

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16TH DAY OF FEBRUARY 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: Doug Miller, Meg Wolgamood, Tony Campanello, and Bob Homan. Staff members present were: Chris Godlewski, Plan Director; Ann Prough, Zoning Administrator; Robert Nemeth, Planner; Kathy Wilson, Office Manager; and James W. Kolbus, Attorney for the Board.

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

3. A motion was made and seconded (*Homan/Wolgamood*) that the legal advertisements, having been published on the 4th day of February 2012 in the Goshen News and on the 5th day of February 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 (*Wolgamood/Miller*) 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.

5. There were no postponements of business items.

6. The application of *Elkhart Community Schools (Elkhart Area Career Center)* for an amendment to an existing Special Use for a school (Elkhart Area Career Center) (Specifications F - #38) to expand the automotive building on property located on the South side of CR 10, 1,900 ft. West of the Nappanee Street extension, common address of 28330 CR 10 in Cleveland Township, zoned M-1, came on to be heard.

* (*It is noted that Randy Hesser stepped down from the Board for this public hearing due to a potential conflict of interest.*)

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 #28330CR 10-120118-1*.

There were 10 neighboring property owners notified of this request.

Debra Hughes, Project Engineer with Marbach, Brady & Weaver, 3220 Southview Drive, Elkhart, was present on behalf of this request. Also present was Tony Gianesi, Director of Building Services for Elkhart Community Schools, 1135 Kent Street, Elkhart. Ms. Hughes explained that the Elkhart Career Center has an annex. The school purchased the property on CR 10 in 1996 and it was a former welding shop. It currently houses the building technology, automotive technology and motorcycle technology programs. The school would like to build an addition onto this building. The addition would be located on the north side of the existing main building. They are asking to add 30 feet of additional building over the entire width and it would

include a new entrance and an existing landscape area that would be converted to handicapped parking and pavement. No other site changes are proposed.

Mr. Miller asked if they are adding restrooms and Mr. Gianesi indicated no.

He added that the school actually has two annexes. The portion of the auto trades program that they would like to put into this addition is located at 1704 Bristol Street, which is their old service building. It has not been part of this annex for almost 13 years now, so they finally have an opportunity to consolidate and eliminate some of the disconnect because this is one half of auto trades 1 and the other half is currently in this building. Having this request granted would allow them to put both together, which will really create continuity for their first year program. The students tradeoff between semesters, so the school currently has to transport them between two locations and it's very difficult at times to be able to coordinate the efforts and have all of the students and staff on the same page. This really gives them an opportunity to consolidate that program and really improve for their students.

He confirmed that they would not be adding any restrooms. They will be renovating existing restrooms that are in the building to upgrade them. They are doing some renovations inside because the original welding shop offices were left intact and they really don't service the purpose that they need for their staff offices. The school has about 5,000 square feet of renovations to do along with the 5,000 square feet of addition.

Mrs. Wolgamood asked if this will impede the existing traffic flow in any. Mrs. Hughes said the school buses use all of the property around the perimeter to make their loops and they can still make the last turn even though there will be an additional 30 feet of pavement. There is still over 100 feet in between the two buildings.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Campanello*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for a school (Elkhart Area Career Center) (Specifications F - #38) to expand the automotive building be approved by the Board with the following conditions imposed:

1. All required permits to be obtained.
2. 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 within sixty (60) calendar days after BZA action on the petition for placement in the petition file.

The Board also imposed the following commitment:

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.

* (*It is noted that Mr. Hesser returned to the Board at this time.*)

7. The application of **David J. & Michele L. Muir (owners) and Muir Real Estate Holdings, LLC (owner)** for a Special Use renewal for an existing home workshop/business for winery, wine tasting, and retail sales (Specifications F - #45) on property located on the West

side of SR 15, 60 ft. South of CR 112, common address of 55503 SR 15 in Jefferson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #55503SR 15-120123-1*. She then explained that there is already a commitment on the property so the staff is not recommending that another commitment be recorded.

There were 6 neighboring property owners notified of this request.

David Muir, 55503 SR 15, Bristol, was present on behalf of this request. He said it has been about 15 months since they opened the doors, and although they would love to have more business, they are happy with how things are going. According to Mr. Muir, they have had a good turnout from tourists who are visiting and new to the area.

Mr. Homan recalled previous discussion about the type and amount of truck traffic in and out of the business and he thinks the trucks were small. He asked if their volume is about the same and if they foresee any changes in the reasonable future. Mr. Muir explained that he has made other arrangements for something that has to be delivered by a semi truck so they have never have had a semi truck in there.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/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 renewal for an existing home workshop/business for winery, wine tasting, and retail sales (Specifications F - #45) be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

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

8. The application of ***Nelson R. & Ruth E. Gingerich*** for an amendment to an existing Special Use for an agri-business for a feed mill and a fencing business to allow for the construction of an addition to the feed mill for feed storage (Specifications F - #56) on property located on the North side of CR 20, 1,100 ft. East of CR 22, common address of 15459 CR 20 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 #15459CR 20-120119-1*.

There were 3 neighboring property owners notified of this request.

David Bontrager Jr., J & L Bontrager Construction, 59723 CR 33, Middlebury, was present representing the petitioners. Mr. Bontrager explained the petitioners would like to have a little more storage to store their feed that they are processing in the building.

Mrs. Wolgamood asked if there are semis coming to the place of business and Mr. Bontrager said yes, the petitioner would have semis coming in to unload corn products.

She asked him to explain how the semis will maneuver on the property. Mr. Bontrager pointed out on the site plan where they would do so. They would come in the east driveway, pull

in and then back in to the feed mill. They would also back up in the driveway in order to drive out.

Mrs. Wolgamood questioned if the semis will ever be backing up onto the county road and Mr. Bontrager said no. They won't need to back in off the road or back onto the road to get out.

When asked if the eastern driveway will be utilized for the business, Mr. Bontrager said yes. The western driveway is for the residence.

The days and hours of operation were questioned by Mrs. Wolgamood. She asked what 25 production hours per week meant. The petitioners' representative explained that on the last amendment, they had a required 25 hours. The production hours will be when the petitioner has his diesel running, mixing feed, etc. The other hours are when his customers are still able to stop into the shop to and get a bag of feed.

Mr. Miller asked if this will operate in conjunction with the normal business hours and Mr. Bontrager said in conjunction with them.

John Dewilde, 15240 CR 22, Goshen, was present to voice some concerns. Mr. Dewilde explained his property is off of CR 22 and he owns property that goes around the property in question all the way to CR 20 on the east side of them. He pointed the property out on the aerial photo at this time. He was glad to hear them talk about operation hours of 8 to 5 because running a feed mill is a noisy operation. When it is in the grinding mode even more than the petitioner's diesel engine, it is very obvious in the neighborhood. He felt it would be quite reasonable if they kept the operation within those hours.

Mr. Dewilde indicated that semis are a bit of a concern. In regards to the semis coming off of CR 20, one of the problems that does happen is when they have semis to unload pallets; they park on CR 20 in the westbound lane. There is a bit of a null along the road that comes through there with an Amish school and sits on that side also. At that point in time, traffic coming cannot see over the null and they do have to pass those semis in the blind on that operation. The driveway that the petitioners have is fairly steep in the winter. It's hard sometimes for the semis to get out. He said they do have quite a bit of parking and storage area that's not only used for the semi and traffic movement, but also for fence storage. He felt it would make it a whole lot easier for their semis to get in and out if they would have a second drive out of the property so the semis could make a loop. Mr. Dewilde indicated that was his basic concern.

Nelson Gingerich, 15459 CR 20, Middlebury, was present on behalf of the request. Mr. Gingerich said there is a downgrade on the driveway and if it's slippery and snowy, the semis do have a problem getting out. They are planning on taking the fencing supplies away from that area. They put the trees along the south side to cover up the fencing supplies to where if they make a second driveway, they will have to take down the trees. If they continue with the inside storage, they want to get rid of most of the fencing supplies so the semis are able to make a U-turn and go out the same driveway.

Mrs. Wolgamood asked if they have a timeframe for doing that work and Mr. Gingerich said if the request is approved today, they would like to start soon.

Mr. Hesser asked if semis can't turn around on site presently and Mr. Gingerich said they can, but it's a little bit harder because it is slippery. The buffer trees are in the way, so they have to go right up to the road to know if something is coming. He noted they have unloaded on the road in the past and he doesn't feel that is good.

Mr. Gingerich also explained they started sending out three or four pallets at a time and if they put that in their production storage, they don't have room to maneuver. They would like to have more pallet storage so they are able to store them until being shipped out.

Mr. Campanello asked the petitioner if he would open to creating a place where the semis could pull in, pull forward, unload and then back out. That way he could be utilizing some more of his land on the other side of the storage area to create a lane for them to work out of. He pointed out an example on the aerial photo. Mr. Gingerich said that is basically what they are doing now, but it is a little bit too tight. He indicated they could extend it out a little bit, but they currently have trees along the east side for buffering.

The buffering was a requirement of the previous approval. Mrs. Wolgamood noted the Board would have to approve a revised site plan if he wanted to deviate from any of the previous conditions.

The public hearing was closed at this time.

Mrs. Wolgamood was appreciative of the information the Board received and said it's her opinion that the petitioner should come back with a designated plan for a turnaround and anything he can do to correct the semi parking for unloading on CR 20. Mr. Miller was in agreement with Mrs. Wolgamood's comments.

When Mr. Campanello asked if he is able to remove the trees that were required by the Board, Mr. Kolbus said the Board can waive their original condition if they deem fit.

Mr. Homan said there is an issue of public safety involved that needs to be addressed, but they can't do that today so he agrees this request should be tabled.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) that this request for an amendment to an existing Special Use for an agri-business for a feed mill and a fencing business to allow for the construction of an addition to the feed mill for feed storage (Specifications F - #56) be tabled until the March 15, 2012 meeting of the Board of Zoning Appeals to give the petitioner time to resolve the access issues for ingress and egress from the property from a safety standpoint so there is no backing in or out from CR 20 and no parking on CR 20 for unloading. A revised site plan to be submitted to the Staff by February 27, 2012 for placement in the Board's packets. A roll call vote was taken, and with a unanimous vote, the motion was carried.

9. The application of ***Debra Hochstetler*** for a Special Use for a privately owned recreation building for wedding venue (Specifications F - #20) on property located on the Southeast corner of CR 52 and CR 3, common address of 28854 CR 52 in Locke Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #28854CR 52-120123-1*.

There were 7 neighboring property owners notified of this request.

Present representing the petitioner was Barry Pharis, 1009 S. 9th Street, Goshen. Mr. Pharis explained the petitioner owns nearly 80 acres on a farm northwest of the Town of Nappanee. The farm has been in the family for over 140 years. The house, the barn and the pavilion are not currently occupied.

Mrs. Hochstetler and her family have had many discussions of what to do and how to keep the farm without selling it, subdividing it or renting it. There is over 70 acres of tillable farm land surrounding the buildings which is leased for farming.

The petitioner was approached by a family member about having a wedding at this site and agreed to do that. Through that wedding, they learned that a process needed to be established and a plan to accommodate weddings needed to be completed. To fine tune and establish that plan, they agreed to have three other weddings on the site last year. The response from the families of the weddings was overwhelming. Mrs. Hochstetler and the five people who worked with her to put these four weddings on enjoyed the opportunity to be in the first steps of the young couples' lives. They had fun being part of a successful project and they enjoyed the glowing comments from the young couples, their families and guests.

Suddenly, a solution to a problem was discovered. A use for the farmhouse and its buildings that did include selling, subdividing or renting. With four wedding experiences, a firm set of rules were established, a comprehensive contract was prepared by her attorney and a website was established. The response to that website has been just like the response to the first four weddings, overwhelming. There are few venues available in Elkhart County that offer the ambiance and experience at the farmhouse. He encouraged everyone to drive through this area.

At this time, Mr. Pharis submitted three (3) letters in support of this request *[attached to file as Petitioner Exhibit #1]*. These letters are from Mayor Larry Thompson, and Marvin Hochstetler and Jenny Lincoln who both live across the street from the petitioner. Also included was a list of Commitments that the people using the venue would have to comply with.

Mr. Pharis went through the Commitments at this time. The first Commitment indicates there is to be absolutely no smoking on site - not in a vehicle and not on the property. No votives or freestanding candles are permitted at any time. All food and beverage must be provided by a licensed and bonded caterer. The weddings are scheduled between mid-May and mid-October; a total of 22 weekends, but typically the Memorial Day weekend, July 4th weekend and Labor Day weekend are excluded, as well as the weekend in August where the town hosts the Amish Acres Arts and Crafts Festival. The petitioner does not want to compete with that nor the traffic that it creates. Access to the grounds on Saturday is no earlier than noon and they must be done by midnight. All music must stop at 11:00 p.m. and one of the neighbors has commented that they could barely hear the music, but they appreciated that it be turned off at 11:00 p.m. Portable toilets are provided and those are the only facilities on site. The owner, Mrs. Hochstetler, will deserve the right to terminate and refuse to serving of alcohol to anyone who appears to be inebriated or under 21.

The petitioner has taken extra efforts to assure that the updates to this farm and the buildings are from supplies that were on the farm originally. It is exactly the pieces and parts as it would've been at the time of construction. She and five employees are on site for the entire time of the wedding or reception. Three are located in the parking lot so they can direct traffic, making sure that guests are parking correctly and then they drive through the parking lot the rest of the afternoon/evening assuring security and safety.

Mrs. Hochstetler personally meets with every client. This is the way that she can review the contracts and the rules and face to face understand that the customer understands that the Commitments are not negotiable. They must agree to the contract, the rules, the conditions and her expectations.

The petitioner has found a way to protect the farm from sale with assurance to the neighbors that the impact will be minimal and provide a venue that is unequalled in Elkhart County. Two of the three neighbors have written letters in support, which the Board had previously received and Mayor Thompson has expressed his appreciation of Mrs. Hochstetler's efforts and its impact to the economic conditions of Nappanee.

Mr. Campanello asked if they will ever accommodate more guests at this location. Mr. Pharis said no. In his conversations with the petitioner, she has set aside the parking area that she is comfortable with. They've selected the seven acres around it, so the petition is not for the whole farm; it's just for those seven acres. This is the size and this is the amount of work that she wants to do and it can support it.

Mr. Campanello asked if this will be strictly for weddings and Mr. Pharis said for weddings and receptions only.

Mrs. Wolgamood questioned where the two neighbors submitted the letters reside. Mr. Pharis pointed out of the location of both neighbors on the aerial photo at this time.

Mr. Pharis said that in regards to a timeframe being put on Special Uses such as this, he hoped that the Board would keep in mind that weddings are scheduled well in advance of the date. Mrs. Hochstetler is getting requests for weddings next year and the year after. He hoped the Board would accommodate that and give them five years, for example, instead of one year, although they hope the approval would be indefinite.

There were no remonstrators present.

The public hearing was closed at this time.

During discussion about imposing a timeframe for this permit, Mrs. Wolgamood suggested they approve it for five (5) years. If there is valid complaint, Mr. Homan said it could be brought back to the Board.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Campanello/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a privately owned recreation building for wedding venue (Specifications F - #20) be approved with the following conditions imposed:

1. All required state and local permits to be obtained.
2. 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 within sixty (60) calendar days after BZA action on the petition for placement in the petition file.

The Board also imposed the following commitments:

1. Approved for the owner of the property.
2. 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.

10. The application of *Lynn D. & Deanna Miller* for a Special Use for a home workshop/business for a grocery store (Specifications F - #48) on property located on the East side of CR 43, 2,400 ft. South of CR 40, common address of 66356 CR 43 in Clinton 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 #66356CR 43-120104-1*.

There were 7 neighboring property owners notified of this request.

Deanna Miller, 66356 CR 43, Millersburg, was present on behalf of this request. Mrs. Miller explained they have a single home attached to their two-story home which is empty and they would like to have some extra income.

Mr. Homan asked what type of items they would be selling. Mrs. Miller said it would be a discount food store. They wouldn't have any refrigerated items or cold items.

