been some music, but they will be more than happy to accommodate the neighbors. Mr. Kimmel indicated the church tries very hard to be good neighbors.

Mr. Homan asked if it would affect the church if the services or music weren't allow outside of the structure. Mr. Kimmel said the services are not normally amplified and they usually only do that once or twice a year.

The public hearing was closed at this time.

Mr. Hesser said he goes by this site every day and he doesn't see traffic being an issue. He has a concern about the tent to the rear of the property. He would not be opposed to approving this and then having them come back in one year to verify there haven't been any issues with noise.

Mr. Homan noted there are a number of small church buildings in the county. In the past, the Board has been pretty diligent about making sure there are appropriate parking spaces provided.

Mr. Hesser said they recently approved another church on US 20, but it is a significantly larger church. The difference is that the access is not off of US 20. Mrs. Wolgamood indicated there is a major difference because that church will be built to commercial code and this one was built as a residence.

Mrs. Wolgamood indicated she doesn't have an issue with the request other than the noise level and the tent being located on site for months at a time to allow for outside services.

Mr. Homan asked what would be entailed to bring this building up to the code appropriate for a church. Mrs. Prough said the petitioners would have to work with each department that regulates the standards such as the Building Department, Health Department, and Highway Department. She also noted that the previous business had several conditions placed on their approval and one of them indicated no outside speakers.

Mrs. Prough indicated the parking on this site is adequate.

Mr. Kimmel indicated the tent is only up in the summer to keep the sun off of the church members. Mr. Lantz indicated the tent itself is not the issue, but the amplifier system being used outside is an issue.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/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 church (Specifications F - #48) be tabled until the November 18, 2010, Board of Zoning Appeals meeting. A unanimous roll call vote was taken and the motion was carried.

11. The application of **Richard Grubb** for a Special Use for a home workshop/business to build, repair and sell utility trailers and car hauling trailers (Specifications F - #45), and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the East side of SR 13, 1,050 ft. North of CR 12, common address of 54812 SR 13 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #54812SR 13-100812-1*. She also submitted a petition in favor of this request with 6 signatures *[attached to file as Staff Exhibit #2]*.

There were 4 neighboring property owners notified of this request.

Richard Grubb, 54812 SR 13, Middlebury, was present on behalf of this request. Mr. Grubb explained he would like to put up a structure to allow him to build and repair utility trailers and car hauling trailers.

Mr. Lantz asked if he had been doing this for quite some time and the petitioner said yes and noted he does his work outside.

Mrs. Wolgamood asked the petitioner how long he's been doing this and Mr. Grubb said since this summer. When she asked if he has an issue with keeping everything inside, Mr. Grubb said no.

Mr. Lantz if he picks up most of his material and the petitioner said yes, but the axles and tires are shipped to him.

Mr. Miller asked if the current garage is attached and the petitioner said he doesn't have a garage, only a shop. Mrs. Wolgamood noted he is proposing to use a part of that shop for a portion of his home workshop/business.

Mr. Homan questioned how the handles the orders where the customers want it done by scratch. The petitioner said that would be done per order and if he was to accumulate excess trailer, he would find a different outlet for his plan.

When Mrs. Wolgamood questioned what the largest trailer is that he constructs, Mr. Grubb said 4 ft. x 20 ft. The trailers are all open and are not enclosed.

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/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business to build, repair and sell utility trailers and car hauling trailers (Specifications F - #45), and for a Developmental Variance to allow the total square footage of accessory

structures to exceed the total square footage in the primary structure be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. No outside storage or outside display related to the business.

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

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

12. The application of ***Baugo School Building Corp. (lessor) and Faith Community Church (lessee)*** for an amendment to an existing Special Use for Harley Hoben Community School to allow for a church on property located on the Southwest corner of CR 16 and CR 1, common address of 30046 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #30046CR 16-100823-1*.

There were 37 neighboring property owners notified of this request.

Bruce Perry, Business Manager for Baugo Community Schools, 29125 CR 22, Elkhart, was present on behalf of this request. Mr. Perry indicated this petitioner is being submitted jointly with Baugo Schools and Faith Community Church. The Pastor of Faith Community Church is here if the Board has any specific operational questions about the church itself. The property in question has been a vital part of the community for over 50 years. Public entities have been under budget pressures and the school system had some meetings regarding the direction of the school. A plan that they discussed and implemented involved idling and that plan was approved by the Baugo Board of School Trustees in the spring of 2010. The school ceased to operate at the end of the 2009-2010 school year.

