



**LAPORTE COUNTY
BOARD OF ZONING APPEALS**

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**ANNEMARIE POLAN
Building Commissioner**

June 20th, 2017

Dear Members:

The regular meeting of the La Porte County Board of Zoning Appeals was held Tuesday, **June 20th, 2017, at 6:00 p.m.** in the Assembly Room of the County Complex.

MEMBERS PRESENT: Dwayne Hogan Johnny Stimley
 Glen Minich Earl Cunningham

PRESENT: Annemarie Polan, Recording Secretary, Attorney Doug Biege; Dar Forker,
Secretary

The Pledge of Allegiance.

APPROVAL OF MINUTES:

Dwayne Hogan asked for approval of the meeting minutes of May 16th, 2017.

Glen Minich made a motion to approve the meeting minutes as presented. Johnny Stimley seconded.

Dwayne Hogan asked if there are any questions, comments, or concerns.

All approved. Motion carried 4-0.

1. The Petition for Variance of Developmental Standards for John & Amber Delligatti for placement of a mobile home on their property. This property is located at 4833 N. 325 W., La Porte, Center Twp., zoned R1B on 12.988 acres.

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

Amber Delligatti, 4833 N. 325 W., La Porte, Indiana.

6-20-2017

Dwayne Hogan asked Ms. Delligatti what she would like to do this evening.

Ms. Delligatti said that they want to put a mobile home on their field for her mother-in-law.

Dwayne Hogan asked Ms. Delligatti how old is her mother-in-law.

Ms. Delligatti said she's seventy one (71) she believes.

Dwayne Hogan asked Ms. Delligatti how big is the mobile home.

Ms. Delligatti said she thinks that she's looking at around like a sixteen (16') foot mobile home. Ms. Delligatti said they haven't gotten one yet. Ms. Delligatti said that she does have some examples of what she's looking at if you want to look at them. Ms. Delligatti said nothing too big.

Ms. Delligatti said that there was a mobile home on the property back in 1999 so there is an existing well and septic there.

Dwayne Hogan asked if the mobile home is gone.

Ms. Delligatti stated yes. Ms. Delligatti said that she believes that it was back in 1999.

Dwayne Hogan asked if it's going to be hooked up to the same septic and well system.

Ms. Delligatti stated yes. Ms. Delligatti said that they had Sunset come out and take an initial look at it and they think it can be usable.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition No. 1.

Dwayne Hogan asked if there are questions, or concerns from the board.

Glen Minich said that his main concern is that we haven't been placing trailers in the county for some time now.

Ms. Delligatti said that they're just trying to be proactive. Ms. Delligatti said that she has been going through cancer and she has some health issues. Ms. Delligatti said that they're just trying to look out for her.

Glen Minich said that they definitely feel for people like you, but we don't have an answer at this point because we don't want mobile homes being brought in that aren't put on a permanent foundation like modular homes. Glen said that is more of what they're looking for – it's about the safety of the occupant more than anything else and as far as he's concerned, mobile home parks have sirens, shelters, and all that in place.

Dwayne Hogan said an actual addresses.

Earl Cunningham asked Mr. Biege if all the neighbors were notified, and there are no remonstrators.

Attorney Biege said that's correct.

Ms. Delligatti said that her neighbors across the street care for their mother-in-law and told her that they were for it. Ms. Delligatti said that she gets along with all her neighbors greatly – wonderful neighbors and she hasn't heard any complaints on it.

Earl Cunningham asked Ms. Dellilgatti how many feet of road frontage does she have on this property – almost thirteen (13) acres.

Ms. Delligatti said she's not sure on the frontage.

Dwayne Hogan asked Ms. Delligatti if she has thought about a smaller dwelling in there for her, instead of a mobile home.

Ms. Delligatti said that they have thought about that and if they went that route, is that something that you would accept?

Glen Minich said that they would be much more receptive to putting in a little house on a foundation. Glen said that they can construct a garage.

Glen Minich said that he sure wished that the RV industry – mobile home industry would come up with something, because it wouldn't take that much to build something that could be put on a permanent foundation – a smaller size.

Ms. Delligatti said that she's not sure if she can financially afford something like that, but it is what it is.

Earl Cunningham asked Ms. Delligatti if there was any cement pad from the previous mobile home.

Ms. Delligatti stated no.

Earl Cunningham asked Ms. Delligatti if she would be willing to put in a small cement pad –

Ms. Delligatti said that was her plan to put in a cement pad.

Earl Cunningham said that he's seen some of them where they're chained down and bolted into the cement.

Glen Minich said that he thinks that it's a challenge for the manufactured home industry doing something that can pass what the buildings codes for our department are.

Dwayne Hogan asked Ms. Delligatti if that is something that she would consider.

Ms. Delligatti said absolutely.

Dwayne Hogan said would that be fair that we table this to have an opportunity to consider that.

Ms. Delligatti said absolutely.

Attorney Biege said that if we table it, the nature of the petition changes. Attorney Biege said to make it cleaner is simply to deny it, however allow her to come back within the twelve (12) months if she wants to re-petition on a different item. Attorney Biege said that we will have to re-notice anyway if it's a petition for a second home on the property and is a totally different category than what she asked for additionally.

Earl Cunningham asked Ms. Delligatti where her mother-in-law is at now.

Ms. Delligatti said that she's in Chesterton. Ms. Delligatti said that she has a home in Chesterton right now.

Glen Minich said that they have been in favor of second residences on property in this case.

Earl Cunningham said that we have in the past given temporary permission for a mobile home while a permanent home is being built.

Glen Minich said in this case --- she'd never get her money back.

Ms. Delligatti said that she could live with them.

Dwayne Hogan asked the pleasure of the board.

Glen Minich made a motion for the Petition for Variance of Developmental Standards for John & Amber Delligatti for placement of a mobile home be denied. Property is located at 4833 N. 325 W., La Porte, Center Twp., but waive the twelve (12) month period to come back.

Johnny Stimley seconded.

Dwayne Hogan asked if there are any questions, or concerns.

All approved. Motion carried 4-0.

2. The Petition for Variance of Use for Rick & Lynn Moore for training and selling of firearms and a shooting range. Business out of home until such time existing barn can be converted into sale location. Unlit sign not to exceed (8'x10') feet. This property is located at 9251 S. 900 W., Wanatah, Clinton Twp., zoned Agricultural on 3.55 acres.

(This Use Variance was granted by this board on May 19th, 2015 for two (2) years to be reviewed.)

Dwayne Hogan asked for name and address for the record.

Rick Moore, 9251 S. 900 W., Wanatah.

Dwayne Hogan asked Mr. Moore what he wishes to continue to do.

Mr. Moore said the range was the thing that the board wanted to give a stipulation on the time period to look at it again to see if there were any issues with it and to come back before they would grant the permitted use of the range.

Attorney Biege said that he wants to reinforce that the range is what we're looking at, the rest of the variance was granted.

Earl Cunningham asked Annemarie if there have been any complaints.

Annemarie Polan, Building Commissioner, said no complaints.

Glen Minich said that they don't have an actual picture of the backstop. There is a mobile home.

Mr. Moore said that is personal pleasure. Mr. Moore said that the backstop is behind the mobile home.

Mr. Moore said the sidewalls are not quite finished yet.

Glen Minich asked Mr. Moore what the materials are constructed of.

Mr. Moore said dirt.

Glen Minich said and a little concrete in there.

Mr. Moore said you really don't want to put concrete in a range backstop.

Glen Minich asked Mr. Moore how big the backstop is.

Mr. Moore said he wants to say like fifteen (15') feet.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition No. 2.

Dwayne Hogan asked if there are further questions, or concerns from the board.

Earl Cunningham asked Mr. Moore if the RV is still on the property.

Mr. Moore said that it's still on the property, it's just not on the range.

Dwayne Hogan asked Mr. Moore how many shooters has he had come through there.

Mr. Moore said that he doesn't have a number, but there have been several – many.

Glen Minich asked if it's used primarily for sales and training.

Mr. Moore stated yes.

Dwayne Hogan asked if it's used for fundraisers.

Mr. Moore stated no.

Attorney Biege asked Mr. Moore how high the backstop is.

Mr. Moore said that he wants to say the backstop is twelve (12') feet high. Mr. Moore said that they're doing some more work and raise it even higher. Mr. Moore said that they haven't had any issues with it the way it is, but they're just wanting to raise it higher and they're continually doing some modifications and work on it.

Attorney Biege asked the approximately length

Mr. Moore asked of the backstop.

Attorney Biege stated yes.

Mr. Moore said its twenty-four (24') feet.

Glen Minich told Mr. Moore that he originally said he was going to build it ten by thirty five by fifteen (10'x35'x15'.)

Mr. Moore said it would be thirty-five (35) long.

Glen Minich asked the hours of operation. Glen said he doesn't see where that is written in the Findings of Fact.

Mr. Moore said that he thinks that the hours of operation were when the business itself was approved, he doesn't remember right off, but he wants to say like 9:00 a.m. to 6:00 p.m. is what they had.

Dwayne Hogan asked if that is seven (7) days a week.

Mr. Moore said that they don't do anything on Sundays, they do personal stuff, but no classes.

Glen Minich asked about Saturdays.

Mr. Moore said that they do classes on Saturdays. Mr. Moore said that is probably their biggest class day. Mr. Moore said that they usually are done by 5:00 or so, but sometimes it will go over into 6:00, but its daylight until 8:00, but personal stuff they have done later than that.

Dwayne Hogan asked if there have been any complaints by the Sherriff, or remonstrators.

Annemarie Polan, Building Commissioner, stated no.

Earl Cunningham said that he has a question regarding the RV. Earl said it's somewhat of a conflict with our last case. Earl asked if the RV was the backstop at one time, or is it just sitting on the lot.

Mr. Moore said that it has never been the backstop.

Earl Cunningham asked if the RV is usable – are you using that as the ---

Mr. Moore said that it's just scrap. Mr. Moore said it was something they put out there personally to shoot at, because you don't get to shoot at an RV to often in a legal way. Mr. Moore said that they just did it for fun. Mr. Moore said that they pulled it off the range and they're selling as scrap.

Earl Cunningham said that would be one of his concerns because we just turned down the lady who was going to bring in a brand new mobile home on almost thirteen (13) acres.

Mr. Moore said that it's a motor home – it's like an 88 Ford Motor Home with wheels and a motor.

Earl Cunningham asked Mr. Moore if he could give us a reasonable time that you will have that removed for scrap.

Mr. Moore said that it's setup and ready to go – maybe a couple of weeks. Mr. Moore said that it's moveable, not a dwelling.

Annemarie Polan, Building Commissioner, said that an RV can be stored on the property five (5') feet from the side or rear property line if there is a house.

Earl Cunningham said that he finds it a conflict that we just turned the lady down on thirteen (13) acres.

Earl Cunningham said here's a question hypothetically. What if she would have said she just wants to bring an RV to put her mother-in-law in?

Attorney Biege said that you can park an RV on the property, but you can't live in it. Attorney Biege said the well and the septic is the key.

Dwayne Hogan asked the pleasure of the board.

Earl Cunningham made a motion to approve the Petition for Variance of Use for Rick & Lynn Moore for training and selling and buying of firearms and a shooting range on property located at 9251 S. 900 W., Wanatah, Clinton Twp. On 3.5 acres with the stipulation that the recreational vehicle be removed within sixty (60) days.

Johnny Stimley seconded.

Dwayne Hogan asked if there are any questions, or concerns.

All approved. Motion carried 4-0.

3. The Petition for Variance of Use for James A. Rotering for a transfer station, transferring RV's off his property to a dealer. This property is located at 1241 W. Springville Rd., , Springfield Twp., zoned R1B on 7.33 acres.

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

James Rotering, 1241 W. Springville Road.

Terry Rotering, same.

Dwayne Hogan asked Mr. Rotering what he would like to do this evening.

Mr. Rotering said he guesses they're supposed to get a variance to be able to park new campers on his property. Mr. Rotering said that he got a letter in the mail from the County Commissioner to apply for a variance.

Dwayne Hogan asked Mr. Rotering if he is on seven plus acres, correct?

Mr. Rotering stated yes.

Dwayne Hogan asked Mr. Rotering how long he has been running this little side business at this address.

Mr. Rotering said that he doesn't have a side business at this address.

Dwayne Hogan asked what are the campers then?

Mr. Rotering said that his dad delivers campers; he does not.

Dwayne Hogan asked Mr. Roterling how long he has been parking campers there.

Mr. Roterling said over ten (10) years.

Dwayne Hogan asked Mr. Roterling how many he has had there at any one given time.

Mr. Roterling said that normally there maybe two to four.

Mr. Roterling asked the board if they're familiar with the RV industry. Mr. Roterling said that it's highly seasonal.

Mr. Roterling said that a couple months out of the year it's feast or famine. Mr. Roterling said right now its famine. Mr. Roterling said that February, March and April you get them while you can, otherwise somebody else is getting them and you're going to starve.

Glen Minich asked Mr. Roterling if he goes to Elkhart and brings them here, and then slowly pulls them out of there.

Mr. Roterling said that you pull them out of there for the rest of the month. Mr. Roterling said that they have to be out of the factory before the end of the month, otherwise they give them to somebody else.

Dwayne Hogan asked Mr. Roterling how long they have been doing this there.

Mr. Roterling said that his dad's only been doing it a couple years, ever since Teledyne shut down. Mr. Roterling said that he spent forty-one (41) years at Teledyne and now he's near retirement and he only has a few years left. Mr. Roterling said that he's almost retired. Mr. Roterling said that his dad has a bum leg and other health issues.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition No. 3.

REMONSTRATORS:

Dwayne Hogan asked for name and address for the record.

Anthony Novak and he's an attorney at Newby, Lewis, Kaminski and Jones and he's here tonight on behalf of his client, Harvey Stroud, and he lives at 1162 W. Springville Road. If you would look at an aerial of the property, he lives directly across Springville, and just to the southwest portion of the property. Attorney Novak said that they do have additional pictures that they will show you in their presentation.

Attorney Novak said that his client's property has been in his family for approximately thirty (30) years and it was owned by his father from about 1985 until about 2006 when he passed. In

2006 his client purchased it through his estate and has lived there since. During that time frame, the neighborhood out in the Springville area has been residential and the property at issue across the street has also been residential itself with lots of trees.

Attorney Novak said that they're here tonight to remonstrate against Mr. Rotering's petition. In addition to Mr. Stroud being in opposition of the petition, they have submitted a petition in opposition that was signed by approximately twenty (20) neighbors. Attorney Novak said that in addition to those twenty (20) signatures, there are two additional neighbors sitting in the back that their signatures aren't on there and they're also in opposition to the petition. Attorney Novak said that he doesn't know if you would like to know their names, or anything, but they are also in opposition.

Attorney Novak said that the current zoning classification of this property is R1B, which as you guys know, it's highly residential, and also includes other institutional social and recreational uses, such as bed and breakfast, daycare centers, playgrounds etc. Attorney Novak said that the variance being sought here has essentially become a use that is permitted in B2 or B3. Although the subject property is on US 20, which is filled with much traffic, this property itself is about seven (7) acres and the portion which the RV's are parked, they're on the far southeast portion of the property, farthest away from 20 and farthest away from the intersection of 20 and 39.

Attorney Novak said that although Mr. Rotering stated that there is only about three (3) to four (4) RV's at any time, his client has taken pictures and there has been at certain times up to twenty-five (25) to thirty (30) RV's parked at this location. Just this past year, Mr. Stroud has indicated there is a large portion of trees that were removed directly across his driveway as you can see the RV's that are parked there.

Attorney Novak is showing pictures to the board members.

Attorney Novak said that as they stated, the number of RV's change, there always was consistently RV's there. Mr. Stroud has indicated that it's been the majority of this year when the trees were removed and most of the RV's had started coming in. Mr. Stroud said that a typical day would be about four (4) to six (6) trucks that would come along Springville Road, go to the property, remove the RV and then take them out, either along Springville to 125 and then to 20, or they will come from Elkhart, take a left on Wilhelm and then go along Springville Road, which road although in the county, is approximately an eighteen (18') feet residential road where people cycle, walk, and walk their children as well.

Attorney Novak throughout the last four (4), or five (5) months, there has been a significant increase in traffic and noise on Springville, 125 and Wilhelm. Attorney Novak said that although Mr. Stroud has owned his property that has been in his family for thirty (30) years, has been residential in nature and other people that are listed on that petition who have chosen to live in an area that is residential in nature, are now living in an area that is into a dealership.

Attorney Novak said as he's sure that you're well aware under Indiana Code, the Joint Zoning Ordinance and even the BZA procedures, there are five (5) elements that have to be met for a Use Variance to be granted. In fact, JZO Section 28.11 (a) the BZA may approve or deny

variances from the use provisions of the zoning ordinance only upon a findings of fact that support the following:

1. The granting of the variance will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
3. The need for the variance arises from some condition peculiar to the property involved and is not at least in the BZA procedures there is a further part of the sentence that says that is not due to the general conditions of the neighborhood;
4. The strict application of the terms of the zoning ordinance will constitute an undue hardship if applied to the property for which the variance is sought; and
5. The approval does not interfere substantially with the Comprehensive Land Development Plan.

Attorney Novak said that these five (5) elements are a burden that the petitioner has to meet. Attorney Novak said that if one of those fail, the variance should fail. Attorney Novak said that they really don't believe that the petition as presented sufficient evidence, and we don't believe that he's presented any evidence to support those five (5) elements. Attorney Novak said for example, for elements 1, 2 and 3, they do believe that it's injurious to the general welfare of the community. There are about twenty-two (22) neighbors total that say that the general welfare and the general nature of the community is now going to change from residential to this businesslike manner.

Attorney Novak said that the use of the value of the area will not be adversely affected. This is now a residential area that is literally parked across the street from an RV lot now. Mr. Stroud has talked about selling his property; he has been to many hearings before where people will come up and say this is going to substantially affect the value of my property. I know that you can't state that affirmatively without getting some type of analysis, however if I was going to buy a property and right across the street is twenty (20) some RV's, he's probably not going to buy it, or he's going to offer a little bit less.

Attorney Novak said that the need for a variance arises from a condition peculiar to the property. Attorney Novak said that the only condition that is peculiar to this property is that it's R1B and that he's seeking a B2, or a variance, a variance that is business in nature.

Attorney Novak said that there is an Indiana Case Sam's East Inc. vs. United Energy Corp 927 NE2d, 960, 2010 Indiana App. LEXIS 960 ND in order to establish the prerequisites of these elements. The peculiarity must at least relate to the specific features of the property, not just the

owner's desire to the use of the property. Attorney Novak said that he believes that this variance is being sought simply because this is where he owns his land and he needs to get the variance and he's here before you tonight.

Attorney Novak said that in the event the board did grant this petition, which they're strongly against, we would ask that there be a little bit more transparency – a little bit more restrictions, or some type of conditions that are placed. We have no idea if these people are licensed; that there needs to be insurance. Attorney Novak said there could be many accidents that would arise on Springville Road. Mr. Stroud would also like to see certain restrictions on time, etc. etc.

Attorney Novak said inclusion and in submission, because petitioners failed to approve any of the elements, let alone all five (5) elements, they believe that this petition must fail and the variance be denied. Accordingly, and we respectfully request the petition be denied so that the nature of the neighborhood is preserved.

Dwayne Hogan asked if there are any other remonstrators this evening for Petition No. 3.

Dwayne Hogan asked if there are any further questions, or comments from the board.

Earl Cunningham asked Mr. Rotering what is the most vehicles you have had on the property at any one time.

Mr. Rotering said twenty (20) something; he's not sure how many.

Glen Minich said that it looks like you put these RV's in different spots and different times. Glen said from a Beacon photo it looks like you had them towards the north side of the house at one time.

Mr. Rotering is up at the bench going over the pictures with Mr. Rotering.

Glen Minich said that it looks while he was there that you're actually putting gravel to the south side of the building to make like a parking lot there.

Mr. Rotering said that he did that for another reason last year. Mr. Rotering said that he did that for himself and a friend of his, but his friend moved on to other things.

Glen Minich said that he thinks that Mr. Novak makes a point that it's one thing to have a few RV's there to help supplement your income, but it doesn't (unintelligible).

Attorney Biege said that he wants to clarify something. You said that this is for your dad for current extra income until he retires, but Mr. Novak he thinks if he caught that correctly said sometimes there are three (3) or four (4) trucks that pickup RV's in a day. Attorney Biege asked Mr. Rotering who is driving these RV's out.

Mr. Rotering said his dad and his friend that owns the business that his dad works for. Mr. Rotering said that it's two different trucks.

Attorney Biege said it's more than one person, it's not just your dad hauling these RV's.

Mr. Roterling said it is the guy his dad works for.

Attorney Biege asked Mr. Roterling if the guy your dad works for does he have a business that transports RV's.

Mr. Roterling said yes he does.

Attorney Biege said it's a little different than what you said, right?

Dwayne Hogan asked Mr. Roterling if there is any possibility to have an alternate location where you can store these RV's.

Mr. Roterling said that he would have to research that.

Dwayne Hogan asked if there are any other concerns of the board.

Glen Minich said that it's always tuff, but it's done after the fact –

Mr. Roterling said that he only knows of one neighbor that is upset.

Dwayne Hogan asked for name and address for the record.

Amber (unintelligible) 1241 W. Springville Road.

Amber said that her question is for Mr. Novak. Amber said he said that twenty-two (22) people signed this petition, and she was just wondering what mile radius is that, and what does the petition say, which she can see it now. Amber said did he go five (5) mile radius – ten (10) mile radius --- one (1) mile radius? Amber said that she thinks that makes a difference, because they have talked to their local neighbors and she would say ninety-five (95%) percent ---

Glen Minich said that these addresses are included in there.

Amber said like she said, they never seen a copy of the petition, so she was just curious.

Dwayne Hogan asked what her comments about the neighbors she talked to were.

Amber said on Springville Road they have talked to several of them, and actually they contacted us saying that there was a petition going around. Amber said none of them were upset and they didn't have a problem. Amber said that they know that Gary does this a few months out of the year – that is his bread and butter. Amber said he can't work otherwise and he's not old enough to collect social security, so he transports these trailers. Amber said it gives him a little money.

Amber said it did get excessive this year, because they got a good contract. Amber said who's to say what it's going to be like that next year.

Dwayne Hogan asked the time frame for the months that you are in business there. Dwayne asked when they start.

Mr. Rotering said usually around November.

Dwayne Hogan asked how long do they run. Dwayne asked if that is all winter.

Mr. Rotering said that they pick them up and deliver them within a couple of weeks. Mr. Rotering said that they're all brand new trailers.

Mr. Rotering said that he delivers all year around. Mr. Rotering said maybe you misunderstood the seasonal thing – the excessiveness, twenty some trailers in one shot. Mr. Rotering said that is seasonal. Mr. Rotering said that February, March and April, other than that, the rest of the time there may only be a few. Mr. Rotering said that they haven't had any out there the last several weeks because there is none. Mr. Rotering said that he delivers two places – two dealerships, he's not one of those guys that runs clear across the country – no interest in that.

Dwayne Hogan asked where they deliver.

Mr. Rotering said Wisconsin. Mr. Rotering said that you can't do Wisconsin from Nappanee to Wisconsin and back in a legal amount of time without staying in a hotel.

Glen Minich said that it's a large property and a lesser amount would be possible, maybe in a better spot. Glen said you have a big factory across the road from you on 20. Glen said it's not like it's all residential. Glen said if they could be sheltered somehow north of the building and away from the residential property he thinks that would be a big plus.

Mr. Rotering asked if that is the other side of the barn.

Glen Minich said that it's clear to the south end of the property.

Mr. Rotering and Glen Minich going over the site plan up at the bench.

Dwayne Hogan asked the approximate radius of the distance for miles from this location.

Attorney Novak said that he certainly can't state here the actual distance, but what he can at least explain to you that the fourth page will show the locations of all those remonstrators, and there is actually only one remonstrator that is east of Wilhelm, that is remonstrator 18 and 19, which he believes are the Kopczyks and they're on the third page. Attorney Novak said that the remaining remonstrators are all west of Wilhelm towards the property and it looks like there are only two to four remonstrators that are just slightly west of the property. Attorney Novak said while they might not be adjacent neighbors for the purposes of notice for these BZA petitions, they're certainly neighbors in the neighborhood. Attorney Novak said that if you notice on the back and

take into consideration that the RV's come along 20 and then they go on Wilhelm, these RV's are turning literally through this entire neighborhood and going in front of these persons' yards.

Attorney Novak said that Mr. Stroud wanted to point out that of all the neighbors that he sought out to seek this signing of this remonstrance, there was only one that refused. Attorney Novak said that there are probably neighbors that are in support, but he doesn't see them here and they haven't submitted something in support, but he can at least tell you that we have submitted a document twenty (20) people in opposition. Attorney Novak said that he does understand that they have apparently been operating this for years, but they were operating it improperly and they need to get a proper variance --- it's not Mr. Stroud's issue that the property that they have isn't a proper area to operate this without a variance, so what Mr. Stroud did was he contacted the county -- if he's correct, the county then told him to stop and the RV's then disappeared and that is why we're here.

Attorney Novak said that Mr. Stroud is one of the most civil clients that he's had and he's very reserved and makes a great client. Attorney Novak said that he's very reserved and he wanted to make sure he went about this in the appropriate manner. Attorney Novak said that he asked if this is appropriate to do and I said it's not appropriate and they need to get a variance. Attorney Novak said that he has gone that route and he's now in front of you -- I asked him to get a petition in remonstrance and he has done this and literally spent his hours getting all those signatures and has sat here quietly and asked me to present this for him.

Attorney Novak said that he can't speak if there is anyone for it, but he does know what the elements of a variance are and as to the board again, we do not believe they have met those elements.

Dwayne Hogan asked if there are any further questions of the board.

Johnny Stimley said he has been operating for ten (10) years and he wasn't aware of this. Johnny said it's a hard decision either way. Johnny said he doesn't know if we could possibly limit the number of RV's, or move them in the back or somewhere else.

Glen Minich said he would propose trying to shelter them more ---

Earl Cunningham said if we table this and give him one month to come back with a proposal -- maybe even sit down with Mr. Novak, or the neighbors and try to work out something as amicable to keep you in business for a couple of years until you reach sixty-five (65), or sixty-six (66). Earl said that he thinks that's the issue.

Attorney Biege told Mr. Cunningham if he's going to do that, let's remember, it's not his business. Attorney Biege said that he's working for someone.

Earl Cunningham at Mr. Roterger if he's getting rent from these people.

Mr. Rotering stated no.

Earl Cunningham told Mr. Rotering that he's letting an outside businessman use your property just because he's employing your farther.

Mr. Rotering said that he was using his land before he employed his farther. Mr. Rotering said that it's an old friend of theirs.

Attorney Biege said if we're going to have a hybrid agreement, the person who is actually running the business has to be part of that agreement.

Glen Minich said that he thinks the agreement would be between the property owner and the board, and the board saying this many RV's parked on the property.

Mr. Rotering asked if he could ask who decided the word "transfer station". Mr. Rotering asked if anybody has looked up what a transfer station is. Mr. Rotering said that it's not a transfer station.

Attorney Biege told Mr. Rotering that he agrees with him and he doesn't think anyone was trying to categorize. Attorney Biege said that somebody was just trying to summarize.

Glen Minich said that it's more of an RV drop site.

Glen Minich said that it looks like a business, and it's not supposed to be a business. Glen said that he thinks that it's a good idea to limit it, if we're not going to allow twenty (20) campers there.

Earl Cunningham said hypothetically, let's say you had twenty-four (24) campers there at one time, how long did that take you to get that back down to two (2), or three (3).

Mr. Rotering said that they take two (2) a day.

Earl Cunningham asked if he and his partner are both taking them the same day.

Mr. Rotering said ten (10) to twelve (12) days. Mr. Rotering said that he's pulling every day.

Glen Minich said that he thinks that it's better to limit the size and limit the time that they're there. Glen said that we can limit that to three (3) years to get you to your retirement time and then that gives the neighbors some piece of mine that it's not a long term thing that is going on there.

Mr. Rotering said that sounds fair.

Johnny Stimley said that if we do approve this to a limited number, he would like to see it be one (1) year because he doesn't know who is going to be out counting.

Glen Minich said that we can do it for three (3) years, and have it reviewed after one (1) year.

Attorney Biege said that he doesn't like that because what are you going to do if they aren't in compliance. Attorney Biege said whatever period of time you want to put on this should match the renewal period.

Attorney Novak said that his client would like to talk about the situation briefly. Attorney Novak said that he's asked him to also talk about maybe what the possible recommendations he would have as well, knowing all the while that he would like this completely denied.

Dwayne Hogan asked for name and address for the record.

Harvey Stroud, 1162 W. Springville Road, directly across the road from this parking lot of RV's.

Mr. Stroud said that as far as the neighbors that he has contacted from Wilhelm halfway down to 39, which comprises the majority of all of the people on that stretch of road. Mr. Stroud said that only one (1) person has refused to sign and there have been four (4) people that he has not been able to contact. Mr. Stroud said that everyone else has agreed that this is a problem in the neighborhood. Mr. Stroud said that he doesn't know where the term transfer station comes in, but if you drop something that you picked up from point A and moving to point B, he thinks that transfer station is an appropriate term. Mr. Stroud said if he's not correct, he apologizes, but it seems appropriate to him.

Mr. Stroud asked the board members if they were able to look the pictures over closely. Mr. Stroud said that if you can't take one (1) mobile home on a piece of property, he can't imagine how you could allow twenty-four (24) to thirty (30) of these trailers out there in front of his property.

Earl Cunningham asked Mr. Stroud if this is his driveway in this picture.

Mr. Stroud said that's right.

Glen Minich said that is Springville Road.

Mr. Stroud said that it's eighteen (18') foot wide with a right-of way, with a distance from his right-a-way to those trailers where you could pitch a horseshoe.

Glen Minich told Mr. Stroud what he would propose is to allow an area to the north of this building that would allow them to be kind of hidden from the more residential areas.

Mr. Stroud said that would certainly be more acceptable.

Board members speaking amongst themselves.

Earl Cunningham asked Mr. Rotering if we put a limit of twenty (20) units, if he purchased twenty-four (24) he could probably find a spot to put four (4) of them for a few days.

Glen Minich said that he's saying limited to ten (10).

Earl Cunningham said that is the seasonal aspect of it when they get a contract –

Mr. Rotering said that he would say that you're looking at two (2) to three (3) months that you would see that. Mr. Rotering said the rest of the time you would see two (2) to eight (8).

Earl Cunningham said that if it's going to be twenty (20), they're going to be moved out in approximately ten (10) days – let's say two (2) weeks at the most.

Johnny Stimley said that the one thing he wants to add we're working with both sides here and he would like to see down to at least ten (10) or twelve (12).

Glen Minich said he agrees. Glen said that we're going to ask him to shelter them to the north of the barn.

Mr. Rotering said that there is a lot of room, but it's going to take a lot of work to do that. He will have to put some gravel down and more trees to knock down.

Earl Cunningham said so we eliminate to twelve (12) units on the north side. Earl asked if we could go with two (2) units on the south side that comes in from Elkhart for one night and move them the next morning.

Mr. Stroud said that if they're coming in off of 125 W. the north side is the closest route and minimum amount of driving.

Attorney Biege said he doesn't like that. Attorney Biege said that it's difficult to write, it's difficult to enforce. Attorney Biege said just pick a number of units on the side of the barn.

Earl Cunningham said twelve (12) units on the north side of the barn, using 125 West. Earl asked if there is anything else we want to incorporate in one (1) year renewable. Earl said that he knows that it's going to come back in a year from now and hopefully we don't have twenty-four (24) people saying petition against it, because things are improved. Hopefully you come back a year from now and everything is smoothed out and we could give you a (2) year variance to get you to sixty-five (65).

Earl Cunningham made a motion that we grant the Petition for Variance of Use for James A. Rotering for a transfer site transferring RV's off his property to a dealer. Property is located at 1241 W. Springville Road, La Porte, Springfield Twp., zoned R1B on 7.33 acres for a one (1) year variance, maximum number of units will be twelve (12) and stored on the north side of the barn and to use 125 West.

Johnny Stimley and Glen Minich seconded.

Dwayne Hogan asked if there are any questions, or clarifications.

All approved. Motion carried 4-0.

4. The Petition for Variance of Developmental Standards for Timothy & Lisa Kincaid to divide their property (9.766) acres to construct another home on (4.76) acres with one-hundred plus feet of road frontage. Existing home will be on five (5) acres. This property is located at 2255 N. 450 E., Rolling Prairie, Indiana, Kankakee Twp., zoned Agricultural.

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

Lisa Kincaid, 2255 N. 450 E., Rolling Prairie, Indiana.

Ms. Kincaid was explaining to the board that she wanted to spilt her existing property of 9.766 acres to construct another home on 4.76 acres with one-hundred plus feet of road frontage.

Board members were talking about creating a flag lot and they wanted Ms. Kincaid to hire a surveyor to see if they could get at least one-hundred fifty (150') feet of road frontage for the new construction.

There were no remonstrators present this evening for Petition No. 4.

Annemarie Polan, Building Commissioner said that if she makes that One-Hundred Fifty (150') feet for the new house, then Ms. Kincaid won't have Two-Hundred (200') feet and she would need a variance for her property.

Attorney Biege said that he thinks she's fine. Attorney Biege said that she has petitioned to divide the parcel.

Glen Minich said that it's understood that it's going to be taken from her.

Glen Minich made a motion that Petition No. 4 be tabled until next month so the petitioner has time to look at a more even division of her property for the proposed second home.

Earl Cunningham seconded.

Dwayne Hogan asked if there are any questions, or concerns.

All approved. Motion carried 4-0.

Attorney Biege told Ms. Kincaid that she will not need to re-notice.

5. The Petition for Special Exception for J & C Brother, LLC, as contingent contract purchaser, by and through counsel, Braje, Nelson, Janes, LLP and Richard F. Loniewski, as legal owner, for construction and operation of a convenience store with a drive-through restaurant (QSR), gasoline sales, and/or related accessory uses, which, based on the property's current zoning, are permissible subject to the BZA's approval. This property is located 5906 N. US Highway 35, Michigan City, Springfield Twp., zoned B3 on 20.5862 acres.

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

Christopher Willoughby of Braje, Nelson & Janes. As Mr. Hogan indicated, his firm is here on behalf of the contract purchaser, J & C Brothers, LLC. Attorney Willoughby said that he thinks that is important from the outset that his clients have a contract to purchase this subject to what the board's pleasure is. Attorney Willoughby said that he thinks by now everyone is well aware of this property and Mr. Loniewski is part of this petition as the legal owner. Attorney Willoughby said that he has a contract to sell that property to his.

Attorney Willoughby said at this current date the property isn't in productive use and quite honestly perhaps even an eye sore there with outdated vehicles. Attorney Willoughby said ultimately his clients intend to put a convenience store that also sells gasoline; it will also have a quick service restaurant that includes a drive-thru. Attorney Willoughby said as you see most places, look right across the street from this property you will see a monstrosity of a speed-way there.

Attorney Willoughby said as of now in its current state, the property is zoned B, which is Highway/Commercial District and probably outside of industrial, the most flexible in terms of the uses. Attorney Willoughby said that the uses they're proposing are allowed under this zoning designation, with this board's approval of the Special Exception. Attorney Willoughby said that they've identified in what they feel this Special Exceptions are would be the convenience store with the drive-thru restaurant, along with the gasoline sales.

Attorney Willoughby said that this Petition is also subject as a result of the drive-thru and the elements that are set forth in Article 24. Those give us and he will briefly go over those because those are their standards to establish. In addition to those provisions, or elements that they must prove because they have the drive-thru, they're also subject to Article 14.06 with regards to restaurants with drive-thru service.

Attorney Willoughby said tonight they aren't asking for any other variances. We aren't asking for variances in regards to set-backs; with regards to driveways; frontage. Attorney Willoughby said that they recognize that if something changes within their plans, they may be back before this board. Attorney Willoughby said that the reason why he brings this up now is because he

thinks that will be important; you will hear from some adjoining property owners tonight and he's had an opportunity to speak to one that is a significant property owner and one of the main concerns was what is going to happen with traffic and frontage road. They don't believe that those things are properly to be determined tonight. What his clients do, or don't do in the future will be subject to what INDOT is going to require.

Attorney Willoughby said if he could approach, he has an updated drawing with some of the improvements they intend to make with the roadway.

Attorney Willoughby is up at the bench passing out the improvements for the roadway.

Attorney Willoughby said that he thinks that it's important and the first page shows in general what the plans are, and he thinks it's important and one of the biggest points of intention would be the third page. Attorney Willoughby said you see some red renderings and blue, which are done. Attorney Willoughby said he has with him this evening Mr. Ambrose, who is the architect and can speak to some of these specifics with regard of this plan. It's important to know that this is a heavy haul area, and even though the neighbors have expressed to him and they have tried to be proactive in addressing any concerns prior to this, it seems like the overriding concerns, if any, might be what happens to traffic here. Attorney Willoughby said what they have indicated and we know with INDOT, they are going to be required to expand and widen and pave that road. Those are things in their plans to do.

Attorney Willoughby said that the blue that you'll see on each side are to widen 35 to make sure there are decal in turning lanes there. Attorney Willoughby said that they're representing to this board and they don't think within your purview at this point to address that. INDOT is going to dictate what we do, or what we don't do, whether this project works or not, we're asking you're your approval of the Special Exception, which are generally allowed.

Attorney Willoughby said that even if you approve that, they aren't done yet because we know that we still have to have INDOT's blessing for what we're going to do. Again, based on these plans, we assure you that everything is going to be done in compliance with the code as its written, and the only thing they're asking is for approval of those Special Exceptions. Those Special Exceptions they have to establish elements – and he won't read them verbatim again because you're familiar with them that are set forth in Article 24. We have to show that what they're doing will not be injurious to the public health, safety, general welfare of the community; that they're not going to interfere or be injurious to the enjoyment of other property in the immediate vicinity; shall not be hazardous to adjacent properties, or involve uses, activities, etc., that will be detrimental to health, safety and welfare. That the proposed uses will be served adequately by essential public facilities and services, such as highways, streets, police, fire protection, drainage, water facilities, refuse; that developmental will be consistent with the intent development required established in the zoning ordinance. That the granting of a Special Exception Use will not be contrary to the general purpose served by the ordinance; that the proposed uses will be consistent with the character of the zoning district in which it's located and also subject to those provisions because of the drive-thru restaurant in Article 14.

Attorney Willoughby said he will address that one and repeat himself on Article 14. Those extra elements in Article 14, they don't have any problem meeting those and they're not asking for relief on those. They recognize that they're subject to everything that is listed there. With regards to this, there is no question that this area is getting developed in terms of higher traffic. Again, it is a heavy haul of commercial real estate agent for the seller who reminded him tonight that he was involved in the project and he actually attended a zoning meeting on the other side of 94, there is actually a logistics center that is going there. This roadway is already high traffic, whether this project goes in or not. They're not adding to the traffic that goes there, they're simply improving in addition to with anything, they're going to improve the area; we're going to provide jobs and we're going to do everything that's in compliance within the code.

Attorney Willoughby said if you do have technical questions, he does have representatives from both the LLC, as well as (unintelligible) with specifics in regards to the project.

Dwayne Hogan said out of curiosity, how many remonstrators are here this evening for this petition.

Attorney Willoughby said that's for and against, correct.

Dwayne Hogan stated yes.

Dwayne Hogan said let's hear the ones against here first.

REMONSTRATORS:

Dwayne Hogan asked for name and address for the record.

Rich Ostergren, 15 Elm Drive, La Porte. Mr. Ostergren said that he's the owner of Serenity Springs.

Mr. Ostergren said that he's only heard convenience store and gas. He doesn't believe the word semis or diesel has been mentioned yet.

Glen Minich said that they're only asking for gasoline sales.

Mr. Ostergren said that the proposal shows diesel.

Mr. Ostergren is up at the bench going over the site plan with the board members.

Mr. Ostergren said that he's not against a proposal that can work. Anyone, or any improvement would be better than what they have now. Mr. Ostergren said that it's nice when the trees are covered out in Serenity Springs and customers from all over the world and they have to view this when they drive in, which is the wrong impression of La Porte County. Regarding traffic, he would like to point out the current traffic situation and ask that each board member experience themselves. There are times in the day when semi-trucks are lined up around the back of

Speedway and unable to use the first diesel pump because the turn is too sharp. Mr. Ostergren said that when semis are lined up around the back all the way to the entrance, the next few semis line up on Route 35 to the point where semis have actually backed into the exit up to the first fuel pump.

Mr. Ostergren said using a proposed frontage road exiting from the frontage, the cars come around the corner from 20 prior to the construction that's going on now, at forty-five (45) to fifty (50) miles an hour. If you look one way and then the other way and you pull out, you will have a problem. That's why I encourage you to sit at that stop sign and just know.

Mr. Ostergren said that now with the construction there they're redoing the curve there, he can only imagine with a brand new road, the cars will be able to be much faster. With the proposed drawing when a semi were to exit, it would be impossible for another semi to enter on frontage road, not to mention the semis that are already waiting to turn into Speedway. More importantly than the traffic, is the proposed site; its twenty-five (25) acres and four (4) acres is proposed for semi fueling. The insurance we need, is that there will never be truck parking. There is a residence in the middle of the twenty-five (25) acre parcel, but not part of the parcel, along with the surrounding residential properties.

Mr. Ostergren said that the developer lives next to him on Pine Lake and they seem to be good people, but he can see problems. Mr. Ostergren said that the developers could open and find out semis cannot get in and out and the state and the county realizes semis are blocking 35 and it becomes a hardship and they need to move the entrance, and now it becomes twenty-five (25) acre truck stop. The owner of this property has a reputation. The last proposal was a gentlemen's club and he believes that something's been learned since then and that's not to tell the whole story upfront. Both proposals draw prostitution and drugs. One is in a building and one creates, or has lot lizards and much harder to control.

Mr. Ostergren said that the legal description is for twenty-five (25) acres, but only shows four (4) acres without the adjacent residential properties. I would ask that this board tables this until the traffic and INDOT would know how to handle it, because he would think that would change the whole drawing and the truck stop situations.

Earl Cunningham asked how many feet is it from 20 to the frontage road.

Mr. Ostergren said he would say one-hundred (100') feet. Mr. Ostergren said right now it's under construction, so the cars are going a little bit slower. If you sat at that stop sign to come out, you wouldn't really be experiencing what it was before, which is terrible, but now they're putting in a new runway and the cars are only going to go faster. Mr. Ostergren said that you have to picture a semi pulling out of there and one trying to pull in. Mr. Ostergren said he doesn't care how wide you make it, there is a limit. Mr. Ostergren said that you have to remember what has already been approved for Speedway, and that is for the semis to line up into there. Mr. Ostergren said that you have to be there in the afternoon to know what's going on. It's a disaster. Mr. Ostergren said that he has already talked to the developers; it doesn't show the

residential homes right smack in the middle of the property, which is not part of it. Mr. Ostergren said if they move the entrance down, now the trucks drive right through residences on both sides, what's the next thing, park a couple of trucks.

Dwayne Hogan asked if there is any other remonstrators.

Dwayne Hogan asked for name and address for the record.

Ed Loniewski, Jr., 5848 N. US Highway 35. Mr. Loniewski said that he is the residence in the middle. Mr. Loniewski said that his concern is basically what are they are going to do about the water problem, because there is high water there. Mr. Loniewski said once you pave everything – he's sure they have retention ponds there, but there is a lot of water.

Earl Cunningham asked how many acres of the proposed for sale site is under water. Earl said he drove out there and it's pretty much under water now and he saw a lot of cattails.

Mr. Loniewski said that the whole back of their yard there were ditches where water doesn't drain off and it just lays there.

Glen Minich asked Mr. Loniewski if he runs a business on his property.

Mr. Loniewski said yes he does.

Glen Minich asked if it's excavating, or truck –

Mr. Loniewski said it's excavating.

Glen Minich asked if the property to the south of him is a bigger part of the parcel.

Mr. Loniewski said that the property that they're looking at purchasing is higher ground there.

Mr. Loniewski is up at the bench going over the site plan with the board members.

Dwayne Hogan asked if there are any other remonstrators against.

Dwayne Hogan asked for name and address for the record.

Cecil Frazee, 5566 N. 525 W. Mr. Frazee said that his property reflects this twenty-five (25) acres. Mr. Frazee said he's concerned, because his two (2) acres in the springtime, water lays on that lot. Mr. Frazee said that he just got this paper himself, and the only thing it said was to operate a convenience store. Mr. Frazee said after looking at the plat, it looks like it's a lot more than a convenience store. Mr. Frazee said that it doesn't seem to him that the convenience store should be the first thing on the list here. Mr. Frazee said that it's diesel and semis, and so forth.

Mr. Frazee said what do we do with the residential area – there are several houses on 525 West that abuts this property and on Highway 35 also. What do we do about night traffic and so forth

– lights going into that subdivision? That subdivision has been there since approximately 1939. It just seems to him that we need to get more information to the residences around in that area so they can make a decision with everything, not just a convenience store. This is diesel, gasoline, semis, and lights in the evening. What are we going to do about the subdivision, are we just going to blind the subdivision out all night long with the lights, traffic, trucks and noise. It seems to him like we need to do something with that.

Dwayne Hogan asked if there is another remonstrator against.

Dwayne Hogan asked if there are any remonstrators for.

Dwayne Hogan asked for name and address for the record.

Mark Matousek, Current Petroleum, St. Charles, Illinois. Mr. Matousek said that they're the field supplier. Mr. Matousek said that he would just submit that there are common concerns that they face in every project – lighting, noise. Mr. Matousek said these issue can all be abated and they would certainly work with the local residence to ameliorate these issue to the best of their ability. Mr. Matousek said that he will also submit that the gentlemen that will be operating the facility are wonderful neighbors, community members, very generous and very supportive.

Dwayne Hogan aside for another remonstrator for.

Roy Wilke, 5625 Place Drive in South Bend, Indiana. Mr. Wilke said that he happens to be the commercial/industrial broker for almost all the land around the I-94 area. Many of the concerns that were addressed here are common concerns of any development industrial as Earl is obviously notifying.

Mr. Wilke said that storm water is handled. Recently, they had Jim Berg Transportation, a large logistic supplier go a few miles down the road also in the county and he had earth berms with evergreen trees, and storm water retention. Mr. Wilke said that there is a lot more water that comes off the cemetery off of 212 underneath the railroad tracks onto the property. Mr. Wilke said that those concerns can be easily addressed and are part of any architectural design plans. Mr. Wilke said that he happens to work in Edison's Lakes in Mishawaka, and they have tremendous high amount of water tables over in that area and they have to deal with it. Another point that is really lost about the whole area, is the fact that zoning attracts, and where that is, it's a tremendous regional and national attraction point for manufacturers who have a lot of loads of freight coming in and out; distribution companies. Mr. Wilke said that he gets calls from small, medium, and large size trucking companies and there have been multiple fuel stop operators who have called before about this site because of where it's zoned and where it's at, as on the other side of the road.

Mr. Wilke said that it's unfortunate, but you must remember, it's like up in Valparaiso and parts of Chesterton and up there, those are heavy hauled routes. Heavy hauled routes attract that type of business. That zoning attracts that and with transportation costs being so high, they want to be

close to the interstates. Mr. Wilke said Glen knows Zeland Farm Services is a huge hauler in Kingsbury. They come down 294 right across to 20, and they haul a tremendous amount of freight down into Kingsbury, and they even required about this site at one time. It's unfortunate that there are residences; he lives in a house and he doesn't live in an apartment complex and he's by an interstate. Mr. Wilke said that they're just built near interstates and heavy hauled routes. Elkhart is now over fifteen thousand (15,000) containers a month and they're all coming across 20 to 2 because they don't want to pay the tolls, and there is nothing you can do about that coming out of the intermodal yards in Joliet and other places. It's the facts of life.

Mr. Wilke said that the calls that they get are on places that are industrial in transportation, and distribution business districts related in the services. There was a large Japanese supplier came into town a year ago who looked at Michigan City and that site of the toll road; it's zoned for it; it's a heavy hauled route, which is a tremendous costs savings for them to be able to do that. Mr. Wilke said that's the type of traffic you're going to get and unfortunately it would be like somebody trying to build a house in an agricultural area as in Kingsbury, complaining about confined space operations, or crop dusting; don't build there. Mr. Wilke said that he understand the residence's concern.

Mr. Wilke said he does have a question for Mr. Loniewski. Mr. Wilke asked Mr. Loniewski if he operates a dump truck business also. Mr. Wilke said that he sees dump trucks there. Mr. Wilke asked if he's incorrect on that.

Mr. Loniewski stated yes.

Mr. Wilke told Mr. Loniewski that he said he had a repair service.

Mr. Loniewski said he didn't say he had a repair service.

Mr. Wilke it's just the way it is and we're going to get inquires for that full area.

Mr. Wilke said that he's going to leave you with this last point, Northern Indiana and Northwest Ohio is now one of the top two places of all of North America for delivering freight and manufacturing within a single driven truck, or a team driven truck. Mr. Wilke said that he's willing to take any questions.

Earl Cunningham asked Mr. Wilke to give him an approximate time frame here. Earl said he knows you're going to do a lot with INDOT. Earl said he thinks he owns another truck stop somewhere. Earl asked how much time before construction would even begin.

Mr. Wilke said that he can't answer the construction question, but he can discuss INDOT because he had a similar situation with CR England, the nation's largest refrigerated carrier at Burns Harbor. Mr. Wilke said that he was almost running five (5000) thousand loads a month in five (5000) months out on Tech Drive out on 149. Mr. Wilke said once INDOT did the traffic count and added additional traffic in, they were very quick in making their decision. Mr. Wilke said that INDOT moves very quickly now compared to years ago. Mr. Wilke said that they can have a decision made in a matter of very brief time – thirty (30) to sixty (60) days after they have

that done. Mr. Wilke said that they already have excel decal lanes in their plans and that's what INDOT wants. Mr. Wilke said that they have done a lot of good planning already in there. Mr. Wilke said just like Mr. Berg did with his steel hauling transportation logistics company going on the other side of the road, and these guys are ahead of the game.

Mr. Wilk said unfortunately, for the residents, it's already a heavy haul routes, with multiple heavy haul routes around. It's a fact of life.

Dwayne Hogan ask if there are any other remonstrators for this petition.

Attorney Willoughby said he just wants to address some of those concerns. Attorney Willoughby said he would like you to know that we also have Rebecca Patz, whose family owns what is now a dilapidated piece of property that's right next to this that's been in the county's site before, but he knows he can represent that she's also in favor of this project and this house is right on top of this proposed project.

Attorney Willoughby said that he thinks a lot of these concerns are valid points, and once again, he doesn't know that all of them are properly to be considered by this board, even though all of those elements come into play in your decision.

Attorney Willoughby said for the gentleman here who feels maybe the notices misrepresented, the only thing he can say in taking with a grain of salt because he's not your attorney, they complied with what they were required to. The labels within the code are what they are. Attorney Willoughby said that a convenience store with gasoline sales and other accessory uses are what's there, so what is in the notice versus anything that ventures off. Attorney Willoughby said that in each of the letters and notices that were sent out, were a full set of what they have submitted.

Attorney Willoughby said that they're available and again, that's not any slide on your interpretation what they're doing, just making clear they would never misrepresent what they're doing and in fact, his clients have been adamant and they intend to be good citizens and he thinks Mr. Ostergren would let you know as soon as he became aware that he had some concerns, he picked up the phone and let him know the same thing and he put his clients in touch with him so they could speak about this project.

Attorney Willoughby said that they've tried to be as forth right and share as much information that we can, because he just learned over the years it's easier to do it that way.

Attorney Willoughby said to address the concerns about the diesel fuel, he thinks that it's an interesting one because the code – this isn't a truck stop and the truck stops are defined very clearly in terms of servicing trucks and this isn't that. Attorney Willoughby said that this is a gasoline station and the ordinance also provides that where there aren't direct definitions, this board is to then make a decision based on its knowledge, but there are two different definitions.

Attorney Willoughby said that there is the convenience store and there's a truck stop. The convenience store is allowed to sell it; it doesn't talk about the diesel fuel there. We have the truck stop that talks about commercial maintenance, servicing storage, repair, etc. Attorney Willoughby said this isn't that. Attorney Willoughby said that he certainly understands Mr. Ostergren's comments.

Attorney Biege asked attorney Willoughby if there are overnight accommodations for trucks at this facility, or plan overnight accommodations.

Attorney Willoughby asked in terms of parking.

Attorney Biege stated yes.

Attorney Willoughby said that it isn't the intention. Attorney Willoughby said that what he's telling you is what's before you is what they're proposing, and if we change they recognize that we'd be back before this board.

Attorney Biege said one significant factor that he sees is in the definition of a truck stop.

Attorney Willoughby said potentially that plays within there. Again, right now there isn't an intention for that and they recognize just as he tried to say at the outset, the lighting, the landscaping, if they wanted different driveway requirements, all of those things are set forth in the code now, and they aren't asking for relief. Attorney Willoughby said that all of the things that are proposed are in compliance with the code as it stands and again, they recognize. Attorney Willoughby said that he doesn't know that he has been in this position where we're not asking for more variances and they also recognize as this goes, as meetings with INDOT go, and some of those things unfold, and future things when they approach the building department, if we have to come back, we do. Maybe this does change, but if it does change, all of these stake holders are going to get that notice as well.

Attorney Willoughby said that he has the architect here; he has a representative from the owners here for the contract purchasers if there are any other specifics.

Attorney Biege said that he wants to remind you, but all of this is already allowed. Attorney Biege said the point of a Special Exception is because some of these businesses are unique and there could be factors for that property and the surrounding neighborhood and it should be considered by the board. Attorney Biege said that when they drafted this code, we didn't want something like this to be automatic, but it's allowed everywhere else. With a Special Exception it's more than an oversight function to make sure that there isn't a significant problem. Attorney Biege said that you can put conditions on an approval.

Earl Cunningham said for an example on one of the conditions could be that there would not be any overnight truck parking, overnight vehicle parking, or anybody parking there overnight. Earl said that you could set a time limit as to how long they could be there --- two (2) hours, or and an hour and a half.

Attorney Biege said maybe a time in the evening, or a time in the morning.

Dwayne Hogan said also the traffic study.

Attorney Willoughby said that it's a deal breaker if they don't get what they need, and were not going to get what we need unless they're in compliance with INDOT. Attorney Willoughby said that he doesn't think that it's this board's decision.

Earl Cunningham said that the highlighted Article 14 he thinks that you addressed this on the restaurant with the drive-in service. Earl asked if the seven (7) items below that are listed are in your proposal for compliance. Earl said Article 14 (b), restaurants with drive-in service.

Attorney Willoughby said as represented earlier, and if any of those change, they recognize they would be back. Attorney Willoughby said as its submitted now, they're not asking for any relief from those requirements.

Dwayne Hogan asked for name and address.

Carmen Scalise, Chicago Illinois, representing J & C Brothers. Mr. Scalise said to Mr. Ostergren's point out the traffic and the trucks that backup onto the street during the day is precisely the reason that they see an opportunity here. Mr. Scalise said that they aren't looking to build a gas station to build up traffic on the other side of the street. They see as an opportunity that Speedway cannot service the demand that is in the area, and they're looking to take advantage of some of that excess demand. Mr. Scalise said that this is not something that they're expecting to build a road block out here, they want to syphon for those trucks off the street and bring them across the street and improve this. Mr. Scalise said that is one of the things that is definitely in consideration in their design to approve upon the way that the trucks can get around the station through the diesel base so that we don't have that kind of traffic.

Dwayne Hogan said as far as addressing the prostitution and the drugs, etc.; it's just drawn to that and the whole La Porte County has a problem as a whole, it's just not at that business at all.

Attorney Willoughby said as much as they have the burden to show that we meet those elements, there is nothing before you other than a lay opinion --- and those are valid concerns, and once again, all he can represent is that he has a client that has experience with this in Illinois. Attorney Willoughby said that they're property owners here and he is neighbors with Mr. Ostergren on the lake. Attorney Willoughby said that they intend to do it the right way, and if they don't they will be receiving letters from the county and it will get corrected.

Attorney Willoughby said at this point all we can do is represent what their intentions are and put forth the plan that they did, but of course they wouldn't endorse that or allow that, and it certainly wouldn't be good for business.

Dwayne Hogan asked for name and address for the record.

Laura Ostergren, 15 Elm Drive, La Porte, Indiana. Ms. Ostergren said that she is also owner of Serenity Springs. Ms. Ostergren said just as a reminder, Serenity has been in operation for nineteen (19) years. Ms. Ostergren said that they run a respectable and profitable business. Ms. Ostergren said that her concern would be the lights and the noise that would affect the guest staying on their property. Ms. Ostergren said that is meant to be a secluded relaxing environment. Ms. Ostergren said that she didn't hear the hours of operation; so that would be a concern. Ms. Ostergren said that is just some other thoughts for you to consider with the already existing businesses in the area, as to what effect something like this may have.

Dwayne Hogan asked if there are any other comments.

Rich Ostergren said going back to the truck parking. Mr. Ostergren said that the proposal as its drawn has no provisions for truck parking. It doesn't show the other twenty-five (25) acres, but he thinks the first thing is they're not looking in the future for truck parking. Mr. Ostergren said that should be the first agreement that should be understood – no truck parking. Mr. Ostergren said that's not what we're proposing now, but that is our second step. Mr. Ostergren said that we don't want to do this after the fact.

Mr. Ostergren said that you mentioned the resident next door to that property. We've been there nineteen (19) years and that place has been burnt down for quite a few years, and still allowed to have an eye sore. Mr. Ostergren said that he doesn't believe that its credibility – you can't live there.

Mr. Ostergren said that he can't see any way around how they're going to solve the traffic problem, but I would think that you would at least see what INDOT has to say, because that could totally change makeup of the plan.

Dwayne Hogan asked if there are any other comments.

Dwayne Hogan asked for name and address for the record.

Trace Ostergren, 15 Elm Drive, La Porte, Indiana. Mr. Ostergren said that he was up in front of this board last year for a variance to operate a fireworks store on the adjacent property, and his hours of operation were limited. Mr. Ostergren said that he wasn't granted twenty-four (24) hours, mainly due to the fact that the adjacent property on that street was residential.

Attorney Biege asked Mr. Ostergren when he got his variance if it was B3 zoning.

Mr. Ostergren said he believes so.

Dwayne Hogan said he's not sure how to address the concerns of the truck parking.

Attorney Willoughby said that he thinks there is a difference and he doesn't want to get cute with the work, he thinks the difference is if he's understanding and he probably doesn't interpret it the same way in terms of what makes it a truck stop versus not. Attorney Willoughby said that

they're not planning overnight parking. There are going to be trucks that park and go in and out of the convenience store and get fuel; our plan is not to have overnight truck parking making it a truck stop. Attorney Willoughby said that is the condition that they would ask. We're going to have parking. Attorney Willoughby said could this plan as it's before you change, we've said it earlier and we say it now, yes, but it's going to be in compliance with what the code says. Attorney Willoughby said that they're not going to play fast and loose; we're not going to be able to do anything that they're not allowed to do under the code.

Attorney Willoughby said that as far as the hours go, we ask that we are allowed to do what the code provides, which allows them to have it twenty-four seven hour access and operation just like Speedway does across the street. Again, the lighting and the sound, he finds it with all due respect to be dis-ungenerous; Serenity Springs is nice and it does have a reputation; it's on the corner of 94, 20 and 35, which are traffic, high heavy haul routes, once again his clients are going to do everything within the requirements and then some. Attorney Willoughby said that they're going to be good neighbors. Attorney Willoughby said that you just have to make a decision on, but the rest, we do believe that we met all of the elements that would allow us to have this.

Attorney Biege said that he's not trying to advocate, but he wants to make sure the board is clear that this is B3. This project is exactly what B3 is for. Attorney Biege said the title is highly commercial district. Attorney Biege said that if you read the definition in the code, but its automotive orientated to serve a market that includes traveling public. Attorney Biege said they aren't asking for an exception in the rule.

Dwayne Hogan asked if there are any questions, comments, or concerns of the board.

Earl Cunningham said that he would only be in favor of it if we restrict overnight parking.

Glen Minich said that is what it's zoned for, but this drawing to him is not realistic.

Ron Ambrose told Glen what he's looking at is the trucks as they enter off of 20 and getting on frontage road. Mr. Ambrose said that their proposal is to work with INDOT and they're expecting to widen frontage road.

Glen Minich said he's talking about the trucks that are going to the back to get to the fuel.

Board members and Mr. Ambrose are going over the site plan.

Mr. Ambrose said as the truck enters the site and drives around the back, there is an angle line and that is the setback line for the landscaping. Mr. Ambrose said that when he says landscaping, he means yard setback is what that amounts to. He's cutting on that corner of landscaped area.

Attorney Willoughby said again, we are outside those setbacks as they presented and he advised his client that we're going to be back before you asking – we're either going to have to make it fit what is there, or they have to have another variance in the future.

Dwayne Hogan asked if there is anything else.

Rich Ostergren said at least he would think that this proposal calls for twenty-five (25) acres. Mr. Ostergren said that he would think that they would have to see a drawing of the entire proposed property, not four (4) acres out of the twenty-five (25), then you would see where the residence is in the center. The legal description calls for twenty-five (25) acres and you have a drawing of four (4) acres. Mr. Ostergren asked how you can make a decision on that.

Glen Minich said that their decision would be that they're not building on the rest of it. They're proposing four (4) acres.

Mr. Ostergren said that their proposal is for twenty-five (25) acres for truck traffic.

Glen Minich said that the parcel approves twenty point five (20.5) acres.

Dwayne Hogan said just a point of clarification. Dwayne said we have twenty point five (20.5) acres, and you have point five (.5) acres.

Attorney Willoughby said it's twenty (20).

Board member speaking amongst themselves.

Johnny Stimley made a motion to accept the Petition for Special Exception for J & C Brother, LLC, as contingent contractor purchaser, by and through counsel, Braje, Nelson, Janes, LLP and Richard F. Loniewski, as legal owners, for construction and operation of convenience store with a drive-thru restaurant, gasoline sales, and/or related accessory uses, which, based on the property's current zoning, are permissible subject the BZA's approval. This property is located at 5906 N. US Highway 35, Michigan City, Springfield Twp., zoned B3 on 20.5862 acres, with the exception of no overnight semi parking.

Glen Minich said that he will possibly second. Glen said that the one point that he wants to make, we're going to approve this as its drawn ---

Attorney Biege said not at all. Attorney Biege said any building plans go to Annemarie. Attorney Biege told Glen that he's not approving the plat – only the Plan Commission will approve a Plat, and that is not what we're doing here. Attorney Biege said that is a rendering of what they intend to build, but any compliance with MS4, drainage code, setbacks go to the Building Commissioner and she will not issue a building permit until all that is straight.

Glen Minich said that what was presented to them was that this whole filling station and convenience store is going to be located in this area, and they're building in this area.

Attorney Biege said that if they build in that area, and they want something else, that function requires a Special Exception, they have to come back for new construction, or it varies from the zoning district in anyway.

Glen Minich said as long as we're clear.

Attorney Biege said that Annemarie will receive much more information, whether she makes the decision as to whether or not she will issue a building permit, because they can't do anything until that lady says it's okay.

Annemarie Polan, Building Commissioner said that there are lighting requirements; Chris knows and we know what they are.

Glen Minich said that he just doesn't want this to grow in the other areas that we haven't even talked about.

Attorney Biege said that it can, it will depend on what the use is. If the use is permitted in the area and the use does not require a Special Exception and the building plans are in compliance, they don't have to come back. Just like if you're going to buy a house in a subdivision, you don't have to come here, you have to go to the Building Commission.

Earl Cunningham said that in reality they could turn around and sell ten (10) acres to somebody else who's going to come in and ask for approval of something else.

Attorney Biege said absolutely.

Glen Minich said that he at least wants to say that there is no overnight truck parking on the entire parcel.

Earl Cunningham said that they couldn't park back there until they paved and they would have to come back.

Attorney Biege said that if they're going to pave it and try to put parking in, they have to come back.

Glen Minich seconded.

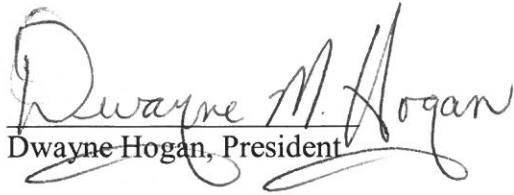
Dwayne Hogan asked if there are any clarifications, or concerns.

Earl Cunningham said that he just wants to make one comment that it's been quite some time, but he believes Mr. Ostergren's opening comment was no matter what we get, it will be better than what we have now. Earl asked Mr. Ostergren if that is what his opening statement was?

Mr. Ostergren stated yes.

All approved. Motion carried 4-0.

There being no further business before the Board of Zoning this evening, meeting adjourned at 8:20 p.m.


Dwayne Hogan, President


Annemarie Polan, Recording Secretary