

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 17<sup>TH</sup> DAY OF MARCH 2011 AT 8:30 A.M.**  
**MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING**  
**4230 ELKHART ROAD, GOSHEN, INDIANA**

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: 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. A motion was made and seconded (*Homan/Lantz*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17<sup>th</sup> day of February be approved as read. The motion was carried with the following roll call vote results: Homan – yes; Wolgamood – abstain; Lantz – yes; and Hesser – yes.

3. A motion was made and seconded (*Wolgamood/Lantz*) that the legal advertisements, having been published on the 5<sup>th</sup> day of March 2011 in the Goshen News and on the 5<sup>th</sup> day of March 2011 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 (*Homan/Wolgamood*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.

5. A motion was made and seconded (*Homan/Wolgamood*) 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 **Steve Kasten** for a renewal of a Special Use for a kennel with outdoor pens for obedience training (Specifications F - #15.10) on property located on the West side of Jefferson Parkway, 1,010 ft. South of US 20, common address of 57185 Jefferson Parkway 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 #57185JeffersonParkway-110218-1*.

There were 17 neighboring property owners notified of this request.

Steve Kasten, 57185 Jefferson Parkway, Goshen, was present on behalf of this request. Mr. Kasten indicated he would like to renewal his Special Use permit. He does four day, seven day, and eleven day training with dogs to help with their behavioral issues such as digging, barking, etc.

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 renewal of a Special Use for a kennel with outdoor pens for obedience training (Specifications F - #15.10) be approved with the following conditions imposed:

1. No more than seven (7) dogs on site at any one given time, including the petitioner's personal pet.
2. Group training is to be located on the south side of the property or to the west of the property.
3. One (1) sign no larger than four (4) sq. ft. per side and unlighted.
4. Approved for the owner/occupant of the residence on site.

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

8. The application of **Randy J. & Tina E. Miller** for a Special Use renewal for a home workshop/business for a taxidermy business (Specifications F - #45) on property located on the West side of Oakwood St., 325 ft. South of Sunnyfield Drive, common address of 54337 Oakwood Street in Osolo Township, zoned R-2, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #54337OakwoodSt-110208-1*.

There were 27 neighboring property owners notified of this request.

Randy Miller, 54337 Oakwood Street, Elkhart, was present on behalf of this request. Mr. Miller indicated he would like to renew his Special Use permit. The only change he is requesting is to have the hours of operation changed to 12:00 p.m. to 9:00 p.m. He noted the traffic would not be increased at all, but he has had issues with clients taking their business elsewhere because he wasn't available at the time the customer needed him. Mr. Miller explained he averaged 40 clients in 2010.

When Mr. Hesser asked if the staff had any issues with the requested hours of operation, Mrs. Prough said no. She felt the hours of operation were reasonable and the staff has not received any complaints.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood questioned the privacy fence and the petitioner indicated they plan on adding more fencing on the southeast side of the property.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Homan*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon these Findings, this request for a Special Use renewal for a home workshop/business for a taxidermy business (Specifications F - #45) be approved with the following conditions imposed:

1. One double-faced sign permitted, four (4) sq. ft. per side and one unlighted or one single faced sign, eight (8) sq. ft. and unlighted.
2. Arrangements must be made for immediate removal of animal waste material.
3. Hours of operation are to be 12:00 p.m. to 9:00 p.m., Monday through Sunday.
4. Approved for the owner/occupant of the residence on site.

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

9. The application of **Leon & Erla Burkholder** for a Special Use for a home workshop/business for a machine shop (Specifications F - #45), for a Special Use for a roadside stand for the sale of produce and greenhouse products grown on the premises (Specifications F - #54), and a Developmental Variance for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the South side of CR 40, 2,000 ft. West of CR 11, common address of 25354 CR 40 in Harrison 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 #25354CR40-110221-1*.

There were 6 neighboring property owners notified of this request.

Loren Sloat, Attorney, 102 Heritage Parkway, Nappanee, was present representing the petitioners. At this time, Mr. Sloat submitted a packet of information to the Board including information about the home workshop/business, pictures, a site plan, a petition in favor of the request, and some information on previous home workshop/businesses similar to this one which have been approved *[attached to file as Petitioner Exhibit #1]*.

Mr. Sloat said they debated whether to file this as an agri-business or a home workshop/business. He discussed it with staff and decided to proceed with the home workshop/business.

Until recently, the size of a building for a home workshop/business has not been an issue. The Board approved a home workshop/business for woodworking in 2004 that has a 7,200 sq. ft. building. The staff recommendation was positive and the neighbors were all in support of it. Mr. Sloat feels that petition was very similar to this one.

He explained that when you look at what a machinist does and what a woodworker does, they basically do the same thing. One works with stainless steel and the other works with wood. The woodworking shops make dust, but the steel shops don't make any dust.

The staff's primary concern is that the business is too big. The first finding indicates that the request is not consistent with the spirit, purpose and intent of the Zoning Ordinance. The staff indicated that a 6,000 sq. ft. building will not be secondary to the residential/agricultural use of the property. He asked how size makes a difference as to whether something is secondary. There was an Indiana case law in 1975 that stated every man has the exclusive right to free enjoyment of his own property to use as he pleases and that his neighbor enjoys the same rights and privileges with his property. Mr. Sloat feels the purpose of the Board is to make sure that what someone wants to do isn't going to be injurious to the neighbor. He noted that there are neighbors in the audience in support of this request to show that they are meeting that standard. He feels the use is what is important and not the size.

Mr. Hesser asked if this is an existing business and Mr. Sloat said yes, but it is currently located on CR 42. He has been operating the business at that location for 21 years.

Mr. Sloat explained that the petitioners are present in the audience with their family. Mr. Burkholder has an eighth grade formal education. When he was 20 years old, he worked in some woodworking shops and then went to the career center for four semesters of classes to learn the trade of machinery.

The petitioner has never had a complaint filed against him and he has a 3,500 sq. ft. building and wants to move to a 6,000 sq. ft. building. It is very tight inside of the building and

hard to move around. Part of the problem is that the petitioner has 30 machines and each machine is needed for a specific use.

Mr. Sloat explained that every machine needs a footprint to work. The petitioner works with bar steel. On page 28 of the submitted packet, there is a picture showing the steel rack where Mr. Burkholder stores his inventory. He does not have access to that rack with a forklift. He has to physically take the bars off the rack, go out the entrance door, walk around to another door, and enter where he wants to do his work.

The petitioners have ten children ranging from the age of one to nineteen. Mr. Burkholder would like all of the children to help with the business eventually to teach them skills, respect, responsibility and accountability. The petitioner has one young man in the neighborhood who works part-time for him a couple times of a year, but the rest of the work is provided by his family.

The Burkholders' have a three bedroom house at their current location. A few years ago, he had the opportunity to buy his parents' farm in Southwest, but that has been carved down to 12 acres. There had been a roadside stand there before which was run by his uncle. The house at the proposed location has six bedrooms and will give their family more space.

Mr. Hesser asked if he owns the property he is currently working at and Mr. Sloat said yes. When Mr. Hesser asked what that property is zoned, the petitioner's representative indicated agricultural. A Special Use permit had never been obtained for that location.

The Board asked why the petitioner doesn't want to build or expand at his current location and Mr. Sloat said they only have three acres. Mr. Burkholder attempted to buy some land off the neighbor, but the neighbor didn't want to sell it. The house on the property is too small, the shop is too small and the piece of land is too small.

A picture of the petitioner's office was displayed to the Board at this time. He needs a bigger area to store his business files and records. The office utilization space is 15 ft. x 20 ft. and that is not very big. Mr. Burkholder explained there has to be room for each machine and then there has to be room to get around. He also needs an alleyway where they can drive a forklift down.

The home workshop/business is a use that is secondary and not a size that is secondary. The term "secondary" means of second rank, importance or value. When a man is raising a family of ten on his property and providing a roof over their head and food for them, that would be of primary importance. There isn't any way that the use of the residence would become secondary.

Mr. Hesser asked how many square feet the current facility is and Mr. Sloat said 3,500 sq. ft. The petitioner does some production work, but he primarily does custom work. Once a year, the petitioner makes knives for a silo unloader company. Once he's done with those, he doesn't need the machine anymore until next year, but he does still need to have the machine.

There is a company in Bremen that makes computerized combine guidance systems. They are detection devices that go on the front end of a combine and they follow the corn row. These are very valuable in situations where you have down crops. Mr. Sloat said Mr. Burkholder makes a part for that guidance system. The combine guidance systems are sold all over the world in Brazil, Europe, etc.

Mr. Burkholder makes vinyl fence parts which account for most of his dollar volume. They are stainless steel pieces that go on the bottom of a vinyl fence post and then they are

fastened to the concrete. Mr. Sloat said the petitioner makes those pieces by the thousands. He also makes adjustments to put on a patio chair.

As far as the machinery work, Mr. Sloat displayed some pictures of some of the equipment the petitioner repairs. Mr. Burkholder works on manure spreaders, skid loaders, cattle back rubs, cutting knives for hay choppers, pistons for old two-cylinder car engines, etc.

Mr. Sloat feels this request will not substantially or permanently injure the appropriate use of neighboring property. The staff reports says that this type of investment should be located in a B-3 or manufacturing zone. Mr. Sloat asked when the Board became a financial planning entity as he thought the main focus was land use. It is the petitioner's decision to decide how much money he wants to spend on this business.

At this time, Mr. Sloat asked how many of the neighbors in the audience were opposed to the request and none raised their hand. When asked who was in favor in the request, several audience members raised their hand.

Mrs. Wolgamood asked if any of the people in the audience in support of the request are adjacent neighbors. There was one neighbor who lives to the south and one who lives right across the street.

At this time, Mr. Sloat displayed an aerial map to the Board showing where other businesses in the area are located *[attached to file as Petitioner Exhibit #1]*.

Finding #3 on the staff report indicates that this will not serve the public convenience and welfare by permitting and establishing a manufacturing business in an agricultural zone. Mr. Sloat said there aren't any facts to support that finding because there are several people in the audience who are in support of it. If you look at the customer breakdown, the farmers make up 51% of the petitioner's transactions. The repair shops make up 48% of the transactions and the production transactions make up about 1%.

Mr. Hesser asked if the shop's current location is shown on the aerial exhibit he displayed and Mr. Sloat said yes.

At this time, Mr. Sloat reviewed some information from some other home workshop/businesses similar to this one that have been approved.

Mr. Sloat said he feels they have met the standards for the Developmental Variance.

Dean Slabach, 2134 Elkhart Road, Goshen, was present in favor of this request. Mr. Slabach said he's an advocate to the lifestyle of the Amish. He is very concerned about what is going on in Elkhart County and the future of the Amish. He then displayed a brochure advertising Amish Country in Elkhart County. He feels the Amish have a hard time making their lifestyle in Elkhart County.

Mr. Hesser indicated he strongly disagrees with that statement.

Mr. Slabach said he knows people of the Amish heritage who are concerned.

Mrs. Wolgamood said she has well over 30 years with zoning experience and in that time, she doesn't feel that the Board or staff has ever been disrespectful to the Amish Community.

Janice Stutzman, 25252 CR 40, Goshen, was present in favor of this request. Ms. Stutzman said she is in favor of the request as long as there are stipulations. She feels the petitioners would be responsible and follow the guidelines. She lives to the west of the property in question. She thanked the Board for doing the best job they can do.

Kevin Hartman 30025 CR 30, Elkhart, was present in favor of this request. Mr. Hartman said he has been a customer of the petitioner since 1990 and he has been outstanding. He feels Mr. Burkholder needs more space in his shop.

Mr. Hesser said he doesn't have a problem with the business at all. The home workshop/business has to be small enough where it doesn't require a business zoning district. From all of the comments, it seems that the petitioner is pretty successful. When he asked the petitioner's representative to address that, Mr. Sloat said it is not functional for a person to ride a horse and buggy or a bicycle to have a machine shop in an industrial park.

Mr. Hesser asked the staff where the nearest B-3 zoning district is and Mrs. Prough said the corner of SR 119 and CR 40 is B-2. She felt the closest B-3 district would be in Wakarusa. Mr. Sloat indicated that Wakarusa was five miles away.

In summary, Mr. Sloat said the petitioner has been where he's at for 21 years and he will be doing the exact same thing at the proposed location. He will be expanding the building, but not the use.

Mrs. Wolgamood asked if the conditions submitted with the petitioner's exhibit are identical to what was in the Board's packet and Mr. Sloat said yes.

Mr. Hesser said when a business gets to a certain level, it is no longer considered a home workshop/business and needs to be located in a different zoning district.

The public hearing was closed at this time.

Mr. Homan explained there are home workshop/businesses working out of agricultural style buildings that are similar in size to what the petitioner is requesting. He felt that every other criteria of the home workshop/business has been met.

He asked the staff what the difference would be between having this as a home workshop/business or an agri-business. Mrs. Prough said she talked with Mr. Sloat and he wasn't sure which way to go with it because it was so close. The home workshop/business restricts the number of employees and an agri-business will not. A home workshop/business also restricts outside storage and an agri-business does not. Mr. Sloat was not comfortable going with the agri-business because of the 58% not being agricultural. In good faith, she didn't feel Mr. Sloat felt comfortable representing to the Board that it was an agri-business.

Mrs. Wolgamood and Mr. Homan agreed that they felt this was the best way to go.

Mr. Hesser said he is concerned about the size of the operation. He looks at this request as a relocation of a business that has been operating for 20 years. He understands the argument that the petitioner is expanding space, but not the operation itself.

Mr. Homan asked if the raw material is delivered on a semi and Mr. Sloat said occasionally.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) that this request for a Special Use for a home workshop/business for a machine shop (Specifications F - #45) 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 a substantial and permanent injury to the appropriate use of neighboring property.
3. Will substantially serve the public convenience and welfare.

The following conditions submitted by the petitioner's representative (as amended by the Board) were imposed as follows:

1. No more than two (2) full-time employees that do not live in the residence.
2. No expansion of the facilities without BZA approval.
3. Hours of operation to be 7:00 a.m. to 5:00 p.m., Monday through Friday.
4. Sign per ordinance.
5. No outside storage of product or inventory related to business.
6. All necessary building permits to be obtained by Elkhart County Building Department for the new improvement to be constructed.
7. No additional accessory building or additions of the existing accessory building shall be constructed on the real estate for use in the machine workshop/business without prior written approval of the Elkhart County Board of Zoning Appeals after public hearing conducted in accordance with the rules of the Board and after the giving of notice as provided in said rules.
8. Residence on site to be occupied by petitioner, his wife and family.
9. Special Use permit to be personal to petitioner, who must own and operate the business.
10. No inventory held for retail sales.
11. Adequate provisions be made for a turnaround on-site and no backing onto CR 40.

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

Secondly, a motion was made and seconded (*Hesser/Wolgamood*) that the request for a Special Use for a roadside stand for the sale of produce and greenhouse products grown on the premises (Specifications F - #54) be approved for the owner/occupant of the residence on site, in accordance with the site plan submitted and as represented in the petitioners' application. A unanimous roll call vote was taken and the motion was carried.

Finally, a motion was made and seconded (*Hesser/Homan*) that the request for a Developmental Variance for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved with no additional conditions imposed. The motion was carried with the following roll call vote results: Homan – yes; Wolgamood – no; Lantz – yes; and Hesser – yes.

10. The application of **Allen J. & Judith Kauffman** for a Use Variance to allow for a second residence on a single zoning lot and 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 West side of CR 116, 1,600 ft. South of CR 16, common address of 56815 CR 116 in Middlebury Township, zoned A-1, came on to be heard.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #56815CR 116-110114-1*.

There were 5 neighboring property owners notified of this request.

Mrs. Prough submitted a letter from Mr. Doriot requesting that the public hearing be re-opened [*attached to file as Staff Exhibit #1*]. She indicated the staff report has not changed since last month.

Mr. Kolbus said it is at the Board's discretion as to whether or not they want to re-open the public hearing.

Mrs. Wolgamood said she listened to the recording in its entirety. She made a lot of notes, reviewed the file this morning, looked at the photographs and also read the letter from Mr. Doriot requesting that the public hearing be re-opened. She doesn't feel she needs any additional information.

Mr. Doriot said he did put a lot of work into this, but without Mr. Miller present, he felt Mrs. Wolgamood would be the deciding factor.

Mrs. Wolgamood said there were four Board members present in February and there was a tie vote. If she votes in favor of the petition, there will still be a tie vote. If she votes against it, the majority of the votes will probably be against it.

Mr. Kolbus said the Board can only act through a majority vote, which is three out of five. There was not a majority vote last month for granting or denying, so therefore the motion was to table the request to this month.

Mr. Doriot then requested to have the request tabled until next month.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Hesser*) that this request for a Use Variance to allow for a second residence on a single zoning lot and a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure be tabled until the April 21, 2011 Board of Zoning Appeals meeting to allow for all five board members to be present. A unanimous roll call vote was taken and the motion was carried.

11. There were no items transferred from the Hearing Officer.
12. There were no audience items.
13. There were no Staff/Board items.
14. The meeting was adjourned at 10:02 a.m.

Respectfully submitted.

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Kate A. Keil, Recording Secretary

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Randy Hesser, Chairman

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Tom Lantz, Secretary