When the plan was implemented, it helped with cost savings in the budget. They hoped that the facility could be utilized in some way to make the building functional and cost neutral to the school system for at least two years. The plan was implemented by the school board, they were unsure what opportunities would be out there for a future use for the facility. They were faced with some level of maintenance and utility costs, which they knew they would have to incur just to maintain the building. They went into the plan knowing that and being fully aware of that. Fortunately, Faith Community Church has a need for the facility and the school has a plan in place for them to lease the building for at least two years to help neutralize some of the operating expenses.

Mr. Homan asked whether there is a lease agreement in place and Mr. Perry said yes.

Mrs. Wolgamood questioned if there is a true need to have the signage wrapped around the building and if it would be permanent. Mr. Perry indicated it would let the Pastor speak to that issue.

Pastor Randy Smith, 55429 Osborne Avenue, Elkhart, explained part of the reason they went with the wrap-around sign was for aesthetics because of the existing limestone is aged and dirty looking. He felt it would make the building look a little better. The sign company is attaching it with minimal invasiveness so that it could be removed at any point. With the

building being on a corner, Mr. Smith felt it warranted signage on all three sides of the building. The building sits back so far from the road that he didn't feel it would look obnoxious.

Barbara Payne, 56314 CR 1, Elkhart, was present in favor of this request. Ms. Payne indicated she lives three blocks from the school and she would be delighted to have a church in this area. She is saddened that the school had to move for a while and she is hoping they can come back one day. She feels this is a perfect arrangement to be able to have someone in there.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for Harley Hoben Community School to allow for a church be approved in accordance with the site plan submitted and as represented in the petitioner's application.

A roll call vote was taken and the motion

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

13. The application of **Mark Slabaugh, AMMF Trustee Corp.** for a renewal of a Special Use for an agri-business in an A-1 district for a custom livestock/meat processing facility (Specifications F - #56), and for an amendment to allow for the placement of a 10 ft. by 14 ft. portable cooler and for the duration of the Special Use to be indefinite on property located on the East side of CR 101, 1,100 ft. South of US 6, common address of 72700 CR 101 in Locke Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #72700CR 101-100823-1*.

There were 4 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. Mr. Sloat indicated the petitioner couldn't be here today due to prior commitments. Two years ago, the Board of Zoning Appeals approved the Special Use for an agri-business for livestock processing and meat processing. Everything is going well for the petitioner at this point.

Mr. Hesser asked if the petitioner lives in the house on site and Mr. Sloat said yes.

Mr. Sloat indicated everything is the same as before and the petitioner concurs with the Staff's Analysis. The only thing he would like to change on the site plan is to be able to put in a portable cooler to provide for overflow of the processed meat during the deer season.

Mrs. Wolgamood asked Mr. Sloat to point out the location of the cooler and he did so, which is located in the northeast corner of the building.

Mr. Homan asked how he runs the cooler and Mr. Sloat said he has a diesel generator.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a renewal of a Special Use for an agri-business in an A-1 district for a custom livestock/meat processing facility (Specifications F - #56), and for an amendment to allow for the placement of

a 10 ft. by 14 ft. portable cooler and for the duration of the Special Use to be indefinite be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The Special Use for Agri-Business shall be confined to the area of accessory building identified on the site plan and a holding pen.
3. No outside storage of anything related to the business.
4. One (1) sign, four (4) square feet per side, and unlit.
5. No retail sales.
6. The number of employees limited to three (3) who are not residents of the property.
7. The residence on site to be occupied by the owner/operator of the business.
8. No expansion of the buildings or building operations without Board of Zoning Appeals approval.
9. All blood, water, and animal tissue waste (offal) to be collected and disposed of per State and local health department regulations; will not be placed in domestic sewage system. Offal to be collected separate from blood and rinse water and disposed of properly.
10. All Indiana State Board of Health Department regulations to be adhered to regarding waste product disposal and pest control.
11. Schedule/Hours:
 1. Receipt of Animals: (a) scheduled Monday and Friday 3:00 p.m. to 7:00 p.m.
(b) other times in case of emergency
 2. Customer pickup: Monday through Friday, 6:00 a.m. to 3:00 p.m. and Saturday, 8:00 a.m. to noon
 3. General hours of operation to be Monday through Saturday, 6:00 a.m. to 3:30 p.m.
12. The duration of the Special Use shall be indefinite unless a valid complaint is received by Code Enforcement.

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

14. The application of ***Christopher & Sara Trovatore (buyers) and Wayne D. & Anne T. Kehler (sellers)*** for a Use Variance to allow for the construction of a residence on property served by an access easement on property located on the South side of CR 36, 2,000 ft. West of CR 21, common address of 20360 CR 36 in Elkhart Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20360CR 36-100823-1*.

There were 20 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners. Mr. Sloat explained in 1999, the petitioner's father purchased this property. They split off three acres where the old farmhouse and barn was located, and they entered into a commit with Elkhart County that no further improvements would be done on this property without dedicating the road as a public street. They didn't want someone trying to develop a subdivision on this property. Mr. Sloat pointed out the location of the parent parcel and explained the daughter would like to build a home back in that area. They will probably spend \$250,000 and build a nice home. Therefore, they will create a new three acre piece with access out to the road from

the lane that the parent's own. The issue that comes into play is timing because the petitioners have a house to sell and they are unsure how fast it will sell in this economy. They don't want to start building in this location until their current house is sold.

Mr. Sloat explained there is a tenant living in one of the houses on site who has lost her job. She has three young children, has had medical issues, is behind on her rent and has had her car repossessed. The petitioners do not want to kick her out due to her situation, so they are requesting three years before they do that. The staff indicated 2012 as the deadline in the staff's recommendation, but the petitioner's would like the deadline to be September of 2013.

Mr. Hesser asked if there is a problem with the existing house and Mr. Sloat said it's an old brick house which isn't insulated properly. The petitioners felt they would spend as much money refurbishing this house that they would to build a new house.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that 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 Use Variance to allow for the construction of a residence on property served by an access easement be approved with the following conditions imposed:

1. The petitioner is given until September 30, 2013 to demolish the existing residence on Parcel A.
2. The deed for Parcel B must be recorded prior to the issuance of any building permits for Parcel B.
3. Parcels A and C are to be combined into one (1) legal description, which will create two (2) non-conforming residential uses prior to the issuance of any building permits.
4. Approved in accordance with the site plan submitted.
5. The existing agreement for the easement is to be amended to be consistent with the new Parcel B.

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

15. The application of *Joshua A. Satoski (buyer) and Raymond & Rosalie Olszewski (sellers)* for a Use Variance to allow for the construction of an accessory structure prior to the construction of a residence on property located on the South side of US 6, 2,672 ft. West of SR 13 in Benton Township, zoned A-1, came on to be heard.

Staff received call and they are out of town. Sale fo property is pending, they are aware of request and have no problems with it.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #OUS 6-100823-1*.

There were 9 neighboring property owners notified of this request.

Joshua Satoski, 71604 CR 133, Syracuse, was present on behalf of this request. Mr. Satoski said they are looking to a build a residence in the spring. He has a 35 ft. x 16 ft. barn at his current residence with tools which he will use for the construction of the new building. The petitioner also indicated he has a boat, golf cart, a bob cat, and a couple tractors. He would like to get the barn built so he has somewhere to keep all of the items during construction of the new home.

Mrs. Wolgamood asked when they anticipate beginning on the new home and Mr. Satoski said early spring, as soon as the ground thaws out. He indicated he has the loan approval and they will be closing on the purchase of the property in two weeks. He has also been approved for the home construction loan with the Farm Credit Services in LaGrange.

He has the loan approved, and they are closing on the property in two weeks.

Mr. Hesser asked the staff how much flexibility they have without Board approval when building simultaneously. Mrs. Prough said they would normally issue the building permit for the house, and if the foundation was constructed, then the staff would administratively grant the building permit for the accessory building. They don't like to grant them at the same time because they have gotten stuck before.

Mrs. Wolgamood asked the petitioner if he talked to any of the staff members regarding the possibility of putting in a foundation and the petitioner said no. She asked if he has any house plans and the petitioner said yes, he has them with him. He also noted this all happened faster than expected because their house sold in three weeks.

When she asked if he had a problem with get a permit for the house and putting a foundation in, and once the foundation is in, then the staff could issue him a permit for the accessory building. Mr. Satoski said he has to be out of his house by the third week of November and he hopes to have the barn put up before that point. If that is what he has to do, then he will do it.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said he is very hesitant to grant these types of requests because you can end up with an accessory building and no house. He feels this situation is different because he has sold his house, but he would like to see if this could be resolved without action from the Board.

Mr. Miller asked who is doing the foundation for the new construction and Mr. Satoski said he was unsure, but he won't be doing it himself.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that this request for a Use Variance 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 injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner as there are other large structures in the area.
3. A need for the Variance does arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.
5. The Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was imposed:

1. The petitioner is to submit a copy of the house loan approval document to the staff within thirty (30) days.

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

16. The application of ***Ernest L. & Pollyanna Stutzman*** for a Use Variance to allow for the construction of a second dwelling on a single zoning lot on property located on the Southeast corner of CR 28 and CR 43, common address of 10720 County Road 28 in Middlebury Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #107920County Road28-100823-1*.

There were 12 neighboring property owners notified of this request.

Ernest Stutzman, 10720 CR 28, Middlebury, was present on behalf of this request. Mr. Stutzman explained they live on a dairy farm and their children are getting married, so they have currently have less help. He and his wife have decided they need more help and one of his sons has offered to move home and help out on the farm. His son would like to build a house on the property and eventually take over the farm.

Mr. Lantz asked how many acres they have all together and the petitioner said 64 acres.

Mrs. Wolgamood asked if the proposed house is going to be attached to the existing shop and the petitioner said yes. Mr. Stutzman said that was their plan if it is possible. She also asked if there is any way possible he could build an addition onto the residence to make this a double dwelling. The petitioner said it could be done, but it wouldn't look very aesthetically pleasing.

Mrs. Wolgamood asked why he couldn't split off a piece of property to put up another house. Mr. Stutzman said he could probably do that, but he was unaware of the process.

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/Lantz*) 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 the construction of a second dwelling on a single zoning lot be denied. After a unanimous roll call vote was taken, the motion was carried.

17. The application of ***Joyce E. Parker (landowner) and Matthew Nettrouer (business operator)*** for a Use Variance to allow for a small engine repair shop in an A-1 zone on property located on the South side of CR 20, 670 ft. West of Sunlit Boulevard, common address of 19554 CR 20 in Jefferson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #19554CR 20-100823-1*.

There were 5 neighboring property owners notified of this request.

Matthew Nettrouer, 67945 CR 19, Goshen, was present on behalf of this request. Mr. Nettrouer said he doesn't quite understand how this would affect the public safety, morals and general welfare of the community. There is a six foot privacy fence going all the way around the property. All he wants to do is start a small engine repair business. He has been certified since 1991 and he plans to provide a service to the community. He has already talked to one individual about his plans, Daniel Olson, who is adjacent to the property in the question, and he indicated he was in favor of the request. Mr. Olson has lawn equipment and Mr. Nettrouer would be able to do repairs for him without having to drive a distance. The petitioner also

indicated he will be transferring the waste oil to the Elkhart Waste Management to be disposed of. There will be no leakage of the oil to the soil because the floor is concrete.

Mr. Nettrouer said there is a gated entrance to the property and the hours of operation would be from 9:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 12:00 p.m. on Saturday. As of right now, there is excess traffic on CR 20 because they are doing road construction on SR 15.

Mr. Hesser asked the petitioner if he is east or west of SR 15 and he indicated west. Mr. Nettrouer indicated there is a heating and cooling business on the corner of CR 20 & SR 15. The property across the street is agricultural and there has been no livestock on that property for 30 years. The owner of that property is family and he is residing in Florida.

Mr. Hesser said he's not concerned about the use to the north, but he is concerned about the growing residential area to the south.

Mrs. Wolgamood asked how many NPO's were notified and Mrs. Wilson indicated five.

The petitioner indicated he just wanted to provide a service for the community that is affordable.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser indicated he concurs with the Staff Analysis and Mrs. Wolgamood agreed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for a small engine repair shop in an A-1 zone be denied. A roll call vote was taken and the motion was unanimously carried.

18. The application of **Lavern & Kathryn Whetstone** for a Special Use for a kennel with indoor pens and outdoor runs in an A-1 district (Specifications F - #15.00 & #15.10) on property located on the South side of CR 22, 200 ft. West of CR 35 North, 900 ft. South of CR 18, common address of 14304 CR 22 in Middlebury Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #14304CR 22-100706-1*.

There were 7 neighboring property owners notified of this request.

A motion was made and seconded (*Hesser/Homan*) the public hearing be re-opened. After a unanimous roll call vote, the motion was carried.

Mrs. Prough indicated she had not received any information regarding the noise from the petitioner since the last hearing.

Present on behalf of this request was Attorney Theora Ohaneson from Graber Law Firm, 114 S. Main Street, Middlebury. Ms. Ohaneson explained the first submission in the document submitted at last month's meeting included signatures from all of the neighbors within 300 feet. She then submitted a letter in favor of this request from the closest neighbor, Sandra Clark *[attached to file as Petitioner Exhibit #1]*. Ms. Ohaneson indicated the strict application of the terms of the Zoning Ordinance would be difficult for this family because this is part of their income. She noted that Ben Graber, who is installing the noise barrier, is present today to speak.

Ben Graber, Maple Lane Metal, 13248 Springfield Center Road, Grabill, was present to address the installation of the noise barrier. The noise barrier fence the petitioners are proposing

would have a solid metal exterior facing the neighbors with sound deadening insulation. They also have a new product which is perforated metal which allows the noise to go through, but then it stops once it hits the insulation in the middle. He is willing to work with the petitioners to get the fence to where it needs to be. The fence will be about ten feet high and if that doesn't do the job, then there are other things that can be done to capture the noise.

Mrs. Wolgamood asked Mr. Graber if he has had past experience of a ten foot fence harboring 50 dogs. The petitioner said yes and indicated the noise would be very faint and unnoticeable at 300 feet

Mr. Lantz asked if the fence wasn't good enough at ten feet tall, then what are the other alternatives. Mr. Graber said the next alternative would be having an angle brace coming up off the fence. Mr. Lantz also asked how long they have been using this material and Mr. Graber said about six years.

Ms. Ohaneson also noted Mr. Graber's company has put up sound barriers in machine shops. They don't use a sound meter of any kind, but they have doing this work for quite some time and haven't had any issues.

Mr. Hesser asked where they are proposing putting the fence and Ms. Ohaneson said around the area where the dogs are.

Dr. Hilary Reinhold, Veterinarian at LaGrange Veterinary Clinic, 1005 N. Detroit Street, LaGrange, was present in favor of this request. Ms. Reinhold indicated she is currently the petitioners' Veterinarian and she feels they do a very nice job with the dogs. She feels it would be a shame for him to lose this business. He works very hard at this and it is something he puts time and effort into. She sees dogs from his facility on a weekly basis and if there are any problems, Mr. Whetstone immediately remedies them.

John Newson, Indiana Farm Bureau, 225 S. East Street, Indianapolis, was also present in favor of this request. Mr. Newson said he got to meet Mr. Whetstone and several other dog breeders a couple years ago when legislation was being proposed which was going to be detrimental to the commercial dog breeder industry. He never realized there were so many dogs produced in this part of the country. Mr. Newson feels this is a wonderful family business. One of the keys to having good quality dogs is the human and children interaction. This business represents fifty percent of the petitioners' income, so it is a significant part of his family's livelihood. Mr. Whetstone's facilities are registered with the Board of Animal Health and they are inspected by the USDA.

One of the petitioner's dogs was shown to the Board at this time. Ms. Ohaneson also indicated there is a dog on another property in the area that barks all night long. They do have one dog, which is a German Shepard and will bark when someone drives in the driveway.

Mrs. Wolgamood indicated she is confused about where the new fence is going to be located. Mr. Whetstone drew the fence onto the aerial photo at this time and submitted it to the Board *[attached to file as Petitioner Exhibit #2]*.

Kerm Troyer, 58565 CR 35, Middlebury, was present to voice his concerns. Mr. Troyer asked what an inside run is and what an outside run is. He also asked how many dogs will be bred and approximately how many pups will be in one litter.

Ms. Ohaneson said the building being constructed is where the dogs will do their birthing and they will remain in that structure until they are able to be moved. The dogs need a location that is quiet for when they go into labor.

When asked what an inside run and outside run were, Mr. Whetstone said the dogs are kept inside, but they have a door flap that allows them access to the outside.

When asked how many puppies are in a litter, Mr. Whetstone said there is an average of three or four in each litter.

Mr. Hesser asked how many litters per year the dogs have and the petitioner said each dog can have two litters in a fourteen month period.

Mr. Troyer indicated a barking dog is 100 decibels, which is the same as a lawnmower or a baby crying. He feels this operation will be extremely noisy and he doesn't feel that one child could socialize that many dogs. He also questioned how thick the insulation in the fencing will be and whether there is any documentation as to how much the decibel rating is lessened.

Linford Martin, 12241 CR 20, Middlebury, was present in opposition to this request. Mr. Martin is the Pastor of the church at the property next door. When he had the Lane Search Committee search for land for their church, they asked for ten to fifteen acres because they wanted some light outside activity as well as the church. The church plans are on hold off right now because they have merged with another church for the time being. Mr. Martin indicated this property is less than 50 feet from the church's property line. He asked if the run will be surrounded by the fence and also asked what the fence would be surrounded with.

In rebuttal, Ms. Ohaneson said when the dogs are birthing, they are never outside. The only dogs they would ever hear outside are the parent dogs, but they will be inside while birthing.

Mr. Kolbus indicated she needs to address how much the fence will reduce the decibel level. Ms. Ohaneson explained the petitioner spoke with a company regarding getting a decibel reading and it is very expensive. If the Board requires it, then they would be willing to do it.

Mrs. Prough said she understands where the petitioner is going to put the fencing. Currently, there are outdoor pens to the east of where they are showing the proposed fence. She felt they should address that because those are the pens that border the church's property. Ms. Ohaneson said they are planning to move those dogs inside and those outdoor runs would then be removed.

Mr. Hesser asked if that would modify the staff's recommendation in any way and Mrs. Prough said the staff's recommendation for denial was based on the fact that there was no information provided that they could reduce the sound. They have presented evidence today, but there haven't been any decibel ratings submitted. If the noise levels could be reduced, then he the staff would be in support of the request.

Mr. Graber said the noise level has been tested and the sound will be reduced by over fifty percent.

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/Miller*) this request for a Special Use for a kennel with indoor pens and outdoor runs in an A-1 district (Specifications F - #15.00 & #15.10) be approved based on the following findings:

1. Will be consistent with the spirit, purpose and intent of the Zoning Ordinance.
2. Will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. Will substantially serve the public convenience and welfare.

The following conditions were imposed:

1. The kennel is to be modified by adding fencing and removing the structures as represented at the public hearing on September 16, 2010.
2. A revised site plan is to be submitted within thirty (30) days.
3. One (1) year renewal before the Board of Zoning Appeals.
4. The outside pens are to be relocated within thirty (30) days.

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

19. The staff item regarding the review of a Special Use for an addiction clinic in an A-1 zone for **Rose Watson** was presented by Mrs. Prough at this time. In September of 2009, the request was approved with a condition that a review be done in one year. The staff went out to the site and has determined that the property is in compliance with the conditions of the original Special Use. There was one complaint received by Code Enforcement earlier this year regarding the age of the residents. Upon investigation, Code Enforcement determined it was not a valid complaint. The only thing staff had noted was that a subdivision application is supposed to be submitted for the split of the property, but that has not been done yet.

Barry Pharis, Brads-Ko Engineering & Surveying, 1009 S. 9th Street, Goshen, indicated they didn't submit a subdivision because they wanted to get to this point to know that the business was going to be approved. There were a lot of neighborhood remonstrators at the original meeting and he advised the petitioner to not spend any more money until she had demonstrated that this will not be detrimental to the community.

Mr. Pharis indicated 2009 was not a good year, but the addiction clinic has had seven clients successfully complete the program. They have clients from Chicago, California and locally. With the Board's final approval today, he and Ms. Watson will put together a final plan. Mr. Pharis indicated he would work with the staff on a schedule regarding the Subdivision Control Ordinance.

Mr. Hesser asked if they need to take any action for a review and Mr. Kolbus indicated they would need a confirmation that the petitioner is in compliance. Mrs. Prough noted they are in compliance because the subdivision was not listed as a condition.

When Mr. Hesser asked Mr. Pharis what his timeline is for submitting a subdivision plan, he indicated he was unsure. He will sit down and research all the deeds and decide what the best option would be. He noted he wants to meet with the staff to make sure a subdivision is required.

A motion was made and seconded (*Hesser/Wolgamood*) that this request is in compliance. After a unanimous roll call vote was taken, the motion was carried.

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 12:33 p.m.

Respectfully submitted,

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary