

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19TH DAY OF FEBRUARY 2009 AT 9:00 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: Meg Wolgamood, Robert Homan, Tom Lantz, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Larry Harrell, Zoning Administrator; Kathy Wilson, Office Administrator; Robert Nemeth, Planner; Dan Piehl, Planner; Mick Slater, Code Enforcement Officer; and James W. Kolbus, Attorney for the Board.
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 15th day of January be approved as read. The motion was carried with a unanimous roll call vote.
3. A motion was made and seconded (*Homan/Wolgamood*) that the legal advertisements, having been published on the 9th day of February 2009 in the Goshen News and on the 7th day of February 2009 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.
4. A motion was made and seconded (*Wolgamood/Homan*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.
5. A motion was made and seconded (*Miller/Wolgamood*) that the Board accepts the Staff Reports as evidence into the record. A roll call vote was taken and the motion was carried with a unanimous vote.
6. At this time, Mr. Harrell indicated that Lawrence Ramer hasn't been able to get all of the surveying in and they are only about half way done because of the snow. Mr. Doriot and Mr. Sloat would like to have the petition tabled until the April Board of Zoning Appeals meeting. Mr. Hesser indicated that petition would be dealt with when it comes up on the agenda.
7. The application of ***Curt Haberstich*** for a Special Use for warehousing and storing in an A-1 district (Specifications F - #44), for an Appeal to allow for the construction of a mini-storage building on property not subdivided in accordance with the Subdivision Control Ordinance and for a 35 ft. Variance to allow for the construction of said building 85 ft. from centerline of the right-of-way (Ordinance requires 120 ft.) on property located on the East side of SR 13, 500 ft. South of CR 42 in Benton Township, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091098*.

There were 22 neighboring property owners notified of this request.

Curt Haberstich, 68530 US 33, Millersburg, was present on behalf of this request. Mr. Haberstich said the all steel mini storage building they would like to build would be the first one in the Millersburg area. They plan to have a very nice fenced-in building with gated security and 24 hour access.

The petitioner said the reason he has asked for the setback Variance is because the house to the north is 50 ft. from the street and the house to the south is 62 ft. from the street. The building won't be too far back from the street due to security purposes, but he wants to give the neighbors privacy as well.

Mr. Hesser asked what the stockpile area is to the south of the lot. Mr. Haberstich said the firm that drew up the plans said that was necessary while doing excavation for a place to stockpile dirt as it is being used or removed. He indicated this would be a temporary situation and the only things that will be permanent are the row of trees, steel building, and the fence.

Mrs. Wolgamood asked where the proposed outside storage will be and Mr. Haberstich said to the south of the building. There is a 24 ft. gravel drive around the perimeter of the building, so it would be just to the south of that.

She also asked the petitioner if he is only proposing one building and the petitioner said yes, at this time. Mrs. Wolgamood asked if there is a possibility for additional buildings in the future and the petitioner said there is room for further development, which is why the building is off-site to the north of the property.

Mr. Haberstich said there is an address on this property which is 216 Benton Street and he has requested the annex for the Town of Millersburg. He said it hasn't been followed through with yet, but it has been requested. The town said there wasn't an issue, but they had to contact their lawyer and find out exactly how to do it. The retention area to the back of the property was still partially in the county. He said the property has been chopped up and divided by the previous owner.

Mr. Lantz asked the petitioner if he plans on adding on to the south if things go well and Mr. Haberstich said yes, but only if this one works out well.

Mr. Hesser questioned what kind of outside storage he plans on having and Mr. Haberstich said boats, campers, etc. The outside storage will be things that don't fit in the proposed building.

Mr. Lantz asked if anyone has an issue with the distance Mr. Haberstich is requesting for the Variance. Mr. Harrell said one of the things the staff considered is whether there is a staging area when driving into the property while the gate is coming up. He asked if traffic will be able to get off the road before they stop. The petitioner indicated that in the drive area, the gate is 75 ft. back from the road, so you can sit there, open the gate, and wait. He was concerned about that himself and Mr. Harrell said the staff doesn't want traffic stacked up on SR 13.

Mrs. Wolgamood said should this be approved, then the petitioner is to have only one building with outside storage. If he wants more buildings, then he has to come back for an amendment. The petitioner indicated he understands that.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan indicated the staff report talks about directing the lighting inward and putting in a tree buffer. The petitioner said that is acceptable and said he is aware of all five conditions staff has recommended.

Mr. Kolbus suggested that the Board approve the request as per site plan submitted.

Mr. Hesser asked if the staff has any issues with the Variance and Mr. Harrell indicated there should be no stopping on SR 13. There needs to be enough length there to get off the road. Mr. Homan pointed out that the petitioner's site plan shows the fence line.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for warehousing and storing in an A-1 district (Specifications F - #44), for an Appeal to allow for the construction of a mini-storage building on property not subdivided in accordance with the Subdivision Control Ordinance and for a 35 ft. Variance to allow for the construction of said building 85 ft. from centerline of the right-of-way (Ordinance requires 120 ft.) be approved with the following conditions imposed:

1. All lighting to be directed to the interior. Light should not spill over to adjacent residential houses especially at night nor blind drivers traveling Lincoln Street
2. A buffer of two rows of trees five ft. in height, eight ft. staged on centers, should be installed between the north property line and the metal mini-storage building. Special Uses should protect the public welfare, which includes protecting aesthetics.
3. All roadways to be dust-proof.
4. The entire property shall be fenced and gated.
5. There shall be no dispatching or storage of end products for manufacturing businesses.
6. There is to be no stopping of traffic on SR 13.
7. Approved as per site plan submitted.

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

8. The application of *Chris Kenyon (buyer) and Stuart Gingerich Golden Properties (seller)* for a Special Use for an agricultural use for the keeping of 4-H animals on a tract of land containing three acres or less (Specifications F - #1) on property located on the East side of CR 31, 388 ft. South of CR 20 in Middlebury Township, zoned A-1, came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091075*.

There were 4 neighboring property owners notified of this request.

Chris Kenyon, 58052 Crystal Springs Drive, Goshen, was present on behalf of this request. Mr. Kenyon said he and his wife are trying to buy the proposed parcel which is to the south of Crystal Springs Subdivision. Both of his children are involved in 4-H and in the past, they have had to keep their 4-H animals on a neighbor's property. He feels buying this property would be a good fit for his family.

Mr. Kenyon indicated he has contacted the people to the west of the proposed property and they have no issues with it. He is not sure who owns the parcel to the north and hasn't been able to talk with the landowner to the south.

The building the petitioner is proposing would sit towards the center of the parcel. There is a large swale on the north side of the property. If they decided to build a house on the property in the future, it would make more sense to build the house near the road.

Mr. Homan asked what kind of livestock they plan on housing and Mr. Kenyon said pigs and possibly calves.

Mr. Hesser asked if there is any fencing on the property right now and the petitioner said no.

Mr. Homan asked Mr. Kenyon if he will fence the area where the animals will be and the petitioner said yes. There is an area where they can make a small pasture and one of the neighbors would like to farm the back area of the property.

Mrs. Wolgamood asked what the total number of animals would be at any one time and Mr. Kenyon said the kids will each take two to four animals. He's not completely sure how many they will have because some of the animals may be bred in the future.

Brad Hooley, 14385 CR 22, Middlebury, was present in favor of this request. Mr. Hooley indicated he represents the buyer and the seller. He explained they did very precise measuring on this parcel because he wasn't sure Mr. Kenyon needed a Variance in the first place. Mr. Hooley met with Phil Barker who verified that the property is 3.00 acres. If the property would have been 3.01 acres, then they wouldn't need to be here today. The neighbors are all in favor of the request.

Mr. Hooley also indicated that he was on the fair board for many years and each member is limited to selling six animals in the auction. Since Mr. Kenyon has two kids, then twelve animals would be the maximum.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for an agricultural use for the keeping of 4-H animals on a tract of land containing three acres or less (Specifications F - #1) be approved with no additional conditions imposed. After a unanimous roll call vote was taken, the motion was carried.

9. The application of ***Jerry L. Lambright*** for a Special Use for a roadside stand for the sale by the owner/producer of produce and plant nursery products (mums) raised on the premises in an A-1 district (Specifications F - #54) on property located on the South side of CR 22, 2,395 ft. East of CR 33, common address of 15066 CR 22 in Middlebury Township came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091082*.

There were 23 neighboring property owners notified of this request.

Jerry Lambright, 15066 CR 22, Goshen, was present on behalf of this request. Mr. Lambright explained he would like to operate a roadside stand. They have four school aged children and hopes they can help with the business during the summertime hours. They have sold mums in the past and they would like to enlarge it a little bit.

The petitioner is asking approval for a 10 x 30 three-sided open front portable shelter to keep the sun and the rain off the produce. He would like to have Michigan fruit brought in from off-site for retail sales.

Mrs. Wolgamood asked if he raises the mums on his property or if they are brought in from off-site. The petitioner indicated they would bring the mums in from off-site, but they

would like to raise potatoes, onions, sweet corn, melons, and tomatoes. In addition to the mums, they would also need to bring the fruit in from off-site.

Brad Hooley, 14385 CR 22, Middlebury, was present in favor of this request. Mr. Hooley indicated he is the neighbor of the petitioner and said that he has a very clean farm. There is plenty of room for cars to park off of the roadway and Mr. Lambright has a very nice farm.

The public hearing was closed at this time.

Mrs. Wolgamood gave compliments to the petitioner for his site plan and indicated he did a very nice job.

Mr. Hesser said he understood that with the exception of some fruit from Michigan, everything else is raised on site, but that is not the case. It was then clarified that the fruits and mums are brought in from off-site. Mrs. Wolgamood indicated that should be clarified completely in the motion.

Mr. Harrell said in the past, the Board has approved the petition with the majority of the merchandise sold being produced on site.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a roadside stand for the sale by the owner/producer of produce and plant nursery products (mums) raised on the premises in an A-1 district (Specifications F - #54) be approved with the following conditions imposed:

1. There shall be no parking or backing onto CR 22.
2. One (1) sign permitted no larger than 12 sq. ft. per side and unlighted.
3. Required setbacks shall be maintained for the portable building on site.
4. Applicable health standards must be maintained.
5. Approved as per site plan submitted.
6. Fruits and mums may be brought in from off-site.

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

10. The application of ***David & Corinna Chupp*** for a Special Use for a kennel with outdoor pens and/or runs in an A-1 district on property located on the South side of CR 146, 1,470 ft. East of West County Line Road, common address of 30868 CR 146 in Locke Township came on to be heard.

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

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091088*.

There were 19 neighboring property owners notified of this request.

Present representing the petitioner was Loren Sloat, Attorney, 102 Heritage Parkway, Nappanee. At this time, Mr. Sloat submitted a packet of information to the Board containing aerial photos, a site plan, pictures, petition in favor of the request, USDA inspection report, waste disposal letter from the Indiana State Department of Health, and a list of conditions *[attached to file as Petitioner Exhibit #1]*. Mr. Chupp is the owner of a 44 acre farm on CR 146, which is commonly known as the Goshen-Plymouth road. The property is right next to the St. Joseph county line. Over the past four to five years, Mr. Chupp has gotten into raising small breed dogs. The small

breeds are lap dogs or companion dogs that are around 15 inches from the tip of its nose to the base of their tail.

Presently, there is a kennel to the rear of the property where Mr. Chupp keeps the dogs and provides their care. The petitioner is also proposing a second kennel at a different location on the parcel. There are a lot of neighbors in the area and most of them have signed the petition in favor of the request that is in the packet which was submitted. Twenty-five of the neighbors have signed the petition and have no complaints in regards to noise or the operation.

Mr. Chupp currently works in the RV industry and hopes to maintain that employment, but he is doing commercial dog raising as a side business. He has four children at home who help with the dogs and the socialization of them. Generally, the petitioner has 50-55 adult dogs total with five or six females and one male of each breed.

Mr. Sloat then went through the aerial photos, site plan, and pictures of the property included in the packet and explained them to the Board. He noted that one of the photos of the property shows a "for sale" sign for the puppies.

When viewing the property from CR 50, you can see the kennel behind Mr. Chupp's barn, which has fencing to stop any noise from the barking. Mr. Sloat indicated he has been out there several times during the process of going through this application, and when you walk up to the kennel, there is generally no barking. Once the dogs are disturbed, then the barking occurs, so it is intermittent that this happens.

A view from the east side of the property was then shown in one of the photos. The new kennel will be to the east side of the existing building. The existing kennel is 10 x 24 on skids and the proposed kennel will be 10 x 20 on skids.

Mr. Chupp has applied for and received approval for a USDA license as a commercial dog breeder. He doesn't have the actual licensed certificate, but he does have a letter showing the approval of him as a commercial dog breeder. He has also submitted an application to the Indiana State Board of Health and the local Elkhart County Health Department in regards to the disposal of waste and products from this operation. As a part of the requirements for USDA approval, you have to have a veterinary care program, which Mr. Chupp has with the Nappanee Veterinary Clinic. All of the petitioner's work with the dogs is done under the direction and guidance of the Veterinarians from that clinic.

Mr. Hesser questioned what the petitioner does with the dead animals now. Mr. Sloat said those are generally disposed of at the direction of a Veterinarian by taking them to the clinic. Mr. Sloat indicated the animals are not buried on premises.

When looking at the inside of the kennel, Mr. Chupp has a work area where he works with the dogs and puppies. He has scales where he gets the dogs' weights, vaccinates them, and worms them. The petitioner maintains a very clean operation that has a wash tub, is ventilated, and heated at a maintained temperature. On page 18 of the packet, there is an interior picture of the kennel. The wash area and work area are behind where he was standing to take the picture. The existing kennel has two rows of eight crates on one side and two rows of seven crates on the other side, which equals a total of 30 crates. On the outside area of one side of the kennel, there are outdoor continuations connected by a small door. On the other side, there are seven outdoor runs on the bottom row of crates, but none on the top. The outdoor runs allow the dogs to move freely back and forth.

On the inside, the crates are 30 x 30, and on the outside, the crates are 30 x 48. The dogs can go through the door to the inside and outside at their discretion. When the dogs are whelping, they are kept separate from the rest. The doors can be locked when there is bad weather so the puppies can't get outside.

With the size of the dogs and the requirements, an 11 inch dog is required to have two sq. ft. of space. He indicated you take the inch size of the dog from the tail to the nose and add six to it. That number is then squared and divided by 144, which gives you the number of square feet needed per dog.

Mrs. Wolgamood questioned whose regulations those are and Mr. Sloat indicated USDA.

The inside crate is six and a quarter square feet and the outside crate is ten square feet, which is a total of 16 square feet for the inside and outside space. If there are four adult dogs put in one crate, there would be four square feet per dog which is more than what the USDA requires. The kennels are cleaned everyday and more if needed.

Mr. Chupp works in a factory four days a week, but his children spend a lot of time playing with the dogs and handling them. He explained they do get a lot of personal attention. All of the adult dogs are micro-chipped, so their information can be processed electronically. Many of the puppies are purebred and able to be registered with AKC if the owner chooses to do so.

The puppies are either sold in direct sales or sold commercially through a dealer who Mr. Chupp works with. A lot of people come to the farm to pick out the dog they want for their family.

Mr. Hesser said the staff is recommending a maximum of two adult dogs per cage. Mr. Sloat said he didn't get a chance to talk to staff about that, but he thinks they were only looking at the inside crates. If they have the outside crates as well, then that gives a lot more space per dog.

Mr. Hesser asked if there are situations where they have four dogs per crate and Mr. Sloat said yes. Mr. Hesser asked if staff has any concern with the petitioner having four dogs per cage and Mr. Harrell said no, the recommendation was only considering the inside crates. He indicated they don't regulate that because it's under constraint regulations.

Mr. Sloat said the reason the petitioner wants a second kennel is to have an area for whelping of dogs and raising breeder dogs and housing retired breeder dogs. Retired breeder dogs are adopted out and they have to have a place to care for them. It takes two years to raise a pup to be used as a breeder dog.

The reason the petitioner would like to have a second kennel is to have an area for the whelping of dogs, raising replacement breeder dogs, and for housing retired breeder dogs. Mr. Sloat explained that retired breeder dogs are put back into society and are adopted out, which requires them to go through a process. The dogs should be two years old before they are used for breeding purposes. He indicated that the new kennel would have 24 crates available for use.

Mr. Lantz questioned if the new kennel would have double crates like the existing one has and Mr. Sloat said yes.

In addition, there will be a grassy enclosure in the new kennel area which will allow the dogs to run and play. As of now, the family's children provide a lot of socialization for the dogs, which they will continue to do. He indicated the dogs do get a lot of contact with humans.

Mr. Sloat included in the conditions that if the dog population is over 64, then they will hire some of the neighbor children to play with the dogs and interact with them. This would assure that the puppies would be capable of adjusting to society when they are sold. The conditions included in the packet were then reviewed by Mr. Sloat.

The petitioner has a three day warning that is given to all of the purchasers. If the dog were to have a disease or a defect, they could bring the dog back and get a full refund within three days. Mr. Sloat indicated Mr. Chupp is present in the audience if the Board has any questions.

Mr. Lantz asked how you tell if a dog is socialized, but Mr. Sloat said it's a matter of opinion. Mr. Sloat said socialization means that dogs have been in contact with enough of society that when they hear a car horn or someone comes up behind them, then they aren't timid and afraid.

Mr. Homan asked who is responsible for inspecting the operation of the kennel and how frequently that would happen. Mr. Sloat said there is a representative from USDA who covers this area and makes inspections every so often.

Eric Durcinka, 402 Park Avenue, Mishawaka, was present in opposition to this request. Mr. Durcinka explained he has interacted with the property in question because he used to be the Executive Director of the Elkhart County Humane Society, but he now serves as the President of the Indiana Society for Prevention of Cruelty to Animals. He has been in the field for 15 years now, so he has extensive experience dealing with animals and kennels.

On November 6th, 2008, Mr. Durcinka was out to the site and spoke with Mr. Chupp in regards to the kennel. The Humane Society had received multiple complaints about the conditions of the animals, so they went out to investigate. Mr. Chupp had talked about building the new facility and the problem that he was overpopulated with dogs. He had stated that a person he works with had to get rid of their dogs, so he was forced to take them.

When the Elkhart County Humane Society did their inspection on the kennel, there were over 100 dogs at that time, including puppies. In regards to the conditions, the waste was being drained under each kennel into a gutter system. The fecal matter and waste would have to be sprayed down, otherwise it would sit in the trough. The trough had a pipe that would run to the fence and leak out into the field, which left a very large waste field. Mr. Durcinka estimated the waste field being approximately 10 x 12 and in this weather, the waste isn't evaporating or going anywhere. He explained the complaints weren't based on the neighbor's issues, but they were based on the general conditions of the animals. The barking isn't very loud with these types of dogs, so the complaints were more based on the health, welfare, and safety of the animals.

Another concern of the Elkhart County Humane Society was the amount of dogs that were in each cage. Mr. Durcinka is glad to see that the petitioner is moving forward and applying for a license through the USDA, but he indicated that is only an application.

With regards to the square footage in each cage, Mr. Durcinka explained that in the wintertime, the dogs don't have access to the outdoor part of the crates due to the cold weather. Otherwise, the temperatures inside the kennel would not be able to be maintained to keep the dogs warm. During that time, the dogs are all forced to stand, sit, and lay on the wires they are on to allow their fecal matter to drop through, but they are all contained together.

At the time of the investigation, Mr. Chupp was very apprehensive about taking the Humane Society into the barn. The petitioner realized he was over the amount of dogs he should

have and he was very aware of the conditions. Mr. Chupp was very concerned himself about what the Humane Shelter's response would be.

Mr. Hesser asked if the information Mr. Sloat represented regarding the minimum requirements is accurate. Mr. Durcinka said if the doors were left open, then it would be accurate.

Mr. Hesser also asked if the space requirements are accurate and Mr. Durcinka said no. The guillotine door is for letting the dogs outside to get air and exercise. During the winter, that door is not left open, so that is only considered one kennel. It serves as a consistent wall with the guillotine shut and the dogs cannot push the door open. At any point when that door is closed, the kennel size is only the inside area and the dogs don't have access to the outside area.

As far as what the Mr. Sloat represented as the minimum space requirements, Mr. Hesser asked if that was accurate. Mr. Durcinka said the minimum space requirements Mr. Sloat indicated are required is accurate, but the volume of dogs Mr. Chupp is keeping there would not be approved. He indicated that is part of the USDA requirements.

Mr. Chupp was so concerned about the conditions of his animals at the time of the inspection, he was very adamant that another barn was going to be built very soon. Four months later, the barn has still not been built and Mr. Durcinka has not heard of any dates for the barn to be built. He feels that 84 dogs is a large amount of dogs for a very small area. Mr. Durcinka had a video of the inside of the building which he wanted to play for the Board, but he was unable to play it due to technical difficulties.

Mr. Durcinka explained that the fecal matter and urine was very noticeable on the inside of the building. The troughs that the fecal matter runs into are not appropriately able to drain. The building is built so that the noise is contained inside the building, but it was very alarming to see the volume of dogs kept in each cage. Mr. Durcinka explained that there were more than 100 dogs in that building including adult dogs and puppies and there were several dogs in each cage. His concern is that when you get into a larger breeding facility, you have to devote the resources to appropriately serve the animals. If the volume of dogs is kept at an appropriate amount, then it probably wouldn't have been as bad or unmanageable. Mr. Durcinka feels this amount of animals is overwhelming.

Mr. Hesser asked Mr. Durcinka when his visit was to the site and he indicated November 6, 2008.

Mr. Hesser then questioned the septic system for the waste disposal. Mr. Sloat said they have been working with the Indiana State Department of Health in regards to putting in a septic disposal system that will meet the standards. Currently, the waste is being collected behind the facility like a lagoon, but the Health Department has suggested that Mr. Chupp use a more conventional septic system. He explained that is in the process of being done because there is no use in doing that if this request is not approved today.

With the current conditions and standards that are present at this facility, Mr. Durcinka doesn't feel that it would be appropriate for the petitioner to continue on this path. He feels there is potential for a nice facility if Mr. Chupp is going to follow through with the septic system, etc. Unfortunately, all of those improvements were talked about, but were never followed through with.

Mrs. Wolgamood indicated that Mr. Sloat is requesting 84 adult dogs, but he is also requesting that Mr. Chupp be allowed to construct a second kennel. She asked Mr. Durcinka if

he feels the additional kennel along with the existing kennel would be ample space for 84 adult dogs. Mr. Durcinka said that would definitely be putting it at a maximum, but limiting the amount of adult dogs to around 60 would be excellent. They felt that if Mr. Chupp would have made the changes that the Humane Society spoke of at the time, then he would be on the right track, but he is still talking about making those changes four months later.

Mr. Homan said it seems the USDA approval for this business is a key element to success and asked Mr. Durcinka what would be a violation of those standards in regards to Mr. Chupp's operation. Mr. Durcinka said two issues they would have taken immediate concerns with are the volume of animals in the cages and the waste disposal system.

Mr. Homan asked what the USDA process would be and asked if there would have been an inspection of the facility prior to the issuance of a certificate of occupancy. Mr. Durcinka said for a breeding facility, they would do an inspection at some point, but they are really behind right now. They also would inspect the property if he renewed the license.

The Board asked if the inspection is done before or after the license is approved and Mr. Durcinka said it should happen before.

Mr. Lantz asked if the petitioner had a flap door instead of the guillotine door, then would the number of dogs be a problem per square foot and Mr. Durcinka said no.

Mr. Lantz also said an auto-scraper or water drip system could be installed to the waste disposal system to take care of that issue. The reason he mentions that is because he believes this looks like a pretty nice setup. He thinks they are taking issue with a lot of minor details. Mr. Durcinka indicated he is looking at the optimum pictures instead of the pictures he had prepared for their viewing. The video he has is very alarming and most people who have seen it think it is a problem.

Mr. Durcinka explained there is no doubt that Mr. Chupp and his family care for the animals, but he feels some issues need to be looked at.

Mr. Kolbus asked how the inspection process works after the kennel license has been approved by the USDA. Mr. Durcinka said there are so many kennel approvals right now that they aren't doing many inspections unless complaints are received. Mr. Kolbus then clarified that they are subject to inspections, but they may not actually take place, and Mr. Durcinka said that is correct.

The multiple complaints received by the Humane Society were then questioned by Mrs. Wolgamood. Mr. Durcinka said one of them came from a person who had some long-term interaction with the petitioner. The other ones were just people who had gone to possibly buy a dog from Mr. Chupp.

Mrs. Wolgamood asked if their main complaints were about the health and welfare of the animals and Mr. Durcinka said yes.

Mel Reed, Elkhart County Humane Society, 214 Hamilton Street, Dowagiac, Michigan, was also present in opposition to this request. One of her major issues is the socialization of these animals. With the current quantity of dogs, she doesn't feel there is any way the dogs are getting the proper socialization they need to be a healthy animal. The children Mr. Chupp has are very small and most small kids don't want to play with puppies all that long, especially if they see them everyday. The adult animals need socialization as well such as petting them, talking to them, and making sure everything is alright. In order to have a business such as this

beneficial, you need to make sure the animals are happy and healthy. Overall, she doesn't feel this amount of dogs can get the proper socialization they need.

In rebuttal, Mr. Sloat said the multiple complaints seem to be random and not specifically regarding this operation. Mr. Durcinka indicated in his presentation that he visited the premises on November 6, 2008, and counted an excess of 100 dogs, but Mr. Sloat questioned whether he was actually inside of the kennel. Mr. Durcinka indicated he was inside of the building, but Mr. Sloat believes he was inside the area between the fence and the kennel. He explained that the doors are not kept shut during the wintertime, but they can be kept shut. For the integrity of the animals, it's probably better that they are kept closed, but they are open and the dogs can move inside and outside. Mr. Sloat explained that he disagrees with Mr. Durcinka's representation that the dogs are overcrowded and the only space that's countable is the space inside.

The license with USDA has been approved, but they do not have the certificate yet. Mr. Sloat explained the packet submitted to the Board includes the inspection report issued by Laurie Lynn who is the USDA agent.

When the USDA agent was on the premises doing the inspection, they had no problem with the lagoon method of handling the waste disposal. When they talked with the Health Department, they suggested Mr. Chupp go beyond that and work with the Indiana Department of Health about a different method of waste disposal.

The reason that the second kennel has not been placed yet is because the Special Use hasn't been approved yet. The kennel is done and is waiting to be delivered, but they wanted to make sure the Special Use was approved first before accepting delivery of it.

Mrs. Wolgamood asked if there is a time frame for putting in the septic system and Mr. Sloat said it would be done by this spring. He said they would be willing to come back in six months to follow up on some of the concerns mentioned.

As the volume of dogs is very alarming, the Humane Society didn't see it alarming enough to take action at that time. The report they gave Mr. Chupp when they did their investigation seemed to be satisfactory. Mr. Sloat said the petitioner is concerned about the animals and he is taking care of them. Mr. Chupp is in the kennel multiple times a day and he handles the dogs. They appreciate the fact that this has been called to their attention because they would like to improve the operation.

The public hearing was closed at this time.

Mr. Lantz thinks this is one of the nicest facilities he has seen and he believes putting a flap in for the door would take care of the space requirement issue. In his opinion, the new kennel facility is alright as long as the petitioner meets the standards. He thinks it would be an overkill to put a septic system in for this operation, but if the petitioner is required to do that, he will take care of it that way.

Mr. Hesser indicated the Board needs to focus on land use and not the other issues.

Mr. Homan said this is not a 4-H situation and the animals are not agricultural animals. This is a commercial business for raising dogs and he questioned the intensity of the use on this property in conjunction with the established FDA guidelines that the petitioner is trying to come into compliance with and receive proper credentials for.

Mr. Kolbus explained that when Mr. Homan briefly left the room, additional comments were made by Mr. Sloat regarding that issue. He asked Mr. Sloat to repeat that information for the Board.

Mr. Sloat then reiterated that page 15 of the packet displays an inspection report prepared by the USDA inspector that states there are no items of non-compliance. The only thing they lack from USDA is the certificate to hang on the wall.

Mr. Hesser said when looking at this, you have to separate the land use issue from the type of business. If the Board were to approve this as recommended by the staff, he would consider adopting most of the conditions presented by the petitioner, which are significantly more stringent than the staff conditions.

Mr. Hesser said he thinks some of the conditions that were submitted don't involve this Board which is in regards to how the animals are being maintained. He is concerned of the intensity issue with the number of animals being requested. The staff has recommended 64 and the petitioner is asking for 84, but he suggested restricting the number to 64. If he wants to have more down the road, then he can request an amendment, which would eliminate #3 of the conditions.

Mr. Hesser indicated that condition #11 in the petitioner's packet regarding the illumination of areas where dogs are kept may not be something that this Board can enforce.

Mr. Kolbus suggesting stating "approval from the Health Department" instead of "register with" in condition #9. Mr. Hesser pointed out that the staff's recommendation indicated "register with", but he suggested stating "register with and approved by."

Mr. Hesser said conditions #11, #12, and #13, are things he hopes the petitioner would do, but they are not normally part of something the Board deals with. He also indicated that conditions #16 and #20 are things the Board definitely wouldn't deal with.

The Board then discussed the review issues. The petitioner is proposing a review renewal by the BZA in three years. The other time issue is deciding within what time compliance with the conditions would have to be met such as obtaining the license for the sanitary septic, etc.

Mrs. Wolgamood indicated that in the past, they have required the petitioner to provide a copy of the vaccinations.

She feels that 84 dogs are too many and the intensity is too great due to noise, waste, etc. She thinks that the volume and the waste are the two major issues and she would like to hear more regarding those issues.

Mr. Lantz indicated the neighbors are not complaining about the noise, but they may with the additional dogs. As far as the waste, he feels this could be allowed here.

Mrs. Wolgamood explained it is not a permitted use in an agricultural zone, which is why Mr. Chupp is here today.

Mr. Hesser indicated he is very satisfied with the proposal that was made with respect to disposition of waste. He said it's very clear that the complaints had nothing to do with the local neighborhood.

Mrs. Wolgamood asked if there is an issue with the additional kennel and Mr. Hesser said no because there will still be a limit on the number of dogs. It should help the situation instead of hurting it because it will allow for more space.

Mr. Homan questioned item #3 in the Staff Analysis and asked what county agency or board would be responsible for that. Mr. Harrell said that would be left up to the Humane Society because there isn't anyone in this office that is qualified to tell whether 64 dogs have

gotten their shots or if they have a disease. He feels that is something the Humane Society should monitor.

Mrs. Wolgamood asked about having a time frame for review. Three years was suggested by Mr. Hesser and Mr. Miller suggested having the staff go out in six months to verify that everything is in compliance.

Mr. Hesser indicated he was thinking that the approval is conditioned on all of these issues being satisfied within six months, or whatever amount of time the Board feels is appropriate.

Mrs. Wolgamood said if they are going to condition it, then the staff can issue the Special Use permit at the time.

Mr. Sloat the permit would be revoked if the petitioner doesn't meet the requirements. Mr. Kolbus indicated that is what they usually do and then the staff gives the Board a report at that time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that the Board adopt the Staff Analysis (as amended by the Board) as the Findings of the Board, and based upon the Findings that this request will be consistent with the spirit, purpose and intent of the Zoning Ordinance, will not cause substantial and permanent injury to the appropriate use of neighboring property by inclusion of 64 adult dogs, and this will substantially serve the public convenience and welfare because it does provide puppies for the local community and the applicant would be allowed to continue his commercial kennel with a limit of 64 adult dogs, this request for a Special Use for a kennel with outdoor pens and/or runs in an A-1 district be approved with the conditions submitted by the petitioner (as amended by the Board) imposed as follows:

1. No more than two (2) kennels
 - 1 (10' x 24' kennel) containing 30 crates – 23 with outdoor runs
 - 1 (10' x 20' kennel) containing 24 crates – 24 with outdoor runs
2. The existing 10' x 24' kennel will house adult breeding dogs and the proposed 10' x 20' kennel will house the whelping dogs and litters. The proposed kennel is to be placed in accordance with the site plan submitted.
3. The petitioner will not house more than 64 adult dogs.
4. Kennels enclosed with fencing as reflected in the photos submitted by the petitioner.
5. The petitioner must maintain USDA breeder license and provide a copy of that certificate to the staff.
6. The premises where the dogs are present will be sanitary.
7. The equipment used for the care of dogs will be maintained in a manner that ensures proper storage and disposal of waste, which is to be in accordance with and approved by the Elkhart County Health Department.
8. Maintain control measures to prevent infestation of the dogs and premises from external pests and vermin.
9. Provide sufficient ventilation to minimize drafts, odors, and moisture for the benefit of the health and comfort of the dogs.
10. Will ensure that each dog's enclosure is cleaned and sanitized.
11. All dead animals be disposed of in an appropriate manner as directed by the treating Veterinarian and the animals are not to be disposed of on-site.

12. The petitioner will provide to a dog purchaser a copy of the dog's vaccination, medication, and treatment record.
13. Approved for the owner/occupant of the residence on site.
14. A renewal of the Special Use is to be submitted for public hearing to the Board of Zoning Appeals in three (3) years.
15. Compliance with all of the above conditions within six (6) months from the date of today's meeting and the petition is subject to revocation if those conditions are not applied.
16. No expansion at any time is to be done without approval by the Board of Zoning Appeals.

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

11. The application of **Lawrence Ramer** for an 8 ft. Variance to allow for an addition to an existing accessory building 2 ft. from the rear property line (Ordinance requires 10 ft.), and a Developmental Variance to allow the total square footage of accessory structures (11,860) to exceed the total square footage of the primary structure (3,648), a difference of 8,212 sq. ft. on property located on the North side of CR 38, 2,185 ft. West of CR 11, common address of 25445 CR 38 in Harrison Township, zoned A-1, came on to be heard.

The Staff Report/Staff Analysis is attached for review as *Case #20083434*.

There were 3 neighboring property owners notified of this request.

There were no remonstrators present.

Mr. Kolbus indicated the petitioner is asking to have the request tabled until the April Board of Zoning Appeals meeting. Mr. Harrell indicated he has not secured all of the information he needs from the surveyor.

Mrs. Wolgamood indicated she would like to have all information regarding this petition in the packets so the Board can be prepared. Mr. Hesser said the revised site plan definitely needs to be in the packet.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Lantz*) that this request for an 8 ft. Variance to allow for an addition to an existing accessory building 2 ft. from the rear property line (Ordinance requires 10 ft.), and a Developmental Variance to allow the total square footage of accessory structures (11,860) to exceed the total square footage of the primary structure (3,648), a difference of 8,212 sq. ft. be tabled until the April 16, 2009, Board of Zoning Appeals meeting with the revised site plan being submitted to the staff by April 6, 2009. After a unanimous roll call vote was taken, the motion was carried.

12. There were no items transferred from the Hearing Officer.
13. There were no audience items.
14. There were no Staff/Board items.
15. The meeting was adjourned at 10:54 a.m.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary