

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20th DAY OF OCTOBER 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, Robert Homan, Tony Campanello and Doug Miller. Staff members present were: Chris Godlewski, Plan Director; Ann Prough, Zoning Administrator; Robert Nemeth, Planner; Kathy Wilson, Office Administrator, and James W. Kolbus, Attorney for the Board.

2. At this time, Tony Campanello was welcomed as the new board member replacing Tom Lantz. Mr. Campanello's Certificate of Residency was then entered into the record (*see attached Staff Exhibit #1*) which Mr. Kolbus explains is pursuant to the new state law in the Rules of Procedure.

3. A motion was made and seconded (*Homan/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of August were approved.

4. A motion was made and seconded (*Miller/Wolgamood*) that the legal advertisements, having been published on the 7th day of October 2011 in the Goshen News and on the 9th day of October 2011 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

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

6. There were no postponements of business items.

7. The application of **Matthew & Eva Schlabach** for a Use Variance to allow for the construction of a second dwelling on a parcel or lot on property located on the South side of CR 52, 1,033 ft. West of CR 31, common address of 16120 CR 52 in Jackson 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 #16120CR 52-110919-1*.

There were eight (8) neighboring property owners notified of this request.

Blake Doriot, 15815 CR 50, Syracuse, appeared on behalf of the petitioner at this time. Mr. Schlabach originally pulled a building permit for a shop/home and it is to the point where they can now afford to build an actual home on this property. Mr. Doriot submitted a petition in favor of this request with signatures from all of the adjoining property owners [*attached to file as Petitioner Exhibit #1*]. He also pointed out on the aerial map where each of the adjoining neighbors resides.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Use Variance to allow for the construction of a second dwelling on a parcel or lot 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 living quarters in the existing structure to be removed within ninety (90) days of completion of the new residence.

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

8. The application of **Charles D. Hahn** for a Special Use for a kennel with indoor and outdoor pens and runs in an A-1 district (Specifications F - #15.00 & #15.10) on property located on the Northeast corner of CR 104 and CR 15, common address of 22465 CR 104 in Osolo Township came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #22465CR 104-110914-1*.

There were 21 neighboring property owners notified of this request.

Present on behalf of this request was Charles Hahn, 22465 CR 104, Elkhart. They just purchased the property and there is an existing kennel there but it has not been in operation for about a year. They have cleaned up the kennel and would like to operate it again as there is a need in this area.

Mr. Homan asked if the sign in the photo *[attached to file as Staff Exhibit #1]* is the sign that is in the petitioner's request. Mr. Hahn explained that the sign is the existing one and he believes it is 2 ft. x 3 ft. and they would like a 4 ft. x 4 ft. sign.

Mr. Homan asked if the petitioner has been in the kennel business before and he said he has not but his wife worked for the previous owner. She will operate it most of the time as he works third shift and will continue to do that.

Mr. Hesser asked if this facility has been continuously operating as a kennel. Mr. Hahn confirmed that it was, with the exception of last year.

Mr. Homan asked the staff if this Special Use request is coming back before the Board because it was issued to a specific owner as opposed to the owner/occupant. Mrs. Prough confirmed that was correct. She said that if it had not been tied to an owner/occupant and if they had operated according to those established conditions, this petitioner would not have to be here. Mr. Hesser asked if the business had retail before and Mrs. Prough said the retail was not a condition of the previous Special Use, but she believes that they did have it. The staff thought that they would cover all bases and put this as a condition as long as it is limited as an accessory to the business.

Mr. Hesser asked if the intention of condition #3 is to be applied just to the retail portion as he felt that operating a kennel was a 24 hour operation. Mrs. Prough said she wondered about that also; especially the condition of no Sunday hours. The petitioners understand that people may want to pick-up their dog on Sundays and they are willing to make special arrangements or appointments for people to do that.

Mr. Hahn said they will not accept dogs on Sunday and they will clean the kennels on Sunday also.

Mr. Miller asks if petitioner were to get into business, will they have to bring this back as an amendment. Mrs. Prough suggested that they address that now so it does not have to come back in the future.

Mr. Homan asked if the Board suggests hours for pick-up on Sunday. Mr. Hahn indicated they can do that if they need to.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said that this appears to be a great place for a kennel and the use will be substantially the same as the last few years. The Board agreed to amend condition #3 to include the Sunday hours for pick-up from 12:00 p.m. to 4:00 p.m.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a kennel with indoor and outdoor pens and runs in an A-1 district (Specifications F - #15.00 & #15.10) be approved with the following conditions (as amended by the Board) imposed:

1. Approved for the grooming, boarding, and training of dogs and cats.
2. Approved for the retail sales of items related to the kennel business.
3. Hours of operation to be Monday – Friday, 7:00 a.m. to 11:00 a.m. and 4:00 p.m. to 7:00 p.m., Saturday, 8:00 a.m. to 10:00 p.m., and Sunday, 12:00 p.m. to 4:00 p.m.
4. Approved for the owner/occupant of the residence on site.
5. Two (2) single-faced signs not to exceed a combined total of 32 sq. ft.
6. Approved in accordance with the site plan submitted and as represented in the Petitioner's application.
7. No outside speaker systems.
8. Lighting shall be directed onto the interior of the parcel.
9. Area shall be kept clean and odor free.

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

9. ***Commitments/Rules of Procedure*** – Mr. Kolbus explained that after last month's meeting, he took the staff comments and Board comments and revised Section 6.06 on conditions and commitments. There will be two different types of commitment documents; one for Board of Zoning Appeals and one for the Hearing Officer since they handle a little different type cases. At this time, it will be recorded by the owner and then it will be up to them to return it to the Board of Zoning Appeals staff in order to obtain a valid permit.

Mr. Kolbus indicated he was able to obtain some seminar material from John Malliter, who was on the ISBA legislative committee for planning and zoning, and helped write the law. One of the questions asked of John at the seminar was regarding getting these documents signed and recorded. The staff had a lot of concerns about this because it's difficult to get the petitioners to get the documents back to them. His comment, which was after they had done this, was to make it a condition of approval that they sign and record the commitment. What they have done is right in line with their thinking.

Another question asked was why they can't just record the Board's notice of decision and his comment on that was that a statute says a written document is to be recorded and by

implication it needs to be sign. Also, based on the contract law, if you're going to force something against somebody, they need to have signed it. Another question was why they cannot record the Board's notice of decision. Mr. Kolbus said the staff and Board's comments they have come up with as a group follows along with the way one of the writers of this legislation intended it to proceed. .

At the bottom of 6.06, there is a whole new section in blue. That statute allows the Board of Zoning Appeals to let something to be terminated. For example, the staff brought up a situation where somebody wanted to vacate their Special Use. If you don't deal with it in your rules, then you have to have a public hearing on it, so we put in a provision that will allow them to basically file a request to vacate both the Special Use and the commitment in their entirety. That can then be handled as a staff item rather than a public hearing. A public hearing would be required when they want to vacate one and not the other, or possibly amend it in some way. If you're going to remove the commitment and have a Special Use, we feel that needs to have a public hearing on it. The staff also went through and modified the forms for the application and the commitment itself. When looking at Exhibit B, the standard condition in there is that the approval is not effective until the commitment, recorded and returned to the staff.

Mr. Kolbus said another question that came up in the seminar materials was whether or not it should be recorded and he was told that's up to the individual Board. If it's not recorded, you're going to have potential problems of enforcement against subsequent owners in the future. If the Board wants their decision to stick and be binding, the recordation part of the Rules of Procedure needs to be enforced. He noted that he and the staff would be available for any questions they may have.

At the bottom of Section 6.06, they are asking to delete Section 6.06C in its entirety and that's something Mr. Burrow had come up with a few years ago regarding recording a results letter. Since they now have a statute and a form to deal with that, they don't need Section 6.06C anymore, so that is why they are recommending it be deleted in its entirety.

Mr. Hesser pointed out that Section 6.06C goes beyond situations where there's a commitment. Mr. Kolbus said that was correct, but they didn't feel it was necessary to keep it in there.

Mrs. Wolgamood questioned if they are going to discuss this now and the Board indicated yes.

Mrs. Prough explained that as a result of what they're doing if they change their process with commitments, then they have revised the petitioner application packet to reflect those changes. One thing you'll notice is that on all of them, under "Information" on the application in #2, they are now going to require that the property owner submit a recorded deed, rather than just a legal description. One reason for doing this is because it's very important that since the landowner/property owner is responsible for signing the commitment, they need to make sure their applicant is the property owner. A lot of petitioners are already submitting that, but they get in situations where sometimes they don't.

Also, they added to each questionnaire the comment about the commitment process out of the Rules of Procedure. They would like them to know going in up front that it will be required, so they've added that to each of the instruction sheets.

Mrs. Prough then explained she had sent a memo to the staff stating that they are changing their process and some of their procedures when accepting applications for Use Variances and Developmental Variances. I changed the questionnaires to reflect those changes.

We used to take building on an easement as a Use Variance, and now we're going to be taking it as a Developmental Variance, so we've taken that question off of the Use Variance question and added it to the Developmental Variance questionnaire. Since they will be processing certain Special Uses that have developmental standards or definition standards, they are going to process those as Special Uses with Variances for those standards, rather than processing them as Use Variances. For example, they have one before the Board today for a motocross track, and they meet all of the criteria with the exception that it's within 1,000 feet of a residential use. The staff has determined that they would like to process those as Special Uses with a Variance for that standard. The Developmental Variance questionnaire has two questions related to that.

Mr. Homan pointed out that many times, petition requests come in and they are seller/buyer situations. The seller is sometimes represented by a real estate agency and he questioned who would sign. Mrs. Prough said the current property owner is responsible for signing the application, so that would be the seller. Mr. Kolbus noted the statute says the owner must sign it.

Mrs. Wolgamood said she likes all three of the Developmental Variances and how they've changed. She feels that is excellent and she really appreciates that. Most everything they have changed in Section 6.06, she thinks are great. One of them in particular is the recording by the owner of the document and then having it given back to the staff for the file because if it's not recording, then why are we doing it? This is a huge monumental change, not only for us, but for the staff and petitioners. I know its state law and we have to do it, but this is big. It has created a lot of work and she feels what was created in the questionnaire was very good.

In Exhibit B, the result letter commitment form, on page 2 at the top, Mrs. Wolgamood said that in all of the documents in front of them, nowhere else did she find the word "may" verses "shall." In number one on the commitment letter that is going to be recorded, it says, "This commitment may be recorded in the Elkhart County Recorder's Office." Everywhere else, including in the Rules of Procedure that they are asking us to adopt, says, "The complete commitment shall be signed and recorded." She feels it should say "shall." She noted that if that word is changed, then she has no issues with the document.

Mr. Kolbus noted it should say "shall."

Mr. Hesser questioned the buyer/seller situation at this time. When they grant a request, it's granted to the land and not the individual. He asked if it would be permissible for the commitment to be recorded after the sale. Mr. Kolbus said it would still be valid. They want the owner to sign within sixty days, so if the buyer does and it's still within sixty days, then it is valid. Mr. Kolbus noted that is a very good point.

Mrs. Prough questioned #7 on her instruction form because she put, "The Board of Zoning Appeals may require or allow the owner to do this." She asked if that should stay "may" or if it should say "shall?" Mr. Kolbus indicated that is one thing the Board needs to decide today. He suggested having it say "shall" rather than "may."

Mr. Hesser said there are some cases where they don't have a commitment. Mrs. Prough clarified they will have a commitment on every case because it's something that is permanent and stays with the property. If they continue to make motions and grant petitions that say they are subject to the petitioner's application, site plan submitted and as represented, she feels that is permanent. That would require a commitment. If they don't want to require commitments on everything, then they would not want to put that in their motion. She indicated they have already

done that in the past, so she feels if they don't, they're going to be going backwards. They really want to tie it to an application or representation on the site plan.

Mr. Kolbus indicated everything that he has read states that permanent restriction must be in the commitment form and not a condition.

Mr. Hesser said that is rare, but there are cases where someone comes and they approve a petition with no conditions.

Mrs. Prough said yes, but they've still always tied it into that. If that's a direction the Board would not like to go, then they would not include it as part of their motion and the staff wouldn't include it in their analysis.

Mr. Hesser said if it's going to be in every situation, then it should be "shall." His gut reaction was that there would be cases where it wouldn't be necessary.

Mr. Kolbus indicated that the first "may" in #7 needs to stay as "may."

A motion was made and seconded (*Hesser/Wolgamood*) that the Commitments/Rules of Procedure be approved as presented in the written materials and as modified during today's discussion, effective immediately. The motion was carried with a unanimous roll call vote.

10. The application of ***Jeffrey & Linda Hershberger (lessor) and Homestead Motocross, Inc. (lessee)*** for a Special Use for a motocross track in an A-1 district (Specifications F - #59) and a Developmental Variance to allow said track within 1,000 ft. of a residential use on property located on the North side of CR 4, 3,700 ft. East of CR 35, in York 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 #OCR 4-110909-1*.

There were six (6) neighboring property owners notified of this request.

Jeffrey Hershberger, 12970 CR 4, Middlebury, was present on behalf of this request. Mr. Hershberger explained they would like to continue to use this track for themselves and friends. He and his son use it and then as friends find out about it, more people want to come and ride. They haven't had a problem with that, but it seems to be getting more and more popular and they would like to continue. A complaint was turned into Code Enforcement and Mr. Hershberger didn't realize a permit was needed.

Mr. Hesser asked if the bulk of the track itself is not within 1,000 feet, and it's just because of the driveway. Mrs. Prough said yes, it's because of the driveway.

Mrs. Wolgamood asked how many riders are on site at any one time. The petitioner said it's hard to say at any one time. They do have to come to his house, and he lives directly across the road from the track, and they have to sign in. He noted they've had 30 to 35 riders throughout the day, but at any one time, maybe 20 to 25 at the most. He doubts it's quite that many and averages around 15. The maximum is probably around 25. That is not consistent and the track seems to be busier on the weekends.

Mr. Campanello asked if they bring their bikes on trailers and the petitioner said yes. Everyone apart from him and his son.

When Mrs. Wolgamood questioned when the track was created and Mr. Hershberger said eight years ago. It started off as a little track and as he got bigger, they kept making it bigger and bigger, and it now occupies the entire field.

Mr. Hesser questioned if he agrees with the Staff Report and the petitioner indicated he is not really clear on the use of the driveway. He asked if they can use the driveway to transport pickups and trailers. The Board indicated that is correct, they cannot use it to ride. The petitioner said it seems senseless to him because they've been doing it for years and the neighbor doesn't have a problem with it. Other than that, he feels the conditions are acceptable.

Mr. Hesser noted that one of the proposed conditions says that the number of riders is to be limited per day, but a limit is not stated. He asked the petitioner if he has a limit. The petitioner said 75 riders per day because that would give them lots of room to grow from where they are at current. People have to sign in to go back there, and even spectators that bring the family all have to sign. He doesn't think they have had 75 in a day yet, but it is growing and they don't want to continue to get huge because they don't have the facility for that, or the parking. He indicated 75 would be acceptable for them.

Mr. Homan questioned if they've had any sanctioned public events and also asked if they will be advertising to the public for a race or anything. Mr. Hershberger said no, that would have to be a sanctioned thing.

The days and hours of operation were questioned by Mrs. Wolgamood. The petitioner said his son has a Facebook website and it states 10:00 a.m. to 8:30 p.m. on there. There are no days that it's closed, but they would be willing to close down on a Monday because there are times when it's hard to work on the track and have it stay in good shape when you don't know if somebody is coming to ride. Other than that, they would like to be open Tuesday through Sunday and have hours of operation be 10:00 a.m. to 8:30 p.m.

Mrs. Wolgamood asked about portable bathrooms and the petitioner said there is one on site.

When asked about what steps he takes to control dusts currently, Mr. Hershberger said the field out front is irrigated. As far as the driveway, it gets watered when he waters the field out front and they have a tank that they pull on the track to water also. He indicated dust is not really a problem. As far as the track goes, they try to keep it watered because people don't like to ride when it's real dusty anyway.

Mrs. Wolgamood asked how many months out of the year they do this and the petitioner said mid-April through early November.

When Mrs. Wolgamood questioned who polices this area when there are riders out there. She asked if he is present when there is a rider there. Mr. Hershberger said they have a set of rules and it states that you have to have at least one other person there with you and you can't ride by yourself, but the petitioner is not there all of the time.

Present in favor of this request was Alan Nord, 13025 CR 4, Elkhart. Mr. Nord feels it is nice that the petitioner is providing a place for people to ride motorcycles and four wheelers instead of putting them out on the road. The field the track is in is located in the middle of Mr. Hershberger's woods and there's cornfields to the east, cornfields to the toll road going north and the other properties around there that are residential are to the west, and that's he and his wife. In the seven years that they have been there, there has never been a problem with dust, noise or anything else. The only time they know they are back there riding is if they see them drive in and out because the driveway is parallel to Mr. Nord's. They keep the dust down and there has never been a problem. He is in total favor of this request.

Mr. Homan asked about his experience with the petitioner riding his motorcycles along the driveway to get back to the track. Mr. Nord indicated that no one drives them back there apart from him and his son. The others bring them in on trucks and trailers.

Jason Profit, Overhead Door Company, 23276 State Line Road, Elkhart, was also present in favor of this request. Mr. Profit said he rides out at the track. His children are homeschooled and this allows them to involve them in sports. Many days, they are out there from 9:00 a.m. to sun down. When the petitioner mentioned 75 or 50 riders, Mr. Profit said there are never that many out there at one time. There are normally 10 to 15 riders, and that's the maximum that he's ever seen on the track. Generally, these riders don't ever ride out of their skill level, meaning there are not people out there trying stupid things that will get them hurt.

Mr. Profit indicated he has always seen at least two people on the track. One person always has to be accompanied by another rider. He feels this is a good thing for his children and he sees a lot of responsible people out there, and talent. There are kids out there that can showcase their talent and they don't have to go to a professional track to do it. He feels this is an all-around good operation and he appreciates the petitioners doing this to open it up to the public. He doesn't feel this is about money to them, he feels it's truly about wanting to have a nice place for people to ride, showcase their talent and become athletes. This provides an awesome place for the community to come exercise.

Jeff Hershberger II, 135 W. Vistula Lane, Bristol, was also present in favor of this request. Mr. Hershberger indicated this track belongs to he and his father, and they have had it for about ten years. Just recently, there were other practice tracks in the area, close proximities, that have been closed down due to subdivisions coming in and things like that. In early spring through the middle of summer, he spends 20 to 30 hours a week out there running bulldozers, tractors and trying to water to keep the track in good, safe working order. They have built all of their obstacles to where they are safe, and they have some larger jumps out there where everything is filled in and it is safe to land on. He indicated his whole reason for this is because of his love of motocross.

Mr. Hershberger said he sees a lot of people that don't have the opportunity to ride that could possibly make a future, and they've seen a lot this year with families coming out and cooking out on a Friday or Saturday night and bring grills. When they come, they cook for everybody that's there and it's great to see something oriented. They do what they can to keep the dust down and he noted that ninety percent of the riders that come out there are racing on a semi-consistent basis. In the American Motorcyclist Association, you have to have a 96 decibel exhaust and it can't go over that. He would like to see it stay open because it's an activity families can do together.

Also present in favor of this request was Ray Brewer, 11396 CR 4, Elkhart. Mr Brewer said he owns property right beside Mr. Hershberger and he feels he has done this community a good service by putting the track in and giving the young people a place to go and enjoy themselves. He remembers when his son was little, he used to ride up and down the edge of the road, but now that he's got the track, they have very little problems out there.

Mr. Hesser asked if the staff has any comments on the proposed limit on the number of riders, and the hours of operation. He's not sure how they would enforce having 75 riders per day.

Mrs. Prough said the staff felt there should be some limit due to the fact that they are growing. She doesn't know what's reasonable, but 75 seems like a big number to her. She

doesn't know how much noise and dust that would generate, but she's not familiar with the sport so she cannot really say.

Mr. Hesser asked the petitioner if having 25 riders on the track at one time would be a workable limit, and Mr. Hershberger said that would be fine. The track is not that big, so that may even be pushing it. If there are 40 guys there, they are not going to go out while everybody else is riding because you get tired. He feels 25 would be self-regulated.

Mrs. Prough felt that would be easier to regular rather than number of riders per day.

Mr. Homan said that one of the speakers mentioned that 10-15 riders would be maxed out, so he doesn't see how 25 would even be reasonably possible unless he expanded the size of the track at some point in time. If 15 is the maximum for the track and there are 60 people out there, you are cycling groups four times. If you break it down like that, it doesn't sound too bad.

Mr. Hershberger said he is okay with the number that the Board regulates.

Mrs. Prough said that sounds reasonable. She noted they have never really had anything like this because most of the tracks have always been personal.

The public hearing was closed at this time.

Mrs. Wolgamood indicated she was involved in motocross for many years and her husband and son-in-law were very involved in it. She feels it is a fantastic family sport and most of it is family oriented. She feels that what Mr. Hershberger is suggesting with not limiting the number of vehicles that come and go, but the number of riders on the track. If they have 20 to 25 guys start at the same time, its absolute chaos, and that is not what they are suggesting to do at all. It would be like just taking your bike out and riding the track. The petitioner has neighbors saying that he has been a good neighbor and where else can you find an area where there are no residences within 1,000 feet? The only thing she feels they could improve on is controlling the dust. Other than that, everything the petitioner is suggesting including the months, the hours and the days, she doesn't have any issues.

Mr. Hesser questioned whether the land to the south is being farmed now and Mr. Hershberger said yes.

Mr. Hesser asks about the necessity for the Developmental Variance as the petitioner noted they are not riding their motorcycles on the driveway.

Mr. Homan agreed and questioned why they wouldn't be able to use their own driveway.

Mrs. Wolgamood said that's like saying you have a baseball diamond for kids and the driveway/parking area is not part of the track. She feels it encompasses the whole thing.

Mr. Hesser said if that's the case, you can't possibly have a setback that is 1,000 feet because the driveway is always going to go to a road.

When Mr. Hesser asked if the motocross riding is all done more than 1,000 feet away. Mr. Hershberger said in their rules, it states that all motorcycles must stay on the north side of the ditch. There is a culvert there that they have to cross to get there. Occasionally, you'll have somebody that breaks the rules, but it's stated that they have to stay on the north side of the ditch.

Mrs. Prough noted that when Mr. Nemeth measured the closet point for the track itself to the residence to the west on the GIS, he got 940 feet. He doesn't know if that's right on or not, that's just off of the GIS system. The staff's issue with the driveway was that they didn't want people driving their bikes down the road that close to the residences. When Mrs. Prough worked with the petitioner on this, he said the people who come there to ride don't, but he and his son

do. She indicated to them that the Zoning Ordinance states you can't ride within 1,000 feet, so they decided to include the Developmental Variance.

Mr. Homan suggested adding a condition of "No sanctioned race events on the track." Mr. Hershberger said he is okay with that and if it grows, they will come back before the Board.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, the request for a Special Use for a motocross track in an A-1 district (Specifications F - #59) be approved (as amended by the Board) with the following conditions imposed:

1. Approved for a period of two (2) years with renewal before the Board of Zoning Appeals.
2. Days and hours of operation to be seven (7) days per week 10:00 a.m. to 8:30 p.m.
3. The number of riders be limited to twenty (20) on the track at one time.
4. Port-a-johns to be provided.
5. Riding area and driveway access to be dust controlled
6. All motorized off-road vehicles for riding to be transported to the designated parking area with no riding of said vehicles on the driveway access.
7. The existing sign permitted to remain on site.
8. Motocross track to be owner operated.
9. Approved in accordance with the site plan submitted and as as represented by the petitioner.
10. There will be no sanctioned race events on the track.

With a roll call vote, the motion was carried unanimously.

Mr. Hesser feels that the purpose of Developmental Variance is because it encroaches by 1000 feet which may be minor based on what has been represented, and because it is for their personal use only.

Based on the representations made by the petitioner, a motion was made and seconded (*Hesser/Wolgamood*) that the Board finds that this request will not be injurious to public health, safety, morals, or general welfare; it will not cause substantial adverse affect on the neighboring property; and it would otherwise result in an unnecessary hardship in the use of the property, and therefore approves the request for a Developmental Variance to allow said track within 1,000 ft. of the residence. A roll call vote was taken and the motion was carried with Mr. Homan voting in opposition.

11. The application of **Jeffrey M. & Allison S. Hilty** for an amendment to a Special Use for warehousing and storing of excavation equipment in an A-1 district (Specifications F - #44) to allow for retail sales and recycle of aggregate on property located on the East side of SR 19, 1,000 ft. South of CR 36, 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #OSR 19-110919-1*.

There were six (6) neighboring property owners notified of this request.

Jeff Hilty, 64200 SR 19, Wakarusa, was present on behalf of this request. Mr. Hilty submitted a petition in favor of this request with signatures from neighboring property owners *[attached to file as Petitioner Exhibit #1]*. He noted this is the second time in the last three months that he has

had to appear before the Board and he is finding it increasingly discouraging to operate a business in Elkhart County. He has a very good neighborhood to live in for the most part, but he feels that he can't do anything without coming in here and asking for it first.

Today, he's asking for an amendment to his Special Use to allow for retail sales and the recycling of his concrete pile. The retail sales only consist of a truck here and there coming in to get a load of recycled concrete. The drivers will probably not even get out of the truck. He does not plan to do this again after the pile is all recycled, but the timing was right with the job and he had a stockpile area to accommodate it. He had a job with a lot of old concrete to get rid of and he had several jobs around his neighborhood, including his own, that need recycled concrete for driveways, parking lots, etc. He felt this was a common sense solution to haul it to his stockpile yard and recycle it, and then haul it out to the job as he needed it.

The zoning for the property where the recycling will take place is A-1, and the Special Use has already been granted for his excavation business. He is not more than a quarter mile from what used to be Hoosier Pallet and he isn't far from Utilimaster, which both have commercial zonings. Mr. Hilty also noted he is located on SR 19, which is very much a commercial highway with lots of truck traffic from early morning to late at night.

The truck traffic in and out of his driveway will be considerably less if he hauls the material out after it is recycled rather than before. He has many trees around the perimeter of his property which will help reduce the noise, and he's asked his recycler to come in and explain further the recycling process. There is no threat to disruption of surface water or subsurface tiles with recycling this concrete. Seventy five percent of this material will most likely be staying within a ten mile radius of his property, with twenty five percent of it being spoken for within one mile if this amendment is approved today. If the amendment is not approved, they will not be able to recycle anymore before winter and the material he needs for his jobs will have to be trucked in from Mishawaka. He and his neighbors do not want to look at this pile all winter and go through this process again next spring. He has gone from door to door and found his neighbors have all, with one exception, very willingly signed the petitioner, with some even wanting to clean up some of their own piles of concrete.

Mr. Hilty said he has the equipment to dig a hole and bury this pile of concrete, which would eliminate about \$6,000 of sales tax for the State of Indiana if this amendment is not granted. He has decided that this option will be cheaper for him rather than hauling it off site. He respectfully asked for the Board's approval of this amendment today.

Regarding the hours of operation, Mr. Hilty explained he has talked to a couple of his neighbors and they have decided on 7:00 a.m. to 5:30 p.m., which the crushing being from 7:30 a.m. to 5:00 p.m. There won't be any nighttime crushing and he doesn't personally feel there will be a lot of noise. His recycler is here to explain that.

Mr. Hesser asked if what he is requesting is a one-time deal and the petitioner said yes. When asked how long it will take to complete, Mr. Hilty said on average, his recycler thinks he can grind 3,000 tons per week and they are estimating it is about 9,000 tons. It will take approximately three weeks, but they are asking for four weeks in case of bad weather.

Mr. Hesser asked about the neighbors that have aggregate that they want to have ground. Mr. Hilty has three or four neighbors saying they have concrete that they would be glad to haul over. They look at it as a good option to clean some of their places up.

Mr. Hesser questioned if this is a temporary thing to get rid of this pile or if he would like to be permanently allowed to do this. Mr. Hilty said while the pile is there, the neighbors would

be allowed to haul it on, and he even told some of them he would come get it for them at no charge, so once the pile is ground, he's not expecting to do it again. The equipment will be brought onto the site from his recycler.

Appearing in favor of this request was Simon Stalter, owner of Farmers Repair Service, 11929 Chivley Road, Nappanee. Mr. Stalter said he is the recycler and they work for a lot of people in Elkhart County and St. Joseph County. With regards to the concern about noise and dust, of all of the people that he works for, people usually tell him that his process is quieter than the competition. If they can recycle everything now, the dust is much lower in the latter part of the year. In the middle of the summer when the sun is beating down hard and everything is really dry, the dust is much higher. As of right now, the dust will be very, very minimal and if it does become a problem, they can water it and keep it very well under control. Also, there seems to be very few neighbors to the northeast of it, and most of the prevailing winds come from the southwest.

In the breaking process of large chunks, Mr. Stalter said they lift the chunk up and drop it on a wrecking ball and it makes a thud sound verses hearing a hammer all the time. That noise will be far less than the common crushing recycling operation that you're going to think of. They will have a tiny excavator on top if a little piece gets stuck and there is a little jack hammer up there, but it's tiny. They bring the crusher, two excavators and their support equipment. Like the petitioner said, this is a one-time operation, so when they're done, all of their equipment goes with them.

In regards to hours, if they could crush between 7:30 a.m. to 5:00 p.m. then that would be great. They would like to show up and grease things and fuel things up before 7:30 a.m. and maybe a little bit of that after 5:00 p.m., but they would be willing to shut things down before 5:00 p.m. He believes it will take three to four weeks to clean up everything.

Also present in favor of this request was Jeremy Hoover, 27802 CR 38, Wakarusa. Mr. Hoover said he approximately $\frac{3}{4}$ miles from the petitioner. He had them scheduled to come in this fall to redo the parking lot as he has an auto repair business. He thought he would be able to purchase this in Goshen because they had agreed on recycled concrete for their base, but since then, that option is no longer there. They would have the material within $\frac{3}{4}$ mile and if they can't do that, it will have to be trucked in from Mishawaka. Mr. Hoover has no objections to what the petitioner would like to do.

Denny Paulus, 28430 CR 36, Wakarusa, was also present in favor of this request. Mr. Paulus explained he lives about $\frac{1}{4}$ miles away from the petitioner. He does some farming to the north and to the south, and on his own ground to the east. He would not like to see Mr. Hilty bury the concrete because it would be buried out on the farm ground. He has known the petitioner for quite some time, so when he says it's a one-time deal; he takes his word for it. He is in favor of this request.

Appearing in opposition to this request was Sandra Kreps, 27870 CR 36, Wakarusa. She noted she lives directly north of the petitioner. Mrs. Kreps submitted a letter to the Board dated September 20, 2010 that the petitioner had sent her *[attached to file as Staff Exhibit #1]*. Mr. Hilty stated in the letter that he has a stockpiling permit and as for the neighbors close by, she can only imagine who he wants it for. They have caused problems for her before. At first, Mr. Hilty states in the letter that he hopes to do it in late November or December and two sentences later, he said he hopes to have it gone by late spring. Then a couple sentences later, he said it takes three to four weeks to do. There seems to be some double talk because he states one thing and then a few

sentences later, he states another thing. He states that the noise would be blocked out by trees, but Mrs. Kreps indicated she can currently hear the trucks through the trees. When she spoke to Mrs. Prough, she stated how much noise there was when she was out checking the facilities, and there's even more.

Mrs. Kreps feels there is something going on behind this reason as the petitioner is asking for this amendment. She has checked with other neighbors about whether they received a letter and no one has. The ending statement in the letter is, "Please accept this token of our appreciation to you for being patient with the sights and sounds which you may have encountered." In the letter was a \$50 gift card to an area restaurant. Mrs. Kreps indicated she doesn't accept bribes. She said they have enough noise on CR 36 as all summer, they have had between 24 and 48 dump trucks go by her place.

The neighbor to her east works from 5:00 a.m. to 5:00 p.m. in construction and the other neighbor to the west has rented that property. She's unsure what their hours are for working. The neighbors to the north across the road are all tired, and they have respiratory problems and heart problems. This would not be good for them. She asked the Board to not allow this to happen in the farming area. She is concerned about dust and debris in the area, as well as noise. The other neighbors do not need this. She asked the Board help keep their neighborhood safe and clean.

Mr. Hesser asks Mrs. Kreps to point out her property on the aerial photo. She indicated she is the first house east of SR 19.

Also present in opposition to this request was Wilma Wenger, 27853 CR 36, Wakarusa. Mrs. Wenger noted she lives right across from Mrs. Kreps. She is concerned about the air pollution and the noise pollution. She has lived in her home for 34 years in the country and she likes her peace and quiet there. She is all for recycling, but not in this area. She doesn't appreciate all of this activity going on. When she is inside eating breakfast with the doors closed, she can hear the clinging of the trucks when Mr. Hilty empties them.

In rebuttal, Mr. Hilty said he is sorry that the gift card was taken as a bribe. It was given to all of his local neighbors. He had second thoughts when he did it, but it thought it would be a nice token of appreciation for them, but that's not the way it was taken.

As far as the neighbors, he has been going around since Saturday. The last three evenings, he has gone around and if the lights have been on in the house, he would stop. He has gone to Mrs. Kreps door three times and he has never met her yet. He doesn't like to have upset neighbors and if there's anything he can do differently to change this, he'd like to do it. He has a job to do, he has a family to feed and he is doing it the best way he knows how. He apologizes for anything he has done that she doesn't like.

Mr. Homan questioned the condition of stockpiling of material. He asked what the representation was at that time and what kind of material he was foreseeing. Mr. Hilty said it wasn't concrete. This job came up and he thought that since they spend so much money on trucking around this neighborhood, this makes sense to haul it in. He will probably use an eighth of his own property and when you haul 1,000 tons of material down the road, that gets expensive. He thought that if he could do it one time and recycle it and use it, it seems like it made sense. He was permitted to stockpile and thought this would be the thing to do.

The public hearing was closed at this time.

Mr. Hesser said he would feel different if this was an ongoing operation. He feels the best solution would be to let this happen for four weeks and let it get done, although he doesn't like it.

Mr. Homan said he never thought of a recycling plant as being portable. It's a mobile piece of machinery. Having recycling as part of this business at this location, he doesn't feel he could support that. The impact will still be on the neighbors as far as noise and dust. The retail sales will continue until the piles are gone. There is some short term impact on this.

Mr. Miller said given the circumstances and the fact that it's a portable recycling unit that is a one-time proposition, he doesn't have an issue with that in this specific location. He is sensitive to all of the neighbors and their input regarding that. Being in the construction business, I am also sensitive to the high cost of doing business in today's environment. He's in total agreement with Mr. Hilty that if they can be more competitive in their local markets if they can provide a service to their community and if they can resolve issues from a business standpoint somewhat amicably, he feels it makes a great deal of sense. For that reason, he would probably support this request.

Mr. Homan asked whether the county provided any type of permitting for temporary contractor arrangements. He's not in favor of granting this forever, but he understands there is a situation that can be resolved by grinding this material and reusing it whether it's at this location or another location. He would look at this differently if it were a long term process of if the business was investing in the recycling equipment, which they are not.

Mr. Campanello is also in the commercial construction field and feels that this should have been thought about before starting this project. He suggested having a timeframe for completion of the project being set as the petitioner does not have a lot of say about time for things such as equipment breakdown, etc.

Mrs. Prough said one thing that is a concern is if everything for this job has already been hauled in or if he has additional haul in. Mr. Hilty had indicated to her that he had completed the large job, so there won't be any additional held in from that, but there's mention of bringing in some more, so that's something the Board might want to consider, too.

Mrs. Wolgamood asked for clarification on what the one year timeframe is for. The remonstrator had mentioned grinding and then talked about selling the product which appeared on the letter sent to residents.

Mrs. Prough informed the Board that the current permit has no retail sales but the petitioner would like to crush and sell the product.

Mr. Campanello suggested that the petitioner get rid of the material within one year if he finds a company to buy it. He will have one year to get done and he cannot come back to crush more.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board finds that this request for an amendment to a Special Use for warehousing and storing of excavation equipment in an A-1 district (Specifications F - #44) to allow for retail sales and recycle of aggregate is consistent with the spirit, purpose, and intent of the Zoning Ordinance; will not cause substantial and permanent injury; and will substantially serve the public by allowing this on a temporary basis, therefore, approves the request with the following conditions imposed:

1. The grinding and crushing operations to be completed no later than December 31, 2011.

2. The remainder of the Special Use regarding the retail sales be restricted to a period of one (1) year.

A roll call vote was taken and the motion was carried with Mr. Homan and Mr. Campanello voting in opposition.

Mrs. Wolgamood reminds Mr. Hilty that he has a Special Use Permit and anything he wants to do there must be checked out with the Zoning Board prior to doing so.

12. The application of ***Dana & Lori Bontrager*** for a 3 to 1 depth to width ratio Developmental Variance and a 70 ft. lot width Developmental Variance (Ordinance requires 100 ft.) to allow for an existing residence on property located on the West side of CR 33, 2,050 ft. South of CR 20, common address of 59285 CR 33 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 #59285CR 33-110919-1*.

There were six (6) neighboring property owners notified of this request.

Attorney Loren Sloat, 102 Heritage Parkway, Nappanee, was present presenting the petitioners. Mr. Sloat explained they had come in to amend their Special Use site plan and Mrs. Prough pointed out that the property the petitioners have for their residence needed Variances. He said the entire piece was 33 acres as one parcel, but then when the petitioner built his home, the bank wanted them to split some land off due to financing purposes. The home was built in 2004 and there is a drainage ditch that runs alongside the property. The Pumpkine Trail is also in the area. Their petition is for appropriate waiver of the required frontage on the road from 100 feet to 30 feet, asking for a 70 ft. Variance.

Mr. Hesser questioned that because there is a conflict between the staff report and the questionnaire. The staff report indicates the width Variance wasn't requested, but the answer to #14 indicates that it was.

Mr. Sloat indicated that was an error as he thought it was. He misunderstood that.

Mrs. Prough noted there was only a 3 to 1 Variance granted because when it was presented, it was for the entire parcel and it included the business. There was never a lot width Variance granted. She feels that Mr. Sloat misunderstood.

Mr. Miller asked if the petitioner owns the other 70 feet or if that is on a different parcel. Mr. Sloat indicated they will be moving 70 feet from the adjacent parcel over to this parcel. If you want to get back to the house, you have to go across a culvert. If you drive across the 70 feet, it likely gets stuck in the ditch.

Mr. Homan asks about the amount of frontage on CR 33 in total and Mr. Sloat indicated there are 392 feet.

Mr. Hesser asks if there is a house on the parcel to the north and Mr. Sloat said no, that's just the business.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller noted that the house is existing and Mrs. Wolgamood confirmed that the house was built on the 33 acres.

Mrs. Wolgamood is in complete agreement with the Staff Analysis and with Mr. Sloat's admittance that if the 70 feet is obtained, that will make this legal.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these findings, the request for a 70 ft. lot width Developmental Variance (Ordinance requires 100 ft.) to allow for an existing residence be denied. A roll call vote was taken and the motion was unanimously carried.

A motion was then 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 3 to 1 depth to width ratio Developmental Variance. A roll call vote was taken and the motion passed unanimously.

13. The application of ***Dana & Lori Bontrager*** for an amendment to a Special Use and site plan for warehousing and storing, including a construction storage yard, in an A-1 district (Specifications F - #44) on property located on the West side of CR 33, 1,730 ft. South of CR 20, common address of 59285 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 #59285CR 33-110919-2*.

There were ten (10) neighboring property owners notified of this request.

Present representing the petitioners was Loren Sloat, Attorney, 102 Heritage Parkway, Nappanee. He submitted a packet of information to the Board at this time [*attached to file as Petitioner Exhibit #1*]. Mr. Sloat explained they filed the application to amend the site plan in two respects. They would like to square up the area that is being used in subject to the Special Use and the other was to seek approval to remove the existing and dilapidated 40 ft. x 70 ft. building and replace it with a new attractive 100 ft. x 100 ft. structure in which the petitioner could use for maintenance, repair and storage of equipment.

This request was originally approved for warehousing and storage in 1998, including construction storage yard. The permit was renewed every two years until 2004, and then it was renewed for an indefinite period of time. There have been no significant changes made in that operation in the past seventeen years. The petitioner didn't expand; he modified and shifted what he was doing using his trucks from hauling excavation equipment to hauling freight. He had always had trucks to move his equipment around, but since the economy has slowed down and you need to maintain certain volumes of business, you need to shift your emphasis from time to time to be able to maintain the cash flow that you need to stay in business. For example, originally back in 2000, the petitioner was moving about 40,000 ton of crushed rock in a year. Not nearly all of that came into this site, but maybe half of it did. The other half was delivered directly to jobs. The half that came in here was hauled out of this site by his dump trucks and those trucks would make 10 to 15 trips in and out of this site every day. That business has virtually dried up. Last year, instead of doing 40,000 ton of crushed rock, he did 1,000. Mostly all of that was hauled directly to the site. The dump truck activity is reduced to very few trips, maybe two or three per day. He has used his tractor trailers to move equipment around to put on the road to haul freight. Everything is involved in an excavation business, including the tractor trucks. All of this equipment was kept behind in the storage yard and was not visible from the road.

What the petitioner would like to do is modify the site plan to make it a little wider to accommodate the proposed new building to allow him to take better care of his trucks, store

them inside and keep the equipment out of the weather. Their current conditions allow for ten stockpiles and they probably currently have seven or eight. The area on the northeast corner is a hill. He pointed out the old building that they would like to replace and where the new building would be located. The petitioners also have a portable office building to the rear and that would be removed, and the office would be placed inside the building. When they are completed, they will have an attractive looking building rather than the ugly eyesore. It would be providing a lot of service for Mr. Bontrager and his business. The primary entrance to the building would be from the back. They would have overhead doors, probably four of them across the back and two at the front so they could drive through. It would certainly be an improvement from the neighborhood point of view in regards to the neighbors' point of view. Mr. Sloat then displayed the approval issued by the Board on July 15, 2004.

A copy of the staff report for today's request was then displayed. Under the Staff Analysis, it states that the previous Special Use permit was for warehousing and storing for a construction storage yard for an excavation business. He noted that's not the same language. Using that approach, the staff took off on a tangent in regards to the freight trucks and said they were in a freight business, and operating a freight terminal. Mr. Bontrager has always had the same trucks, but he used the word expanded in the questionnaire and they didn't expand, they are just trying to survive. They changed the use and diversified, but they have a Special Use for warehousing and storing, and it's not specific with regard to what they warehouse and store. They're in an excavation business, but they warehouse and store the trucks and they also have a construction storage yard. Mr. Sloat does not feel that warehousing and storing the trucks that are used to haul freight is inconsistent with their existing permit.

Mr. Bontrager has four semi-trucks that are used. One of them is used and is kept on the lot, for the most part, to move excavation equipment around from job to job. It may be in and out of the property once or twice a day, or maybe not at all depending on the activity of the construction business. Two of the trucks are longer hauls. One of them goes to California and back. It leaves the yard and it will be gone for a week and a half, and then it comes back. Another truck makes more regional haul around Indiana and Chicago. It leaves the yard and it's gone for two to three days. It may pick up a trailer here and still not be back for a week and a half. The coming and going of these freight trucks is far less intense than the coming and going of the dump trucks that they were hauling material out to job sites with. The traffic they have is 20 to 30 percent of what it used to be, although they are doing a little different type of work. They are using their same trucks, just doing a little different work with them.

The tractor trailer trucks are air ride, so the suspension on them is much quieter than the suspension on a dump truck. When one of these trucks does go down the road, it's much quieter than an empty dump truck that comes slamming down the road and bouncing around with the empty steel box. These four trucks are hardly ever all four there at the same time, so the traffic is not what it used to be. They do come back for servicing and maintenance, and that's why they want a larger building. Mr. Bontrager has always had it in the plan to have a larger building, and they are now at the point where they feel they are ready to take that step and replace the portable office.

Mr. Sloat said this neighborhood has a lot of commercial activity in it. There are other buildings in the same area that are larger. There is a sales building in the area and they have a lot of trucks coming in and hauling in steel. A lot of trucks come in to that property and they do not have access for the trucks to get off the highway and unload. The trucks unload on the road and

then they have no place for those trucks to turn around, so many of those trucks come down here and turn around at Bontrager's site, or they go down to the next county road intersection and turn around there.

Yesterday, Mr. Bontrager's secretary tried to keep track of the truck traffic past this property and there were 27 trucks that went down the road. There is a lot of truck traffic in this area. A & R Machine is also in the area, which is operating under a DPUD. They have a lot of commercial traffic. There is also a landscaping/excavating business with a lot of trucks. Mr. Sloat also pointed out the duck farms in the area. The truck traffic that they would add to the road would be insignificant.

On January 14, 2010, Mr. Sloat noted that staff was out to the site to do an on-site inspection and found everything to be in compliance. They have adequate room for trucks to turn around onsite. The petitioner is proposing conditions similar to what they had before. The only thing that has changed is that currently, they have six employees, but they listed seven on the questionnaire. If things should turn around and get busy, Mr. Bontrager may need one more employee. They have four loads of aggregate being delivered to this site per day and that's more like four loads per month now. Everything else is the same as what was requested in the past. Mr. Sloat feels they have met the spirit, purpose and intent of the Zoning Ordinance as they are warehousing and storing trucks, and it's not specific and limited to excavation trucks. They will not have an adverse effect on neighboring property owners as there are neighbors in support of this request. Lastly, they feel this is a service that continues to be needed in the community and Mr. Bontrager is a well-respected member of the community.

Mr. Sloat then submitted a letter from the neighbors directly across the road, Dave and Brenda Miller *[attached to file as Petitioner Exhibit #2]*. They have indicated they have no issues with the request.

Mrs. Wolgamood asked what Mr. Bontrager originally used the trucks for to haul and what is he using them for now. Mr. Sloat said he used to have construction and excavation business, so they needed more trucks to move excavators and bulldozers because they were going everywhere all the time. He doesn't do that anymore. He currently uses the trucks to haul freight. He clarified that no freight goes through the building on site and it is only used for service. He picks up freight from freight companies.

Mr. Hesser asked if the petitioner owns his own trailer and Mr. Sloat indicated yes.

Mr. Miller asked Mr. Sloat if he is offering that this is less intense to that location than the previous use and Mr. Sloat said yes, much less intense. He estimated approximately 80 percent less.

Mr. Homan asked about #14 on the questionnaire regarding pickup and delivery services. The response to the question was, "Three or fewer loads of material is delivered to this site per day. Maybe only three per week." He explained it goes on to say, "Up to 15 loads of material taken out of the site each day, currently two to three per day." He doesn't understand that if they are taking in three loads of material each day and pulling out fifteen loads a day, then he asked where it's coming from. Mr. Sloat clarified that they used to haul in three loads of material a day and dump that on-site, and then dump that on site. They would then part that out into smaller loads, but that don't do that anymore. Mr. Sloat indicated that was back then, but not now.

Mr. Homan then asked if Mr. Bontrager is expanding his vehicles to include refrigerator vans and Mr. Sloat said no.

Mrs. Wolgamood asked if it would only be four trucks total and Mr. Sloat said he has four semis and four dump trucks.

Mr. Miller questioned whether the actual fleet has changed and Mr. Sloat said no. They are the same size operation that they always were.

Present in favor of this request was Mike Yoder, 59520 CR 31, Middlebury. He owns 70 acres of farmland at that location. Mr. Yoder also noted that he has a dairy farm at 13519 CR 20, Middlebury, and that is where he spends most of his days. That is important in regards to this because the property in question lies right between those two properties. He travels that area on a daily basis back and forth, and he also has a business relationship with Mr. Bontrager. He feels that the petitioner is a very good businessman and keeps his property very well kept. He is aware of the impact of traffic in the area and it is exactly as indicated by Mr. Sloat. He was very surprised about the freight delivery business because he has not seen any increase in traffic from his site on the road at all. He appreciates the Board's concern for the county roads. Mr. Yoder indicated that this road and CR 20 are used heavily by semi traffic, and there is much more intense use than Mr. Bontrager's. In fact, his dairy operation has more semis in a year coming onto the property than the petitioner's. He supports this request.

Marlin Miller, 59279 CR 33, Middlebury, was also present in favor of this request. Mr. Marlin Miller is the closet neighbor to Mr. Bontrager and where his business is located. He supports what the petitioner is proposing to do. In 2002, his parents bought the property where they now live and he then bought it in 2006. It has been nine years since he has been local, but not necessarily always living there. He has noticed that the petitioner's construction part of his business has tapered down quite a bit and his truck traffic is definitely as was stated previously. It's a different trend and it's a lot less during the day than what it used to be. Even what it was before was not any problem to Mr. Marlin Miller or his parents in living there. They are up on a hill and if they go to the rear of the property, they can see his storage area. He indicated you cannot see it unless you are just in front of the fence.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Doug Miller feels that this is a move in the right direction with respect to the original Special Use. The Board has heard testimony in support of the decreased traffic.

Mr. Hesser said that after reviewing the materials, he was more focused on the site restructuring. He asked if the staff has any comments on this.

Mrs. Prough said the staff took into consideration that the petitioner wants to expand to a 100 ft. x 100 ft. building, which is almost three times of what they have on site now. Mr. Sloat is correct; originally the petitioner did represent way back that he would replace the building. The staff's concern was the large expansion and whether it was due to the new freight business.

Mr. Hesser noted the office would go inside the new building and the petitioner would be able to park some buildings in there as well.

Mrs. Prough said it appears it would help clean up the site, and she feels he needs to shift the building due to the trucks/trailers coming in.

Mrs. Wolgamood asked Mr. Sloat about one of the other large buildings in the area. Mr. Sloat said he understands it's used to store tractors and cars in. When asked if there is another one to the south, Mr. Sloat said he knows there is some truck traffic, and there is a poultry building to the south.

Mr. Homan asked about the original Special Use for warehousing and storing. He asked if it is assumed that the warehousing and storing is property belonging to the petitioner or could it be warehousing and storing for third parties? The reason he asks is because if the concern is about this business becoming a terminal freight business, then what is the potential of seeing products brought in from other manufacturers to be stored?

Mrs. Prough said that the Zoning Ordinance does not define that. It just states that you can apply for a Special Use to warehouse and store in an A-1 zone and that includes a construction storage yard.

When Mr. Homan asked Mr. Sloat to clarify what the petitioner is intending to store, Mr. Sloat said trucks, to keep them out of the weather. They are not going to store any freight, and he said the petitioner would be acceptable to having that as a condition.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Campanello*) that the Board approve this request for an amendment to a Special Use and site plan for warehousing and storing, including a construction storage yard, in an A-1 district (Specifications F - #44) based on the testimony given by the petitioner and the following Findings of the Board:

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

The proposed conditions submitted by the petitioner (as amended by the Board) were imposed as follows:

1. No yard activity (loading or unloading of materials, or use of front end loader) before or after the hours of operation of 6:00 a.m. to 6:00 p.m., six (6) days per week Monday through Saturday, with the construction storage yard to be closed by 6:00 p.m. Trucks are permitted to leave or return to the site prior to or after the hours of operation.
2. Approved for an indefinite period of time with the Special Use to be referred back to the Board of Zoning Appeals for further action if a valid complaint is received by Code Enforcement.
3. Exterior lighting shall be restricted to security dusk-to-dawn night guard-type lighting.
4. No exterior loud-speakers shall be allowed on the premise.
5. Permanent buildings on this site shall be constructed in accordance with plans and specifications approved by appropriate governmental authority with building permits issued by the Elkhart County Building Department.
6. A setback line of 200 ft. from centerline of CR 33 shall be applicable for material storage, stockpiling and storage of equipment.
7. Special Use Permit confined to area designated on site plan.
8. No asphalt or concrete debris or slab shall be stockpiled on the site without prior consent of the Elkhart County Board of Zoning Appeals after public hearing and notice to interested parties as required by ordinance.
9. No more than ten (10) stockpiles of aggregate, sand, or topsoil permitted.
10. No more than four (4) loads of aggregate to be delivered to the site per day.
11. Speed of trucks on CR 33 limited to 35 miles per hour.
12. All materials stored in area designated on site plan.
13. Sign as per specifications.

14. The number of employees limited to seven (7).
15. Trucks and equipment to be parked inside or in area designated on site plan.
16. There will be no warehousing of third party freight inside or outside the building.

After further discussion, the motion was amended to include the following condition:

17. Tractor-trailers and equipment on site limited to the owner/occupant's with no third-party equipment.

Mr. Campanello seconded the amended motion and the motion was carried with a unanimous roll call vote.

14. The application of ***Carl Martin (land contract holder) and Gary Martin/Martin Steel Roofing & Surplus, Inc. (land contract purchaser and business operator)*** for a Special Use for an agri-business (Specifications F - #56), for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure, and for a Developmental Variance for a sign to exceed the total square footage allowed on property located on the South side of CR 40, 1,050 ft. East of CR 9, common address of 25772 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 #25772CR 40-110919-1*.

There were five (5) neighboring property owners notified of this request.

Present representing the petitioners on behalf of this request was Loren Sloat, Attorney, 102 Heritage Parkway, Nappanee. He submitted an aerial photo in color to the Board *[attached to file as Petitioner Exhibit #1]* along with a copy of his PowerPoint presentation *[attached to file as Petitioner Exhibit #2]*, which he referred to throughout his presentation.

Mr. Sloat explained that the Special Use permit referenced in the staff report was originally issued to Carl Martin in 1986. At that time, he was buying the property on land contract from his mother and it was approved for warehousing and storing. He did a little checking on it, but he's not quite sure when the agri-business came into the Zoning Ordinance.

Mr. Kolbus indicated the agri-business was introduced to the Zoning Ordinance in 2003.

Mr. Sloat said he was involved back then and they didn't do near as nice of a job presenting things then. He displayed the petition, staff report and minutes from the meeting. There were no remonstrators present at the meeting and the petition was approved at that time. When looking at the file, Mr. Martin came in and pulled a building permit for a 50 ft. x 80 ft. building within the next week. There were no specifications as to how big the building was supposed to be.

In 1988, Mr. Martin wanted to make some improvements on the building and it was noted that the only thing Mr. Martin needed to do was go in to get a permit. Mr. Martin did not always follow up on getting permits, but his son Mr. Gary Martin is to be trusted and does follow the rules.

Mr. Sloat has been before the Board on two different occasions in this area for different things he was doing, and those requests were approved and he has lived by those conditions consistently. There have never been any issues or complaints, and now he's trying to clean up the air and omissions of his dad. They are starting on base zero and would like to go forward from here.

The reason this came up was because the petitioner wanted to put an addition onto the barn and part of that will be used in the business. Mr. Sloat pointed out the area that will be agricultural. There will be no new square footage added to the businesses. They are not expanding the warehousing of the business. They are substituting what the business is using for new space.

Mr. Sloat pointed out each of the buildings on the site plan and indicated they were eventually connected. The total square footage of the building is around 7,000 square feet. In 1989, Mr. Carl Martin came in to get a permit to build onto the west end of the building and in 1998, he obtained a permit to build onto the east end of the building. Those additions were used for agricultural as he stored farm machinery. They had nothing to do with the business. As Mr. Carl Martin got older and wasn't able to handle the business as well anymore, Mr. Gary Martin moved onto the farm and took over. Mr. Gary Martin has started making barn windows in the building and it is used for business use. .

Mrs. Wolgamood asked if that is where the petitioner does his fabrication of the windows and Mr. Sloat said yes.

Mr. Gary Martin makes plastic or vinyl replacement windows for barns and sheds, and things of that sort. He gets plastic bar stock in, which looks like 2 x 4's, and he runs it through a shaper to make it into little pieces that he can insert window panes in, and screws it together to make a window. These are the windows you see in an old pole buildings that slide out a little bit. The petitioner maybe spends 80 to 100 hours per year doing that. They are then sold the business, Martin Steel Roofing. They are also used by other contractors in the area.

Mr. Sloat pointed out the area where Mr. Gary Martin would like to put on the addition and indicated which portion would be used for the business and which part would be used for storage. That changed the Developmental Variance a little bit because none of the new addition will be used for business. The calculation for the Variance is now 10,684 square feet and before it was around 13,000.

The staff indicated in their report that they were over the building size by 12,000 square feet, but the reason is because there was no limit placed on the square footage of the original building and they are adding the back barn, which is 2,400 square feet. They are not really over what they were granted to do to begin with, although it may seem that they are. They would like to be approved to have this remain as it is. They are not asking for the business portion of it to be increased at all.

Mr. Gary Martin would like to do more of his own farming and have some more equipment, but he needs a place to put it. He's going to remove a 1,500 square foot building, so they are actually diminishing building sizes by taking one building down. He then displayed a picture of a view on CR 40 from the west side of the barn, and screening evergreen trees were planted.

As far as other businesses in the area, there are a lot of businesses such as a repair shop, fabric store, retail stop, welding shop, body shop, grocery store, egg supply store, greenhouse, fire station, and a produce auction. This is just another farmstead and that will be used partially for business and partially for farm.

Martin Steel Roofing sells steel roofing systems, siding material, guttering, windows, and things of those nature to the agricultural community. Last year, there were about 900 customers total. There were about 15 per day in the summertime and 2-4 per day in the wintertime. A lot of jobs are picked up by the contractor or the farmer and some of the jobs that are bigger have to

be delivered by a truck. Eighty percent of the customers are farmers and eighty percent of the dollar volume is for agricultural. Mr. Sloat feels this should be approved as an agri-business for agricultural sales, rather than as a Special Use for warehousing and storing, and that is what their application is about.

The petitioner stocks a lot of material and supplies on site. He then displayed photos of the petitioner's home, indicating that the property is well maintained. There are four employees working for the business full time, and there are two part time employees. They work 6:30 a.m. to 4:30 p.m. and 9:00 a.m. to 12:00 p.m. on Saturday. Mr. Sloat indicated they have been operating during those hours for years. He also noted there is adequate room for truck turnaround on site. Mr. Sloat explained that nothing will change with traffic. The material is brought on site by a semi about three times a week. The business has been there for approximately 30 years. He feels this provides a needed service to the agricultural community and to his knowledge, there have been no complaints registered with Code Enforcement regarding this business. They are simply trying to bring it into compliance. This all takes money, so the petitioner will need about two years to implement this.

At this time, Mr. Sloat submitted three letters in favor of this request from people who were unable to attend today's meeting *[attached to file as Petitioner Exhibit #3]*. These letters are from David Royer, David Loucks and Joan Ramer. Mr. Sloat indicated they all live very close to the petitioner and are all in support of the request.

Mr. Homan said going back to the original 1986 permit; he asked if the Martin's have been involved in sales of roofing since that time. Mr. Sloat said yes and indicated that's how the business began. One of the things that Mr. Carl Martin had was salvage material. He would get liquidation and odds and ends of things. Mr. Homan noted he was trying to determine the difference between storage building materials and storage and sales of building materials. He asked the staff if anyone looked at the original testimony to see if it was represented as though storage items would be sold from the property as well.

Mrs. Prough read a section from the minutes which stated, "Mr. Sloat explained to the Board that Mr. Martin wishes to construct a building on the proposed site to store construction materials. He explained that Mr. Martin would have one to two semi loads of building materials delivered to the site every month. He stated that most of the building materials are used on jobs, but Mr. Martin might sell some of the materials to area farmers and other people in the area. All of the materials would be stored inside and there would be no outside storage of materials or dumping on the site."

Present in favor of this request was Blake Doriot, P.O. Box 465, New Paris. Mr. Doriot said he has been a customer here several times and his roof is covered with their steel, and his pole barn is built with their steel. He has stopped by the site many times and has never had a problem with too much traffic. The ten years he lived in Wakarusa, he drove this road twice a day and never once in that time did he have an incident of a problem with too much traffic. He feels the petitioner runs a clean business. He asked that the Board grant this petition as presented.

Carlyle Martin, 66227 CR 9, Goshen, was present in favor of this request. He lives across the road from the petitioner to the west. He has lived at this location since 1989, so he has been living there ever since the business started. He has no issues with it whatsoever because he sees very little of it. He also noted he bought the property to the east of the business in 2004. He asked that the Board approve this request.

Also present in favor of this request was Marlin Hoover, 60545 CR 11, Elkhart. Mr. Hoover explained he is not real close to where the petitioner lives, but he does business with him. He appreciates the family run business and he supports the integrity on Mr. Martin's business.

Mr. Sloat then asked for a show of hands of everyone present who was in favor of this business.

The public hearing was closed at this time.

Mr. Homan asked when the agri-business definition came into creation and Mr. Kolbus indicated that it was in 2003. Based on the testimony and the 1986 discussion in the minutes, there is pretty reasonable expectation that the petitioner was approved not only to store material, but also to sell it, and that to him implies business, with the exception of construction of windows. He's not sure that is a high impact side of the business. He appreciates the staff comments and understands them, but with the exception of building square footage and with the testimony stating that it would not increase the actual business square footage, Mr. Homan feels the benefit outweighs the negatives.

Mrs. Wolgamood agreed but said there were very few conditions placed on anything back in 1986. They just didn't have the intensity of things that they have now. She appreciates what Mr. Gary Martin is trying to do on the property. When she first looked at this petition, her first thought was wow, Mr. Sloat is giving testimony that Mr. Gary Martin is the only one that does that. He has six other employees, but they don't do the windows, so she doesn't have an issue with this.

Back to the original 1986 permit, it did state that the petitioner was to have no outside storage and no manufacturing. In that respect, that has changed dramatically. In all other respects, they've moved from agricultural buildings to now being utilized for a business. If the petitioner were to come in and get a building permit for a manufacturing building today, he would have to have state approval. When this Board grants something, the petitioners have to comply with state law. To her knowledge, none of these plans have been submitted to state but that is not something which can be changed now.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board finds that this request 1) Will be consistent with the spirit, purpose, and intent of the Zoning Ordinance as the business has been on site for a minimum of twenty-five years and it does provide a good service to the community; 2) Will not cause substantial and permanent injury to the appropriate use of the neighboring property; and 3) Will substantially serve the public convenience and welfare; and therefore, this request for a Special Use for an agri-business (Specifications F - #56) be approved as stipulated by the petitioner with the proposed conditions submitted by the petitioner *[attached to file as Petitioner Exhibit #4]* imposed as follows:

1. No more than six (6) full time employees.
2. Hours of operation to be from 6:30 a.m. to 4:30 p.m., Monday through Friday, 9:00 a.m. to noon on Saturday.
3. Sign per Developmental Variance.
4. No outside storage of product or inventory related to business in areas not designated for outside storage on site plan.
5. All necessary building permits to be obtained by Elkhart County Building Department for the new improvement to be constructed.

6. No additional accessory building or additions to the existing accessory building shall be constructed on the real estate without prior written approval of the Elkhart County Board of Zoning Appeals.
7. Evergreen screening maintained on West and North perimeter of outdoor storage areas shown on site plan.

A roll call was taken and the motion was approved unanimously.

After Mrs. Prough asked if they want to include the revised site plan that was submitted today, Mrs. Wolgamood amended the motion to include the following condition:

8. Approved in accordance with the site plan submitted (Petitioner Exhibit #2).

Mr. Miller seconded the motion, which then carried with a unanimous roll call vote.

Mrs. Wolgamood then moved that the request for a Developmental Variance to allow the total square footage of accessory structures to exceed the square footage in the primary structure be approved in accordance with the revised site plan submitted today. Mr. Miller seconded the motion and the motion passes unanimously.

A final motion was made and seconded (Wolgamood/Miller) that in accordance with the Staff Analysis, the Board approve the request for a Developmental Variance for a sign to exceed the total square footage allowed. A roll call was taken and the motion carried unanimously.

15. The application of **Kevin Martin/Martin Animal Bedding, LLC** for a renewal and amendment to a Special Use and site plan for an agri-business for processing wood fiber waste material into livestock and poultry bedding (Specifications F - #56) on property located on the Southeast side of SR 119 and CR 36, 225 ft. East of CR 17, common address of 21918 SR 119 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 #21918SR 119-110919-1*. Mrs. Prough submitted two letters in opposition to this request from Regina Goodman and Lynda Scott *[attached to file as Staff Exhibits #2 and #3]*. She indicated that the Board and Mr. Sloat have copies of these letters. Concerns expressed in the letters include the type and amount of waste, odor, the potential for fires, dust, noise, groundwater, safety, respiratory health, hours of operation, and truck traffic. Also submitted with Mrs. Scott's letter are photos which illustrate the piles of waste on site, damage to the building from a recent fire, and the dust created from this operation.

There were fifteen (15) neighboring property owners notified of this request.

Present representing the petitioner was Attorney Loren Sloat, 102 Heritage Parkway, Nappanee. Mr. Martin is requesting to renew his existing Special Use permit for an agri-business for processing scrapped engineered wood into animal bedding. This permit was originally approved in 2008.

Mr. Sloat submitted a copy of his PowerPoint presentation to the Board *[attached to file as Petitioner Exhibit #1]*. Included in the information is the original petition application submitted in 2008, and the Staff Report dated September 20, 2008. He explained that the petition was approved based on a list of eight conditions, which he reviewed with the Board at this time. Mr. Sloat noted that one of the conditions stated that the operation had to be designated by a certified site plan, but the staff records indicate that Larry Harrell, previous Zoning Administrator/Building Commissioner, waived that requirement. He compared the 2008 Staff Report with 2011 Staff Report, which he said is substantially the same other than Condition #6.

The 2008 report indicates renewal by the staff rather than by the Board of Zoning Appeals in the 2011 report. Another condition was that if a valid complaint was received by Code Enforcement, it was to be brought back to the Board. Mr. Sloat has represented Mr. Martin since 2008 and to his knowledge this is the first time he's been back to this Board. He noted it is not because of a complaint, it is for the renewal of the Special Use permit and to update the site plan.

The Staff Report made some reference to complaints that have been received by Code Enforcement regarding dust, noise, traffic and days and hours of operation, without any specific facts being provided. This resulted in the staff recommendation for denial. The basis of Mr. Sloat's concern is that during this three year period of time, Mr. Martin has operated on a premise that this was a use and that he needed to comply with conditions that were imposed, which he has been attempting to do. The staff records show that during that period of time, there was considerable conversation back and forth between the Code Enforcement staff and Mr. Martin. He indicated there was also correspondence between the staff and IDEM as Mr. Martin was seeking his permits from IDEM. Most of those comments had to do with dust, and he noted there was limited reference in the file regarding noise, traffic or hours of operation. His concern is if there was a sufficient amount of concern warranted or exhibited by those complaints, it probably would have been more appropriate to have been brought back before the Board to address the issues as they occurred rather than recommending denial for a renewal. He indicated they have had a good working relationship with the staff, but he's concerned this is a pretty grievous action to take to deny this renewal when Mr. Martin has been cooperating with the staff on what needs to be done to achieve compliance.

Since 2008, Mr. Martin has made an effort to make a livelihood and support his four boys while teaching them how to conduct a business. Up to the point of 2008, he was a dairy farmer and did this operation on the side. Mr. Martin can only do things so fast and it also involves money. He has sold his dairy cow herd and concentrated on grinding material and making bedding. He has installed a fire suppressant system as required by the conditions, which is a 2,500 gallon tank that sits outside of the building. It has an auto fill feature on it, so you can draw water out and it pumps water out of the well to keep it full. It has been used and has been very effective. He has had a fire over the last couple of years, which is something that is going to happen in these types of operations.

Mr. Martin has hired Ergonomic Solutions, and Mr. Sloat indicated that Melissa Lehman was present in the audience. The petitioner has applied for his permits through IDEM and he has obtained an air quality control permit that is good through June 30, 2015. He also obtained a solid waste disposal permit which expires on March 1, 2016. Mr. Martin has incurred significant costs for filing fees, professional fees and fees for obtaining the permits, but he has gotten them. IDEM has required the petitioner to improve his staging area so he has concreted a 200 ft. long x 50 ft. wide x 6 inches thick area. It was noted that this cost the petitioner nearly \$50,000, but he has done that to try and conform and be responsive to the imposed conditions. The petitioner has also raised the trusses on the end of the building to provide better ingress/egress for his equipment to access the building. The staging area was then pointed out on a large aerial map that he submitted to the Board *[attached to file as Petitioner Exhibit #2]*.

Through Mr. Martin's contacts with Ergonomic Solutions, he hired an engineer in Ligonier to work with him on a detailed site plan. The permit expires in November and Mr. Sloat wanted to have a new site plan on file before that date showing the actual dimensions of the

structures, where they operate and how they operate. The petitioner would like to get the Special Use renewed so he can continue to proceed with meeting the rest of the issues.

The biggest issue according to Mr. Sloat is the dust, which they do acknowledge, and are trying to do all they can to control that. There isn't a lot of dust created when the trucks come in and unload, but there is some dust when they push the material down to put it into the grinder. The most dust is created when they load the trucks to take the bedding out to the farm, and Mr. Sloat went on to explain that process. He said the petitioner would like to build another structure at the end of the existing structure that would allow him to load the trucks inside and contain the dust. It has been suggested that Mr. Martin put in a dust collection system, but their concern with that is that no dust collection system is going to collect 100 percent of the dust. Part of the problem with the dust is the wind, and part of the problem with the complaints is their hours of operation.

Mr. Sloat explained that he went back to the first of January on the weather website to gather wind data for the 16th day of every month. He submitted a copy of this data to the Board *[attached to file as Petitioner Exhibit #3]*. Generally in the morning, he said it is pretty quiet, but as it starts heat up outside, the wind starts to pick up. As the day starts to cool down at 2:00 or 3:00 in the afternoon, it tends to quiet down again. In an effort to control dust, he said the petitioner has tried to grind at times that are more conducive to the wind patterns, and that's consistent with what he has been talking about with IDEM. He then acknowledged that Mr. Martin should probably have come back to the Board to adjust his hours so it was consistent with what he is doing, which is what he would like to do today. They would like to adjust the hours of operation from 7:00 a.m. to 7:00 p.m. to allow him more time to work. If they aren't working during the heat of the day, he said the dust will be minimized. However, he said it will take them a while to construct the proposed building as they have to design it, obtains bids and then have the financing.

Mr. Martin tries to do this grinding consistent with the wind patterns or when it is not windy to avoid an impact on his neighbors. The neighbor most affected by the dust is the neighbor who lives to the east of Mr. Martin. Mrs. Prough provided pictures earlier of this neighbor's car with dust all over it, which he does not deny. To be fair to the neighbor, Mr. Sloat informed the Board that Mr. Martin had the neighbor's property appraised and then sent her a letter offering to buy her property. He indicated that he still has heard nothing from this neighbor. If the petitioner could buy that property, he said they could eliminate one of the complainants and improve the traffic situation. Mr. Sloat reported that he has spoken to Commissioner Mike Yoder and the Elkhart County Highway Department regarding this situation. He feels that CR 36 should be changed by eliminating the intersection of CR 36 and SR 119 making it a perpendicular corner. Once CR 17 is completed, he said it will only enhance the number of people that think there is an exit ramp off of SR 119, but it will only go to CR 38. People currently come around this corner very fast and the petitioner cannot alleviate any traffic issues unless they are able to purchase the neighbor's property and have additional time to deal with the issues.

The petitioner held an open house recently and invited all neighbors within 300 feet to come and voice their opinions and/or concerns, but only two people showed up. Neither one of them had any major problems and they understand that dust is something that goes with this type of operation. They also understood that the petitioner is trying to run a business, support his family and he is providing a good service to the county. Mr. Sloat feels this business is certainly

something that Elkhart County needs, as you don't want all of this material to end up in the landfill and farmers need the bedding. The petitioner has about 80,000 head of livestock that depend on this bedding. He brings in 25 to 30 loads of product a day and then he grinds it up and hauls it out by semi or straight truck. One of the requirements of the IDEM permit is that all material that is brought in has to be ground up each day; therefore, they cannot store the material on site.

Mr. Sloat explained that there has been a lot of dust during the construction on CR 17 and some days, it's hard to tell where the dust is coming from. When that construction is completed, they feel this is a good place to have an operation like this because it is in close proximity to Goshen, it's on a state highway, and it's within several hundred feet of an intersection with an arterial county road that goes straight over to Elkhart. If you go the other direction on SR 119, you have a straight shot into Wakarusa and Nappanee. Mr. Sloat feels this is an ideal location as most of their material comes from RV factories.

In regard to complaints on noise, Mr. Sloat indicated there are two sources of noise; the grinding operation and the pay loaders moving the material around. According to the neighbors who showed up at the open house the slamming noise of the roll-off trucks is the most annoying. He then indicated that Mr. Martin has talked to the drivers and asked them not to do that. He reiterated that they do have an air quality control permit and that IDEM is satisfied with the operation. They are in a difficult situation as they do not want to violate the IDEM permit, but if they can't get everything being brought in ground before 5:00 p.m., they will violate the hours of operation stipulated in the Special Use permit. Mr. Sloat said he was not aware these issues were so serious until he filed the renewal and received the Staff Report.

Mr. Sloat informed the Board that they have a couple of options. The first would be to follow the staff's recommendation and deny this renewal. The petitioner is reliant upon the Board's approval of this renewal and has invested thousands of dollars in this business during the last few years. If the request is denied, Mr. Sloat indicated there will be a lot of scrap wood out there without a place to go. There will be a lot of people who rely on this business that will be out of a job, and a lot of animals will go without bedding. In addition, there will be a lot of wasted dollars that Mr. Martin has invested so he doesn't feel that denying the request would be a very good choice.

The other option would be renew the Special Use with the same list of conditions. The petitioner could then work with the staff to try and work out any issues in dealing with the complaints and dust. He understands the concerns about dust and said they are sensitive to that, so he felt a better option today would be to table the request for a reasonable period of time to allow everyone to take a serious look at this. Since the Special Use expires next month, he said they could renew it conditionally subject to a permanent renewal in sixty (60) days. This would give the petitioner time to work out the issues and come back with a plan for a proposed building. If they reappear before the Board and are denied, he said they will be faced with the decision of either packing up the business or filing for a PUD, which will be very costly. He then suggested they have a work session with the staff to decide how to proceed, and then come back to the Board in December or January.

Mr. Kolbus pointed out that ten conditions were listed in the information Mr. Sloat submitted in his PowerPoint presentation (Petitioner Exhibit #1), but there was a list of nine conditions in their packets. Mr. Sloat explained that after the application was filed, there was some question on loading and unloading, and storing of scrap material in the staging area so he

split that into two conditions. He then submitted the revised list of ten conditions to the Board members at this time *[attached to file as Petitioner Exhibit #4]*.

Mr. Hesser questioned Mr. Sloat's comment that the condition of requiring a certified site plan imposed in 2008 was waived by a staff member. Mrs. Wolgamood said Mr. Harrell waived that condition, but it's her opinion that a zoning administrator can't waive a condition of the Board.

Mrs. Wolgamood asked how many in the audience want to speak regarding this petition and four people raised their hands.

John Feder, 3217 Wakefield Road, Goshen, was present in opposition to this request. In regard to the comment about the neighbor who seems to be the most adversely affected by the dust, Mr. Feder assured the Board that those comments were not fabricated. The second thing that he wanted to mention was the offer of purchasing the property, but he pointed out that Mr. Sloat did not mention the amount of that offer. He appreciates the efforts involved in this, but he is not aware of any improvements in the conditions at this business location. He said this is not an issue that has just transpired in the past year as these issues have been going on for a long time.

Mr. Feder said when he reads the newspaper regarding what VIM has gone through, he asks himself if everyone is being held to the same standard. It appears that this operation is being run in a facility that is not completely enclosed and there is no dust collection system on site. He appreciates their opinion that they don't find dust collection systems to be 100 percent perfect, but it does raise a question as to what efforts are really being taken to mitigate the dust and some of the other problems that are going on.

Mr. Homan noted that Mr. Feder may be familiar with some of the people who wrote the letters in remonstrance. He particularly asked about a comment that was made in a letter from Regina Goodman. Her accusation is that there is not only disposable wood waste, but also disposal of medical waste and other pollutants on the property. He asked Mr. Feder if he can offer any evidence of that. Mr. Feder said he cannot offer any evidence as he does not know Ms. Goodman, but he is familiar with what she has referenced.

Amos Weaver, 69594 CR 117, Goshen, was present in favor of this request. Mr. Weaver said he realizes that dust is a problem, but this grinding has to be done and he asked where a better location would be.

Melissa Lehman of Ergonomic Solutions, 6560 S 700 W, Topeka, was present in favor of this request. Ms. Lehman explained that she has been working with the petitioner and helping him come into compliance with all of his item requirements. She has been working with him for about a year and she assured the Board that he is working very hard to understand what is going on at the state level and to do whatever he can to comply with that. She also indicated that he has spent a lot of money pouring concrete, making improvements, building the berm, creating a storm water plan, a storm water system, and he has been doing a lot of work on the site. Until she became involved, she said all of the requirements were new to Mr. Martin and he did not understand them. She then reported that he is in compliance at all levels, including filing his quarterly reports.

Mrs. Wolgamood asked if there are state regulations for dust control. Ms. Lehman said yes and explained that is through the air permit. When asked if she is involved with that air permit, Ms. Lehman replied yes and verified that he is currently in compliance with the air permit. She then explained that they are in the process of working on a revision. The state

compliance inspector and other regulatory people met regarding this permit a few months ago to decide exactly what they needed to do and what reports needed to be filed.

When looking at the photographs submitted by the staff as evidence, Mr. Homan said you can see dust billowing out of the building. He asked what the compliance standards are and whether they do air testing or if it's done by visual inspection. Mrs. Lehman said with the air permitting, they are much more geared towards the exhaust out of engines, loaders and that type of thing. For dust, it is mainly a visual inspection. The petitioner has built the large berm and has the large trees in, so they are trying to keep the dust on site as much as possible. The grinding is supposed to be happening inside the building, but due to fire hazards and the combustibility of what's going on, it's really hard to close it off. In general, she said they are visually supposed to be monitoring the dust and if it gets windy outside, they are to shut down. She said the wind usually dies down in the evenings so that is a good time to grind, but with the conditions imposed by the Board, he is restricted from grinding at that time.

Mr. Homan asked if her understanding was that IDEM would prefer an open building to a closed building for grinding and Ms. Lehman said they want everything to be under a roof. They have no preference to the sides, but it has to be roofed. Another problem they have been struggling with at Mr. Martin's property is keeping everything under the roof. They have been pouring more concrete and they would like to possibly add an additional storage building so there's a place to get everything inside and under roof. However, she clarified that is not from a dust concern, it relates more to storm water and what can have rain on it.

Mr. Miller asked if there is no air particulate standard for this specific operation. Ms. Lehman said they have a calculated loss written in Mr. Martin's permit, but she said there is actually no way to measure or monitor it.

Mr. Miller noted that the wind data provided by Mr. Sloat indicates that the wind patterns are fairly consistent between an 8 and 14 mph southwest wind at all times. He questioned whether a "gust" is beyond that. Ms. Lehman said it's all visual with dust leaving the site. If there's a lot of dust leaving the site, then Mr. Martin is supposed to shut down.

Mr. Campanello asked if there are any existing operations in the area that handles these issues differently. Ms. Lehman said there used to be a few other operations similar to Mr. Martin's, but they were not functioning under the rules and they were all shut down. She said this is part of the reason why Mr. Martin has been really busy running big capacity and trying to do more work than what he's really set up to be able to do at his site. Now that VIM is operational again and trailer factories are starting to not be as busy, she feels the petitioner will be able to have a more manageable operation. She said there are not a lot of other sites permitted like this because it takes a lot of money to have an air permit, solid waste permits and to keep in compliance at the state level. She then explained that she didn't have a lot of comparable information for the Board because this isn't very common.

When Mr. Homan questioned if VIM is operating in an enclosed four sided building, Ms. Lehman said she doesn't work with VIM. She explained that she works with farmers in handling manure nutrients mostly, but she does have a good relationship with IDEM in working through these types of situations, which is how she became involved with Mr. Martin.

Arthur Zimmerman, 67738 CR 13, Nappanee, was also present in favor of this request. Mr. Zimmerman explained that he is a farmer and he uses this bedding. He said they must have bedding for their cattle to keep the environment clean and eliminate potential contamination of milk and ice cream.

Mrs. Wolgamood asked Mr. Zimmerman how long he has been a farmer and he said he's been in the dairy business for 45 years. When she questioned where he purchased his bedding prior to receiving it from Mr. Martin's operation, Mr. Zimmerman said the bedding used to be available through waste from trailer factories and he purchased it directly from a hauler. He said it was already in shaving form so they didn't need to grind it. Today, however, that is not as available because of the economy and there are now other uses for wood shavings.

Mr. Zimmerman said the petitioner has spent a significant amount of money in trying to come into compliance with IDEM. He noted that Mr. Martin has elements such as wind to deal with that he has to work around, but at the same time he has to have the property cleaned up. He also has to deal with repair time when machinery breaks down so he cannot work solid all day long even though the wind is in his favor.

Also present in favor of this request was Merlin Miller, 61852 CR 35, Goshen, who said he also purchases animal bedding from Mr. Martin. He manufactures a wood fuel pallet, and typically when you use that, he said you want a clean fiber. He explained that in the past, the clean fiber (wood shavings) was used as animal bedding, but today they can use the wood fiber to heat homes. He said the farmers they normally service would be looking for animal bedding, and with the product this business is providing, they are still able to service the farmers they have taken care of in the past.

When Mr. Homan asked if he has a grinder, Mr. Merlin Miller said they do a small amount of grinding.

Dan Plant with Soil Solutions, 29861 Old US 33, Elkhart, the former VIM site, was present in opposition to this request. Mr. Plant explained that Soil Solutions got into this industry approximately two years ago. By trade, they are considered waste handlers and he said they handle a lot of pharmaceutical and bio-solids waste that they land apply through permits with IDEM. They have a good relationship with IDEM and he understands this is a difficult and expensive business.

When his company was purchasing the assets of VIM, Mr. Plant said they operated with the understanding that everyone was following the same guidelines. They have an overhead of several millions of dollars in protecting the environment, human health and the surrounding neighborhood, and he asked how they can compete with Mr. Martin's business. He respectfully disagreed with Mr. Martin's notion that a bag house is unneeded because there are a lot of bag houses you'll see when driving around. They spent \$960,000 on their bag house, which they were required to purchase in order to stay in compliance. In addition to IDEM, he said Soil Solutions has had to deal with the EPA, the FPA for fire, and OSHA due to the number of employees they have. He said it's his understanding that Mr. Martin is only required to deal with IDEM.

Although Mr. Martin has an air quality permit, Mr. Plant does not feel he is operating within the guidelines of the permit because they increased the size of their equipment. According to IDEM, the operation must be enclosed in the building unless you can demonstrate that you are protecting the environment as good or better than what an enclosed building would. There are fugitive dust laws and he said dust is not supposed to go over your property line.

Mr. Plant does not feel the argument that this would all be going to the landfill is a viable argument because there are other operators. His company would take the product, and if they couldn't handle the volume, he said there are companies in Michigan, LaGrange and Ft. Wayne.

With regard to medical waste, he said he spoke with someone who worked for the company that produced this waste and was told they dumped their tanks here.

With regard to improper disposal of solid waste, Mr. Plant indicated that he had photos of big chunks of perforated tile being disposed of in Mr. Martin's field, but those photos were not submitted at this time. He pointed out the area on the aerial map where this occurred, but when he drove by two weeks later, he said the area was planted in crops.

Mr. Plant then asked the Board to not take the neighbors for granted who are not present for this hearing. He spoke with one of the neighbors who sent a letter, and she didn't want to attend the hearing because she's afraid of the repercussions from the Martins.

Mr. Plant said the only way his company can compete with this business would be to shut down their business, purchase a field out in the middle of nowhere, and start another business that would not have to comply with the rules. Now that there is another option, he said there are distributors who refuse to buy from Mr. Martin because they know he is not in compliance with the rules and they do not want to risk an accident. He also indicated that some of the haulers do not want to deliver to Mr. Martin either.

Mr. Plant does not have a problem with this business if it's just for grinding as a means for the needed animal bedding. However, he said Mr. Martin wants to be regulated as a farm, yet he operates as a commercial or manufacturing industry. He indicated that he has photos of the operation documenting non-conformity with the conditions imposed by the Board, but again those photos were not submitted. Mr. Plant then clarified that he was asked by a number of people to speak on their behalf today, which include neighbors and a commercial entity.

Also present in opposition to this request was Keith Goodman, 21520 CR 36, Goshen, the husband of Regina Goodman who could not be present at today's hearing. They live just east of the property in question and he pointed out his property on the aerial photo. Their concerns are with the heavy truck traffic on CR 36, which according to Mr. Goodman, starts as early as 7:00 in the morning. He said the trucks are literally driving by so fast that the residents' trash that is placed a few feet from the road gets blown over. He also said the intersection of CR 36 and SR 119 is completely filled with trash that blows out of the material that's being hauled in from the RV plants. He said this material blows as far as his property.

The constant noise is also a big issue. The conditions of the Special Use indicate the petitioner can only operate during certain hours, but Mr. Goodman said the neighbors know the business is operational from 7:00 a.m. to 8:00 p.m. They moved to this residential/agricultural neighborhood for a reason, and Mr. Goodman said it was not to be living next to an industrial facility.

Mr. Goodman said the problem with the dust has been discussed to great detail. If you live within a mile radius of it, you know it's a serious problem. The dust gets everywhere and he said they cannot have their windows open virtually at no time during the year without it being a problem. The entire area is coated in dust, and he said the idea of doing all of this in an open ended building is ludicrous. He said the dust goes up in the air and it does not take much wind at all to create the problem you are seeing there.

Mr. Goodman suggested that the issue with medical waste originated with the petitioner's father, Carl. They are also concerned that the type of business the petitioner is operating is dangerous. He explained that there have been numerous enormous fires that had to have multiple townships called out to extinguish. One fire was as recent as August so it's not a question of if there's going to be a fire, it's a question of when the fire will occur.

Mr. Goodman appreciates the comments by the current operators of the VIM facility because he doesn't believe Mr. Martin is being held to the same standard as other businesses are required to do. In order to operate this business safely, it's going to require a significant investment into property. He then pointed out that there is over a million square feet of commercial property in established industrial parks that is currently available at rates and prices that are probably the cheapest ever. He feels there are better facilities and safer locations to have an operation such as this.

Mr. Goodman does not agree with the comment that they would like to have time to correct the issues and make it right. As an adjoining property owner of the Martin family for over 20 years, he said there has always been that promise they are going to do it better tomorrow, and all that happens is that it gets shifted from one part of the property to another part of the property. Mr. Goodman said this business doesn't belong where it is.

When the permit was originally granted in November 2008, Mrs. Prough said there were no conditions placed on it regarding dust, noise or traffic. However, there were conditions that he had to comply with including the installation of a fire prevention system, providing a site plan, and working with IDEM. She said she started working with Mr. Martin in May 2009 regarding the compliance of the conditions.

Mrs. Prough went on to say that she did not receive any calls regarding complaints on the property until April 2010, which was a result of the Martins going through their permit process. The company who was processing the permit sent letters to the neighbors, and that's when she received the first call. At that time, they were addressing issues such as dust, traffic and noise, which was not a condition of the Special Use permit so it wasn't something Code Enforcement could regulate. In August 2010, she said she started getting complaints about the petitioner being out of compliance with the staging area, and the days and hours of operation. She communicated that to both Mr. Martin and Mr. Sloat, and she said she tried to work with them to get them through the permit process.

In May, Mrs. Prough said she told both Mr. Martin and Mr. Sloat that he needed to get the operation into compliance or amend the Special Use permit. She indicated to them that he could not continue to operate the business in non-compliance. She then reported that she has 14 pages of notes since this permit was granted, so for Mr. Sloat to be surprised that he suddenly got a negative recommendation, she doesn't feel is a fair representation. Mrs. Prough said maybe she should have brought this back before the Board right away, but their policy has always been to try and work with the petitioners.

In rebuttal, Mr. Sloat said he would welcome the Board to read Mrs. Prough's 14 pages of notes and the e-mails that the former Director of the Planning Department, Bob Watkins, sent to IDEM. He thinks the Board will find that about 80 percent of that correspondence is between the staff and IDEM, and not between Mr. Sloat or the petitioner. If the issues are as serious as what they now find it to be, Mr. Sloat said he would have much preferred to have been cited for non-compliance in 2009 so he could have dealt with that, than receiving a negative recommendation now because he didn't cooperate.

With regard to the medical waste that was brought up, Mr. Sloat explained that Bayer Medical in Elkhart had a permit to do what they did well before 2008. He said nobody like it, but it has nothing to do with this application today.

Mr. Sloat acknowledged that there is an issue with dust. He is not here to debate the merits of competition as this isn't the place to do that. Everybody is operating within the

guidelines that they have, so he feels it is only fair and appropriate that the Board take some time to review the file, if they haven't read it already, and allow them to talk with some of the remonstrators.

All Mr. Martin is trying to do is provide a service to the community, make a little money to support his family, and provide a product to the farmers. Mr. Sloat said the RV industry has change a lot over the last four or five years, and they are doing what they can to comply and they will continue to do that. He indicated that he looks forward to working with the staff on working out these issues. He then suggested tabling this request for sixty (60) days to give them a chance to do that.

Mr. Hesser is concerned that the existing issues cannot be resolved without additional information being received through a public hearing; however, he realize that the public hearing can always re-opened.

Mr. Hesser acknowledged that the petitioner has invested a lot of money and is reliant upon the Special Use permit, but he feels that when you do that, you also have to spend a lot of time making sure that the conditions are complied with. The Board has dealt with issues like this in the past with the grinding operations and he said they are difficult, which is part of the reason why the Board frequently grants these requests on a temporary basis.

Mr. Hesser expressed a concern that the Board does not have in their packet a documented list of violations like they've had in other cases. If it was shown that he is not following the conditions of the approval, he has no problem with not renewing the Special Use, but he thinks there is a process to go through to do that and he's not satisfied that that has been done. Mr. Kolbus advised that it is a three-year permit and there is nothing that guarantees it will be renewed, even if they met all of the conditions. Mr. Hesser said he understands that and has no questions about the legality of what they can do, he is talking about a fairness issue.

If this is continued, Mr. Homan said he would be interested in reviewing more about the original petition and the representation by the petitioner, including the minutes from the original approval in 2008. He recalls a photograph of a truck in the building and his recollection was that everything was happening inside the building. It seems like things are being done outside the building, and if that's the case, he feels different about it.

Mr. Miller feels this business is industrial and he cannot make a decision on this today as he has not heard any evidence of how to mitigate the dust and noise.

Mr. Campanello does not understand why this business does not have a long-term plan for dust already in place. He felt the petitioner should have had a plan for dust control before they came before the Board today for a renewal. Just because a professional company says they are in compliance with IDEM regulations doesn't necessarily mean anything. Even in years past, he said the RV companies have always had to have some kind of dust containment system in place.

The public hearing was closed at this time.

Mrs. Wolgamood commented that she doesn't feel sixty (60) days would be long enough for them to come back with a plan. She said the petitioner has not given her any reason to renew this Special Use.

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, amended as follows:

- 1) Will not be consistent with the spirit, purpose and intent of the zoning Ordinance. The agri-business has not operated in compliance with the conditions of the Special Use permit granted in November 2008: staging area, days and hours operation, stockpiles outside of the designated area on the approved site plan, no dust control, little traffic control;
- 2) Will cause and has caused substantial and permanent injury to the appropriate use of the neighboring properties due to fugitive dust, truck traffic, noise, and safety issues. Photographs have been submitted of dust on everything, there has been testimony that there really is no way to regulate the dust control when you have it outside the building other than visual and don't do it when the wind blows;
- 3) Will not substantially serve the public convenience and welfare as the surrounding area is developed residential/agricultural;

and based on these Findings, this request for a renewal and amendment to a Special Use and site plan for an agri-business for processing wood fiber waste material into livestock and poultry bedding (Specifications F - #56) be denied by the Board.

Prior to voting on the motion, Mr. Hesser commented that he does not feel this Board has the correct information to make a decision today. Mr. Miller said he feels obligated to give the petitioner time to bring solutions to the Board.

A roll call vote was then taken and the motion was carried with the following results of a roll call vote: Homan – yes; Miller - no; Campanello – yes; Wolgamood – yes; and Hesser – no.

16. There were no items transferred from the Hearing Officer.
17. There were no audience items.
18. See page 3, item #9 for discussion regarding *Commitments/Rules of Procedure*.
19. The meeting was adjourned at 1:24 P.M.

Respectfully submitted,

Kate A. Keil, Transcriber

Laura Beltz, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary