

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17TH DAY OF JANUARY 2013 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. Staff members present were: Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

Absent: Robert Homan

2. A motion was made and seconded (*Wolgamood/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of December 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 5th day of January 2013 in the Goshen News and on the 4th day of January 2013 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. There were no postponements of business items.

6. Election of Officers:

Motion: Moved by Meg Wolgamood, **Seconded by** Tony Campanello, that Randy Hesser be re-appointed as Chairman.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

Motion: Moved by Tony Campanello, **Seconded by** Meg Wolgamood, that Doug Miller be re-appointed as Vice Chairman.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

Motion: Moved by Tony Campanello, **Seconded by** Meg Wolgamood, that Robert Homan be re-appointed as Secretary.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

7. The application of **Samuel D. Yoder (land owner) and Alvin J. Heims (appellant)** for an Appeal from the issuance of an Improvement Location Permit (ZN-121029) for a sawmill with attached lean-to on property located on the East side of CR 43, 2,800 ft. North of CR 10, common address of 54014 CR 43 in York Township, zoned A-1, came on to be heard.

Mrs. Wolgamood informed the audience of the second item on the agenda for Mr. Yoder which is the renewal of the Special Use for a sawmill and indicated these two applications are actually two separate public hearings. She noted someone wanting to speak for or against the issuance of the zoning clearance and building permit for the appeal will need to address those issues and not the use of the property for a sawmill. She added that the second hearing will discuss the sawmill.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #54014CR 43-121206-1*.

There were four neighboring property owners notified of this request.

Al Heims, 105 Greenfield, Middlebury, was present as appellant in this petition. He said they purchased the property on CR 43 in 1996. His wife submitted a packet of photographs at this time *[attached to file as Appellant's Exhibit #1]*. He said he feels badly about the fire and the sawmill business being destroyed. He noted while they have had disagreements over the sawmill and the impact on Mr. Heims' property, he is sympathetic and feels badly about what happened. He stated they bought their property for the purpose of having their sons experience both the peace and hard work of growing up in the country and what that means as he and his wife both grew up on family farms. He said when they purchased the property, it had dump piles and debris throughout and large scrub trees, thorn bushes, and overgrown weeds all over the place. He noted they spent much time and money over the years to clean up the property to what it is today which is clean and attractive. He indicated he hopes his neighbors and Elkhart County at large would appreciate the improvements and referred to it as a labor of love.

Mr. Heims said the sawmill came in after they purchased their property and really imposed upon them. He said they viewed the property was an investment and a large part of their retirement fund. He indicated they felt they could take the property, improve it, and create value. Although they encourage anyone to choose a livelihood and make a good living as the Yoders have with the sawmill, he stated they object to the operation at this location and believe it should be located somewhere else. He feels the sawmill has the largest impact on them as their property borders the sawmill on two sides, but he noted most of the neighbors have the same issues with the operation. He reported Jonathan and Elsie Miller *(10135CR 10-110725-1)* petitioned before this board a year ago and their property also adjoins their property to the east but sits back and does not have the noise and obtrusions that the Yoder sawmill does. He indicated he feels as neighbors they need to respect each others' needs and that is not the case with this sawmill. He added people choose to live in the area when there is no sawmill or impact from one.

He stated some of his specific objections to this permit are the original approval for the variance was for the existing structure, the existing location, and for a specific approved site plan. As those buildings no longer exist, he said it would seem the Special Use permit is no longer valid. He said if any new structure for any non-agricultural use is built on this site for any reason, it should be limited to what is allowed in size in an A-1 zone for non-agricultural use. Mr. Heims indicated in this case, a new building should be limited in size to 2,016 sq. ft. which

is the actual size of the original core structure that burned down, built under the original permit which was properly based on the square footage of the house on the property which was a total of 2,016 sq. ft. including walk-out basements. He indicated the added lean-tos were permitted for use in the 2010 variance assumingly as they already existed but it seems that footage should not be used considering they are rebuilding, partly because they were sloppily built. He added the square footage of the proposed building of 4,928 ft. exceeds the permissible structure size for non-agricultural structures by 2,912 over the 2,016 sq. ft. allowed in the rules.

In the two parcels, he said it should be noted the house parcel and the out parcel should be considered as a combined number as the original permit considered them as one for a total of five acres being that the land owner considered the full five acres in all his applications and petitions submitted. In his view, he said any new non-agricultural structure on this site used for any reason should be limited to 2,000 sq. ft. in keeping with the spirit of the Special Use/Variations purposes in agricultural zones to protect neighboring properties. In addition, he said the height of the original building was 17 feet while the proposed building is 22 feet which is much larger, taller, and visible. He went on to say that a condition of the 2010 variance was that there be no expansion of the business without BZA approval, but he indicated the business has expanded without approval using more of the property, outside of the approved site.

He feels a bigger building will also likely see expansion beyond whatever approval is given, and he thinks it needs to be contracted back, not expanded. He said there has been constant, chronic, and on-going non-compliance with conditions imposed in the original approval by the BZA and the spirit in which it was approved. He noted he will get into those objections later in the second hearing. He explained the result of the larger operation is a greater amount of impact on his property, traffic, and neighbors. He said the operators have not considered the safety and wellbeing of the public with much higher truck traffic and higher speeds passing through the residential neighborhood to the north.

He went on to say he has had contact with Chris Dotsee of TransCanada who owns the underground gas line easement. According to Mr. Heims, Mr. Dotsee said the pine trees in the easement are no longer allowed and will be removed through their normal pipeline easement maintenance as special funds are allocated for clearing which could occur at any time although not yet scheduled. Mr. Heims feels it needs to be assumed that the trees will be removed in the near future. He pointed out that these trees were a major consideration when the Special Use was originally approved as a buffer to keep the noise down. He added that there were also to have been trees planted between the existing trees and the roadway to give additional buffer. Because of the drought this year or from heat from the diesel exhaust, he said the trees are becoming see-thru trees and do not provide much buffering. He said that TransCanada no longer allows obstructions including trees, buildings, fences other than perpendicular fences with no fence posts in the easement, or any large immovable storage such as stockpiling logs. Mr. Heims said removal of the tree line will open up the sawmill for full sight and noise exposure to the north and void the buffer that the tree line was intended to provide. He feels without the trees the taller and larger building will have significantly greater negative impact on his property with sight and sound. He added they will also have more visible sight of the log stockpiling.

With the restrictions now in place as to the use of the easement and considering other unusable space on the property from low woodlands and the home site and yard, he indicated the

useable sawmill site has become small and constrained. Mr. Heims also said he feels expansion and moving the building back will likely open up other problems for the back and possibly use in the front.

He reported the fire on 11/21/12 was not the first issue with smoke and fire risks at the operation as smoldering sawdust has been a recurring issue. Additionally, he stated he feels fire safety practices should be in place and the cause of the fire should be examined fully before any re-building is commenced. He expressed that a larger building will only mean a bigger fire. He added that if this fire had occurred during the warmer, dryer months, the fire could have spread to the property to the north and east with a prevailing wind. As it is, he reported they had fire soot as far as their barn which is 1,000 ft. away. Mr. Heims said this is also indicative of the dust that blows on their property as well. He feels such a fire hazard is not just a hazard for the owners but the whole neighborhood. He said the entire parcel area is far too small for a building of the proposed size with no buffers for possible fire. He suggested a fire suppression sprinkler system should have strong consideration if any building is built for such an operation.

To address the staff analysis, he believes it did not consider some key considerations which are addressed in this objection. While the proposed reconstructed sawmill is set back from CR 43 by 38 feet, Mr. Heims said it is also a much deeper building and is thus 64 feet closer to their woods to the east. He added with the additional setback and with pine tree removal, the new operation will be even more obtrusive to his property. Considering topographies, he stated the sawmill will sit high with lower elevations to the north and northeast.

With the crane turned 90 degrees, it will now be parallel with his property on the north. So instead of having 30 feet of crane, there will be 120 feet of crane next to his property. This will intensify without the tree buffering. Concerning the proposed new site of the sawdust and chip trailers, he said although they are behind the building, with the removal of the trees, they will be visible from both the north side and east side of his property. While the trailers may be 15 feet lower and sit with their roofs at ground-level from the front of the property, he said the area slopes downward at the rear and will do nothing to mitigate the view of the trailers from either the north property or the east side.

In comparing the original building size to the proposed, he feels the scrappy lean-tos built outside of a permit should not be compared to core buildings. He said including the engine room for each, the size has gone from 2,172 sq. ft. to 4,659 sq. ft. or an increase of production facility by 2,487 sq. ft. which is over double. He feels the production could be four times greater than the original facility. He feels the real consideration under the new construction is simply what is permitted by Elkhart County. He said any structure building should be limited to 2,016 for new construction for a building built for a non-agricultural use in an A-1 zone. He further stated in light of the controversial nature of this operation and its history with this permit, including unsightliness, noise, safety, and other issues, there seems to have been little evaluation in the building construction standards and requirements, including structural exterior elevation and appearance, design components, interior elements (ie. employee safety, OSHA, fire safety such as dust removal, ventilation, a sprinkler system), impact on future production levels and truck traffic, and other matters important to neighbors. He questioned if there is a bathroom with a septic in the new facility, if there is log storage, and how the front property will be used.

He feels expanding the size of the sawmill will only expand controversy and conflict in the neighborhood and extending the special variance for this permit will only extend the difficulties of the neighborhood and the others involved in the oversight.

James Yoder, 54038 CR 43, was present on behalf of this request. He said he lives in the house directly to the south of the building that burned. He stated this issue began when the sawmill burned down on 11/21/12. He said he woke up at 11:30 p.m. because his bedroom which was about 100 feet away from the sawmill, was lit up due to the fire. He indicated at that point the roof was already falling in and four hours later the entire building was gone. He said with help from the neighbors, they began cleaning up the site. Mr. Yoder said he worked with Mr. Mabry quite a bit for a couple of days until they obtained the building permit. He said the neighborhood frolic was scheduled and they were ready to raise the trusses when they got word that the permit was going to be red-tagged. He said they stopped any construction at that point.

Mr. James Yoder indicated when Sam Yoder was obtaining the permit; it was issued for a larger total square footage but was later changed slightly to be closer to the original square footage. He stated the correct amount is 4,834 sq. ft. as opposed to Mr. Mabry indicating 4,928 sq. ft. He said the old building was 4,438 sq. ft. including all of the lean-tos. He explained the other leans were added to the original structure later but they were insulated and substantial. He further noted they used what they had because that is what was there when they started but it was an operational part of the facility at that time. Mrs. Wolgamood confirmed that the difference is approximately 400 sq. ft. now.

With the financial responsibility Mr. James Yoder has for the property as he is purchasing it through a land contract from Samuel Yoder, he has to put something back on this property for income to pay the mortgage. In the event that he would not be allowed to continue with the sawmill, he would appeal the right to build one way or the other. He stated it is not his desire to create controversy in the neighborhood. He expressed his goal is to work quietly and get along with the people around him and be unobtrusive with all of the operations there. He said he would always prefer the neighbors come to him directly to address the issue and solve the problem.

Regarding the issue of the pine trees, he submitted photos of the area *[attached to file as Petitioner Exhibit #1]*. He said the main issue with the pine trees is they act as a buffer on the north side of the property line. He said he talked with the Trans Canada field man who was out when they built a fence that was on the pipeline right-of-way. He said he asked then and was told that if the land owner requires a certain piece of landscaping to stay, they will keep it. From what he sees, Mr. Yoder believes the pine trees are a good improvement to the property as well as the neighbor's property, and as far as he knows, the trees can remain. He also indicated they have planted new pine trees and put up privacy fence out close to the curb cut on CR 43 to help protect the intrusion on the north side.

Regarding the issue of fire hazard, he said the new building should greatly reduce fire danger as it will be a metal building, metal roof, and lined with metal as well. He indicated plans for the engine room where the original fire started are to enclose it entirely with cement block walls to reduce noise and fire hazard.

When he asked for a show of hands from the audience in the full boardroom who would support the sawmill building permit being reissued, the majority raised their hands. Mrs.

Wolgamood then asked for a show of hands of those opposed, and three members of the audience raised their hands.

Before hearing from anyone in the audience regarding this petition, Mrs. Wolgamood reiterated this is regarding the issuance of the Improvement Location Permit.

Bob Beck, 53329 CR 43, was here in remonstrance to the building permit being issued. He indicated he is to the north closer to SR 120. He stated it is apparent that the new building is much larger than the existing one. Although he said he is not sure of exact square footage, he noted that if you would actually compare what was there to what they are building now, it is much bigger and taller. He said this is regulated by the Board of Zoning of Appeals and if there is a deviation or variance that needs to be completed, it usually appears before board for approval, but this permit did not go through that process.

Mike Yoder, 59525 CR 31, Middlebury, was present speaking on behalf of the County Commissioners. He said they became a little involved in this issue after the building burned. He added that they were also involved initially to help establish or fix some of the entrance issues at the highway at the entrance to the business. He said the commissioners are here to support the staff's recommendation to issue the building permit. He indicated they need to allow staff some leeway in situations like this for a business to rebuild. He noted the business is a little larger but whether the size of the business itself is increasing is an issue for the next hearing. Mr. Yoder said if his business burned and he had the opportunity to rebuild in a way that fixed some of the issues that existed in the original Special Use permit, then he feels that should be done. He said he would also take the opportunity to change the building in a way that would make for more efficient manufacturing and a safer work environment. He explained he was in the building that was converted into the sawmill which was reasonable and the business was operational. However, Mr. James Yoder has the opportunity to actually improve the site to meet some of the county's previous concerns and make the operation more efficient. He said he thinks the staff was well within the range of leeway to make this decision, and he supports that. He indicated the land use issue will be discussed during the next hearing. But he stated he feels it is an agricultural business in an A-1 zone.

Fannie Mae Raber, 54168 CR 43, was present in favor of this request. She said she lives just south of James Yoder's residence and the sawmill. She indicated she approves of the permit to rebuild so he can support his growing family. She said she has lived there for over 60 years and the noise and dust has not bothered them a bit. She added that the traffic from the lake is worse than the truck traffic from this business.

Darrell Waggoner, 53901 CR 43, was present in favor of this request. He indicated he lives on the west side of road just north of business and has a frontline view from his front porch. He said he could hardly see the previous sawmill and does not have a problem with noise or dust. Since the proposed sawmill is even farther back on the property, he might be able to see the roof since it will be taller but he does not see a problem with it.

In response, Mr. Heims said he spoke with Chris Dotsee of TransCanada last year and they had a follow-up conversation a week or so ago. He said that trees are no longer permitted as part of a new policy so the trees will be removed at some point. He indicated he also spoke with Bill Burns who is a regional manager out of Indianapolis, and he reiterated they do not allow any trees or hard obstacles in the easement so the trees will be removed at some unknown time. He

indicated he would like to know, of the people in the audience who raised their hands in support of the issuance of the permit, how this possibly impacts them. He feels it is good to support someone but he feels you also have to support people and their property. Just as he feels they should make a living, he feels he should also have the right to protect his property and the value of it. He reiterated that they have put a lot of hard work and money for the past 16 years into their property to make it look nice only to have a sawmill come. He said the noise, dust, and dirt was insensitive to what they have tried to accomplish. He stated one of the situations or criteria approved two years ago was about permanent or substantial injury to the neighboring property. He feels indeed there was and is. He said he thinks it affects very few of the people present in the audience today. He also said it affects other neighbors but not to the degree it affects them. He stated they have 45 acres and made a huge investment and consider it their retirement property. He reiterated that a bigger sawmill will have a bigger impact, and the size of the operation without the bigger building is a bigger operation. As you can see in the pictures of the back of the operation, he said it has outgrown the site plan. He indicated they should live by rules that are there, and the operation itself is outside of the site plan. He said he feels a bigger building it still going to operate out of the bigger site plan if the same thing applies.

Mr. Hesser asked about a comment Mr. Heims made during his initial presentation that he viewed it as 2,000 sq. ft. larger than allowed for a non-agricultural use. He noted he has heard three different numbers as far as the larger size of 2,000 sq. ft., 688 sq. ft., and 400 sq. ft. Mrs. Wolgamood also indicated she did not know what Mr. Heims was talking about when he said 2,000 sq. ft. larger. Mr. Heims explained as he understands it that if you take total that James Yoder is saying of 4,800 or as the report says 4,928 sq. ft., the permissible sq. ft. of a non-agricultural use structure in an A-1 zone is limited to the size of the house sq. ft. which is 2,016 in this situation, and the proposed building is twice that size. Mr. Hesser indicated Mr. Heims is dealing with a different issue as he is talking about the deviation from the excess of the residential structure. When Mr. Hesser asked if he agreed with the numbers as far as how much larger this building would be compared to the previous structure, Mr. Heims said he does not because he does not believe you can count the lean-tos. Mr. Hesser then asked if the sawmill used the lean-tos in part of the operation of the business which Mr. Heims indicated he believes the east one was used in the operation and the other one was used for storage. Mr. Heims indicated there are two issues with one being the increase of 60% because he does not feel you can count the lean-tos and the other issue is what the variance requires.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus read the definition of improvement location permit which is what Mr. Heims is appealing the issuance of as, "a permit certifying that the site plans of a proposed building, structure, or use of land have been examined for compliance with all requirements of this zoning ordinance". He added that in this case the zoning ordinance would include the Special Use that was granted as well. He indicated the staff gave their reasons why they thought it was in compliance, Mr. Heims gave his reasons for why he thought it wasn't, and the Special Use holder gave his reasons why they felt it was as well. He clarified that the Board's determination here is whether the site plan complies with the ordinance and Special Use permit that still exists on this particular petition.

Mrs. Wolgamood said she would have agreed with staff on issuance of ILP if it followed the original site plan approved by the BZA, but she does not think that it did as the building is larger and taller, the overhead cranes have been moved, the outside storage is moved, and the construction of the building drastically changed the site plan that the Board of Zoning Appeals previously approved. She noted this is hard because she used to be there and decisions are made by the staff in good faith and the best they can with the knowledge they have been given. She indicated that she does not think issuance of ILP should have occurred, and it should have come back to the board due to the number of changes.

Mr. Hesser indicated he had similar thoughts. He added that he understands it is correct that when a building is destroyed, you need to rebuild, and he also agrees that staff should be given a decent amount of deference in exercising judgment through their job. He stated his concern is that just last September a sawmill owner wanted to make a change that was probably less different than this, and the Board voted that it was a major change. He explained to his way of thinking, these are very separate issues. He feels that because at that time in September, they made the determination that due to neighborhood opposition and because of the limited circumstances, it needed to come back to the board if the site plan was going to deviate. He feels these changes deviate from the site plan and because of the unique factors in this case, coming back to the Board would have been the preferred course of action. He pointed out for the hearing on the renewal of the Special Use permit, this will be the revised site plan. In agreement, Mrs. Wolgamood said she specifically did not bring up the sawmill in the next petition because it will address the renewal of the sawmill and if at that particular time the Board says they do not have an issue with the amended site plan, the sawmill location, and everything that is being proposed in the ILP site plan, then the Board can make a decision on that and a building permit can be issued almost immediately.

Mr. Campanello said everything the staff analysis has given the Board in the bullet points is positive and the changes in location are positive changes. He indicated he looks at the staff recommendation as something he can be in favor of because of that. Mr. Hesser and Mrs. Wolgamood both indicated they would agree with Mr. Campanello if this were a run-of-the-mill case. Mrs. Wolgamood said Mr. Mike Yoder mentioned when something happens to a business, staff should have some leeway to issue permit which she absolutely agrees with as long as in correct zone without Special Use permits, with proper setbacks, with proper buffering, and in compliance with the zoning ordinance. However, she pointed out this is a Special Use that this board approved with a specific site plan.

Hypothetically speaking, Mrs. Wolgamood asked staff if in another public hearing a special use is granted for a business, how long it would take from that day forward to receive a building permit to construct a building. Mr. Mabry said for full board's decision on a Special Use, there is not a lag for appeal so a permit could potentially be approved with the average expected time of five working days maximum including ILP, site plan, and building permit. Doug Miller said it is a sticky issue with a business that burned down and James Yoder has an obligation to the financial institution to pay back. He added that Mr. Yoder is operating under the current Special Use, and he started with an original building approval with no specification about side wall height or whether the lean-tos were in the operation. He also said Mr. Yoder started with an existing building and is putting a building back, and there seems to be much

discussion about the square footage. He indicated if you take the most recent calculations, you are talking about an 8.2% variance which he feels is pretty inconsequential. He mentioned the testimony from several neighbors that the line of sight is better, but the current property owner that surrounds the sawmill is not pleased with the situation. Mr. Miller expressed his agreement with Mike Yoder in this specific case and believes the ILP should stand as issued based on the evidence that has been presented.

Regarding the comment made earlier in the hearing that a Special Use is no longer valid if the stuff involved in the Special Use permit burns down, Attorney Kolbus clarified that statement is not true. He said a Special Use permit continues to exist, and they can still rebuild based on what was previously granted. He reiterated that if there is damage to the property or site, it does not void the Special Use in any way.

The Board examined said request, and after due consideration and deliberation:

Motion: Moved by Meg Wolgamood, **Seconded by** Randy Hesser, that the Advisory Board of Zoning Appeals reverse the decision of the Zoning Administrator based on the fact that the site plan submitted for the Improvement Location Permit (ILP) was greatly different than the site plan this Board granted for the sawmill.

Vote: Motion failed (**summary:** Yes = 2, No = 2, Abstain = 0).

Yes: Meg Wolgamood, Randy Hesser.

No: Doug Miller, Tony Campanello.

Since the motion did not pass, Mr. Kolbus suggested tabling this request until the next meeting as it may become moot after the next hearing.

Motion: Moved by Randy Hesser, **Seconded by** Doug Miller, that this request be tabled.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

8. The application of *Samuel D. Yoder (land owner) and James D. Yoder DBA Country Forest Products LLC (business owner/operator)* for a renewal of a Special Use for a sawmill (Specifications F - #37) on property located on the East side of CR 43, 2,800 ft. North of CR 10, common address of 54014 CR 43 in York Township, zoned A-1, came on to be heard.

For clarification, Mr. Hesser asked if they can incorporate testimony from the previous hearing into this next public hearing. Mr. Kolbus advised that they can, but they will need to make a formal motion to do that at the beginning of this public hearing. Mr. Mabry noted that staff struggled with order of hearing these two applications.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #54014CR 43-121221-1*.

There were five neighboring property owners notified of this request.

Motion: Moved by Randy Hesser, **Seconded by** Meg Wolgamood that all testimony and exhibits from the previous public hearing be incorporated in this hearing.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

James Yoder, 54038 CR 43, was present on behalf of this request. He noted there are several positive issues on the subject of renewing the Special Use permit. He indicated he printed up an eight question survey and distributed them to neighbors. He noted a neighbor

from the Thomas residence across the road indicated sometimes trucks exit the drive and over-shoot the county right-of-way and drive on the grass a bit and indicated they have some noise. He indicated he got several back with positive comments that expressed a need for small local businesses, jobs for local people, and businesses that are inside the spirit and purpose of the zoning to create local economy out of local resources. He said their goal is to use timber that is grown in our area and turn it into products that are available for local industrialized economy. He indicated their operation focuses on shipping pallets.

He indicated he had a picture prepared that shows distances from the operation to various neighbors and a couple of documents prepared by the people who own on the north side of the Heims' property where it is actually zoned residential. It should be noted these documents were not submitted as exhibits. Mr. Yoder indicated these people have indicated their interest is in keeping the residential zone as residential and the agricultural business in the agricultural zone. With the agricultural based business in trees, he said they are not trying to change that, and they want to preserve the farmland in Elkhart County because it is a fast dwindling commodity. He noted farmland is quickly being taken over by residential and industrial projects.

Regarding the traffic produced by the sawmill, he indicated an average of 15 trucks per week which breaks down to five per working day. He indicated if they were to lose more of their land to residential, the number would increase dramatically. He reiterated his concern about keeping their agricultural land.

To touch on a few items already mentioned, he noted an agreement with the county in 2011 due to a problem with the curb cut. At the Highway Commission's suggestion, he said they lowered the road bed to expand visibility for their drive. In 2012, he explained they completed the driveway apron to the right-of-way of CR 43 by putting in a culvert and concrete to get the drive up to code so there would not be any hold-up with the Highway Commission.

He indicated he put in this effort not just for himself but for many of the people present today (employees of the sawmill, people he does business with, people in the logging business, and truck drivers who haul the logs). He said these people are part of the team involved so they can have local jobs and support the local economy. When Mr. Yoder asked the audience for a show of hands in support from persons living on or close to CR 43, the majority of the audience raised their hands. He indicated a few live on CR 10 close-by and one lives on SR 120 just at the end of CR 43, but most are in direct reference to this application.

In closing, he mentioned he feels that the operation is still in the spirit and purpose of the zoning requirements even if it expands by the proposed square footage. He expressed he has no desire to have a big sawmill like the local mills that produce hundreds of truckloads per week of product. He would just like to confine his operation to something that supports him at home as he believes his place is to work at home, to provide an environment for his children to grow up and learn work ethics, and to provide a future for his children.

Mr. Hesser noted the reference made in the appellant paperwork to constant and chronic non-compliance including violations of outside storage and dust control in the previous case which he asked Mr. Yoder to address. In response, Mr. Yoder said the issues were concerning outside storage of chips and mulch but nothing was mentioned in the conditions imposed about logs being stored. He noted at one point the appellant took photographs from his property of logs piled in the back, and he also cited a mulch stockpile next to one of the storage semi-trailers. Mr.

Yoder explained he had actually built a ramp with logs and covered with chips to back load into the semi but upon the complaint being filed, he removed the ramp. He did note some spillage beside the trailers during the loading process, but he keeps it consistently cleaned up. He further said the ramp was helping to clean up when they had a spill. Mr. Yoder stated right now everything is outside because they have no building, and they need the building to get stuff inside and get the property cleaned up.

When Mr. Hesser also asked Mr. Yoder to address the differences in the site plan and the reasons for it, Mr. Yoder indicated the changes were made because they presented a more positive, neighbor-friendly area. As some complaints were of outside storage of lumber, he indicated the new building will contain this lumber inside. He also noted the taller building is for a second story office and break area so the main floor can be used for more storage. He reported relocating the engine room to the back of the building moves the sound farther away from the road, and the cement walls should also help to muffle the noise. When Mrs. Wolgamood asked about the reversal of the crane system and the dust collecting, he reported the production set-up has changed by being turned 90 degrees and that requires the crane in a different location. He further explained the crane was previously on the east side of the building and now is on the north side of the building because there are two doors on that side where supplies go into the sawmill. He also noted the crane will be farther away from appellant's property, and he feels that is a positive change. Mrs. Wolgamood inquired about the height of the crane system, and Mr. Yoder said it is 16 or 17 feet from the top of the I-beam on the crane. She also asked about the height of the dust and chip collector trailers which he stated are 14 feet tall. He further explained the new site plan places the trailers directly to the east of the new building where they have prepared a 36'x50' pad that is 15 ft. lower than the surrounding area so the top of semis will be level with the bottom of engine room. He said they have done some landscaping there but need to finish the retaining wall. With the semi-trailers being lower and out of the wind, he said the dust should be contained in that area resulting in less noise.

In reference to the crane system, Mr. Campanello asked about the height of the new building which Mr. Yoder said is 22 ft. at the ridge. Mr. Campanello asked if the appellant's property is lower or on the same grade as the sawmill property. Mr. Yoder indicated on the aerial, the terrain of his property and near the property line on appellant's property which he noted has some ridges.

Mr. Hesser noted the original granting of this request and the staff report refers to no Saturday operations but the request included Saturday morning operations. When he asked Mr. Yoder if the staff recommendation was acceptable, Mr. Yoder said they are not seeking Saturday operations. He further stated their request is for Monday through Friday from 6:30 a.m. to 5 p.m.

Mrs. Wolgamood asked for a show of hands from the audience of those who wished to speak in favor of this request which resulted in five hands being raised. She asked those people to give name and address when they come forward to speak but to please not repeat what was said at the first hearing or what each other has said.

Fannie Mae Raber, 54168 CR 43, was present in favor of this request and strongly encouraged the Board to grant the permit.

Sam Yoder, 54565 CR 43, was also present in favor of this petition. He said he is listed on the petition because his name on property deed at this point. He corrected a couple of items

from James Yoder's presentation. He noted truck traffic is three per day as average. He further explained when James Yoder was talking about the area being agricultural, Sam Yoder believes he was referring to the idea that they look at the area south of the residential zone as a true agricultural zone, and most people living in that area would prefer it not go to a more residential atmosphere in this area. He said he believes the sawmill fits into the current ambiance.

Gary Schrock, 3650 N 1150 W, Shipshewana, was present in support of this request. He reported his business is hauling logs and 30-35% of his business is with this sawmill. He indicated if this request is denied, his business will be hurting. Although he realizes there are changes to the site plan, he encouraged the Board to approve this request.

Joe Slabach, 53805 CR 43, was also present in favor of this petition. He said he lives just north of sawmill and could see the fire from his house. He indicated the sawmill noise does not affect them. Regarding traffic on the road and trucks travelling too fast, he reported he never saw that from the logging trucks. He noted he has seen James Yoder work very hard to comply with this request, and he believes he will continue to do what he needs to do to keep it legal, safe, and friendly to the neighborhood.

David Yoder, 54565 CR 43, was present in support of this request. He stated he is James Yoder's father and is here to support his son's business. He pointed out that there are several things about the nature of this business that would restrict it from growing large. He said the conscientiousness of the Amish that they are leaving the farms and going to home businesses, they understand that it affects the economic and social environment they are in. He said it is one of their first priorities to be in-offensive to the people around them including the County's concerns and efforts to maintain order in zoning. Mr. Yoder said they do not want to create something that is measurably different from what it has been. He noted the way the requirements are set up for Country Forest Products does effectively keep the business from growing large by limiting the number of employees and truck traffic. He said experience has shown them that an operation within those parameters is operable and is something that can work. He added that an operation like that has to work fairly lean but it is something that can work financially. He said James Yoder has worked well within the 15 load limit per week and that has supported his business. He believes it will continue to do that. He added that if the building is larger, it is for improvement on the site plan and not to grow a larger business.

With a show of hands by those remonstrators wishing to speak indicating four people, Mrs. Wolgamood again reminded them to not reiterate what was said previously or to repeat each other.

Bob Beck, 53329 CR 43, was present in opposition to this request. Although he noted he has no conflict with Mr. Yoder, he feels the business is in the wrong place. Even though he did not get as many signatures as last time, he stated he had a signed petition from neighbors and noted only one person refused to sign. He said he thought the original request was for 3-5 trucks per week and now the number is 15. He feels it is a very dangerous road, and traffic is an issue. Although he is not saying all trucks are going to this sawmill, he noted a lot more trucks since this operation began. He also mentioned instead of using full-size semi-trailers, the sawmill has been using smaller ones which need to be switched out more often, creating more truck traffic. Addressing the agricultural use, he said as the sawmill is bringing raw material in, making a product and shipping it out, he thinks it is similar to industry or manufacturing and should be in

one of those areas. He added that the truck traffic should not be coming through the residential area to get to the sawmill. He compared it to driving a semi-truck through a city subdivision to get to a business. He submitted the signed petition at this time *[attached to file as Remonstrator Exhibit #1]*.

Mark Speicher, 10605 Scott Drive, was present in remonstrance to this request. He said he lives at the corner of Scott Drive and CR 43 which is approximately 1/8 mile or less north of the sawmill. He stated when he was contacted before the sawmill was originally approved, his two concerns were noise and traffic. He indicated he has not really noticed any noise or dust and dirt that other neighbors have complained about. He further stated what he has noticed is the traffic. As he works evenings, he is outside in his yard frequently during the day. He expressed that the increased truck traffic is a big concern of his. When he and his wife purchased the property approximately 15 years ago, he said they really liked the small residential area. He indicated many of the neighbors are retired but there are also many families with children which concerns him as the trucks do not respect the 35 MPH speed limit. Mr. Speicher also mentioned his house is in the middle of an s-curve just north of the sawmill which also has two hills in the middle of the curve. He noted it is a very dangerous area. He stated his driveway to his barn is a blind drive so when he is exiting that drive, he cannot see what is coming over the hill. While he indicated he has no opposition to a small business getting started, he said his opposition is to the truck traffic but he is unsure what can be done about it.

Al Heims, 105 Greenfield, was present in opposition to this request. He indicated much has been said about the residential versus agricultural area. He added that if you look at the map, it transitions at the sawmill and there is agricultural land to the south. As he grew up on a small family farm which is a great atmosphere, he said he would hate to see it go away. He feels the site of this sawmill is in a residential area. Like everyone else, Mr. Heims stated he is not opposed to the sawmill, but he is opposed to its location. In his opinion, he does not believe it is an agricultural business. He feels that if the sawmill were five miles to the south, it would have no impact on the residential neighborhood but yet they could still run their business.

Mr. Heims stated a new permit and expansion at this location would heighten and extend on-going conflict of an already troublesome operation that has been imposed on this residential neighborhood. He said it seems the spirit of the special variance in agricultural zones is to permit incidental businesses to operate alongside homes and farms without interference, nuisance, or impacting neighboring property. He noted the larger than expected operation already seems to exceed the confined space and the anticipated negative impact from the size approved in 2010 on his property and the neighborhood as a whole. With the elimination of the pipeline easement for log stockpiling, he expressed feeling the site will be even more confined.

He indicated he enumerated items of non-compliance in a letter written in July of 2012 which Mrs. Wolgamood indicated was included in the board members' packets. Mr. Heims pointed out the dust from loading trucks in a photo in the portfolio (submitted as Appellant Exhibit #1 during Appeal hearing) which comes onto his property. Regarding the staff finding that the sawmill will not cause substantial and permanent injury to neighboring property, he stated that it does. He expressed he felt this was a good opportunity to take this problem and move it into a more agricultural area as either way they are basically starting from scratch with the sawmill. He guaranteed that he will be around if the sawmill continues because it is such a nuisance to his property. He indicated the Yoders were aware the investment last time was for a

three year term. He reiterated that he would like to see it move to a more suitable location. He expressed he believes without any input on the sawmill and any decision, they and their neighbors have lost a lot more than the Yoders have lost in the value of their property, their livelihood, and peace and quiet enjoyment of their properties. Again pointing out the second to last picture in the portfolio of trucks unloading which just happened to have been taken on the day of fire by coincidence, he noted the dust coming out of the trailer and reiterated that there has been smoldering in the past on numerous occasions and expressed his concern about dust and fire hazard.

Pam Heims, 105 Greenfield Drive, was also present in remonstrance to this request. She said she appreciates the support of the Amish community for the Yoders. She noted there are a number of people in opposition who were not able to be present today because of employment. She indicated while she is not opposed to the sawmill, the jobs it creates, and Mr. Yoder providing financial support to his family, she said she is opposed to the location as it is a residential area from SR 120 to approximately CR 10. She explained the homes have been there for many years and believes all of them were built prior to the sawmill approval. She suggested people chose to purchase homes and build homes there because of the surrounding residential area containing approximately 80 to 100 homes. She indicated the people present in support of this request all live south of the sawmill which becomes more agricultural. From her understanding and what she has seen, the logging trucks are coming off of SR 120, going to the sawmill, and then returning to SR 120 which has a huge impact on the residential area north of the sawmill.

While she knows jobs are important and she does not want to put anyone out of a job, she said it just seems there is a better area for this to be located instead of a residential area. She added that she views this business as industrial and not a farm. With the sawmill, she stated it is no longer a peaceful setting which was one of the reasons they bought their property. She pointed out she believes everyone wants a future for their children as Mr. Yoder mentioned which is also one of the reasons they purchased their land.

Mrs. Heims stated Mr. Andrew Robinson who could not be present today, wrote a letter which she read from her I-phone: "My name is Andrew Robinson and I live at 53633 CR 43, Middlebury, IN. I was not happy about the way the sawmill entered our community in the first place, but I was sorry to hear and see the fire at the sawmill. I am still very concerned about a few things associated with the sawmill being at that location. There has to be a better place to locate this type of business rather than a residential farming area. Over the past few months, I have noticed increased truck traffic at all kinds of speeds. The section of CR 43 from SR 120 to just past my house where the road straightens is marked 35 MPH, and it is hard to believe that 35 MPH is the speed of the trucks as they roar by my house. I moved to the country to have some peace and quiet and that is not what we get when these logging trucks come by. There is also the inconvenience of waiting for these trucks to back in and pull out of the sawmill. When you drive south on CR 43 toward the sawmill, part of the hill was removed for sight line so people could see trucks in the road and trucks could see to pull out. I guess my question here is why then have my wife and I been almost hit by trucks pulling out of the sawmill onto CR 43? Why do we have to stop and wait on trucks sitting, stopped in the middle of the road with no room to get around them on either side? There have also been several times that I have approached the sawmill from the south headed north and found a truck sitting in my lane without a driver or

even four-way flashers. This causes a danger as this is a no-passing zone, and it is unsafe to go around the parked truck. Am I supposed to sit and wait for the truck to move? And who knows how long? Or better yet, whose fault would it be if I go around them and cause an accident because I cannot see over the hill for on-coming traffic? Again, this is a no-passing zone. It would be my fault so tell me who is looking out for me. I have two daughters who are 12 and 10 who I would like to go bike riding with along our road. We could connect to the Pumpkinvine Trail about two miles straight south of our house and ride as far as we want. I am afraid to do that with my kids. Should I have to be? I recently heard that the sawmill was going to expand due to this fire. I heard it would be a larger operation. If this is true, does that mean that it will need twice the amount of wood and thus twice the number of trucks to bring it to the mill? If I wanted to live on a highway built for truck traffic, I would have built my house on a highway. Well, there is also the question of who is going to pay for the upkeep on the road with increased truck traffic?" Mrs. Wolgamood politely interrupted and indicated she thought Mr. Robinson's letter was reiterating a lot of what has already been said. Mrs. Heims indicated that there is one point remaining that has not been said so she skipped down to it in Mr. Robinson's letter: "Next I would like to address a different situation I witnessed with my 10 year old daughter as we drove by the sawmill this past fall. As we drove by the sawmill, there was a man parked directly in front of the building obviously visiting the sawmill for some kind of business. He was standing next to his black pick-up truck relieving himself in the direction of the road. The conversation with my 10 year old went something like this, 'Daddy, what was that man doing?'" Mrs. Heims indicated it was the bathroom issue. Mrs. Wolgamood pointed out that is not a land-use issue. Mrs. Heims continued with Mr. Robinson's letter: "I knew that we would like businesses to grow in Elkhart County. I know that everyone has a right to make a living doing what they do best. However, I just question whether this is the best or safest place for this type of business to be located. I believe it is a hazard for the community and should be located elsewhere. Thank you, Andrew Robinson."

In response to the truck traffic issue, Mr. Yoder said one of the main things he has seen that has increased on CR 43 is the number of frame trucks going to factories. He indicated the logging trucks are the lesser amount of the increased traffic over the last few months. He reported just recently he saw five proposed truck routes in a plan by some group being considered as long term solution to truck traffic around Middlebury with various routes to be considered and one route is CR 43 as alternate to SR 13. When Mrs. Wolgamood asked if their truck traffic has increased in the last year, Mr. Yoder said their traffic has remained the same since the business began and will remain the same with the new building.

Mr. Hesser asked for clarification that although the proposed building is slightly larger, there is no expansion of the business which Mr. Yoder stated was correct. Mr. Hesser also indicated he would like Mr. Yoder to address the issue of trucks parked along the road. Mr. Yoder said one of the conditions previously imposed was that there be no trucks backing in off of CR 43. He explained all trucks should drive in, have room to turn around, and do their business. Unfortunately, he reported there have been trucks backing in off the road, and he witnessed this once. He explained there is now a sign that says no backing off road, and he suggested that responsibility lies with the truck driver. He further indicated the new building being set back 42 feet further from the road leaves more room to make the turn off of CR 43. He

said he feels that problem should take care of itself. Mr. Hesser suggested this information needs to be communicated with the truck drivers beforehand because backing off the road cannot happen.

Regarding traffic coming from the north down on CR 43, Mr. Campanello asked if trucks are supposed to come from the south up to the sawmill. Mr. Yoder explained in the hearing nearly three years ago in a County Commissioner's meeting with County Highway and the Sheriff's Department present, he offered to try to route the traffic. He said the consensus at that meeting was that it would be hard to enforce being there is no signage to indicate, "No Trucks". According to Mr. Yoder, the Sheriff actually said it is hard to enforce truck traffic if they have legal permission to travel those roads. Mrs. Wolgamood pointed out that issue had solely to do with the Highway Department and the County Commissioners. Mr. Yoder also pointed out that condition was not placed on the sawmill. When Mr. Campanello asked if Mr. Yoder would offer now to control the truck traffic, Mr. Yoder indicated they can try to encourage truck traffic travelling from the south, but feels it would be hard to enforce. Mr. Campanello suggested Mr. Yoder not accept the log delivery as a consequence of non-compliance when Mr. Yoder said he can attempt to inform the truck drivers to not travel through the residential area to the north but could not guarantee compliance.

The public hearing was closed at this time.

Mr. Campanello stated he feels the route of the trucks is important and could be changed somehow. He said if Mr. Yoder is going to be a responsible businessman, he could try whatever he can do to alleviate the truck traffic to the north. Mrs. Wolgamood indicated she is not familiar with CR 10 and CR 43 south although she said she has driven past the sawmill on a couple of occasions. She reported she was very concerned about the hill and the two driveways but that was rectified. She feels 9 out of 10 vehicles are going to come from the north from SR 120. She acknowledged all the comments about the traffic but also pointed out that Mr. Yoder has indicated the business has not increased since it began.

When Mr. Hesser asked Attorney Kolbus if re-routing the traffic is even something the Board can do, Mr. Kolbus stated the Board can control the site and signs could be placed requesting it, but he does not think it is something that can be enforced. Mr. Miller has been pondering how one comment can be both a pro and a con. He gave an example as, "a new location". He said it is a con for neighbors that are directly affected but in terms of easier ingress and egress for trucks and improving business function, it is a pro. He stated there has been a lot of information presented with respect to how this petition affects the neighborhood it is in, but the petition was granted. He noted the staff by its own admission in its report indicated no substantiated deviations from the original Special Use and no violations. Mr. Miller reported he made a list for himself, and the pros outweigh the cons. He went on to say the petitioner has made great efforts to abide and to be a reasonable neighbor, and Mr. Campanello expressed agreement.

In reviewing the history of this case, Mr. Hesser remembers great concern about the traffic, and there is only so much the Board can do about it. He stated he thinks with the way the roads are laid out that traffic in that area is scary but not because of this request. Considering the length of history with this case, the fact it was continued a couple of times before, and the fact that two hours have been spent on what was scheduled was 20 minutes, he feels there is either a

blatant disregard for rules and a problem with compliance or it is a tough call which he feels is the case here. He noted when it was originally approved, it was a 3-2 vote. He indicated what he sees today is that the request was granted, it has been there for three years, there have been no problems, the proposed changes overall are improvements, and overall what he wants to do will have less of an adverse impact than what was approved three years ago. Mr. Hesser said he thought he would lean toward granting it particularly with being limited to three years. He added that normally at this point if they were renewing a request, it would be renewed indefinitely. He expressed that he is willing to follow the staff report with what has been presented today.

In light of the money being invested in this business, Mr. Campanello suggested lengthening the period of time before the renewal such as five years. Mrs. Wolgamood pointed out if a valid complaint is filed, it will be brought back to the Board. Mr. Miller encouraged staff to hold Mr. Yoder's feet to the fire given the amount of public opinion that has been voiced today.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Tony 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 a renewal of a Special Use for a sawmill (Specifications F - #37) be approved with the following condition imposed:

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

The following commitments were then imposed:

1. Approved for a period of five years with renewal before the Board. If valid complaints are received and verified by the Staff, the Special Use will be returned to the Advisory Board of Zoning Appeals for further review.
2. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
3. No expansion of the business operation without Board approval.
4. No outside storage or stockpiling of wood chips or sawdust unless contained in an enclosed trailer or dustbin.
5. No new curb cuts created.
6. The tree line of pine trees (north side of property) is to be maintained out to the County right-of-way.
7. No semi backing into the property off of CR 43.
8. Days and hours of operation to be Monday through Friday. 6:30 AM to 5:00 PM with no Saturday or Sunday operations.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

9. The application of *David W. & Rhoda Lehman (buyer) and Northeastern Indiana District Church of the Nazarene Inc. (seller)* for a Special Use for an agricultural use for the keeping of a horse on property containing three acres or less and in an R-1 district

(Specifications F - #1) on property located on the Northwest corner of CR 9 and US 6, common address of 72449 CR 9 in Union Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #72449CR 9-121211-1*.

There were 16 neighboring property owners notified of this request.

David Lehman, 24510 CR 54, Nappanee, was present on behalf of this request. He indicated they are proposing to purchase property which is less than three acres. He said they want to build a barn and keep one horse on the property which is in an R-1 zone. When Mrs. Wolgamood asked what will be kept in the barn besides the one horse, Mr. Lehman said a boat, trailers, buggy, and domestic storage. Mr. Hesser inquired about disposal of manure which Mr. Lehman indicated he would spread on his garden or over the field on his property as one horse does not create much.

Laurie Sumpter, 71732 CR 7, Nappanee, was present representing Northeastern Nazarene Church. She reported having the property listed for sale. She noted that Mr. Lehman forgot to mention he went around and spoke with neighbors informing them of his intentions. She said from the feedback they received, no one was opposed. Ms. Sumpter indicated the church purchased the property years ago intending to build a large church which was never completed, and the property was used as a rental and not kept up over the years. She said she believes the neighbors are glad that the property will be used for its intended purpose.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Doug 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 an agricultural use for the keeping of a horse on property containing three acres or less and in an R-1 district (Specifications F - #1) be approved with the following condition imposed:

1. The Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the 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. Approved for one horse only.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

10. The application of *Lavern A. Miller & Lovina S. Miller, Trustees of the Miller Family Trust* for a Special Use for a home workshop/business for a taxidermy business (Specifications F - #45) on property located on the West side of East County Line Road, 2,500 ft. North of CR 34, common address of 62503 East County Line Road in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #62503EAST COUNTY LINE ROAD-121220-1*.

There were five neighboring property owners notified of this request.

Attorney Theora O'Haneson, P.O. Box 58, Middlebury, was present representing the petitioner. She reported a previous taxidermy business at a different location (11230 CR 24, Middlebury) which was approved in March of 2004 by the BZA. To her knowledge, she indicated there were never any problems with that permit, but Mr. Miller has since moved to the current location. She stated he has a shop on the premises where he does his work including some detailed painting. She submitted photos of previous taxidermy projects *[attached to file as Petitioner Exhibit #1]*. She reported the Elkhart County Health Department has been there and checked the premises, and everything was okay. She indicated there is no heavy traffic from this business, and he works by himself. During a year's time, she said Mr. Miller reported mounting an average of 20 deer, 20 fish, 2 to 4 bears, 2 or 3 turkeys, 6 turkey tails and beards, and some other birds like pheasants and ducks. She indicated a total of approximately 52 animals per year so the traffic does not have a large impact. She also reported his annual income is low enough that this is not a large business, but he does enjoy it and does a good job at it. She requested the Board grant this request as it enhances the area but it definitely does not hurt or affect any of the neighbors. She added that occasionally a UPS truck makes deliveries to his business but it is not consistent. Regarding waste, she said Mr. Miller has talked to the Health Department and disposes of any waste with great care but reported there is not much as he does not usually get the whole animal. Concerning washing the items, she reported any washing that Mr. Miller does is done inside the house, and this procedure was also cleared by the Health Department.

Lavern Miller, 62503 E. Co Line Rd, Goshen, responded to Mrs. Wolgamood's question concerning any bears that are brought in for taxidermy. He said the bears are skinned out when they arrive, and it is just the head and the feet.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller pointed out this is a low impact and low key business.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Tony 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 a Special Use for a home workshop/business for a taxidermy business (Specifications F - #45) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for the owner/occupant of the residence on site.
3. Days and hours of operation to be 8:00 a.m. to 5:00 p.m., Monday through Saturday, and closed on Sunday.

Note: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

11. The application of **Bessie Hostetter (buyer) and The Wilma Gray Revocable Trust, c/o Wilma Gray, Trustee (seller)** for a Special Use for a kennel in a B-1 district (Specifications F - #15.10) and for a 10 ft. Developmental Variance to allow for the construction of a parking lot 45 ft. from centerline of the right-of-way of SR 120 (Ordinance requires 55 ft.) on property located on the South side of SR 120, 482 feet East of CR 17, common address of 21810 State Road 120 in Washington Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #21810State Road 120-121221-1*.

Regarding the recommendation for denial from staff concerning the Developmental Variance, Mrs. Wolgamood asked how many spaces are required. Mr. Mabry indicated five parking spaces are needed based on the zoning ordinance. He submitted a letter in remonstrance at this time *[attached to file as Staff Exhibit #1]* which was given to Board members prior to the hearings today.

There were 24 neighboring property owners notified of this request.

Bessie Hostetter, 50806 CR 123, Bristol, was present on behalf of this request. She said she wants to groom dogs and be as in-obtrusive as she can be. She indicated the hours of operation are 7:30 a.m. to 5:30 p.m. on Monday through Friday with occasional Saturday hours. She also reported she opens one Friday a month at 6 a.m. to groom for teachers' animals as teachers have to be to work earlier than 7:30 a.m.

Mr. Hesser noted there is no Special Use variance required for dog grooming as the property is zoned B-1, but the request is necessary for the kennel. Regarding the boarding of animals which Mrs. Hostetter indicated would be during the day, Mr. Hesser asked if she will be doing any overnight or long-term boarding. She stated the only overnight boarding she has done is for the smaller animals such as guinea pigs, rabbits, and birds. She explained the main reason for the kennel is to let the dogs relieve themselves during the day as some dogs are dropped off at 7:30 a.m. and not picked up until 5:30 p.m. She indicated she would like to be able to let them relieve themselves outside as opposed to inside. She stated at this point in time she does not do any overnight boarding and does not plan on boarding overnight in the future. She said she would like to run a daytime business of grooming dogs. When Mrs. Wolgamood inquired if the kennel would be enclosed, Mrs. Hostetter said the kennel will be enclosed with a privacy fence around it, and the longest period a dog would be outside will be approximately 15 minutes at a time.

Mr. Miller asked Mrs. Hostetter if this request were to be approved without the additional parking spaces if that would be an issue. She indicated it would not be an issue. She reported having a letter from Eleachea Sanders of State Highway who indicated she does not see any problems. Mrs. Hostetter said she will have possibly 10-12 cars sporadically throughout the day in the parking lot. She noted there are rarely more than two cars at a time. She noted she has been at her current location on CR 17 for approximately three years.

When Mrs. Wolgamood asked the ability of cars to turn around on the property, Mrs. Hostetter said there is plenty of space to turn around and drive out of the parking lot onto SR 120. Mr. Campanello reiterated that this is not an overnight boarding kennel but facilities to

allow the dogs to relieve themselves during the day while they are being groomed. Mrs. Hostetter further explained the kennels have an indoor area as well as an outside area for each dog. After the dogs are groomed and relieve themselves, she indicated the dogs would be in the indoor area of the kennel. When Mr. Campanello asked about noise from barking, she said most of the time there is no barking. She further indicated at her current location with businesses on adjoining walls on either side of her shop, she said she has had no complaints. When Mrs. Wolgamood inquired, Mrs. Hostetter indicated this would be an expansion of her current business which would allow for another employee and the ability to service a larger number of clients. When Mrs. Wolgamood questioned the request for the variance to allow for additional parking, Mrs. Hostetter indicated the only reason was because she thought that number of spaces were required. Without the variance, she would have four parking spaces for employees and three for customers. Mr. Campanello inquired about the existing garage for additional parking which Mrs. Hostetter indicated has two stalls.

Mike Castleman, 21856 Suburban Drive, was present in remonstrance to the petition. He indicated he lives about 100 yards south of the kennel location. He said he thinks it will be more noise and odor than Mrs. Hostetter anticipates. He inquired why Mrs. Hostetter does not stay at her current location. He stated he has lived at his residence for 43 years. When Mr. Campanello asked what was on the subject property previously, Mr. Castleman indicated it was a single family residence.

Mike Greece, 21883 Suburban Drive, was present in opposition to this request. He said he has dogs and loves animals. He noted his biggest concern would be odor and clean up. He stated he has lived there for 11 years. He indicated the wind blows in the direction from the kennel to his property, and he is worried about odor from dog waste. He further stated he does not want any boarding of dogs to be overnight as he is concerned about barking dogs. He said he does not think this is the place for a dog kennel as he feels a dog kennel should be further out where there are not neighbors or surrounding business behind it. He mentioned Subway, Ace Hardware, and a tanning salon located nearby. He suggested if these businesses open their back doors during warm weather, they could have dog waste odor inside their businesses.

Charles Steplic, 21877 Suburban Drive, was present in remonstrance to this request. He stated he rents the adjoining property to the south. He, too, mentioned being concerned about odor and barking dogs being left outside in the kennel.

Judy Slabaugh, 22313 SR 120, was present in opposition to this petition. She stated she owns the plaza and the surrounding properties behind the proposed business. She said she is very concerned about the big back yard as her fear is the owner expanding the business in the future. She mentioned employees of Subway and the tanning salon take their breaks behind the plaza, and she is concerned about the possible odor and barking dogs. She noted the request is for a kennel which she feels is to keep dogs overnight. Ms. Slabaugh mentioned she did not think there was a lot of room for parking between the building and SR 120. She reiterated her concern about noise and smell being close to the food businesses and how that might affect her tenants.

Laurence Smith, 21877 Suburban Drive, was present in remonstrance to this request. He said he is the owner of the residence and property adjoining on the south. He indicated he has never known a business that did not try to expand to fill the property it has, and he sees this as

slippery slope that will start as a grooming business but will lead to more that will be easily approved. He stated this is setting up a problem for the future with this request. He would feel much more comfortable if there was not this kind of a business going in there because it will impact the tenants who reside on his property and will devalue his property in the process.

In response, Mrs. Hostetter addressed the waste issue by saying there will be 10-20 dogs per day that get groomed there which is the same number she has now at her current location which is only 1,200 square feet. She invited anyone to come at any time to visit to observe there is no waste odor. She indicated in the three years of doing business, she takes out one trash bag which is not full, every single day to the dumpster. She said there will not be overnight boarding as she wants her evenings to spend time with her family. She reiterated that she would simply like a place to let the dogs relieve themselves during the day. As far as cleanliness, she said when dogs are taken outside at her current location, any waste is picked up immediately with each dog. Concerning her reasons for wanting to relocate, she indicated it is for economic reasons as she currently pays rent which is going to increase, and she would like to own a place where her payment amount is guaranteed. If this request were to be approved, Mr. Miller asked if she would agree to the condition that there will be no overnight boarding. She expressed she is willing to agree to no overnight boarding of dogs as she does board cats and guinea pigs. However, she stated they use litter boxes and do not go outdoors. Regarding parking, Mr. Campanello asked if the amount is going to limit her expansion. Mrs. Hostetter clarified that she currently has two full-time groomers and one part-time groomer and when she talks about expansion, she means that she intends to hire another part-time employee making a total of three full-time groomers. She indicated this may increase the business by approximately five dogs. She reiterated the amount of traffic in her lot will be approximately 10-12 cars sporadically per day.

The public hearing was closed at this time.

Mrs. Wolgamood said she was looking at the ordinance for veterinarian offices and pet shops because she was curious, and she reported they are permitted uses with indoor runs in a B-1 zone. She feels this request is not asking for anything different than what a vet or pet shop would offer with indoor runs. Mr. Hesser noted he thinks when people see the petition that says "kennel", it conjures up an image in the mind, and he understands why people would be concerned. However, he said he believes the petitioner has addressed the issues, and it is a permitted use. He also added this request seems very incidental to what is already a permitted use. Mrs. Wolgamood also noted that Mrs. Hostetter has indicated no overnight boarding of dogs which Attorney Kolbus has suggested be listed as a condition of the approval.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve **Moved by** Doug Miller, **Seconded by** Tony 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 a Special Use for a kennel in a B-1 district (Specifications F - #15.10) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. No overnight boarding of dogs.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

Motion: Action: Denied **Moved by** Doug Miller, **Seconded by** Meg 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 10 ft. Developmental Variance to allow for the construction of a parking lot 45 ft. from centerline of the right-of-way of SR 120 (Ordinance requires 55 ft. be denied.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

12. The application of *Fred Roy Joe Detwiler* for a Special Use for a mobile home on property located on the West side of CR 23, 650 ft. South of East West Toll Road, common address of 52405 CR 23 in Washington Township, zoned A-1, came on to be heard.

Mr. Mabry presented the revised Staff Report/Staff Analysis, which is attached for review as *Case #52405CR 23-121119-1*.

As this is a tabled item, Mr. Hesser asked if the public hearing needed to be reopened to accept the revised site plan. Mr. Kolbus indicated the site plan was submitted as part of the opening minutes. When Mr. Hesser asked the audience, it was determined no one other than the petitioner was present, and the public hearing remained closed.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve **Moved by** Randy Hesser, **Seconded by** Meg 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 for a mobile home be approved with the following conditions imposed:

1. Approved for a period of three years with a one year review to verify compliance with Conditions "A":
 - a. The mobile home shall be adequately stabilized, skirted and have tie-downs installed.
 - b. The water supply and sewage disposal system shall be installed in accordance with County Health Department specifications.
 - c. Adequate provisions for storage shall be provided at all times to eliminate exterior storage of personal property, tools and vehicles, except licensed motor vehicles.
 - d. At all times, the premises shall be kept free of abandoned junk vehicles or parts thereof as described by Indiana State Law.
2. Approved in accordance with the site plan submitted (revised 12/26/12) and as represented in the petitioner's application.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

13. The application of *Tri County Land Trustee Corp Attn Paul Schwartz* for an amendment to an existing Special Use for a commercial greenhouse in an A-1 district (Specifications F - #12) on property located on the East side of SR 13, 1,150 ft. North of CR 26, common address of 59800 SR 13 in Middlebury Township, came on to be heard.

Mr. Mabry noted this item was tabled from last month as the public notice and designated property for the Special Use was only a small piece of the overall property. Staff has re-drawn the boundaries for the request and re-notified surrounding property owners with the new boundary in place. He noted nothing has changed from the previous staff analysis or recommendation.

There were 19 neighboring property owners notified of this request.

When Mr. Hesser asked if this request was re-advertised, Mrs. Wilson confirmed it was by looking in the Board of Zoning Appeals Legal book.

Attorney Kolbus suggested the public hearing be reopened.

Motion: Action: Approve **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood, that the Board reopen the public hearing.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

Paul Schwartz, 59800 SR 13, was present on behalf of this request and stated he is the property owner. For clarification purposes, Mrs. Wolgamood asked about the new site plan dated 12/21/12, which shows that the north driveway is utilized for the greenhouse business and that the south driveway is not used. Mr. Schwartz said both driveways get used. He explained the greenhouses are on the north end of the property and cars naturally just use the north driveway. He also believes people assume the south driveway is a private drive because it is closer to the house. When Mrs. Wolgamood inquired about moving the sign from the south to the north driveway, Mr. Schwartz indicated he has not really given that any thought. Mr. Hesser asked Mrs. Wolgamood if the south drive was supposed to be used. She indicated it was in the original list of conditions, and she believes they did use the south drive for a period of time. Mr. Schwartz further explained they were supposed to use the south drive because they did not originally own the north driveway property. Attorney Kolbus indicated he believes the condition of using the south driveway needs to be clarified for the staff, petitioner, and future clarification. Mr. Hesser then noted the original approval says "access from petitioner's property only" which at that time only included the south driveway and pointed out that now it would include both.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony 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 commercial greenhouse in an A-1 district (Specifications F - #12) be approved with the following commitments imposed:

1. Approved in accordance with the site plan submitted (dated 12/21/12) and as represented in the petitioner's application.

2. All previously approved conditions are to remain in effect and be recorded as commitments, specifically:
 - a. Approved for spring planting only.
 - b. Access to be from the petitioner's property, including both the north and south driveways.
 - c. Retail sales of bedding plants and supplies only.
 - d. Retail sales to be inside the proposed building.
 - e. Sign to be no larger than four square feet per side.

Note: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

14. The application of *Jerry E. & Louise Miller* for an amendment to an existing Special Use for a home workshop/business for a woodworking business (Specifications F - #45), and for a Developmental Variance to allow for two additional outside employees for a total of four (Ordinance permits two) on property located on the North side of CR 26, 720 ft. East of CR 37, common address of 12857 CR 26 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Hesser noted this request was also tabled from last month's meeting, and the public hearing was left open.

Mr. Mabry indicated the petitioner re-examined some of the requests and narrowed down the scope of the previous request. He presented the revised Staff Report and recommendation.

David Bontrager, Jr., 59723 CR 33, was present representing the petitioners on behalf of this request. Concerning the number of employees which has a recommendation for denial, he said he gets in a pinch of not knowing what to tell homeowners to do because they want to stay legal. He indicated the petitioner's oldest son is 11 years old and wondered if something could be done to allow the additional employees for four years with a return to renew it at that point. Mr. Bontrager said he was not sure what advice to give Mr. Miller. He noted the request is for two employees, but pointed out that probably only means two bicycles and this will never be a full blown factory business on this property. Mr. Bontrager said Mr. Miller has signed a contract with a company out of Elkhart to make a couple hundred beds to be delivered to those who have a need for anything related to special needs kids.

He indicated there is a lot of sanding involved in the process of making the beds which can be done by underage workers, but the extra employees are needed for the more difficult work of assembling the beds.

There were no remonstrators present.

Mr. Hesser asked Attorney Kolbus for his thoughts or guidance with regard to the number of employees. Mr. Hesser commented on the fact that it is a developmental variance which he always thinks of as being distances and things like that which are not going to change. Mr. Kolbus said it is because it is a standard of the home workshop/business definition so it is a standard that is being changed. He noted this Special Use permit is currently approved for a maximum of two outside employees, and this request is for four. He did point out the Board can grant anything up to or less than what they requested such as two full-time and two temporary full-time for a specific period of time which is in the Board's purview. Attorney Kolbus added that it would have to go in the commitment form so it is on record.

The public hearing was closed at this time.

Mr. Hesser suggested first dealing with the Special Use issue. For clarification and review, Mrs. Wolgamood reported the original approval in 2003 said no employees outside of those who live on site, the approval in 2005 added two outside employees, and this request is for two additional permanent employees. Attorney Kolbus pointed out sons living in the home can work inside the business, and they are not counted. Mr. Mabry explained the current request is for the expansion of the building and for two additional outside employees.

Mr. Hesser commented that he always questions when size is being expanded because with home workshops there comes a point when you are not a home workshop anymore. He pointed out there were no remonstrators present. He noted he would have positive findings with respect to the staff findings for #1 and #2 but would object to #3 because he does not see anything that makes it an unnecessary hardship pertaining to land use concerning the Developmental Variance.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve **Moved by** Randy Hesser, **Seconded by** Doug 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 an amendment to an existing Special Use for a home workshop/business for a woodworking business (Specifications F - #45) be approved with the following condition imposed:

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

The following commitments were also imposed:

1. Approved with the occupant of the residence on site as the operator of the business.
2. One unlighted sign permitted, four square feet per side.
3. Any commodities sold on site must be manufactured on site.
4. Approved for an indefinite period of time with referral back to the Board of Zoning Appeals if valid complaints are received by Code Enforcement.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

Motion: Action: Denied **Moved by** Randy Hesser that the Board adopt the Staff Analysis (as amended by the Board) as the Findings and Conclusions of the Board as follows:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare;
2. Approval of the request will not cause substantial adverse affect on the neighboring property;
3. Strict application of the terms of the Zoning Ordinance would not result in an unnecessary hardship in the use of the property. The home workshop/business could expand its footprint and continue to operate;

and based upon these, further moved that this request for a Developmental Variance to allow for two additional outside employees for a total of four (Ordinance permits two) be denied. The motion died due to the lack of a second.

Motion: Action: Approve **Moved by** Doug Miller, **Seconded by** Tony Campanello, that based on the following findings:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare;
2. Approval of the request will not cause substantial adverse affect on the neighboring property;
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property;

this request for a Developmental Variance to allow for two additional outside employees for a total of four (Ordinance permits two) be approved with the following commitment imposed:

1. Approved for two permanent full-time employees and two temporary (up to 3 years) part-time employees.

Vote: Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

Yes: Doug Miller, Meg Wolgamood, Tony Campanello.

No: Randy Hesser.

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

16. The staff item for James and Debbi Jo Stack (OCR 33-120924-1 – Extension of a 3 to 1 Developmental Variance was presented by Brian Mabry. He said a request was received from Blake Doriot that the Board grant him a 30 day extension on a variance that was approved in October 2012 for the Stacks Minor subdivision for a 3 to 1 and a Lot Width Variance. If this extension is not granted, it would lapse. He noted Mr. Doriot has submitted the plat for review by the Plat Committee and just needs time to go to that committee for anticipated approval.

Motion: Action: Approve **Moved by** Meg Wolgamood, **Seconded by** Randy Hesser that the Board approve a 30 day extension for obtaining Primary approval of the Stacks Minor Subdivision.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

17. The next staff item of board education was presented by Brian Mabry. He suggested possibly waiting until all board members are present to review this information to which the board members agreed.

18. Certificates of Residency completed for Tony Campanello and Doug Miller were submitted *[attached to minutes as Staff Exhibit]*.

19. The meeting was adjourned at 12:05 p.m.

Motion: Action: Adjourn **Moved by** Doug Miller, **Seconded by** Tony Campanello that this meeting be adjourned.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Tony Campanello, Randy Hesser.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary