

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 16<sup>TH</sup> DAY OF AUGUST 2012 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: Tony Campanello, Meg Wolgamood, and Doug Miller. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Kathy Wilson, Office Manager; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Wolgamood/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19<sup>th</sup> day of July 2012 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Campanello/Wolgamood*) that the legal advertisements, having been published on the 6<sup>th</sup> day of August 2012 in the Goshen News and on the 4<sup>th</sup> day of August 2012 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

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

5. Mr. Mabry informed the Board of a letter of postponement for the Eberle case, but he stated he would address same at its scheduled time on the agenda. There was no one present in the audience for the petition at this time.

Mr. Mabry stated that due to having four Board members present today, if there is a tie vote, the item would be tabled until the next meeting for a final decision which was confirmed with Mr. Kolbus.

6. The application of *Daniel Lee & Betty Dean Ganger* for a 1,357 sq. ft. lot coverage Developmental Variance to allow for the construction of a 3,000 sq. ft. single family residence (Ordinance allows 1,643 sq. ft. maximum) and for a 40 ft. Developmental Variance to allow for the construction of said residence 10 ft. from centerline of the right-of-way of E. Indiana Lake Drive (Ordinance requires 50 ft.) on property located on the West side of E. Indiana Lake Drive, 620 ft. North of Church Road, in Washington Township, zoned R-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #E INDIANA LAKE DRIVE-120723-1*.

There were four neighboring property owners notified of this request.

Dan Ganger, 50689 CR 23, Bristol, was present on behalf of this request. Mrs. Wolgamood indicated the Board had a letter in front of them in opposition which is submitted at this time [attached to the file as Staff Exhibit #1]. Mr. Ganger was given a copy of the letter and asked about

reading the letter and responding after any remonstrance. Mr. Miller indicated that would be fine.

Mr. Ganger stated that the East Indiana Lake Road right-of-way is actually on the west side of the road. So, there is 1,000 sq. ft. in the road right-of-way as it is on the survey that was submitted with the application. The Board indicated they have copies of same. Mr. Miller stated it is showing that the actual asphalt is not in the dedicated right-of-way. Mr. Ganger indicated when looking at Figure 4, the west edge of the road is actually on the east edge of the road right-of-way. He further stated the land that is there that the road is not on but is designated as the road right-of-way, which is 1,000 square feet, will likely never be the road.

Mr. Ganger went on to say the parcel on the east side of Indiana Lake Road for the septic system will be approximately 2,000 square feet that will not be needed on the west side of the road. He pointed out in typical lot variances, he would need to address the septic system on the property with the house, but that is not the case in this situation. Mr. Ganger said storm water run-off will be addressed in the design of the foundation of the structure. He stated he has not taken that step yet because he wanted to get approval on his petition before he invested more money. He reiterated that any storm water issues and concerns of the engineers will be addressed in the construction of the home.

Mr. Campanello asked Mr. Ganger about the square footage of the residence to the south. Mr. Ganger indicated it was two stories with 1,250 square feet on each level. In looking at the plat, Mr. Miller stated the lots are all numbered and on both sides of the street. He asked if they were on the same deed. Mr. Ganger stated they are on two separate deeds. He reported Mr. Burrow had talked to them about doing something to encumber both lots so they could not be sold separately. Mr. Ganger indicated they have talked to County Highway engineers about going under East Indiana Lake Road with pipe for septic which was approved, and the Health Department has been contacted and has also approved the septic being on the east side of the road.

Mr. Miller asked Mr. Ganger if they are able to maintain the side yard setbacks on the north and south to which Mr. Ganger responded yes. Mr. Miller further asked if they are in compliance with the rear yard setback from Indiana Lake. The petitioner indicated yes. Mr. Miller asked about the proposed 3,000 square feet being on one floor. Mr. Ganger stated that would also include garage and any deck area, but it would be on one floor. He stated it would be 45 feet north and south and 75 feet east and west. Mr. Miller asked if it was a rectangular plan as delineated on the plot plan. Mr. Ganger stated there will be off-sets, and the floor plan is not finalized. He stated the rectangular shape as indicated on site plan is what they are asking for from talking to builders, and it will include deck areas and a garage. He further reported the 3,000 square feet will include to the extending part of the structure or eaves.

Mr. Hesser asked if this was a one story structure. Mr. Ganger indicated three stories but as some of it will be built into the hill, it will not be a full 75 feet depth on all three stories.

Mrs. Wolgamood asked if Mr. Ganger owns the parcel to the south. He indicated it is his father's property. Mr. Miller asked about the proposed length of the driveway from the garage overhead door to Indiana Lake Road. Mr. Ganger indicated he thinks it is approximately 18 feet on the south corner to the asphalt. Mr. Miller then asked how many lots are to the north to the end of the street. Mr. Ganger said there are three lots as the street ends at the north end of Lot 2. Lot 1 is accessed from County Road 23.

Mr. Miller asked about the total height from ground level to the peak of the roof that is proposed. Mr. Ganger indicated it is 30 feet. Mr. Campanello clarified that the 30 foot measurement is at the lowest grade. Mr. Ganger added that on the road side, it will be the normal height of a garage.

Mr. Campanello asked if the adjacent neighboring property had a garage. Mr. Ganger indicated the garage is on the east side of road, however, they desire to have a garage attached to the house.

Mrs. Wolgamood stated she was curious about the calculation of how large of a house could be constructed if you were in compliance with the lot coverage of this particular lot. Mr. Ganger said they are asking for a variance of 1,357 square feet and the ordinance allows for 1,643 square feet. He reported the subdivision was platted in the 1940's so the lots are small, and he does not think the zoning ordinance was in existence then.

Mr. Miller asked how much higher Mr. Ganger would perceive his ridge line to be than the neighbor's house. Mr. Ganger said he would guess it would be in the range of six to eight feet higher.

Tom Zimmerman, 55775 CR 33, Middlebury, was present in remonstrance of this request. He stated he owns the property to the north being Lot 2, on lake side and also owns Lot 3 directly across Indiana Lake Road. He said he is certainly not against the Gangers building a house on this site. He further stated his main issue is with the location of existing road versus where the right-of-way is. The last two or three property owners to the north have to drive on somebody else's land to get to their homes or property. Even though it is their right, if those property owners fenced their property in, there would be no access to the properties further north. He indicated he believes the county needs to correct the situation by either reconstructing the road within the current right-of-way or at least negotiating property exchanges to offer the property owners a road that is on county property and not on private property. Until the situation is rectified, he does not believe a variance should be granted. He also stated sewer is going to be another big issue on this lake eventually. He feels the right-of-way becomes pretty important for the sewage installation.

The second issue that Mr. Zimmerman brought up is the size of the house. In his opinion, he stated a 3,000 square foot house on a 50 foot lot is too big. He indicated if a precedent is set approving this, then every 50 foot lot along this lake will be able to be approved in the future. He feels the ordinances were established for a reason such as proper drainage down the steep hillside, air circulation, view of lake, and to maintain the residential character of the lakeside community. He stated if this house was constructed according to ordinance, the variance for the road would not even be an issue. He mentioned he understands the challenges of this site, but stated it can be done and cost to build should not be a factor in the decision whether to approve this petition. He submitted a couple of photos *[attached to the file as Remonstrators Exhibit #1]* to show the width of his truck in the narrow roadway. He stated they are unable to get snow removal service because the road is too narrow, and there is no place to turn around.

John Ganger, 50573 E. Indiana Lake Road, Bristol, was also present in remonstrance of this request. He stated he owns house pictured in Figure 2 and the lot beside it to the south and two lots on east side of Indiana Lake Road. He stated all lots are 50x100 presumably. He agreed with Mr. Zimmerman that E. Indiana Lake Road and the right-of-way needs to be corrected with either an easement to cross present lots or the county needs to change the roadway as it is laid

out by the surveyor. In the 40 years that he has lived there, he stated they have been using the roads in this manner. He believes it should be addressed before there is a house built on that lot. He said the other issue is the sewage capabilities. As the front of his house is 50 feet from the water, he is not allowed to put septic there so he pumps sewage to another lot similar to Dan's proposal. The Health Department approved this but he stated he has the room to do it. He further stated with the size building that is proposed, there is not 50 feet to put a septic tank on the west side of that proposed house, and there is no room on the sides. He went on to say the drawing that was given to the Health Department does not show a footage amount from any of the adjacent wells or from where he is going to put septic tank, or if he is going to pump raw sewage up to the septic on the east side of the road. Mr. John Ganger stated he has been told without these details a variance cannot be granted today.

In response to the letter submitted today, Dan Ganger asked if the Board had any questions for him about what was stated in the letter or if there is anything in the letter that the planners did not address. The Board members made no comments. Mr. Ganger reiterated that the septic would be on the east side of the road. He stated the septic tank would be at the bottom of the hill west of the property. He stated that was discussed with the planners and has been approved by the Health Department. When Mr. Ganger asked if the Board had a copy of the letter from the Health Department which he emailed to Mr. Burrow, Mr. Mabry indicated that he did not believe the Board members had a copy. Mr. Ganger stated he received the letter from the Health Department approximately two weeks ago. He commented that the county road issue is interesting. As he discussed this variance with the planners, he was told all of the properties to north and south would have to be in agreement to vacate that road right-of-way, and the County would not even pursue doing that to relocate the road right-of-way to where the existing road is. So, based on the planners' recommendation, he requested a 10 foot off-set from the right-of-way which would be equivalent to a zero off-set from the edge of the road right-of-way on the application.

Requesting a possible response from staff as well, Mr. Hesser questioned the proposed house setting right on the edge of the right-of-way being recommended by staff, but there being an objection to the size of the proposed house. He further asked with staff objecting to the size, would the 10 foot variance still be necessary. Mr. Mabry suggested if the building footprint variance were denied, it would result in almost a 50% reduction in footprint if he were to have to meet the 1,600 square foot residence requirement. If that were the case, there would be additional room to move house closer to the lake yet still have a decent separation from the lake. He further stated denial of the lot coverage could possibly eliminate the need for the 10 ft. variance. Mr. Mabry stated he does not know how that would impact the property. Mr. Hesser asked Mr. Ganger if he would still need the 10 foot variance if he were limited to a 1,700 sq. ft. house. Mr. Ganger said in order to put a garage on the west side of the road and not be in danger of having more storm run-off issues because of the slope of the hill, he would still need the variance. He further stated if you moved an additional 10 feet to the west, you probably drop another eight or 10 feet. He said he believes where they are now, the elevations at the west edge of the road right-of-way are approximately eight to 10 feet lower than the actual road. Mr. Ganger feels it would be a larger issue if the County were to relocate the road into the road right-of-way because either the road would be at a dramatic slope on the side of the hill, or they would

level it up causing more run-off issues than a structure built on that site as proposed. He did state that he believes Mr. Zimmerman is correct about when the sewer goes through in the future.

Mr. Miller asked for clarification that Mr. Ganger's driveway would be level with the centerline or top of the asphalt so he would be driving into the garage level to which Mr. Ganger responded that was correct.

The public hearing was closed at this time.

Mr. Campanello said the last thing he wanted to do is vote against a house being built on a lake but further stated he cannot vote for a house of that size when the ordinance calls for a smaller size house. In his opinion, it is also too close to centerline of the road. Mr. Miller expressed agreement. He also brought up the subject of getting emergency personnel up through there even though it is not the Board's problem to deal with. However, approval of this request would be compounding the problem. He agreed that he would like to see a house built there but perhaps there is a better alternative that exists.

Mr. Hesser added a comment with respect of 10 foot setback that he views these two requests together, and he cannot support the combined request. He added that he would strongly lean against giving the 10 foot variance. But if it were with a different site plan with different issues, he does not conclude that down the road as being something that might make sense. He stated he would vote against it because he believes the Board needs to look at the complete package.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Campanello*) that the request for a 40 ft. Developmental Variance to allow for the construction of said residence 10 ft. from centerline of the right-of-way of E. Indiana Lake Drive (Ordinance requires 50 ft.) be denied based on the following Finding and Conclusion of the Board:

1. Will be injurious to public health, safety, morals or general welfare. The proposed location of the residence will have a negative visual impact on traffic in the area and it will reduce visual impact on the view of the lake from adjacent properties.

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

A motion was then made and seconded (*Miller/Wolgamood*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that the request for a 1,357 sq. ft. lot coverage Developmental Variance to allow for the construction of a 3,000 sq. ft. single family residence (Ordinance allows 1,643 sq. ft. maximum) be denied. The motion was carried with a unanimous roll call vote.

7. The application of ***Mark One Investments, Inc. and Elk Land Investments, LLC*** for an amendment to an existing Special Use for a plant nursery in an A-1 district (Specifications F - #50) to allow for storage of pallets and racks and warehousing of semi trucks and trailers for transportation of plants, trees, and shrubs to Linton's Enchanted Gardens on property located on the Northeast corner of CR 14 and CR 19, common address of 20755 CR 14 in Jefferson Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #20755CR 14-120723-1*.

There were nine neighboring property owners notified of this request.

Kirk Linton, 20755 CR 14, Bristol, was present on behalf of this request. As indicated, he said they would like to have storage set up to house plants on the west side of their current poly-houses. He indicated they have a designated area where they load and unload plants to take to the garden center on CR 17. He said it is necessary for the movement of the goods to have pallets which are loaded and unloaded with a fork lift.

Mr. Hesser asked if this is outside storage to which Mr. Linton indicated that was correct. Mr. Hesser further inquired about any kind of driveway area or pavement in that area. Mr. Linton said it is a gravel drive and, using a pointer on aerial photo, showed entrance from south end of picture to up and around to proposed loading zone. He also indicated where the planted crops are located all around as buffer. Mr. Hesser asked about upper right hand corner of site plan indicating buffering. Mr. Linton stated it is existing at this time. Mrs. Wolgamood asked if there was a residence on the neighboring parcel. Mr. Linton indicated there is a residence which is owned by Marty Friend.

Mr. Campanello asked Mr. Linton to point out where the pallets are going to be stored and possibly the semi-truck parking which Mr. Linton did. In 1997, Mr. Campanello pointed out one of the conditions from the BZA was that all parking areas and driveway must be constructed and maintained with dust-proof materials and compliance was noted in 2009. Mr. Linton indicated he would use the same materials. Mrs. Wolgamood asked how long Linton's has been storing pallets there. Mr. Linton stated they have been using the pallets for approximately eight years. However, since they moved to their new location on CR 17, they have increased the need to move more plants as it is a larger location and the nursery has grown. He indicated when they first began 15 years ago, the buildings started on east property line and as they expand, they are working their way west.

Mrs. Wolgamood inquired as to the number of semi-trailers they have and if they are stored there 24 hours a day, seven days a week except when they are taken to the CR 17 location when loading and unloading. Mr. Linton indicated they usually work with four trailers. He further indicated because they are seasonal, they have heavy periods in the spring when getting product loaded up and moved. Mrs. Wolgamood said she understands their reasoning for not wanting to do plantings as screening, but she mentioned other types of screening such as fencing. Mr. Linton pointed out there is a visual break with the crops being there, and buffering is one thing that gets in the way of expansion. In his opinion, they have done a good job of visually enhancing the area with what is out there now. Mrs. Wolgamood further stated she does not disagree with that and feels Linton's has a good reputation. However, for the first time, she feels there is some unsightliness with the trucks and pallets given what this Board originally permitted. Her concern is if the pallets and semis are moved out to the county road because of the increased visual impact. Mr. Linton said they would not keep moving them out to CR 19. He stated the operation runs more smoothly if it is centrally located, and he is not proposing anything along CR 19.

Based on the site plan, Mr. Hesser indicated he sees a representation that it will be 500 feet from CR 14 and 640 feet from CR 19 and if it got closer on either of those fronts, it would be outside of the scope of the site plan. Mr. Campanello mentioned in the previous Special Use from 1997 nothing was mentioned in conditions either allowing or not allowing any kind of storage. Mr. Linton added in response to Mrs. Wolgamood's comment, they have made efforts to reduced the number of pallets closer to the number that is essential or necessary to work with.

Mr. Campanello suggested possibly using a poly-hut for storage of pallets as an alternative to screening. Mr. Linton reiterated that having circular access to everything keeps the flow smooth to get plants in and out. He feels he has probably reduced the number of pallets by 75% since they got the notice of the complaint, making the height of the stacks of pallets not as tall. Mr. Miller said the site plan indicates the pallets are stacked 6 feet high which Mr. Linton said is accurate. He submitted photos *[attached to the file as Petitioner Exhibit #1]*.

Mark Linton, 315 CR 17, was also present on behalf of this request. He stated he and his brother, Kirk, own 37 acres at this location, and the plan is to develop the entire area with poly houses. He said he believes this one anonymous complaint stems from a dispute with the neighbor, and no one has objected to the poly-houses. He indicated the storage area is in the center of the poly-houses. The closest neighbor, Marty Friend, and the Lintons have a great relationship. Mr. Mark Linton said Mr. Friend maintains Linton's website, Linton's planted and maintain screening at Mr. Friend's adjoining property line, and the Lintons even bought the property from Mr. Friend's family. He reported Mr. Friend's front yard is Linton's back yard. Mr. Friend's house sits at an angle overlooking Linton's property so Linton's have to respect that area.

Mr. Mark Linton indicated any fencing or planting for privacy would be in the way of their future development as each year they add additional poly-houses as they expand their growing facility. He said next year's crop will be field corn which is tall enough to block any stacked pallets, and as they continue to develop their greenhouses, the trucks and pallets will be hidden. He pointed out that this is not something they just began doing as they have been there for 15 years with no concerns. He indicated it has increased to a larger amount or quantity because the business has grown, and it requires more equipment to stock the CR 17 facility.

He stated they do not own the semi-trucks and trailers so they are not permanently located on the property. In order to fully stock the garden center in the spring and haul all the plants back in the fall for winter storage, they move 30 semi-trailer loads. As they are in the beautification business, he said they like to present their property in a positive way. He reiterated that Marty Friend has been the consistent neighboring property owner and has no complaints.

Ann Zimmerman, 53275 Bellhurst Drive, Bristol, was present in opposition to this request. She stated she owns the 14 acres of farmland to the east of the Linton property. In response to Mr. Mark Linton saying that they did not own any of the trucks, she stated she found on the internet that the Linton family owns both of the trucking companies that have been seen at property. She said their property is for sale. They are trying to sell their property as farmland and would like it to remain so. She indicated she feels with all of those semi-trucks going in and out, it is more of an industrial use. She is concerned about how it will affect the value of their property.

Mr. Campanello asked if all the land surrounding her property is farmland. She indicated it was. He commented that when crops are being harvested, large tractors and trucks are on the farmland as well. Mr. Miller confirmed that Ms. Zimmerman's property adjoins the Linton property.

In response to Ms. Zimmerman's comments, Mark Linton said that he does not know what information she is referring to, but they do not own any of the trucks and trailers, either personally or the business. He further stated Jim Shriner is the owner of the trailers and trucking

company that they use. He also mentioned the Zimmermans' realtor contacted him earlier in the week about purchasing the property as an extension of the Linton property.

The public hearing was closed at this time.

Mr. Campanello commented that it is all agricultural land around the Linton property, zoned A-1, other than residences. He further stated there was never anything in 1997 to say that they could not store or have trucks out there in any of the conditions imposed. He said he feels it is not a detriment to its agricultural surroundings as it flows with it. Mr. Miller reiterated that previous testimony from both of the Lintons is that eventually structures will encompass the center storage area. Mr. Miller expressed his agreement with Mr. Campanello about it being an agricultural area.

Mr. Hesser stated that he drives by that area fairly frequently, and would say he has generally not noticed problems. Mrs. Wolgamood said she has only recently noticed it, but she does not go out looking for things. She further stated when she did notice, she was curious about the pallets although she knows they use them as most nurseries do especially for transporting. She mentioned she does not have an issue with what they are doing, and believes basically they do a very good job. She did say she still feels there could be some screening if this is going to be the general location. However, it is not a big deal when talking about an operation this large. She pointed out that a complaint was received. Mr. Hesser stated he would just make a reference to the storage area being per the site plan.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Campanello*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a plant nursery in an A-1 district (Specifications F - #50) to allow for storage of pallets and racks and warehousing of semi trucks and trailers for transportation of plants, trees, and shrubs to Linton's Enchanted Gardens be approved with the following condition imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

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

8. The application of ***Mennonite Mutual Land Trustee Corporation (land contract holder) and Julian Bontrager (land contract purchaser)*** for an indefinite renewal of a Special Use for a home workshop/business for application of spray-in bed liners and for the sale (not retail) and installation of truck accessories, including one part time outside employee and outside storage of trucks (Specifications F - #45) on property located on the South side of CR 138, 1,470 ft. West of CR 11, common address of 25270 CR 138 in Harrison Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #25270CR 138-120723-1*.

There were six neighboring property owners notified of this request.

Julian Bontrager, 25270 CR 138, Goshen, was present on behalf of this request. He said he is not looking to change or add anything from 2008 request. He stated his business has greatly decreased, and he is only doing about a quarter of the business he was previously doing. He further stated he has not seen signs of rebounding any time soon. He mentioned he



previously had one part-time employee. He stated he is located on half-mile dirt road and has almost no walk-in traffic. He said he has not had to put up the screening along the east boundary, but they did from the road all the way back, partly for their personal residence. He did state some of trees have died this year as it has been so dry. As far as he knows, they have a good relationship with all of their neighbors, and he is not aware of any complaints.

Mrs. Wolgamood asked Mr. Bontrager what types of trucks are stored outside. He stated only his personal property is stored outside, including a flat bed truck, a pickup truck, and a dump trailer. She indicated his request is for the outside storage of trucks. He stated in 2006, it was never clarified that there was no outside storage. He said there were times when someone dropped a truck off to be sprayed when he was not home or the vehicle sat outside overnight. He mentioned a pickup truck might sit outside for a day or two. Mr. Campanello clarified that Mr. Bontrager was talking about a pickup truck and nothing else including equipment is stored outside. Mr. Bontrager stated all of his equipment is inside the building. He mentioned he has a tractor which is used for maintenance around the property that may occasionally sit outside.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus commented that the conditions suggested by the staff should actually be commitments. He also added in Item #3, the name Julian Bontrager should be struck and it should read, "owner/occupant of the business".

Mrs. Wolgamood stated in looking at the minutes from the 2006 hearing, Mr. Bontrager is absolutely correct that he did ask the Board what was meant by outside storage. At that time, he explained exactly the same as today about someone dropping off a truck. She added that she would limit outside storage to no more than four customer vehicles as a suggestion. Attorney Kolbus stated it would be a fourth commitment.

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 and Conclusions of the Board, and based upon these, further moved that this request for an indefinite renewal of a Special Use for a home workshop/business for application of spray-in bed liners and for the sale (not retail) and installation of truck accessories (Specifications F - #45), be approved with the following commitments imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. All previously imposed conditions to remain in effect, exclusive of the requirement for renewal, as follows:
  - a. One unlighted 2' x 2' sign is permitted.
  - b. Approved the addition of one (part-time) employee.
  - c. No expansion of facilities without BZA approval.
  - d. Hours of operation are limited to 8 AM to 5 PM, M-F, and 8 AM to 12 PM on Saturday. No Sunday operations are allowed.
  - e. No retail sales of parts or accessories on-site.
  - f. If the Staff determines that traffic from petitioner's activities contribute significantly to the dust on CR 138, petitioner will apply calcium chloride on CR 138 from his lane east to CR 11 no more than two (2) times per year.

3. Approved only for the current owner/operator of the home workshop/business without a requirement for renewal.
4. Outside storage limited to four customer vehicles.

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

9. The application of *Faus Groom and Room* for a Special Use to allow for a mobile home to be used for dog training purpose on property located on the West side of CR 11, 187 ft. South of Indiana Toll Road, North of CR 6, being Lot 2 of Windsong Minor, common address of 52677 CR 11 in Osolo Township, zoned A-1, came on to be heard.

Previous exhibit photos are passed to the Board for review.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #52677CR 11-120423-1*.

Attorney Kolbus stated conditions suggested by the staff should be commitments and Item #3 should be amended to read, "approved only for the owner/occupant of the business".

Mr. Mabry pointed out one issue with the site plan was that at the previous meeting, the Board asked the petitioner to show the placement of a proposed future permanent building. Placement of that building would have necessitated variance requests due to the new standards and setback requirements for kennels. There is not a timeline for construction of this building, and usually when variances are approved, there is a 90 day time limit for the building permit for the approved variance. Mr. Mabry indicated he directed Mr. Faus to not show the proposed future building due to the 90 day time period issue. Instead, he recommended going with the renewal for a year and accessing how the temporary structure is going. At that time, the petitioner may have a better idea as to how soon a permanent facility would be built.

Mr. Campanello asked if the mobile home would be considered a kennel even though it is a training facility if he is not housing dogs in there. Mr. Mabry indicated it is only used for training purposes.

There were nine neighboring property owners notified of this request.

Brad Faus, 52677 CR 11, Elkhart, was present on behalf of this request. He clarified Mr. Campanello's previous question and stated the mobile home is a hollow shell with various rooms set up for their needs such as a room with lockers and a room with slick floors to see what a dog will do in a factory or school. He further stated there are no kennels inside, no dogs are left unattended, and no dogs are fed in there.

Mrs. Wolgamood asked if the other building on site is still a boarding kennel, and Mr. Faus reported that it is. Mr. Campanello asked about the future building being for training purposes in lieu of the mobile home. The petitioner stated yes and went on to say that it will be a pole barn used solely for training. Mrs. Wolgamood asked Mr. Faus if he would be eliminating the kennel in the future to which he replied no.

Mr. Campanello explained that as he understood it from staff, there was something about the future dog training facility being construed as a kennel which is incorrect. Mr. Campanello did clarify with Mr. Faus that the new facility will replace the mobile home. Mr. Faus further stated that the mobile home is not ideal, but it serves a great purpose for the time being. Mr. Campanello inquired when the future facility might possibly be built. Mr. Faus requested at least 12 months if possible, although he originally asked for 24 months.

James Carrico, 52634 CR 11, was present in favor of this request. He stated he owns the property across the street. He stated he would like to repeat that Mr. Faus has been a very good neighbor. He further stated he has not had any problems or issues, and he is very much in favor of what he is doing. In summary, he requested the Board let common sense prevail as what they are doing there is so vitally important. He expressed he has seen what these animals are able to do with the proper training. He feels the good that can be created here and the benefit to the community far outweighs any inconvenience the mobile home might cause. He added that he has no objection to time line of 24 months either.

The public hearing was closed at this time.

Mrs. Wolgamood questioned that the petitioner has a special use for a kennel and now is asking for another special use for the mobile home for training purposes. Because the commissioners have given a new definition for kennels with some standards attached to it, if he were to come in today for a kennel, he would not qualify as a permitted use because he cannot meet at least two of the three standards. She asked where that puts his Special Use right now on his 1.68 acres.

Attorney Kolbus explained that Mr. Faus is vested in the original Special Use because it was in existence, and he took advantage of it prior to the ordinance changing so he has a vested right. Mr. Hesser asked, however, if any changes to the Special Use would have to come before the Board. Attorney Kolbus indicated that was correct and further stated they are doing that today because a mobile home is only permitted by a Special Use permit. It should be made clear that the mobile home is to be used as part of the kennel. He also stated the mobile home is the only issue being addressed today to be used as part of the training facility. Mr. Hesser clarified that today they are not dealing with the future building or if he wants to revise his site plan. When Mr. Faus comes back with his amendment to construct his new building, Mrs. Wolgamood asked for confirmation that it will be considered an amendment to his existing Special Use and will include all of the required developmental variances because if he changes the original Special Use for the kennel, he will require at least two developmental variances. Attorney Kolbus stated he would be expanding his non-conforming use. Mr. Hesser then asked if the fact that he was non-conforming before is a factor that the Board can consider at that stage. Mr. Kolbus indicated that was correct and stated it would be better to clean all of the issues at the time he requests the future building.

Mr. Campanello asked the Board members their opinions of the time period to return to the BZA. Mrs. Wolgamood indicated she did not think it would make any difference if it were one year or two years if they are going to approve it. She further indicated if they are going to approve it, they are saying it is an appropriate place for dog training whether it is in a mobile home or whether it is in a permanent structure. She stated that is more important to her than the structure. Mr. Hesser stated he does not have an objection either because hopefully within those two years, Mr. Faus will be back to resolve all the issues and there will be a global resolution of his request.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Campanello/Wolgamood*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use to allow for a mobile home to be used for dog training purpose be approved with the following commitments imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for a period of two years with renewal before the Elkhart County Board of Zoning Appeals.
3. Approved only for the owner/operator of the dog training business on the Real Estate.

A roll call vote was taken, and with a unanimous vote, the motion was carried.

10. The application of **Jerry Lee Miller** for a Use Variance to allow for the construction of a second dwelling on a parcel located on the East side of Bristol Avenue (CR 8), 1/8 mile North of CR 14, common address of 606 Bristol Avenue in Middlebury Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #606BristolAve-120717-1*.

There were 12 neighboring property owners notified of this request.

Jeremy Gingerich of Jeremy's Construction, 51153 CR 133, Bristol, was present on behalf of this request. He stated the petitioners are living in the current residence at this time and want to build a new house on the property. He stated they would like to have 60 days to remove the original house, but if only 30 days is allowed, they will comply.

There were no remonstrators present.

The public hearing was closed at this time.

Regarding the condition versus commitment issue, Mr. Hesser asked the attorney his preference if they need to be enforced. Attorney Kolbus stated if it is going to be in a gray area, it is safest to make it a commitment. He further stated even though they may be temporary in nature, a commitment would be required to enforce it, particularly Items 2 and 3.

Mr. Hesser stated he had no objection to 60 days, and Mr. Miller agreed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Campanello/Miller*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel be approved with the following condition imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

The following commitments were also imposed by the Board:

1. The existing residence must be demolished within 60 days of the issuance of the Certificate of Occupancy for the new residence.
2. The petitioner is required to return to the Elkhart County Advisory Board of Zoning Appeals if occupancy of the new residence and demolition of the existing residence has not been accomplished by December 31, 2013.

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

11. The application of **Raymond M. & Barbara M. Schrock** for a Use Variance to allow for an existing second dwelling on a parcel located on the Southeast side of SR 119, 2,150 ft. East of CR 9, common address of 25652 SR 119 in Harrison Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #25652SR 119-120725-1*.

There were 10 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, was present representing Raymond and Barbara Schrock on behalf of this request. He stated basically, they are renewing an appeal that was granted five years ago, except now, due to a change in procedure, it is a Use Variance. He further stated nothing in this request has changed in those five years. He stated he concurs with the staff analysis that it should be approved.

Mr. Hesser commented that if he understands this correctly, it is largely the same as what was previously approved except that previously it was for a specific situation that arose with a time limit and at the end of that particular situation, the second residence was return to accessory storage. However, in this request and staff recommendation, that requirement is gone. Mr. Sloat responded by saying he does not know that the requirement is gone in light of the fact that one of the conditions recommended by the staff is that the dwelling not be used for rental purposes. Mr. Hesser indicated he feels the request is substantially modified, in that anyone who does not pay rent could reside there. Mr. Hesser further stated it was previously for a specific family member and it will probably remain a family member but it is perpetual. Mr. Sloat agreed but stated it is not their intention to allow someone to live there for free. Mr. Mabry added that other than the previously approved use variance that had a time limit, he believes the default for any type of variance is that it would run with the property. Mr. Hesser asked if it could be limited to family members of the primary residence. Mr. Sloat does not object to that.

Regarding the commitment, Mr. Sloat mentioned it seems the commitment ought to be enforceable only by adjoining property owners who are owners of record at the current time. Attorney Kolbus stated either they are in compliance or they are not. Mrs. Wolgamood also added that is true particularly if the commitment is approved in accordance with the site plan submitted and as represented. Mr. Sloat argued that he has not seen the commitment. Mr. Hesser stated if the Board was to approve it and Mr. Sloat was presented with a commitment that he did not agree with, it would be brought back before the Board.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if any of the other Board members were concerned about family members. Mr. Miller stated he had not thought about it. Mrs. Wolgamood stated it was approved for daughter and son-in-law so she feels as long as it is a family member and they are not renting it out, she has no objection. Mr. Hesser stated he would like it to be clarified for family members of the owner and not for rental purposes.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for an existing second dwelling on a parcel be approved with the following condition imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.

The following commitments were also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The second residence is to be used only by family members of the owner of the Real Estate and not for rental purposes.

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

12. The application of *Kevin M. & Erin E. Eberle* for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing three acres or less (Specifications F - #1) on property located on the South side of CR 38, 820 ft. East of CR 3, being Lots 2 and 3 of Searer's Subdivision, common address of 28862 CR 38 in Olive Township, zoned A-1, came on to be heard.

Mr. Mabry stated he has a request to table this petition until next month's meeting.

Erin Eberle, 28862 CR 38, was present on behalf of this request. She stated she would like to table this issue until next month because she and the neighbors are actively working on a compromise that they would like to bring to the Board after they have everyone's agreement. Mr. Hesser asked if there were any neighbors present and if they were all in agreement to table the petition until next month. There were three neighbors present in the audience who indicated they were in agreement. The Board members all stated they had no objection to the continuation.

Timothy Loutzenhiser, 28810 CR 38, Wakarusa, was present for this petition. He stated he is the adjacent neighboring property owner to the east of the Eberles. Mr. Loutzenhiser stated he had a procedural question. Once they have reached a compromise, they want to have certain agreements and many of the neighbors feel this is a workable compromise. He stated he does not know if there are parameters that must be listed in a particular use. He further stated the neighbors want to be sure that their agreement is for this particular use under this definition of the limitations that the neighbors are agreeing on.

Mr. Hesser suggested tabling this petition indefinitely to file amendment or to proceed with the existing request. To be on the agenda for September, any agreement or modification would need to be filed with staff by August 30, 2012. Mrs. Eberle asked if they miss the deadline for the September meeting, if they can appear at the October meeting. Mr. Hesser and Attorney Kolbus indicated that is correct.

Mr. Loutzenhiser suggested if they do it as an amendment, then it can be reworded to accommodate everyone's interest because the original request is going to be different. Mr. Kolbus said the staff would make that determination on how much of a change is being made. He further stated in terms of any agreement they reach, if the Board accepts it, a commitment is enforceable by neighbors and/or the Board so there would be a way to enforce it privately or publicly. Mr. Loutzenhiser stated this is very similar to a petition being heard at the previous meeting he attended when another petition was approved for chickens. He indicated this will match that petition except for some of the quantities and details. Mrs. Eberle asked if the Board had a preference as to the distance of the neighboring property owners included in the agreement. Mr. Hesser referred her to the staff with respect to her question.

Mr. Kolbus stated it will require re-notification of neighbors and possibly re-advertisement if it is an indefinite tabling. Mr. Loutzenhiser stated that due to a misunderstanding, the neighbors were unaware of today's hearing until yesterday as they did not realize the petition did not need to be re-advertised.

A motion was made and seconded (*Hesser/Wolgamood*) that this request for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing three acres or less (Specifications F - #1) be tabled indefinitely with neighboring property owners to be re-notified. The motion further reflects that if the staff determines there is a substantial difference (based on an agreement between the petitioner and neighbors), the application will need to be re-advertised in addition to re-notifying the neighboring property owners. The motion was carried with a unanimous roll call vote.

For the record it should be noted that Attorney Kolbus checked the rules. He stated when you table a petition without a definite date, re-notification is required but discretion is used for re-advertising.

13. The application of ***Kevin J. & Laverda K. Yoder*** for a Special Use for a wind-pressor turbine & tower (Specifications F - #31.50) and for a 3 to 1 depth to width ratio Developmental Variance on property located on the West side of SR 13, 2,500 ft. South of CR 42, common address of 67483 SR 13 in Benton Township, zoned A-1, came on to be heard.

Mr. Mabry submitted a packet of information [*attached to file as Staff Exhibit #1*].

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #67483SR 13-120521-1*.

There were two neighboring property owners notified of this request.

Arlin Yoder of Wellspring Power, 1085 N 850 W, Shipshewana, was present on behalf of this request. He believes because of giving his address and not the homeowner's address, the regulations included in the packet of information are for LaGrange County. He stated the turbine is the same size as the one pictured. He further stated the only difference in site plan is that they will have a guyed wire attached to it. Mrs. Wolgamood asked if this would be an 11 foot or 16 foot rotor. Mr. Yoder responded that it will be an 11 ft rotor diameter. He further stated the tower will be 80 feet high to the highest point which is the tip of the blade. Mrs. Wolgamood asked if pictures A, B, C, D, and E in packet are inside or outside of a building. Mr. Yoder stated they are all outside and nothing covers them. He indicated the bottom picture on the right is the final unit.

When Mr. Campanello suggested there was a lot of weight at the top of the tower, Mr. Yoder said he believes the weight is approximately 120 pounds. Mrs. Wolgamood inquired about the location of the tower on the property in case it should happen to fall. Mr. Yoder stated the base of the tower is 86 feet from the north property line, approximately 1,000 feet from the rear property line, and the front setback is 330 feet. Mr. Hesser pointed out that 86 feet is closest property line, and the tower is 80 feet tall. Mrs. Wolgamood confirmed that the actual site plan has not changed.

Mr. Yoder stated at the previous hearing, the Board had requested a picture of the actual tower and more details on the noise level. Mrs. Wolgamood asked about the total acreage which Mr. Mabry stated is 6.226 acres.

There were no remonstrators present.

Mr. Hesser stated his concern from his recollection of the last hearing is that Mr. Homan was the most vocal about wanting to see the plans. Mr. Homan is not present today which is not the petitioner's fault. Mr. Hesser is also concerned because as he was reading through the file preparing for today's hearing, he saw that the Board tabled the petition to get this information.

However, the information was not received until today and while Mr. Yoder provided an explanation, the fact remains that the Board only received more detailed information today. He commented that staff recommended approval anyway so it probably does not matter to them, and Mr. Homan is not present today.

Mr. Campanello stated he believes he recalls that Mr. Homan was confused by the drawing of the tower, and he was also wondering about the decibels. Mr. Campanello went on to say after looking at what was submitted, the picture of the tower shows it is a normal windmill tower. The only thing different is the compressor at the top as shown in photo A. He also stated he feels very comfortable voting on this, and 60 decibels is within realm where they wanted to be. He thinks Mr. Homan was worried about anything over 60 decibels. Mr. Miller stated the letter that was written said the decibel level of the wind-pressor was lower than the ambient noise level of the surrounding area.

The public hearing was closed at this time.

Mr. Hesser stated he did not feel the 3 to 1 depth to width ratio was an issue for himself or any of the other Board members to which Mrs. Wolgamood agreed. He also stated he felt the concerns with the tower have been satisfied, and Mr. Campanello was in agreement.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a wind-pressor turbine & tower (Specifications F - #31.50) 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. All required permits to be obtained.

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

A motion was then made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that the request for a 3 to 1 depth to width ratio Developmental Variance be approved with the following condition imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

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

14. The application of ***Dennis A. & Shirley L. Yoder*** for a 17ft. Developmental Variance to allow for the construction of an accessory building 33 ft. from centerline of the right-of-way of Wabash Avenue (Ordinance requires 50 ft.), for an 8 ft. Developmental Variance to be 2 ft. from the rear property line (Ordinance requires 10 ft.), and for a 3 ft. Developmental Variance to be 2 ft. from the north side property line (Ordinance requires 5 ft.) on property located on the Northwest corner of Wabash Avenue and Railroad Street, being Lot 16 and part of 17 of Lutz's Addition, common address of 309 E. Wabash Avenue in Olive Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Revised Staff Report/Staff Analysis, which is attached for review as *Case #309EWabashAve-120618-1*.

Mr. Mabry submitted Mr. Yoder's revised site plan *[attached to file as Staff Exhibit #1]*.



Mr. Hesser moved and Mr. Miller seconded the motion to reopen the public hearing. With a unanimous roll call vote, the motion was carried.

Dennis Yoder, 309 E. Wabash Avenue, Wakarusa, was present on behalf of this request. Mr. Hesser asked Mr. Yoder if he is willing to build the garage in accordance with the revised site plan submitted today. Mr. Yoder indicated yes. Upon Mrs. Wolgamood questioning driveway measurements on revised site plan, Mr. Mabry submitted a copy of the revised site plan with the proposed driveway shaded in green highlighter *[attached to the file as Staff Exhibit #2]*. Mr. Campanello stated that it still appears to him that at the shortest point, a pickup truck would still be sticking out into the right-of-way. He further stated normally 18 feet is what is required for a pickup truck if not more. Mr. Hesser did indicate that Mr. Yoder has stated he will not be parking there. Mr. Campanello mentioned the Board had talked about Mr. Yoder shifting the garage toward the house to be able to get as much driveway space as he could so if he wanted to park there, he would not be into the right-of-way. Mr. Yoder did mention that the city right-of-way is 20 feet at the end of his driveway so if he parked a vehicle there that was longer than his driveway, it would be into the right-of-way, not the street. Mrs. Wolgamood recalled that she noted last month that the right-of-way on Wabash is exceptionally large especially for a town street.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Mabry stated staff did not change its recommendation but it is more acceptable.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board approve this request for a 17 ft. Developmental Variance to allow for the construction of an accessory building 33 ft. from centerline of the right-of-way of Wabash Avenue (Ordinance requires 50 ft.), for an 8 ft. Developmental Variance to be 2 ft. from the rear property line (Ordinance requires 10 ft.), and for a 3 ft. Developmental Variance to be 2 ft. from the north side property line (Ordinance requires 5 ft.) based on the following Findings and Conclusions of the Board:

1. Will not be injurious to public health, safety, morals or general welfare.
2. Will not cause substantial adverse affect on the neighboring property based on the revised site plan submitted by the petitioner.
3. Will result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance.

The following condition was imposed:

1. Approved based on the revised site plan submitted by the petitioner and received by the Department of Public Services on July 25, 2012, and as clarified by the staff (highlighted site plan - Staff Exhibit #2).

A roll call vote was taken, and with a unanimous vote, the motion was carried.

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

16. The staff item for a minor amendment to Developmental Variance Application was presented by Brian Mabry. He stated the old application did not include anything about a septic. Therefore, question #4 is new and has been added and must also be adopted as part of the Rules

of Procedure. Mr. Mabry also handed out the site plan sheet which is on Page 2, which now includes item #9 to show the septic system on the site plan.

When Mrs. Wolgamood asked if an issue occurred to cause the revision, Mr. Mabry stated at the July meeting, one of the petitioners was relying on a septic area on their plan which gave him the idea that having this on application would be good so it is noticed and caught in the future. Mr. Miller agreed that it is needed information.

A motion was made and seconded (*Hesser/Miller*) that the Board of Zoning Appeals Rules of Procedure be modified by adopting these changes to the forms as presented. With a unanimous roll call vote, the motion was carried.

17. The next staff item for Bradley S. & Jennifer L. Rodman (00CR 27-120621-1) was presented by Brian Mabry. He stated at the July BZA meeting, Mr. Rodman had a variance request to build a house on a parcel that had previously been used by Quality Excavating as a gravel excavation/storage site. Under Mr. Mabry's direction, Mr. Rodman had submitted a request himself to revoke the Special Use permit for the gravel operation for the property. The Board requested that Quality Excavating provide the request instead. Mr. Mabry stated he received an email yesterday from the owners of the excavating business requesting the revocation of the Special Use permit on that property.

A motion was made and seconded (*Hesser/Miller*) that the Board accept the request of Quality Excavating to revoke their gravel extraction Special Use permit as of 11/30/12. A roll call vote was taken, and with a unanimous vote, the motion was carried.

18. The staff item for Buddhist Temple (17341Us Highway 20-100819-1) for use of outdoor loudspeakers was presented by Brian Mabry. Mr. Mabry indicated the request is for a special event they are having which is described in a memo with attachments included in the Board's packets. He said Mr. Sengsommaly, who is present in the audience, came and talked to him earlier this month about having outdoor loudspeakers for a building fundraiser to be held on September 1<sup>st</sup> and 2<sup>nd</sup> of this year from 9:00 a.m. to 9 p.m.

Mr. Mabry stated they were approved for the temple in 2010. However, one of the conditions of the Special Use permit was to not allow loudspeakers. Their request is for two days to have the outdoor loudspeakers for music and karaoke at the fundraiser. Mr. Mabry asked the Board if this proposal to use loudspeakers for the two day event is within the scope and spirit of the original approval. Staff recommends approval for two days only. He further stated the speakers would be located under 40'x60' tent shown on site plan. The tent separation from property lines is 40 feet from the rear and 60 feet from the side. He said there was some discussion at the original approval in 2010 about having tents occasionally in the summer and that did not appear to be an issue with the Board.

Mr. Hesser asked if this was being approved as a minor change. Mr. Mabry said he was thinking of this as a minor change to an approved Special Use permit because one of the conditions, which would probably now be stated as a commitment, was that no loudspeakers be used as part of the temple. Mrs. Wolgamood asked if this will happen on both days from 9 am to 9 pm continuously. Mr. Mabry stated from what he understands from Mr. Sengsommaly, those are the hours of the fundraiser. He also said he did not have information from them as far as the

activity of the speakers but that would be the maximum time window. He stated the specific requirements for approval are shown in the attached result letter.

Mr. Miller inquired if the tent location is directly closest to the neighbor who was talking about the noise in the first place. Attorney Kolbus indicated that was correct. Mr. Miller stated that neighbor spoke at the original hearing. Mr. Hesser stated he drives past this place every day, and he is not aware of any problems. However, looking at the past minutes, the tent and loudspeakers was a big issue. Mrs. Wolgamood stated there was a September meeting with objections about noise and tent. Mr. Kolbus read a section of minutes from 09/16/10 regarding neighbor, Lynn Kauffman, speaking in remonstrance and Mr. Kimmel's rebuttal. Mr. Hesser said at the November 2010 meeting they addressed the tent but said no loudspeakers.

Looking at their timeline, Mr. Hesser noted they cannot give notice and get this done before September 1<sup>st</sup>. Mr. Kolbus stated if the Board declares it to be a major change, it needs to go for a public hearing. If it is a minor change, it can be acted upon today with either a favorable or negative result. Mr. Campanello mentioned possibly having a time period during those two days when the loudspeakers would be in use as a compromise to this request and to appease the neighbors. Mr. Miller said the Special Use was granted with no outside speakers so to him this is a major change. Mrs. Wolgamood agreed as it deals with two conditions placed on the prior approval.

Mr. Hesser moved and Mr. Miller seconded that the Board not accept this request as a minor change and if the petitioner wants to proceed, they need to come back for a public hearing. With a roll call vote, the motion was carried with Mr. Campanello voting in opposition.

19. The last staff item for Quick Notes on Variances produced by The American Planning Association was presented by Brian Mabry. He felt it was appropriate to include in the Board members' packets as informational material. He stated it gives some types of "best practices" which we follow.

20. The meeting was adjourned at 11:27 a.m.

Respectfully submitted.

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Deborah Britton, Recording Secretary

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Randy Hesser, Chairman

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Robert Homan, Secretary