He asked what type of delivery traffic they will have and the petitioner said they aren't sure yet, but they will probably just pick it up with a cargo trailer.

There were no remonstrators present.

Mrs. Wolgamood asked about #16 on the questionnaire. This is an empty attached residence and they talk about a 14 ft. x 20 ft. entrance that will be used for the discount store. When she looks on the site plan, she is confused as to how they're going to use that entrance. Mrs. Miller explained the store would be in the house and the entrance would be used for the sorting and storage of the groceries before they would put them inside. She clarified that the customers will enter the front door of the residence.

The public hearing was closed at this time.

Mr. Homan said the scope of a home workshop/business is very closely defined, and he expressed a concern that if retail businesses are successful, they tend to grow. He did say, however, that by representation today, it doesn't appear that is going to be an issue. Mrs. Wolgamood said she too worries about that when they have a home workshop/business that has a manufacturing business attached to it.

It was then suggested that a three (3) year time limit for the Special Use be imposed as a commitment.

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 of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for a grocery store (Specifications F - #48) be approved with the following conditions imposed:

1. All required state and local permits to be obtained.
2. 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 within sixty (60) calendar days after BZA action on the petition for placement in the petition file.

The following commitments were also imposed:

1. Approved for the owner/occupant of the residence on site.
2. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
3. Days and hours of operation to be Monday through Saturday, 8:00 a.m. to 5:00 p.m.
4. No more than two (2) employees who do not reside on site.
5. Approved for a period of three (3) years with renewal before the Board of Zoning Appeals.

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

11. The application of *David W. & Corinna Chupp* for a Special Use renewal for an existing kennel with indoor pens and/or runs (Specifications F - #15.00) and outdoor pen and/or runs (Specifications F - #15.10), and an amendment to said Special Use to increase the number of dogs, on property located on the South side of CR 146, 1,470 ft. East of West County Line, common address of 30868 CR 146 in Locke Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #30868CR 146-120119-1*. Commitment #2 was amended by Mrs. Prough to read, "No more than 105 adult breeding dogs." She then submitted 28 letters and emails in opposition to this request *[attached to file as Staff Exhibit #2]*. Also submitted to the Board was a copy of a portion of the Animal Control Ordinance with regard to general animal care requirements, which the County adopted and is enforced by the Sheriff's Department *[attached to file as Staff Exhibit #3]*. She explained that this ordinance was not in effect three years ago when the original Special Use permit was granted.

There were 15 neighboring property owners notified of this request.

Present on behalf of this request was David Chupp, 30868 CR 146, Nappanee. Mr. Chupp indicated his wife, Corinna Chupp, and family were also present in the audience. He then submitted eight (8) supportive letters from some previous customers *[attached to file as Petitioner Exhibit #1]*.

Mr. Chupp explained he owns 46 acres of agricultural land and it is entirely surrounded by agricultural land. He has three signatures from his closest neighbors in support of renewing his kennel. There are also some neighbors present in the audience in support of the request.

He indicated they have put a metal sound barrier around the dog kennel. This wasn't done to hide anything that they have been accused of, but to limit impact of noise to surrounding properties. They plan to do the same with their whelping kennel. They wanted to see how it worked first before they enclosed the whelping kennel portion. It seems that the dogs are happy and content, and they are quieter as they can't see outside to see something to bark at.

They currently have a license in good standing with the Indiana Board of Animal health. It is current and they abide by all of their regulations and requirements. They have urine inspections by AKC and they are inspected by the Northern Indiana Pet Breeders Association. They are also inspected and regulated by the United States Department of Agriculture. In their last inspection, they had several minor infractions and they were taken care of. The second time they made their visit, they had a good report.

Mr. Chupp explained they provide the proper vet care the dogs need including keeping them up to date on current vaccinations and rabies. They are also going to start doing dental on all of their adult dogs since that seems to be a concern for people.

They are asking for a renewal of their current Special Use permit as well as moving their limit to 105 adult dogs. They won't be increasing the amount of breeding dogs. They plan to stay around 75, which would be about 60 females and 15 males. The reason he is asking for such a high number is so there's no misunderstanding about USDA reports and how many adult dogs they have. He was told in his last hearing that they were allowed 64 breeding age dogs. That's the way it was worded to Loren Sloat. He specifically asked Mr. Sloat to find out exactly what was meant by that.

A third of the kennel will be retired this year. They have several people that they work with to re-home them. The ones that will be re-homed are social and they will find pet homes for

them. In anticipation of this, they have selected 20 or so puppies that are now approaching breeding age. They don't breed until they second heat cycle as it is better for the mom to wait until the second cycle. They will be under a breeding program when they're between a year and a half and two years of age. He indicated that is why there is a discrepancy between the amounts of breeding dogs seen on the USDA report verses the amount of breeding dogs they actually have.

Mr. Chupp explained they have many repeat customers and many of them are retail customers. They have a three day return policy on all of their puppies, plus the full one year health guarantee. This is their livelihood and they realize that not everyone agrees with it. It is their method of making a living; however, no one has the right to force others to believe as they do.

Mr. Homan asked why they are requesting the higher number of adult dogs. Mr. Chupp said the last several years, they've had some slow periods. While there are always concerns about the number of dogs you have, they also have a demand for puppies that they don't have available, so they are trying to supply the customers' needs.

Mr. Homan asked the petitioner to point out the landowners on the aerial photo who are in favor of this request. Mr. Chupp pointed them out at this time.

Mr. Campanello asked what the largest dog is that they breed. The petitioner indicated a Cocker Spaniel and French bulldog as they are around 20 or 25 pounds.

Mrs. Wolgamood asked about the previous amendment request as he was requesting 84 adult dogs. When asked about the 84 adult dogs and the additional kennel, Mr. Sloat indicated that would be the maximum amount of dogs that could be in the kennels. They also spoke to Eric Durcinka and he indicated they felt 60 dogs would be better than the 84 requested in the two kennels. Mr. Chupp is now asking for 100 dogs, but they aren't asking for additional kennels. Mrs. Wolgamood asked him to explain that situation.

Mr. Chupp felt that was a personal opinion of Eric Durcinka. The second kennel was to keep their whelping dogs separate from the adult dogs so that when they have puppies, they're not bothered by so much interaction with other dogs. It's basically to protect their puppies and basically keep it quieter so they're not bothered when they are having puppies.

They are not planning on having 100 female dogs. Like he said in their presentation, they are planning on having 75 female dogs. They re-home their adult dogs as they don't like to euthanize them unless they have to. They have to replace those dogs in the meantime and raise puppies until they are a year and a half to two years old. He noted that the USDA is already regulating the space requirements. As long as they have a current license with USDA, they are the ones that control that. They also have a large exercise area where their dogs have room to exercise.

Mrs. Wolgamood asked how many dogs the USDA would permit them to have in the two kennels that they have existing. Mr. Chupp said he thinks it would probably be around 105 dogs. They have 52 runs and most of the dogs are small at around 4 or 5 pounds.

Mr. Homan asked if the 10 ft. x 20 ft. kennel and the 24 ft. x 10 ft. kennel were part of the original application. Mrs. Prough indicated those already exist. When the petitioner came before the Board previously, he had the 10 ft. x 24 ft. kennel that was behind the chicken coop and then he had proposed the 10 ft. x 20 ft. to the east. The Board approved him to build that, which is the whelping house.

Mrs. Wolgamood indicated the Board had received numerous letters indicating that they never really had only 64 adult dogs. She asked if he feels as though he has explained that and Mr. Chupp said yes. Mr. Chupp said he has not exceeded that.

Mr. Campanello said the only way he could've exceeded it is if people were adding the puppies in with the 64 and Mr. Chupp said yes, but that includes the young adults that they will have kept as replacements. As soon as they reach breeding age, the older ones are retired and rehomed.

Mr. Homan asked the public to keep their comments to a minimum as there are several people here today to voice their opinions on this request.

Mike Yoder, County Commissioner, 13519 CR 20, Middlebury, was present to give some guidance on the land use issue as it is developing. In regards to the animal care issue, Mr. Yoder explained that Elkhart County is a large agricultural entity and they will be between number one and number two in agricultural production as a value of that. Primarily, that value is from livestock. The livestock experience as a whole has experienced some bad actors and unfortunately, those bad managers have been caught on videotape and often times, it's posted on the website. It reflects poorly on all of the livestock industry, but it doesn't mean they are all bad actors. There are a lot of good farmers out there and it is much the same with dog breeders. There have been some really bad actors out there that have been caught raising puppies and unfortunately, it reflects poorly on all dog breeders.

As far as a land use issue, he is afraid that the current zoning does not give the Board much guidance in this. They have already dealt with some problems on definitions of what is an adult dog, what is a breeding dog, what is a young adult dog, etc. Also, if you're not an animal breeder, it's difficult to know what the proper number of animals should be for the size of the operation. They are not given much guidance there either.

In the animal care issues, other public policy boards have struggled with a wide variety and diversity of opinions and often times, they will go back to a USDA standard or a Land Grant University Standard to guide the animal care.

On the land use issue today, he said that one of the things the Plan Commission is talking about and the Commissioners would like to see in his opinion is that they believe that an animal breeding operation like this is an agricultural use and they are looking to divide those uses into a hobby breeder and a commercial breeder. This would fall under the commercial breeder category. In an agricultural zone for a commercial breeder, they will be focuses around 40 acres for it to be a permitted use.

In other words, if these standards were in the zoning now, this gentleman would not be before the Board today. It would be considered a permitted use in an agricultural zone on 40 acres. He hoped that his presentation was helpful to the Board.

Dwight Moudy, Public Relations Director for the Elkhart County Farm Bureau, 26894 CR 46, was present in favor of this request. Mr. Moudy explained that the point the Elkhart County Farm Bureau would respectively like to submit to the Board is that anybody who is commercially producing animals is very carefully regulated by the USDA and also by the Indiana Board of Animal Health. They feel that with that much regulation going on, if the person that is doing this is in compliance with their regulations and working diligently to meet those standards, then there should not even be a zoning issue for the Board to deal with.

He agreed completely with Mr. Yoder that there are a lot of very good actors out there and just a very small number of bad ones that can sometimes cloud the judgment. Mr. Moudy respectfully asked the Board to support Mr. Chupp and his endeavor.

Carl Chupp, 70932 West County Line Road, Nappanee, was present in favor of this request. Mr. Carl Chupp explained that he is a neighbor to Mr. David Chupp and he is here today to support him. As far as he knows, the petitioners' kennels are clean and the property looks good.

Mr. Homan asked Mr. Carl Chupp to point out his property on the aerial photo and he did so at this time.

Delbert Helmuth, 70388 West County Line Road, Nappanee, was also present in favor of this request. Mr. Helmuth said he lives next door to Mr. David Chupp and he doesn't hear the dogs often. He felt the operation was compliant and he is in favor of the request.

Neil Chupp, 30852 CR 146, Nappanee, was also present in favor of this request. Mr. Neil Chupp rents from Mr. David Chupp and lives right beside him. He has been in his kennels and helped with his grooming. He feels the environment is very clean and nice.

Also present in favor of this request was Paul Chupp, 30421 CR 146, Nappanee. He explained that he is a neighbor to Mr. David Chupp and he feels it is nice for the petitioner to stay at home with his family while making a living.

Anne Reel, Director of the Humane Society of Elkhart County, 54256 CR 5, was present in opposition to this request. Mrs. Reel understands that they are looking at this as a land use situation, but the cautionary part comes in terms of animal care. For Mr. David Chupp to say that this is not a matter of animal care is a total disservice to these animals. These animals are not livestock. They are going into homes, they are living with children, they are living with people and they are domestic pets. Because of that, they require a different kind of attention than those animals that are pigs, cows and chickens. She felt the Board needed to keep that in mind.

In terms of Mr. David Chupp speaking about re-homing some of the animals, he indicated he is retiring ones that are able to be re-homed and social, which means that there are animals that aren't able to be re-homed and aren't social. That is what they see at the humane society. They see some of these animals coming in that are highly aggressive because they have not had all of that tender, love and care that they are hearing from this community that they are supposedly getting.

In terms of breeding animals and knowing that these are going into homes, that socialization piece is an important piece of ensuring that these animals will be the kind of animals that should go into homes. Mrs. Reel explained that the Elkhart County Humane Society would be happy to go out and look at the facility to ensure that they are meeting the standards of care that are written in the Elkhart County Ordinance.

She feels they have a disconnect between the Ordinance in terms of supporting proper animal care and the Board of Zoning Appeals. The Board can say that their only responsibility is to approve usage of land, but as a community that must be a community that is a humane community, their needs to be that connection so that there is some way for us to go out and individually look at some of these locations to ensure that they're meeting those standards. She felt that maybe they needed to look at their Animal Ordinance to provide a little more meat to that.

The Humane Society can be called to go out and respond to these things, but the owner can actually deny them access to the property. There are times when they cannot even go check

to see if there is a relevant issue, so she feels they need to somehow address that particular piece. Some people talk about the USDA and feel they are tough inspectors, but they have seen repeated violations by Mr. David Chupp and there is no pulling a permit once it's in place and violations can continue to happen. This is a broader problem for Elkhart County and it requires a broader perspective in terms of kind of a marriage between what the Board is trying to do and what the Humane Society is trying to do to ensure proper animal care.

Mrs. Reel explained they see so many animals. They average 500 animals a month and they are putting good dogs down because they aren't social. Some of these animals are coming from these particular breeding kennels and are too aggressive to be re-homed. She is in opposition of enlarging this problem. She asked the Board consider tabling any decision on this until the Humane Society has time to work with some other entities in Elkhart County to try and better address this problem so that the Board has a free and clear conscious when approving the zoning situation.

Valerie Shay, 1314 East Main Street North, South Bend, was present in opposition to this request. Mrs. Shay has reviewed the packet of information and she has reviewed all of the USDA violations that the petitioner has received. She realizes that the Board is simply looking at the appropriateness of the zoning, but she feels they all can agree that no one thing works independently of the other and the Board's decision will be a reflection on Elkhart County on an issue that is very important to many people which is the humane treatment to animals. She asked that the Board consider that fact.

Mr. Homan asked which violations she is referring to and Mrs. Shay explained there was an incident where the USDA inspector noted that there was excessive feces in the cages and that the care and attention needed to ensure health and sanitation issues were not being addressed.

Mr. Homan questioned when that citation happened and Mrs. Shay was not sure. She didn't bring the citations with her today because she assumed the Board all had those in their packet.

Mrs. Shay indicated that the violations between in July of 2009 and the most recent violation is from November 7, 2011.

When Mr. Homan asked what that violation was, Mrs. Shay read it at this time which stated, "The wash downs for the outside portion of the adult kennel have buildup mineral deposits. The accumulated grime can attract pests that may carry diseases and could sicken animals." The second violation that day was, "The doorways in the primary enclosure have buildup of grime." In January of 2011, once again, they were cited for excessive piles of feces and furthermore, excessive amounts of feces and wastes and similar throughout history.

Carol Mitchell, 61239 CR 21, Goshen, was in opposition to this request representing Michiana Pet Shop Puppies. She submitted to the Board a list of people in opposition to this request who are also in attendance today *[attached to file as Remonstrator Exhibit #1]*. Mrs. Mitchell explained they see puppy mill after puppy mill in Elkhart County prospering off the suffering of their breeding dogs. She realizes the Board is concerned with land issues, but there are several things they are concerned about the use of the petitioners' land. The first thing would be exercise. Mr. David Chupp has 44 acres of land and she asked why the dogs have to be in cages with just six inches of moving space. They are not agricultural animals and she feels that livestock have better conditions than these breeding dogs.

The Board of Animal Health requires that breeding dogs get exercise daily. The veterinarian report for the Chupp's say that the dogs get one to two hours of exercise per week.

Does that mean they get out of their primary cage every day or only once a week? She asked if the Board has seen the exercise plan for the dogs and whether they are meeting the requirements of the Indiana law.

The second issue would be land use and the number of dogs. In February of 2009, the Chupps had their last hearing and were told that they could renew their permit based on, and among other things, their number of dogs could not exceed 64. As of August 2009, a Code Enforcement staff member went out to inspect the site and the report indicates that they have been in compliance with all of the issues. She asked if the staff member counted the dogs at this time.

There is no note on the number of dogs, yet they were given a permit at this time. USDA records show that the Chupps had 77 dogs in July and a Code Enforcement investigator went out a month later and they had 64. She questioned if they were even counted. The Board of Zoning Appeals minutes from February 2009 indicated that if during the inspection, the requirements were not met, then the permit could be revoked. If there were 64 dogs at the time of the inspection, she asked if it was possible that Mr. Chupp had the extra dogs removed during the inspection.

Mrs. Mitchell had the number of dogs that the Chupps have had in the last three years according to the USDA report, including adult dogs and not puppies. In January of 2009, they had 75 dogs. On January 20th five days later, they had 75 dogs. In July of that year, they had 77 dogs. In October of 2009, there were 70 dogs on site and then in January of 2011, it went up to 96 dogs. In November of 2011, they had 88 dogs. It seems that Mr. David Chupp has a problem respecting the limits placed by the Board of Zoning Appeals. He has not once had his numbers down to 64 since he was told three years ago. He has made a mockery of the Elkhart County Board of Zoning Appeals. If the Board were to renew this permit, she asked why anyone would think they need to follow the Board's requirements as Mr. David Chupp has completely blown them off.

The third issue is the wire flooring issue. There is another area where the Chupps have blown off what they are, by law, supposed to do. Indiana Law APL 111 states that each cage needs an area for the dogs to get off the wire flooring. The Chupps do not have this according to a veterinary report. It states that some of the cages have a metal plate for the dogs to get off of wire flooring. Indiana State Law says that each cage has to have an area where the dogs can get off the wire flooring. The flooring is painful to their feet and their legs can be broken.

In one of the petitioners' USDA petition reports, it states that he was in violation because puppy's legs were dangling through the wire floor. This is dangerous and bones are broken this way. When Mr. David Chupp doesn't follow the requirements, the dogs are the ones who suffer. In the past three years, the Chupps have also ignored multiple USDA requirements for commercial breeders. They are outlined in the USDA reports. The violations range from sanitation issues to lack of veterinary care.

Finally, she asked how is supposed to enforce the codes that are in place. The Board of Animal Health doesn't have the funds to do the inspections, the USDA slaps them on the wrists and then goes away until the next inspection six months or a year later and writes up more violations or lets things go. They don't remove the permits from the worst offenders. Elkhart County has an Ordinance, but we don't know who enforces that. They asked the Board who is supposed to inspect and enforce the codes with all of these puppy mills. In conclusion, she asked the Board not to renew this Special Use permit.

Mr. Hesser asked if the counts of the dogs were from the USDA inspections and Mrs. Mitchell said yes. They were adult dogs and it wasn't including the puppies. Those are in the written reports.

Mr. Homan asked if she owns a pet shop and the Mrs. Mitchell said no. She is representing the Michiana Pet Shop Puppies which is a local organization.

Linda Koeppel, 58071 Concord Valley Drive, Elkhart, was also present in opposition to this request. Mrs. Koeppel said she is strictly against this renewal based on the fact that dogs are not livestock. They need different care. She feels they need to take a stand and the Board currently has that opportunity. She is strictly opposed to the Board granting this request.

Also present in opposition to this request was Pam Donaldson, 207 E Randolph Street, Nappanee. Mrs. Donaldson was with a friend looking for a puppy and she went out to Mr. David Chupp's property and asked to see the puppies. Mr. Chupp asked them if they wanted a male or a female and he brought one puppy out. Mrs. Donaldson asked if she could see the parents of the puppy and the living facility and they were denied. That was a red flag right there that they weren't able to see where the puppies are living or where the parents are living at. They did not purchase a puppy from the petitioner. If he is saying that his kennels are so clean and he is very proud of them, she felt that customers should be able to go in and see living conditions.

Present in opposition to this request was Pat Egolf, 257 North Madison Street, Nappanee. Ms. Egolf said she is trying to stick up for the animals and she is not happy for the kennel being out there at all. She is certainly not happy with them wanting to expand it.

Elaine Long, 19700 Hildebrand, South Bend, was present in opposition to this request as well. Ms. Long said she doesn't understand why there is a confliction between the number of adult dogs. She feels that Mr. David Chupp should know how to breed anymore dogs until finding homes for the current ones. His number should be kept at the required limitation and she feels it is very disrespectful to the Board that he is not following the conditions set in place.

Becky Parmater, 1307 Briarwood Drive, Elkhart, was present against this request. After listening to the petitioner, she feels if he wants to go from 64 dogs to 105 dogs, she doesn't remember hearing that he would be making anymore additional kennels or buildings to house another 40 dogs. She asked if his intent is to add those 40 dogs into the existing two kennels that he has. If that is the case, she can only imagine that it will not be a very healthy situation.

Cathy Kelsey, 55925 Rivershore Lane, Elkhart, was also present in opposition to this request. Mrs. Kelsey explained that she has three yorkies and they cost her thousands of dollars to keep them alive because they were so sickly and they came from puppy mills. They should not have been in a puppy mill to begin with. She is suspicious that her dogs came from this breeder and her dogs' situation is horrific. She feels the petitioner should get a real job instead of trying to make money off of the blood of innocent dogs.

Laurie Golden, 70615 Sherman Road, Edwardsburg, Michigan, was present against this request. Mrs. Golden noted that her husband is a business owner and a property owner in Elkhart County on CR 6, so she is quite familiar with business regulations. She asked how the animals are disposed of when they are euthanized because obviously something happens when they are hearing the changes in the figures of how many adult animals he has. Something has happened to those adults and she asked if they are being disposed of in a proper manner with zoning.

Also present against the request was Cheryl Rambadt, 30868 Oak Springs Drive, Granger. She supports everything has been previously stated. She questioned if the petitioner

has proper drainage. She is very concerned about the environment and she feels there should be a different method of waste removal. Mr. David Chupp will not be at this site forever and she feels the Board needs to keep that in mind. She also felt it was disrespectful for Mr. David Chupp not to follow the regulations set forth by the Board of Zoning Appeals.

Nancy Vida, 24418 CR 16, Elkhart, was also present in opposition to this request. Mrs. Vida used to be a hobby breeder and she has a retired champion dog. She said that a good and responsible breeder cares for their puppies. She also feels that a good breeder does a pre-home survey to know where the puppy will live for the rest of their lives. When she would have a litter of puppies, they were never allowed to be resold. She was President of Dogs for the Handicapped and trained for 15 years providing service dogs for the people of Elkhart and surrounding areas. She fosters dogs from animal rescue and she has had multiple dogs from puppy mills. She is unsure whether they were from his facility, but they have temperament problems and they have health issues. She has been a groomer for 20+ years. One particular dog that she groomed from a puppy mill was extremely matted with lots of wounds and was socially unfit to be a pet at that time. She asked that the Board limit the number of dogs involved in this request.

The USDA approves puppy mills and their job is nutrition, food safety, animal regulation including beef industry, dairy industry, poultry industry and pork industry. She asked when a dog became any of those animals. She feels that dogs need a purpose, they need activity and they need love. When you have 105 dogs, she questioned how they could possibly get that.

Mrs. Vida also noted that privacy fences do not contain dog barking. Mr. David Chupp noted that he has a metal fence constructed, but she doesn't feel that is going to stop sound.

In rebuttal, Mr. David Chupp said he is completely on the remonstrators' side. He felt the concerns were all very explained. If had seen everything the remonstrators have seen on TV about the worse things they can possibly show about puppy mills, he would be here protesting also, but they are not a puppy mill. There are bad breeders out there and there are good breeders. He feels that a puppy mill is neglectful and abusive to their dogs, and they wouldn't be registered with the Board of Animal Health. He assured the Board they are not one of those.

Mr. Homan said he has three issues he would like the petitioner to address. If was approved to increase the number of adult dogs from 64 to 105, how and where would those be housed? Secondly, with the increased load of animals, how would he handle a provision for waste disposal and how would euthanization be handled. Lastly, socialization is something that probably differentiates an agricultural animal from a domesticated animal. Mr. Homan questioned how he handles socialization with 105 dogs and what degree of confidence he has that his product goes to the public in a relatively safe matter.

Mr. David Chupp said if he would've had time, he could've probably have gotten another 100 referrals from past puppy customers who would've spoken up for him. Their puppies are socialized and well taken care of. They constantly have puppies in their house playing with their children. He understands the Board's concern, but as a business person, if you don't have a socialized dog, then nobody is going to buy it. It is in his best interest to make sure that the puppies are well socialized and will make a good pet for someone.

In regards to the disposal of waste, their septic system has been approved for the amount of animals they have and it's been handling it very well. They have it pumped out whenever it gets full. Animals that need to be euthanized are done by a veterinarian and he's unsure what is done with them after that point.

Mr. David Chupp said he does not intend to have this many dogs. He wants a limit of 105 dogs so there is never a problem having their kennel renewed as they do have slow periods where puppies don't sell as well. They do have the facilities and adequate space and he indicated he will continue to assure they have adequate space for the amount of dogs that they have. If they do not have that, they will not have a USDA license.

Mr. David Chupp assured the Board that he has no intentions of increasing the number of dogs to 130.

Mr. Hesser asked the staff if they were changing the number of dogs that they were recommending. Mrs. Prough said yes, they wanted to amend it to say "adult breeding age dogs." The reason for that is because the definition just talks about the keeping of adult dogs and they only talk about adult dogs as being anything over four months of age. Often the petitioner has puppies and they are keeping puppies that might be four or five months old to sell. Mrs. Prough indicated she was out there two days ago and Mr. David Chupp had several that were four or five months old. Under the Elkhart County Zoning Ordinance, those dogs are considered adults, so they are in that count. She tried to get online on the USDA website to see what they determined adult dogs, but she was unable to find that. The changes in the new Ordinance will hopefully address this matter.

Mrs. Hesser asked what the capacity of adult dogs was that was noted in the previous minutes and Mrs. Wolgamood noted 84.

Mr. Hesser asked if they are still maintaining 64 breeding age dogs and he said yes. The remainder of the dogs are older puppies.

The public hearing was closed at this time.

Mr. Homan feels that it is good that the county is considering more specific guidelines for kennel operations and breeding. He certainly does hear the community's comment that domesticated pet animals are different than livestock. He doesn't know if that is part of the discussion about the Ordinance change, but he feels it probably should be. Another comment came up regarding USDA violations and he feels that anybody who runs a business has had a violation from a federal or state agency. You correct those issues, but you don't close your business. He didn't hear anything there that he felt was relevant to the land use or the public safety in terms of USDA citations. As a Board member, it bothers him that they had quite a few more adult dogs than they had directed the petitioner at the 2009 renewal.

The staff recommendation is for 105 breeding dogs and Mr. Homan feels that is rather ambiguous. He doesn't know if that means actively breeding dogs, breeding age dogs, dogs that are being retired or dogs that are being prepared to breed in the future. Unfortunately, given the lack of direction in the Ordinance, the Board has to make a decision based on past history and land use.

Mr. Hesser said in respect to the numbers issue, he is accepting the explanation from the petitioner and the staff. Apparently, there was some communication and clarification, so he feels that distinction was arrived at in good faith. With 64 breeding age dogs and following the explanation that the petition gave as far as how the actual number of adult dogs can vary with respect to that, that about maximizes what the petitioner represents as his capacity. When you ask the question about how many adult dogs can be at this location, it doesn't matter whether it's an adult breeding age dog or an adult retired dog. He feels that 64 dogs is the capacity of breeding age dogs that you could have here, so to double that without an explanation or showing of additional facilities, he doesn't feel it is appropriate. He did not hear anything about not

granting the renewal. He understands everyone's concerns, but he didn't hear the typical concerns of being a bad neighbor, etc. He doesn't see how the Board can support an increase in number based on what they've heard.

Mr. Homan asked if an increase in the future is a concern of the staff. Mrs. Prough said when the staff met, they were unaware of the petitioners' circumstances. She was not aware until after the fact that he has retired adult dogs and they are trying to find homes for them. Some of them, they are raising before they breed them. As far as what the petitioner represented today, Mrs. Prough suggested cutting that number down and addressing breeding age dogs and cutting the number down. If he wants to retire a dog, then the petitioner can retire it, keep it six months and then look for a home. She reviewed the minutes from the last meeting and it was her understanding that when he applied for the 80 some dogs, he exceeded the USDA requirements for housing the animals then. She felt that should be left up to the USDA.

Mr. Miller said they have heard a lot of testimony this morning and he thanked Mr. Yoder regarding some long-term thinking for Elkhart County. He has struggled with the number of dogs since he has gotten this petition and to him, it seems like a moving target. He feels that the Board is ill-informed and unable to make that decision. He believes that this is a very respectable breeding operation, but he would be in favor of only renewing the petition and not increasing the number of dogs. He is not informed enough to say what a breeding dog is.

Mrs. Wolgamood said she wholeheartedly agrees with what Mr. Miller said, including what he said to Mr. Yoder as well Dwight and his comments in support of the request. However, there is an existing Zoning Ordinance and they don't have a future one yet. There apparently is some discussion, but they are stuck with what they have. When Mr. David Chupp came before this Board originally, they made the determination that the land use was in accordance with the Elkhart County Zoning Ordinance and they approved it for 64 adult dogs. Mrs. Wolgamood explained she does not approve of puppy mills, but the petitioner has addressed the concerns that he has put in a septic system for his waste, a veterinarian takes care of the deceased animals and she feels he has answered the Board's concerns. She would agree with a renewal with the existing number of breeding age dogs.

Mr. Hesser said when they talk about 64 dogs, they are not just concerned with the facilities, but the size of the operation. His only concern is that the definition of breeding age dogs has a big gap. The petitioner has represented that as dogs retire, they try to find homes for them, but how do you address the fact that there could be 200 retired dogs that he never gets rid of.

Mrs. Wolgamood said in her opinion, those retired dogs are still breeding age dogs, so they have to be included in the count of 64.

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 Special Use renewal for an existing kennel with indoor pens and/or runs (Specifications F - #15.00) and outdoor pen and/or runs (Specifications F - #15.10), and an amendment to said Special Use to increase the number of dogs 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 within sixty (60) calendar days after BZA action on the petition for placement in the petition file.

The Board also imposed the following commitments:

1. Kennel to be operated by the owner/occupant of the residence on site.
2. No more than 64 breeding age dogs.
3. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

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

12. The application of *Noah & Mary Bontrager Estate* for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence (Proposed Parcel "B"), and 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 the construction of a residence (Proposed Parcel "C"), on property located on the West side of CR 39, 3,030 ft. North of SR 13 (Parcels A & B) and East side of SR 13, 2,650 ft. North of SR 13 and SR 4 intersection 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 #OCR 39-120120-1*. She amended the Staff Report by removing "the Hearing Officer" from the last sentence of Condition #1.

There were 14 neighboring property owners notified of this request.

Merv Bontrager, son of petitioners, 61162 CR 39, Middlebury, was present representing the petitioners. Mr. Bontrager said both of his parents are deceased and they now want to dispose of what's left of the estate. He explained that they would like to take a five acre piece off of the entire 34 acre parcel and that would be Parcel A. That could be used for a building site and it leaves 100 feet of opening that would lead back to a 10 acre parcel. They are not looking to make this a tightly packed neighborhood. In looking at some of the additional parcels in the area, they are medium size and they would allow for some pasturing and small agricultural use.

In regards to the back parcel with 16.4 acres, he explained they do have access off of SR 13 and that access was kept when the adjoining property was sold. The reasons they kept that parcel was for access back into the field.

Mr. Hesser asked if Parcel C is a separate parcel now and Mrs. Prough said everything is proposed.

Mr. Bontrager explained that the back parcel was bought from a different previous owner than the front one. Their tax papers are separate. They felt these would be appropriate sized parcels to use for building sites and they wouldn't be anything out of the ordinary.

Mr. Homan said on the staff recommendation, there is a recommendation for Parcel C and then a recommendation for the proposed Parcel B. In regards to Parcel C, the staff's recommendation is that if this is approved, it would be void unless there was a permit for it in 90 days. He asked Mr. Bontrager if he has potential buyers for this property now or if he is going to put it as open ground on the market pending approval of this. Mr. Bontrager said they will be putting them up for auction shortly. They do not have a buyer in mind at this point. They would like to put it on the market as soon as possible, so he questioned the 90 day restriction.

Leroy Troyer, 60950 SR 13, Middlebury, was present to voice his concern. Mr. Troyer explained he adjoins the subject Parcel C which they would like to sell. He pointed out his property on the aerial photo at this time. He is concerned about someone building a house there in the future and young children getting into the pond on his property. He would prefer to see

the property remain as farming ground. He submitted signatures of neighbors who are in opposition to this request [attached to file as Remonstrators Exhibit #1]. It was then clarified that Mr. Troyer is referring to his property which adjoins Parcel C to the west.

Mr. Homan asked Mr. Troyer to point out the location of the remonstrators who signed the petition in opposition to this request. He did so at this time.

Raymond Bontrager, son of petitioners, 63637 CR 33, Goshen, was also present on behalf of this request. He explained that the pond was recently sold to Mr. Troyer by his father recently. He noted they are trying to keep the parcels big enough so they can still be used for agricultural purposes.

Eugene Hochstetler, 60992 SR 13, Middlebury, was present in opposition to the request. He feels there wouldn't be any privacy in the area if this request were to be approved.

Dale Troyer, son of Leroy Troyer, 60950 SR 13, Middlebury, was also present in opposition to the request. He questioned whether a 30 ft. right-of-way would be big enough to construct a house on the property. He is also concerned about the pond.

The public hearing was closed.

Mr. Homan asked what the difference is between Parcels C and B other than the date of 2001. Mrs. Prough explained that the Ordinance was changed in 2001 to allow people to build on property that is three times longer than it is wide provided they had over 250 feet of road frontage. It was to discourage smaller parcels and this was platted and recorded prior to that change. What they're saying for Parcel B is that currently, that parcel has 400 feet of road frontage. It is buildable as it is right now.

Mr. Kolbus said his question was whether there was any other distinction between the two other than that and Mrs. Prough said no, it was when one was created verses when the other was created. Both of the parcels need Variances in order to build.

Mrs. Wolgamood noted that the people who are most concerned about the property divisions are on Parcel B and not on Parcels A or B.

Mrs. Wolgamood asked when the property at 60992 SR 13 was divided from Parcel C and she also questioned if the Bontrager's owned it when that was done. Mr. Merv Bontrager said it was sold in 1993. When she asked if the Bontrager's owned the parcel to the north which is designated as 60950 SR 13, Mr. Merv Bontrager said that lot was sold back in the 1960's. That was the first lot sold there and then the pond was recently sold.

The parcel that has the pond on it now had road frontage and she questioned how much road frontage it had, but he was unsure.

Mrs. Prough said the property was divided after 2001.

Mr. Homan questioned the improvement location permit and the subdivision application. Mrs. Prough clarified that those are two separate Ordinances. The Rules of Procedure currently address that whenever you grant a Developmental Variance, if it requires a building permit, you have to obtain an improvement location permit, which is your zoning clearance, within 90 days. That is good for six months and then you have to get your building permit sometime before those six months.

The Subdivision Control Ordinance is a different Ordinance and they have to go through that process. The Rules of Procedure indicate that you can grant an extension of the 90 days. For example, if the petitioners are going to sell it and don't have a buyer and don't think they're ready to get an improvement location permit started within 90 days, an extension can be given. They would still have to start the subdivision process within 90 days.

Mr. Hesser said the petitioner needs to be aware of that. He explained to the petitioner that he needs to make sure he meets the time limits.

If the Board grants any of the Variances, Mr. Kolbus advised that they should consider extending the 90-day time limit for getting the Improvement Location Permit now, otherwise they will have to come back to the Board.

Mr. Homan asked if they need to have the Improvement Location Permit before they submit an application for a subdivision, but Mrs. Prough said no.

Mrs. Wolgamood said she had a similar situation yesterday for the Hearing Officer and she granted an extension for a year.

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 3 to 1 depth to width ratio Developmental Variance and a 70 ft. lot width Developmental Variance (Ordinance requires 100 ft.) to allow for the construction of a residence (Proposed Parcel "C") be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within one (1) year from the date of the grant.
2. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
3. The property owner is required to apply for a subdivision within ninety (90) days of the approval.

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

A motion was then made and seconded (*Homan/Miller*) that the request for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence (Proposed Parcel "B") be denied in accordance with the the Staff Analyssis. With a unanimous roll call vote, the motion was carried.

13. The application of **Larry & LeEtta Eash** for a Special Use for a home workshop/business for the making of outdoor lawn furniture (Specifications F - #45), a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure, and a 35 ft. Developmental Variance to allow for the placement of a sign 20 ft. from centerline of the right-of-way of CR 33 (Ordinance requires 55 ft.), on property located on the West side of CR 33, 760 ft. North of CR 38, common address of 64885 CR 33 in Clinton 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 #64885CR 33-120120-1*.

There were 8 neighboring property owners notified of this request.

Blake Doriot, B. Doriot & Associates, P.O. Box 465, New Paris, was present representing the petitioners. Mr. Doriot explained that the petitioners were present in the audience.

On page 13B of the Board's packet, Mr. Doriot explained that it is looking back into the property from the road. The building where the business would be conducted is barely visible from the road. He then displayed the view from the driveway. Mr. Doriot also displayed the larger building that is oriented east and west. He pointed out the area they will be using for the

manufacturing and building of the furniture. The back half will be used for agricultural purposes. They have a very nice horse setup in there. Another photo was displayed showing the peak building north and south and where they will store finished product. They are not anticipating any more than two outside employees.

Mrs. Wolgamood questioned the site plan and Mr. Doriot noted that Mr. Eash submitted that. It was clarified that the site plan is flipped. The east half is used for furniture and the west half will be used for the animals.

Mr. Doriot said that looking north from the storage building, they have a generator shed. The sign is located at the 20 ft. right-of-way looking north from where you would be driving your vehicle. He then displayed further photos of the sign located at different locations on the property. Coming from the north at 55 feet back, it is impossible to see the sign.

As far as the safety issue, Mr. Doriot said if they have the sign back 55 feet, they are going to have someone coming along and they will have to slam on their brakes or they will go down the road and pull in somebody's driveway to make an unsafe maneuver and back out to come back. When you look at the aerial, internally in the site, they have more than ample room for a car to turn around or for a truck to do a backing maneuver. It was stated that the sign would adversely affect the neighbors.

At this time, Mr. Doriot read and submitted a letter in support of this request *[attached to file as Petitioner Exhibit #1]* from Andrew and Sonja Kesler, 64801 CR 33, Goshen, the adjoining neighbors to the north. The Kesler agree with the business and location of the sign. If the sign was to be 25 ft. further back, you would not see it. He also read and submitted a petition in support of this request, which the petitioner circulated to the neighbors *[attached to file as Petitioner Exhibit #2]*.

Mr. Hesser questioned the sales and Mr. Eash indicated they will be selling mostly wholesale items. He asked how many deliveries they have coming to the property and the petitioner said it won't be many trucks. Mr. Doriot noted three or four vehicles per week.

The petitioners' representative explained the Kesler's approve, the Miller's approve who live to the south, there is a large wetland area to the west and to the south is a pond and a wet woods. There is also parsonage in the area for the Rock Run Church and the cemetery for the church. Mr. Doriot respectfully requested that the business be approved and the sign location be moved to just beyond the right-of-way line to allow for safe motoring along the road.

In regards to the semi traffic, Mr. Homan asked how they handle that. Mr. Doriot said the semi is able to turn around on the property and it will not require backing up onto the road.

Mr. Campanello said the new location of the sign will help delivery drivers as well and Mr. Doriot said yes. A car can easily turn around and come back if they miss the turn, but a tractor trailer will have a harder time getting back to the site.

Mrs. Wolgamood said she is concerned about vehicles entering and existing the site because of the location of the trees. Mr. Doriot said when you are at the edge of pavement and you pull your vehicle up right to where you're getting ready to pull out, you have ample sight distance. Traffic from the north will be seeing the stop ahead and will be slowing down. The trees will not impede the vision as they are 20 ft. back from the centerline of the right-of-way.

Mrs. Wolgamood asked if there will be other types of transportation other than vehicles and Mr. Doriot said there will be some buggies coming to the site.

When Mr. Doriot asked the petitioner if he has issues with sight distance when leaving the property and Mr. Eash said you have to make a complete stop and look because of the trees.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood suggested that a revised site plan be submitted showing the correct location of the agricultural portion of the structure (40 ft. x 80 ft.) and the area of the Special Use for the construction of furniture.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for the making of outdoor lawn furniture (Specifications F - #45) be approved with the following conditions 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 within sixty (60) calendar days after Board of Zoning Appeals action on the petition for placement in the petition file.
2. A revised site plan to be submitted within thirty (30) days (correcting the location of the agricultural portion of the 40 ft. x 80 ft. building and the area of the Special Use for the construction of furniture).

The following commitments were also imposed by the Board:

1. Home workshop/business to be operated by the owner/occupant of the residence on site.
2. Days and hours of operation to be Monday through Saturday, 5:00 a.m. to 5:00 p.m.
3. No more than two (2) employees who live outside the residence on site.
4. No outside storage or display.
5. Business to be operated from the existing structures per the revised site plan submitted.

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

A motion was then made and seconded (*Hesser/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved with the following conditions imposed:

1. All required state and local permits to be obtained.
2. Approved in accordance with the site plan submitted.

The motion was carried with a unanimous roll call vote.

Mr. Hesser then moved that the Board approve the request for a 35 ft. Developmental Variance to allow for the placement of a sign 20 ft. from centerline of the right-of-way of CR 33 (Ordinance requires 55 ft.) based on the following Findings:

1. Will not be injurious to public health, safety, morals, or general welfare.
2. Will not cause substantial adverse affect on the neighboring property.
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 motion was seconded by Mr. Miller, and with a unanimous roll call vote, the motion was carried.

14. The application of *Andrew G. & Susie Martin* for an amendment to an existing Special Use and site plan for an agri-business in an A-1 district to include fabrication of trusses for construction of structures for crops and animal husbandry farming operations, to allow for the construction of a lumber storage shelter (Specifications F - #56), and for a Developmental

Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the East side of CR 1, 1,800 ft. South of CR 30, common address of 62332 CR 1 in Olive 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 #62332CR 1-120123-1*. The Staff Report was amended by replacing the word 'hear' with 'heat' in Commitment #10 (Page 14e).

There were 9 neighboring property owners notified of this request.

Attorney Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners. Mr. Sloat noted that the petitioner was unable to be here today as his driver canceled on him at the last minute and he wasn't able to get another ride.

Mr. Martin has been manufacturing trusses at this location since 2004 and he has been before the Board before. At this point, the petitioner would like to construct an open sided storage shelter to the east of his shop. He is currently storing extra material in portable structures to the rear of the property, but he would like to be able to store it in a little bit better situation than that. The proposed structure will be 16 ft. wide x 100 ft. long and it will have posts at the corners and appropriate bracing to support it, so it will be open sided and it will probably have some support posts down through the middle for support. This will help his material from being contaminated by the snow and mud.

Mr. Hesser questioned what will happen to the temporary structures and Mr. Sloat said they will be gone. When asked if this will eliminate outside storage or just reduce it, Mr. Sloat said it will eliminate some of the outside storage. There may be some things that will be temporarily outside.

Mrs. Wolgamood asked if all of the lumber is used in the manufacturing of trusses and Mr. Sloat said yes.

She asked if he has always stored his lumber like that and Mrs. Prough indicated no. When the Board questioned where he was storing it in 2010 when he came before the Board, Mrs. Prough said he was storing it in the open.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said the structure will be an improvement to the site.

Mrs. Wolgamood questioned Commitment #11 which states, "Renewal of the Special Use to be in 2013" and asked if that should be February. Mrs. Prough said it should be February 2013 and in compliance with the original conditions of the last approval.

Mrs. Wolgamood said when looking at the commitments, #5 in particular, her question is when and who determines when the agri-business is no longer secondary to the residential structure.

Mr. Campanello felt it would be when all of the agricultural barns are starting to be workshops creating trusses. As long as he's got agricultural barns on there, it is still agricultural.

Mr. Hesser said the Board would determine that, but the other question is where you draw the line. He was unsure of how to do that.

Mr. Homan said the petitioner has approval for an agri-business and asked if it is even relative as to whether or not it is secondary to the residential function. Mrs. Wolgamood said if it's not, then she feels it needs to come off of there. Mr. Homan felt it should come off. Mrs. Wolgamood agreed.

Mr. Kolbus said it was originally granted as a home workshop/business, so that is why it is in there. At some point, it was changed to the agri-business and you don't need that sentence in there for the agri-business.

Mr. Hesser indicated you could have it. It's an irritation because at the time when they discussed this, they expressed the concern that at some point, it will be too big.

Mrs. Wolgamood indicated she isn't against the approval of what the petitioner is requesting today. She just feels that they need to think about that if they are going to leave that statement in there. Mr. Hesser agreed.

Mr. Kolbus stated that the request was changed from a home workshop/business to an agri-business in March of 2007.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Campanello*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use and site plan for an agri-business in an A-1 district to include fabrication of trusses for construction of structures for crops and animal husbandry farming operations, to allow for the construction of a lumber storage shelter (Specifications F - #56), and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure, be approved by the Board with the following conditions imposed:

1. All required state and local permits to be obtained.
2. 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 within sixty (60) calendar days after BZA action on the petition for placement in the petition file.
3. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within ninety (90) calendar days from the date of the grant and construction work completed within one (1) year from the date of the issuance of the building permit (where required), unless specific permission for additional time is granted by the Elkhart County Advisory Board of Zoning Appeals.

The following commitments were then imposed:

1. Pick-up truck with trailer used for primary delivery of trusses. Semi-tractor with trailer used as needed for longer trusses, no more than one (1) or two (2) times per month.
2. No more than two (2) deliveries or pick-ups per day.
3. Truss business will not be expanded without BZA approval.
4. Hours of operation are Monday through Friday from 7:00 a.m. through 6:00 p.m. with no Saturday or Sunday hours.
5. Construction of roof trusses shall be secondary to the use of the property as a residence and as farmland.
6. Agri-business manufacturing assembly operations will be carried on wholly within accessory building per site plan.
7. Agri-business will be operated by Andrew Martin as resident of the property, not more than two (2) persons who do not occupy the residence will be employed.
8. No signs.
9. No retail sales.

10. Agri-business shall not produce noise, vibration, smoke, dust, odors, hear or glare which can be detected beyond the premises.
11. Renewal of the Special Use Permit to be 2013.
12. 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 with a unanimous vote.

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

16. Mrs. Prough explained that Mr. Kolbus prepared a revision to the ***Board of Zoning Appeals Certification of Residency*** as the original document was not clear, and she requested that the Board adopt the revised form.

After a brief discussion, a motion was made and seconded (*Miller/Wolgamood*) that the Elkhart County Advisory Board of Zoning Appeals Certification of Residency be modified and adopted by the Board as an amendment to the Board of Zoning Appeals Rules of Procedure.

Mrs. Prough then submitted for the record the Certification of Residency forms signed today by Tony Campanello and Robert Homan (*see attached Staff Exhibits #1 & #2*).

17. At this time, Mrs. Prough explained that in January 2011 a Use Variance for the placement of truck beds to be used for storage was approved for ***Americo Real Estate Company c/o U-Haul Company of Northern Indiana***. This property is located on the North side of US 33, West of CR 3 in Baugo Township. They have decided to put a permanent structure on the property rather than using the van boxes for storage. She then submitted a letter dated February 1, 2012, from Craig Wilson, Marketing Company President, requesting to rescind the Use Variance [*attached to file as Staff Exhibit #1*].

A motion was made and seconded (*Miller/Wolgamood*) that the Use Variance be rescinded by the Board, and with a unanimous roll call vote, the motion was carried.

18. The meeting was adjourned at 12:28 p.m.

Respectfully submitted,

Kate Keil, Transcriber

Jane M. Yoder, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary