



**LAPORTE COUNTY  
BOARD OF ZONING APPEALS**

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**ANNEMARIE POLAN  
Building Commissioner**

**February 21, 2012**

Dear Members:

The regular meeting of the La Porte County Board of Zoning Appeals was held Tuesday, February 21, 2012, at 6:00 p.m. in the Assembly Room of the County Complex.

MEMBERS PRESENT:      Glen Minich                      Dwayne Hogan  
                                 Paul Zona                              Melissa Mullins Mischke

OTHERS PRESENT:      Ray Hamilton, Recording Secretary, Douglas Biege, Board Atty.,  
                                 Darlene Pavey, Secretary

The Pledge of Allegiance.

President Dwayne Hogan read Procedures for presenting petitions to the Board.

Melissa Mullins Mischke made a motion to approve minutes of January 17, 2012. Paul Zona seconded. All approved. Motion carried 4-0.

- 1. The Petition for Floyd Gilbert** to operate a business out of the garage (new addition) as Quality Exterior. This property is located at 9958 N. 375 W., Michigan City, Indiana, Springfield Twp., zoned Residential.

Legal work complete. No Remonstrators present.

Floyd Gilbert, 9958 N. 375 W., Michigan City, Indiana 46360.

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

Mr. Gilbert said that he would like to operate a business off of his property, which is Quality Exterior.

Mr. Hogan asked Mr. Gilbert what kind of business this is?

Mr. Gilbert said that it is a remodeling business.

Mr. Hogan asked Mr. Gilbert how long he has been in business?

Mr. Gilbert stated twenty something years.

Mr. Gilbert said that he built a room addition onto the garage so that he can practice business off his property.

Mr. Hogan asked Mr. Gilbert if the business is for office hours, storage, building and remodeling?

Mr. Gilbert said that it is for an office.

Mr. Hogan asked if it was just office supplies and office for the building?

Mr. Gilbert stated right. Mr. Gilbert said that all the building is for is office supplies and putting a secretary inside.

Mr. Hogan asked Mr. Gilbert what his hours of business would be?

Mr. Gilbert said it would probably be 9:00 a.m. to 5:00 p.m.

Mr. Hogan asked if that would be six days a week?

Mr. Gilbert said that it would be five days a week; possibly six.

Mr. Hogan asked Mr. Gilbert if he needed a sign for this?

Mr. Gilbert stated yes.

Mr. Hogan asked Mr. Gilbert how big the sign is going to be?

Mr. Gilbert said that it will be a 4x8.

Mr. Hogan asked if the sign would be lighted?

Mr. Gilbert stated no.

Mr. Hogan asked if there were any questions from the Board?

Mr. Minich asked Mr. Gilbert if there is presently a sign on 1000 North?

Mr. Gilbert said that there is already a sign on 1000 North.

Mr. Minich asked if that is where the sign would continue to be?

Mr. Gilbert said yes. Mr. Gilbert said that he thinks that sign has been there for four or five years.

Mr. Hogan asked if there were any remonstrators present for Petition No. 1?

Mr. Hogan asked the pleasure of the Board?

Paul Zona made a Motion that the Petition for Floyd Gilbert be granted to operate a remodeling business out of his home and to have a 4x8 sign. This property is located at 9958 N. 375 W., Michigan City, Indiana, Springfield Twp., zoned Residential.

Melissa Mullins Mischke seconded.

Mr. Minich asked that in the Motion if we put down the hours of operation?

Mr. Zona said that it will be 9:00 a.m. to 5:00 p.m. Monday through Saturday.

All approved. Motion carried. 4-0.

**2. The Petition for Cooreman Real Estate Group, Inc** to construct a home with 196.87 road frontage on .98 acres not including the right-of-way. This property is located at 4811 N. 600 E., Rolling Prairie, Wills Twp., zoned R1-B.

Legal work complete. No remonstrators present.

Steve Cooreman, with Cooreman Real Estate Group with offices at 4404 Technology Drive, South Bend, Indiana.

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

Mr. Cooreman said that they would like to get a variance from the one acre and two hundred feet rule to make this a legal buildable lot.

Paul Zona asked Mr. Cooreman what they were going to do with the other lot?

Mr. Cooreman said that the other lot right next to it was part of the Baltes' Farm. Mr. Cooreman said to give a little history, they had bought the entire seventy acres and they had platted off

eleven lots along county road 600 and along US Highway 20. Mr. Cooreman said that they left the area in the ink open with the idea that they would develop a major subdivision with about fifty to sixty lots. Mr. Cooreman said that when the economy turned south in 2008 they decided that this wasn't practical to develop the back. Mr. Cooreman said that they approached the (inaudible) family farm and they purchased the entire rest of the land that was going to be a major subdivision.

Paul Zona asked if the two acre lot was an entrance and exit for the subdivision?

Mr. Cooreman stated that is correct.

Melissa Mullins Mischke asked Mr. Cooreman what the road frontage he has for the parcel that he has selected?

Mr. Cooreman said that the parcel that he has selected is one hundred ninety six point eight seven feet (196.87'), which makes them three feet short of the required two hundred feet (200') and they actually have over an acre of land, but once you take away the right-of-way, it takes it down to point nine eight (.98).

Paul Zona asked Mr. Cooreman if this is going to be all one subdivision. Mr. Zona asked if this is all part of the subdivision?

Mr. Cooreman said that it is all part of this Prairie Vista Subdivision and it's zoned for single family residential.

Ray Hamilton, Building Commissioner said that these two lots are not a part of the subdivision. Mr. Hamilton said that these are two independent lots.

Mr. Cooreman said that he's not sure what he's being asked.

Paul Zona asked if these two lots will be part of the subdivision?

Mr. Cooreman said that he thinks Mr. Hamilton is technically correct. Mr. Cooreman said that they are two independent lots.

Paul Zona asked if the other houses could put up pole barns?

Mr. Cooreman said that their covenants do allow for an attractive out building, but it has to match the house with same color shingles and siding.

Paul Zona said that what you're saying those two lots don't.

Mr. Cooreman said that those two lots have the exact same covenants as all the other lots in the subdivision. Mr. Cooreman said that they have the same square footage and roof pitch. Mr.

Cooreman said that he thinks that Mr. Hamilton is saying that they're not technically being called Prairie Visita Subdivision like the first eleven lots were called. Mr. Cooreman said that he's not trying to avoid the question, but technically it's not part of Prairie Vista Subdivision, but in reality it is because it is going to be treated like the rest of the subdivision.

Dwayne Hogan said that it doesn't have to be though.

Paul Zona said that they can do anything they want.

Mr. Cooreman said that they could, but they are going to have covenants recorded on these two parcels of land.

Paul Zona said that they don't have to accept that.

Mr. Cooreman said that if you are experienced, when you put covenants on a piece of land, the covenants run with that land.

Paul Zona said supposedly yeah, but with a good lawyer they don't have too.

Mr. Cooreman said that the buyers are here with him this evening—

Paul Zona said that he's not looking at today or tomorrow, he's looking at twenty five (25) years from today. The buyers have sold off and a guy comes in and he's running a recycling place out of it. Paul asked what the other eleven lots are going to do?

Mr. Cooreman said that he doesn't know if a good lawyer could get out of this ----

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Mr. Zona said that they're not a part of the subdivision. Mr. Zona told Mr. Cooreman that he's creating a nightmare there.

Dwayne Hogan said that technically they could get out of it.

Mr. Cooreman said so you're saying that they wouldn't have to adhere to the covenants?

Mr. Zona said no. Mr. Zona said that they are no part of that subdivision.

Mr. Cooreman said that the dividing of these two acres of land is considered subdividing land.

Mr. Zona said that he doesn't know what the new ordinances are because they were just passed. Mr. Zona said that we are working off the old one technically. Mr. Zona told Mr. Cooreman that he can't vote on this tonight.

Mr. Zona said that he doesn't know what is happening there. Mr. Zona said that there are eleven lots that are in a subdivision. Mr. Zona said that he takes it that you have already sold one off?

Mr. Cooreman said that is correct.

Mr. Zona said that the people might one to reconsider that with the other eleven people that are in the subdivision and talk to a lawyer. Mr. Zona said that until he gets a final clarification, he can't give him any kind of idea or verdict on this.

Mr. Cooreman asked Mr. Zona to give him what type of clarification he could provide?

Mr. Zona said that he wants to know that these two lots are going to be exactly the same as the other eleven houses.

Mr. Cooreman asked from the perspective of having the exact same covenants?

Mr. Zona said everything. Mr. Zona said that they're going to have to abide one-hundred and ten percent (110%).

Mr. Cooreman asked if any approval could be contingent on recording of the covenants that would be exactly the same as the subdivision.

Mr. Zona said not by him. Mr. Zona said that he's been up here to long and he's heard the words "trust me". Mr. Zona asked Mr. Cooreman if he knows what the words "trust me" means.

Mr. Cooreman asked Mr. Zona if he was concerned that the people that bought these would build substandard construction.

Mr. Zona said that he's saying that he doesn't care what happens today, tomorrow, ten years from today. Mr. Zona asked what is going to happen with this subdivision in twenty-five years? Mr. Zona asked if Cooreman is going to be around to reimburse some of these people for damages?

Mr. Cooreman asked Mr. Zona what damages he's referring to?

Mr. Zona said that if one of these two lots is

Okayed tonight and they open up a junkyard; if they start moving in trailers. Mr. Zona asked if these people have any recourse?

Mr. Cooreman said that they don't ever sell land without restrictive protective covenants recorded prior to people taking title. Mr. Cooreman told Mr. Zona that he thinks that if he would touch base with what your attorney would say, as far as he knows they have been doing this for

thirty (30) years. Mr. Cooreman said that every single time they deed home sites to people they always record the covenants with the County Recorder's Office prior to the homeowner taking title. Mr. Cooreman said that if they could hire a good lawyer to get out of the covenants he would question why they would want to destroy their own neighborhood.

Mr. Zona said that over the years he has seen it happen. Mr. Zona said that he's not talking about today; he's talking twenty five (25) years from now. Mr. Zona asked Mr. Cooreman if he was going to put up a million dollar bond?

Mr. Cooreman said that they would do it responsibly and deed it with restrictive covenants.

Mr. Zona said okay show me.

Mr. Cooreman said he would be glad to.

Mr. Zona said next meeting?

Mr. Cooreman said that he would be glad to get the covenants and it's not a problem. Mr. Cooreman said that it is not in their best interest to ever deed land without a covenants because when you own land you don't want anybody to do anything to hurt the value of the other lot owners, because that is a good way to get people upset with you.

Mr. Zona said that's right.

Mr. Cooreman said that they would never do that.

Paul Zona made a Motion that we postponed this until our next meeting.

Dwayne Hogan asked if there were any other comments from the Board?

Melissa Mullins Mischke said that she is curious what the road frontage along that parcel on the west is going to be after you take away the 196.87.

Paul Zona said that it would be two hundred twelve feet (212') because they already sold it.

Board members speaking amongst themselves.

Mr. Cooreman asked if he could ask a question?

Mr. Cooreman wanted to ask attorney Biege if the covenants in his opinion binding that run with the land?

Attorney Biege said that he would like to review the covenants. Attorney Biege said that it sounds like there's a forcibility issue on who can enforce it and that depends on how the covenants are drafted. Attorney Biege if the Board is inclined to postpone this until next month, he'd ask Mr. Cooreman to give him a copy of the covenants at his earliest convenience.

Mr. Cooreman said that the Hyneks that wanted to build here puts a real hardship on them because they wanted to get started building a brand new home there right away. Mr. Cooreman said that they're trying to lock in the low interest rates.

Mr. Cooreman said that he thought we were here to look for a variance for the one acre and two hundred foot rule, not get involved in what his covenants was going to be and what the people are going to build. Mr. Cooreman said that he is a little bit taken back. Mr. Cooreman said that they've built in neighborhoods all over and we put covenants on every single one of them; they enforce the covenants and after our death, there is a provision for civil action to be taken if one neighbor starts a body shop. Mr. Cooreman said that if you violate ...

Mr. Zona said body shop, junk yard, moving ten buses; whatever ...

Mr. Cooreman asked if that would violate the La Porte County Zoning Ordinance?

Mr. Zona said that would come before this Board for a variance.

Mr. Cooreman asked why would you grant a variance for a salvage yard in the middle of a residential neighborhood?

Mr. Zona said he can do it, but we probably wouldn't. Mr. Zona said that the matter just before you this evening, the man didn't know he couldn't run a business out of his house and that's why he was in front of this Board tonight.

Dwayne Hogan asked if there were any remonstrators for Petition No. 2, for or against?

Mr. Zona said that what bothers him is that you have a subdivision here and right in the middle of your subdivision, you have two lots that are not in the middle of the subdivision.

Mr. Zona told Mr. Cooreman to make it a subdivision.

Mr. Cooreman said that is what they thought they were doing, but they went back and forth between --- and maybe Ray can shed some light on this. We got kind of caught up between the County Surveyor and County Building Commissioner, and to this day, we still don't know ---we couldn't even get a copy of the new ordinance. Mr. Cooreman said that their engineer called and they were told that it's not on the internet, so they didn't know how to approach this. Mr. Cooreman said that they were going by what they were told. Mr. Cooreman said that they tried to get information from Mr. Hamilton and the County Surveyor and the only reason we're here tonight is because they told us we had to. Mr. Cooreman said that we don't view this as any

different than the other eleven lots that were stripped off of country road 600; they are all one acre and there is no issue with covenants. Mr. Cooreman said that they are only doing what they were told by La Porte County Officials.

Mr. Zona asked Mr. Cooreman why this isn't this part of the Prairie Vista Minor Subdivision?

Mr. Cooreman said that he's not sure why, but isn't that a technicality?

Mr. Zona said that's all it is. It's a technicality.

Mr. Cooreman said if you want us to call it in the covenants; if you want ---

Mr. Zona asked Mr. Hamilton if he was going to say something?

Ray Hamilton, Building Commissioner said this may shed some light on it. Mr. Hamilton said that Cooreman came to us several months ago and explained that on your maps on the open spot, they wanted to create two lots; they had sold off the land in the back, which these two lots were to be the main entrance into that subdivision. Mr. Hamilton said to keep it evenly divided down through there, his suggestion to them was that Prairie Vista take these two lots and that would be a second addition to Prairie Vista Subdivision. Mr. Hamilton said that way it would have been continuity between all of the lots on the other side and that is the way they preceded.

Ray Hamilton said the night of the meeting the surveyor came up and said that they didn't have to do that and if they wanted they could just divide those lots. Mr. Hamilton said that he does understand that there was a time limit that people wanted to build a modular home there and the prices of modular homes was going to take like a three thousand dollar jump between the two months that we were going to be having the preliminary and the primary hearing for the second addition of Prairie Vista Subdivision. Mr. Hamilton said that Board decided that they could eliminate the second addition and divide that piece of land that you see on the map into two lots. Mr. Hamilton said that it was his idea that night that they could have had a double hearing. In other words, we could have had the preliminary and the primary hearing on in one night, got them on and got them going instead of waiting for another month.

Mr. Cooreman said that he believes that to be exactly what happened.

Melissa Mullins Mischke asked what the acreage was on the parcel with the two hundred and twelve feet of road frontage?

Mr. Cooreman said that is right a one acre.

Melissa Mullins Mischke was asking about the second pink parcel that he has.

Mr. Cooreman said that is just a concept plan in only what they were going to do. Mr. Cooreman said that's what they are proposing to do now.

Melissa Mullins Mischke asked if that was less than an acre, or more than an acre.

Mr. Cooreman said that is where they got caught between the old ordinance and the new ordinance. Mr. Cooreman said that it is still an acre. Mr. Cooreman said that it says in the surveyor that it is 1.0 seven acres.

Melissa Mullins Mischke said that she is confused that the 196.87 feet of road frontage she sees it at .96 acres. Melissa Mullins Mischke said that the one directly west of that you're saying is two hundred and twelve feet of road frontage and 1.07 feet of acreage? Melissa asked if that was true?

Mr. Cooreman said that is true. Mr. Cooreman said that he sees the paradox there and he doesn't know if it was because it was planted under the old ordinance that the road right-of-way was handled differently. Mr. Cooreman said that he doesn't know the platting well enough. Mr. Cooreman said that he knows that Bob Palm of Palm Surveying did the old subdivision?

Paul Zona asked Mr. Cooreman when the subdivision originated.

Mr. Cooreman said that it was two years ago.

Ray Hamilton, Building Commissioner said that it shows 2-14-08.

Paul Zona said that the old one prior to the old ordinance was one hundred seventy five feet (175') and then it went up to two hundred feet (200') and your still off.

Mr. Cooreman said that maybe for a point of reference give some clarity here. Did I get that information from the County Surveyor? Is that what's going on here? Mr. Cooreman said that they did exactly what ---

Paul Zona told Mr. Cooreman if he had two hundred feet of road frontage he wouldn't need to come up in front of this Board.

Paul Zona said that the ordinance says one acre.

Mr. Cooreman asked if that was one acre before or after the right-of-way? Mr. Cooreman said that they went back and forth with this and this is their third time trying to get this approved.

Mr. Cooreman asked if that was the road right-of-way to the back, or the driveway?"

Board members speaking amongst themselves.

Paul Zona told Mr. Cooreman that he's still paying taxes on the road right-of-way.  
Paul Zona told Mr. Cooreman that property goes to the middle of the road.

Board members speaking amongst themselves.

Mr. Cooreman said that they told the contingent buyer, Doug & Kelly Hynek, who are sitting here this evening, would be buying a one acre lot. Mr. Cooreman said what they didn't anticipate is that they would lose three feet to make the other lot buildable.

Mr. Cooreman asked attorney Biege what would be the difference if they're recording the covenants that the other lots have; what difference would there be between that and an owner in one of the original lots?

Attorney Biege said that he would have to review the covenants. Attorney Biege said that so long as the covenant doesn't have a restriction where only persons in the subdivision can enforce, that is his question. Attorney Biege said who can enforce the covenants? Attorney Biege said that is what he needs to know.

Mr. Cooreman said that all they are going to do is use the exact same covenants, but they're going to say instead of lots one through eleven, they're going to plug in the new legal description for these two lots. Mr. Cooreman said that is the only change they're going to make. Mr. Cooreman said that they want to make this simple. Mr. Cooreman said that he can assure you that he wants to do more development in La Porte County and they're looking at other parcels right now. Mr. Cooreman said that he can assure you that they do things responsibly.

Mr. Cooreman said that the covenants for the eleven lots are already recorded back in 2008.

Board Members speaking amongst themselves.

Attorney Biege said that under the new code it does deduct for the road right-of way.

Mr. Cooreman asked if that was because of the road right-of-way, or is it because of the driveway?

Attorney Biege said that it is the road right-of-way. Attorney Biege said that under the old code they didn't deduct for the right-of-way, but now the gross lot areas defined taking out the right-of-way and whatever is left is your buildable lot.

Mr. Cooreman said that he understands that the land is zoned for single family residential. Mr. Cooreman said if they're not allowed to market that and sell that as a buildable home site, it creates a big hardship because they'll be stuck with --- Mr. Cooreman said that he sat on the Board of Zoning Appeals in St. Joseph County and he's really familiar. Mr. Cooreman said that you're not here to try and put money in some developer's pocket, you're here for hardship cases.

Paul Zona said to protect the county and the people who are going to be living there for fifteen years.

Mr. Cooreman said that he can assure you that he totally understands where you're coming from that you have to do things the right way, but he doesn't see this as any violation of anything and he's totally comfortable making this contingent upon getting the covenants for your attorney's review. Mr. Cooreman said that they can fax that or e-mail that by 8:00 a.m. on Wednesday.

Paul Zona told Mr. Cooreman that they still have to meet.

Mr. Cooreman asked if they could make it contingent?

Paul Zona said no. Mr. Zona said that we can't make a special meeting.

Mr. Cooreman said that he's not asking that. Mr. Cooreman asked if they could make an approval contingent upon your attorney reviewing the covenants?

Mr. Zona said yeah, but what happens if two of the Board members don't like what he's saying; they already have the loan and everything else..

Mr. Cooreman said that he's going to protect these people's interest. Mr. Cooreman said that they're going to close with the Hyneks until everything is exactly the way it's supposed to be.

Board members speaking amongst themselves.

Glen Minich said that it needs to be done contingent that everybody in this subdivision is protected under the same covenants. Mr. Minich said that he doesn't see why this couldn't be approved with that.

Attorney Biege said that if they instructed him to review the covenants and make the approval subject to verification and enforceability for the new lots, it's same as the enforceability of the members in the existing subdivision; that would be the same thing and that would be the way to do it where he could verify that and there's a contingency that doesn't require further approval.

Paul Zona said that there is a Motion on the floor.

Dwayne Hogan asked if there were any further comments or questions from the Board?

Paul Zona stated that he made a Motion that until we can take a better look with our lawyer and talk with the lawyer about the covenants and make sure everybody is protected in that subdivision the decision be carried over to next month.

Melissa Mullins Mischke said that with a comment that she agrees that we take a look at the covenants and restrictions to make sure that legally we're protecting everybody in the subdivision she will second that Motion. Melissa said that she does think it is the best use of the land that is there.

Voting Aye: Melissa Mullins Mischke, Paul Zona, Dwayne Hogan.

Voting Nye: Glen Minich.

Motion carried 3-1.

Dwayne Hogan said that it will be on the docket for March 20, 2012 at 6:00 p.m.

Mr. Cooreman asked if the attorney is satisfied that there's a provision that the covenants have the same legal rights of the other eleven owners to protect and he's comfortable with them, are there any other issues that he needs to prepare himself with, or is that the only remaining issue that we have?

Paul Zona said that he wants to find out that everybody is protected.

Mr. Cooreman said that this is the third time we're trying get this little piece of land approved.

- 3. The Petition for Northwest Indiana Salvage, Inc, ((prospective buyer of the real estate) to operate a salvage yard (normally zoned M-2 Heavy Industrial.) This property is located at 5642 North State Road 39, La Porte, Indiana, Springfield Twp.**

Legal work complete. Remonstrators present.

Ralph Howes, attorney with offices at 717 Indiana Avenue, La Porte on behalf of the Petitioner.

Attorney Howes said that he doesn't know if this appropriate or not but he understands this is Ray's last rodeo as the Building Commissioner. Attorney Howes congratulated Mr. Hamilton and he really appreciated working with him. Attorney Howes told Mr. Hamilton that he hopes his retirement goes well for him.

Ray Hamilton thanked attorney Howes.

Attorney Howes said that he's here on behalf of Indiana Metal Processing Group, which is the parent company of the company that has filed this Petition. Attorney Howes said that this is an up-standing fine company and he has a number of photos to present to the Board of their other operations. Attorney Howes said that they presently have three, one in Michigan with a town of O'Clari, one in South Bend and one in Cicero, Indiana. Attorney Howes said that they are presently engaged in the construction of a nine million dollar shredding operation that is going to

be located near In-Tech by New Carlisle. Attorney Howes said that the other locations are feeder locations that will supply the scrap, steel and other materials to this shredder.

Attorney Howes said that this is a device that this company has engineered and patented. Attorney Howes said that it is a way for salvage vehicles to be voided of all the fluids and the vehicles that are brought into their facility that have air-conditioning, have already been evacuated as far as the Freon.

Attorney Howes said that he was going to make an argument that he thought this property probably was grandfathered. Attorney Howes said that it has been a salvage yard in the past; attorney Howes said that it became a salvage yard in the early 1990's by Mr. Irk and at some point and time he allowed another operator to take over this facility. Attorney Howes said that he was informed this evening that that operator was the subject of litigation brought by La Porte County. Attorney Howes said that apparently the gentlemen that was running the facility was not what you'd consider to be a desirable first class operator unlike his current client.

Attorney Howes said that he understands that there was an issue with the Indiana Department of Environmental Management and he has verification from them that all of the remediation work that was required has been accomplished. Attorney Howes said that the only unresolved issue with the Indiana Department of Environmental is that the prior order has failed to pay the civil fines that were imposed, but as far as the remediation aspect that has been accomplished. Attorney Howes said that he believes that this Board's attorney has conducted an independent verification of that.

Attorney Biege said that attorney McDonnell was kind enough to forward a copy of the verification from Indiana Department of Environmental that the clean-up work was done.

Attorney Howes said that checking the new zoning ordinance he notes that the zoning classification assigned to this property is B-2, (General Commercial District). Attorney Howes said that he understands the difficulty in trying to draft a new ordinance, but it would be his opinion that the B-2 classification isn't necessarily an appropriate classification for this property. Attorney Howes said that B-2 is defined as generally characterized by integrated cluster of establishments serviced by common parking area and generating a large volume of vehicular and pedestrian traffic. The intent is to encourage the concentration of regional business are to the mutual advantage of both the consumers and merchants. Attorney Howes said that he can't really envision that definition cleanse itself well to this particular property.

Attorney Howes said that his clients have made an effort to contact the adjoining property owners and one of the things they would do if granted permission to run their salvage operation is to plant a barrier such as arbor vitae to the screen loft. Attorney Howes said that there is a house immediately to the west --- it may be two homes, but it would also be their intention to fence the property. Attorney Howes said that he has some photos that show the fencing being constructed at the South Bend facility. Attorney Howes said that it has vertical supports and concrete panels that fit between and very attractive.

Attorney Howes said that he forgot to introduce his clients **Terry McNamara**, who is here and he is the controller and also an attorney and **David Krugh** who, if the facility is approved and becomes operational would be the manager at this location.

Attorney Howes said that he understands that the prior owner left a lot to be desired in the way the business was run and if there are some people here to remonstrate and upset about the way things have been run in the past, he understands what their concerns might be.

Attorney Howes is passing out photos to the Board of the operation that his clients have in South Bend. Attorney Howes said that he's sure this Board will agree after looking at those pictures. this is a first class operation.

Paul Zona asked attorney Howes how many vehicles will be coming in and out per day?

Attorney Howes said that is a question we will have to ask his clients.

Terry McNamara asked Mr. Zona if he was talking about semi-tractors?

Paul Zona told Mr. McNamara that he's going to have semis coming in hauling cars; you're going to have semis coming in loading cars and hauling them out. Paul said that if this shredder is anything like he's seen in the past he's seen ten to twenty thousand cars a day. Paul said that he doesn't know how big it is.

Terrance McNamara, 1222 White Oak, South Bend, Indiana. Mr. McNamara said that what is going on onto this property is not a shredder.

Paul Zona said that it's a crusher?

Mr. McNamara said that they do have car crushers and probably somewhere in the neighborhood starting out would be maybe fifteen cars a day. Mr. McNamara said that those are then loaded onto a truck and taken to their other facilities.

David Krugh, 7087 Pipe Stone Road, O'Claire, Michigan.

Mr. Krugh said that he thinks to begin with because the feeder yard is so close to the shredder, they're not even going to bring in the equipment to crush cars. Mr. Krugh said that they will smash them down with a loaders or equipment that is there and load everything right into a trailer and ship out. Mr. Krugh said that the cars aren't going to be subject to sell parts. Mr. Krugh said that as soon as there processed and fluids drained, they will be loaded up into a container and shipped out. Mr. Krugh said that if they're processed that day they'll be shipped out that day. Mr. Krugh said that any other tin or metals that are there after it is processed it's going to be off the ground, put in containers and shipped out.

Paul Zona asked Mr. Krugh if he was going to have the neighborhood people come in with their tin and cooper and brass too?

Mr. Krugh said that that they will be accepting brass and copper. Mr. Krugh said that all that stuff will be walked in the building and stored in the building. Mr. Krugh said that as they get a truck load of that it will also be shipped out. Mr. Krugh said that they are just kind of getting the overflow.

Melissa Mullins Mischke asked Mr. Krugh where the shredder is located?

Mr. Krugh said it is in New Carlisle.

Melissa Mullins Mischke asked Mr. Krugh if people are going to come in, smash the cars, drain them of all their fluids and send them off to New Carlisle?

Mr. Krugh stated yes.

Melissa Mullins Mischke asked if there would be any shredding of vehicles at all?

Mr. Krugh stated no. Mr. Krugh said that they have to get a license as a salvage yard and he considers this more of a metal recycling. Mr. Krugh said that they're not selling parts, they're not taking off parts, they're not striping parts, they're just going to process the car of its fluids, any valuable wiring or copper, starters, radiators and remove it from the car and then ship out. Mr. Krugh said that they won't have numerous cars lying around or stacked up.

Melissa Mullins Mischke asked Mr. Krugh how many he anticipates at one given time at that location?

Mr. Krugh said that he's hoping to have everything off the ground by the end of the day. Mr. Krugh said that he knows that's not possible if they get a lot of cars in. Mr. Krugh said that it should be within a day or two. Mr. Krugh said that it only takes about fifteen minutes to process a car from all its fluids and then ship out.

Melissa Mullins Mischke asked if it is going to be ten or twenty cars? Melissa asked how many actual vehicles he anticipates at that location?

Mr. Krugh said that he doesn't think there would be fifteen cars sitting there at the end of the day.

Paul Zona asked Mr. Krugh how many cars he can process in one day?

Paul asked how many minutes to process a car?

Mr. Krugh said that it takes about fifteen minutes to process a car.

Paul Zona asked Mr. Krugh how many people he's going to have working for him?

Mr Krugh said that their goal is to get everything out. They don't want anything sitting on the ground. Mr. Krugh said that the market changes daily. Mr. Krugh said that their goal is to get it in and get it out as soon as they can.

Attorney Howes said that he was inquiring of his clients what their payroll and employees might be if this becomes operational and initially he thinks that they said six and by the end of the year be ten jobs. Attorney Howes said that Mr. McNamara pointed out the considerably economic impact of the money that comes into the hands of the people that bring in the metals and products for recycling.

Attorney Howes asked the Board for a favorable recommendation on this project.

Paul Zona asked that between local people and having trucks bring cars in—

Mr. McNamara said that the only cars that will come to that location are from the people that are bringing the product to them.

Paul Zona asked Mr. McNamara if he has done any kind of traffic study with the State to see what that area – Paul said that they don't have any acceleration or deceleration lane. Mr. Zona said that in the past years Paul said that he has almost hit three to four cars because they just pull out in front of you. Paul said unfortunately he goes past there once a day if not twice so he knows where it's at; he knows the traffic and if you go up just a little farther to the stop light where the gas station's at, figure at least one accident per week. Mr. Zona said that one out of three accidents is a fatality. Paul said that he would like to know more on the traffic study a little bit. Mr. Zona said that the traffic is opening up since someone opened up a gambling casino up the road, the traffic on highway 39 has at least doubled if not tripled.

Attorney Howes said that he believes that there is probably a driveway permit in existence from Indot for this facility and he doesn't know that you lose the right to use the driveway.

Dwayne Hogan asked how many acres total?

Attorney Howes said about three or four.

Board members speaking amongst themselves.

Paul Zona said that Zoning Ordinance page 14-25 under salvage yards the minimum lot area shall be ten (10) acres and a minimum setback of 1,320 feet shall be provided from any adjacent residential district.

Attorney Biege asked attorney Howes if he knows what the adjacent zoning is, because there is a setback of 1,320 feet on 2.39 acres.

Board Members speaking amongst themselves.

Attorney Biege said that you are looking for relief from the 1,320 setback requirement in residential and for a special exception be granted in B-2 zoning where the current code only allows a special exception in N-2. Attorney Biege said that our code does not allow for a special exception in B-2.

### **REMONSTRATORS:**

**1. Kent Parker**, 5689 N. Old Highway 39, La Porte, Indiana. Mr. Parker said that they have the residence just to the west.

Paul Zona asked Mr. Parker if he is up on the hill/

Mr. Parker stated yes.

Mr. Parker said that they are going to need a minimum of ten (10) acres, which is 2.39; they don't meet the minimum setback requirement, and to close to the airport, which is about four point 6 miles. Mr. Parker said that there is no way they're going to be able to stop the dust contamination, noise and vibration and any of the smoke from the machinery. Mr. Parker said that everyone in this area is on well water and he has concerns about the water supply. Mr. Parker said that we also have to look at the water runoff and where it is going to go; also the storm water runoff. Mr. Parker said that the current people that are there have had many issues with storm water runoff and petroleum oil contaminations of the adjacent properties.

Mr. Parker said that one of the other points was made about the current occupants who are there at the present meeting all the requirements. Mr. Parker said that they had to excavate all the per se fluff and non-recycle material and that was never done. Mr. Parker said that they see that property everyday and he's never seen that excavated.

Mr. Parker said that if they're going to be pouring out all of this material out of the vehicles, you have a potential for a hazardous material contamination. Mr. Parker asked how are they going to be storing it and what plans to they have as far as incident control? Mr. Parker said that just pulling off the website they do show us how safe they are. Mr. Parker said that in August, 2006, they did have a fire that completely burned down a facility.

**2. Cynthia Taylor**, same address as Kent Parker, 5689 N. Old State Road 39, La Porte. Ms. Taylor said that the traffic there with the capacity of thirty two cars a day is going to put back log on that road.

**3. Tim Melnyk**, 5658 N. Old State Road 39. Mr. Melnyk said that he would like to add something about the traffic. Mr. Melnyk said that northbound on Highway 39 goes from a two lane northbound to a one lane right around their entrance. Mr. Melnyk said that he has seen an accident there by somebody making a left turn and heading into their place and somebody trying to take the ditch. Mr. Melnyk said that is a bad traffic jam right there.

**4. Peggy Swain**, 5645 N. State Road 39, La Porte, Indiana. Ms. Swain said that Norman Irk came to this Board in 1998 to get a variance to open up a recycling center on the property behind them. Ms. Swain said that this probably was never to be turned over to anybody else in which that did let (Jason inaudible) take over that business. Ms. Swain said that she believes that is a violation. Ms Swain that everything he has done has been in violation. Ms. Swain said that Mr. Irk also told the Board that a fence would be erected and pine trees would grow, but it takes up to three years to develop and she hasn't seen one pine tree.

Ms. Swain wanted to know the difference between a recycling business and a salvage yard.

Ms. Swain said that the Irks were told to keep it clean and spotless and if it wasn't, their variance would be revoked.

Melissa Mullins Mischke told Ms. Swain that here photographs are all from 2007 and she asked Ms. Swain if she had any recent pictures?

Ms. Swain said that they have been in contact with Mr. Hamilton and also that the Sherriff's Department was suppose to go out there and shut them down for being in violation. Ms. Swain said that never happened. Ms. Swain said she doesn't think they should put another variance on that property.

Attorney Biege said that recycling is defined by the process by which materials are destined for disposal for remanufactured. They are separated, processed, produced and into a consumer type of material.

Attorney Biege said that a salvage yard as an open area where water or used materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including but not limited to, motor vehicles, vehicles, machinery or equipment drawn or operated by being attached to motor vehicles, mechanical units which are not in running or operable condition, scrap iron, other metals, paper, rags, rubber tires, and bottles.

Ms. Swain said that when the Irks applied for their variance for a recycle center, it says and it states right here on this paper work from 1998, no junk yard shall be on that property.

Attorney Biege asked Ms. Swain if she had the minutes from that meeting?

Ms. Swain had the minutes from the BZA meeting in 1998.

**5. Craig Molden**, 5525 N. Old State Road 39, Springfield Twp. Mr. Molden said that they said they're going to tow these cars in which means they are full with gasoline. Mr. Molden said that he would like to know how you can get the gasoline, Freon, brake fluid and the battery out of the car in fifteen minutes, plus crush the car. Mr. Molden said that he also has a big concern about the storage with all these contaminants because of the well water.

Mr. Molden said that if he thinks he remembers right, a variance was granted from them to put a salvage yard or whatever you want to call it, but it was his understanding that if that property was vacant over one (1) year, which it has been, then that variance was dead and non-going.

Mr. Molden said that this business is very very close to residential property. Mr. Molden said that he is right over the hill and some of the smells can be really bad at times. Mr. Molden said that he hopes this Board makes the right decision.

**6. Connie Crama**, 5899 N. Old State Road 39, La Porte. Ms. Crama said that they've a two acre section on old 39, and they have all worked very hard to keep their property beautiful. Ms. Crama said that the traffic is much heavier.

**7. Cynthia Taylor**, asked with the fifteen minute process with the crusher, what is the noise and vibration level to their home going to be?

**8. Kent Parker** told the Board that he is a heavy equipment operator by trade and he operates the big cranes and pay loaders. Mr. Parker said that he does have hearing loss from operating this equipment. Mr. Parker said that it is a requirement by his company to wear hearing protection. Mr. Parker said that if he's sitting at home and not work he doesn't feel he should not have to wear hearing protection.

**9. Tim Melnyk** said that commodes go up and down on metals and they say they're going to ship these out every day; if metals are at low price they're going to sit on that metal until the price goes up to make more money.

Melissa Mullins Mischke said that it appears to her from the brochure that we've provided, that the fluids that are coming off these vehicles are all going to be stored in above ground tanks on the facility? Melissa asked attorney Howes if that was true?

Attorney Howes stated yes.

Melissa Mullins Mischke said that ground contamination may not be a potential that they had in the pass.

Dwayne Hogan asked attorney Howes if there was anything in the variance asking for a buffer zone?

Attorney Howes said that he believes his clients said they were going to plant a green built buffer of pine trees on the west side of the property, but with respect to a spill of any those materials that are withdrawn from salvage vehicles, is reportable IDEM and there has to be a response and clean-up.

Attorney Biege asked attorney Howes since we're working with the new code, it looks to him that there will be a fifty foot depth and we have the eight foot tall fence that has already been covered and also a certain number of trees that are required.

Attorney Howes said that whatever the code is they will do with respect to ---

Attorney Biege asked if that was fifty foot depth workable, or are they asking for ...

Mr. McNamara said that the fifty foot depth is fine. Mr. McNamara said that he has talked to nurseries and he can transplant anywhere up to a thirty five foot tree. Mr. McNamara said that he has got prices for twenty five to thirty five foot pine trees that will be brought in and transplanted every ten feet distance at a cost of six hundred fifty dollars a tree. Mr. McNamara said that they figured about twenty trees at a thirteen thousand dollar cost.

Attorney Biege told Mr. McNamara that they have to put up canopy trees and shrubs.

Melissa Mullins Mischke asked what is the intent if there is a problem with egress and ingress to add deceleration lanes?

Attorney Howes he has been involved with some applications from INDOT and engineering studies and his guess is if that became a requirement, this project would probably would no longer be cost effective.

Mr. McNamara said that he knows that in some of their other yards if there is a mile marker and it gets congested, they re-route them.

Paul Zona told Mr. McNamara that they only have one way in and one way out.

Melissa Mullins Mischke asked if there was enough acreage to do that?

Mr. McNamara said that there is always a way to work it out and safety is number one.

Paul Zona said that there has to be a third lane there somewhere.

Board members speaking amongst themselves.

Glen Minich said that as much as he thinks this would be a great business to be in the area, he would like to see a better site. Mr. Minich said that he thinks that the traffic could be a problem.

Dwayne Hogan said that he thinks with the (inaudible) of this business should be commended because there is a lot of money to be made in this field.

Paul Zona made a Motion that the Petition for Northwest Indiana Salvage, Inc. be denied due to the fact that the approval would be injurious to the public, health, safety, morals and general welfare because of the fact that the traffic situation right there will cause multiple accidents. Paul said the value and the use of the adjacent area in the past has dropped the property values because of the looks of the property. This also goes against totally from the present and new zoning ordinances, such that there is approximately three acres and a minimum calls for ten acres, which is way too small and in addition you have to be thirteen hundred and twenty feet off the right-of-way. Melissa Mullins Mischke seconded.

Melissa Mullins Mischke said that she wanted to say that the acreage is an issue and some of the hazards coming into the egress and ingress of the highway could be litigated if there was a little bit additional acreage on the property to make the flow a little bit better. Melissa said that she thinks the lack of acreage plus the offset combination makes her want to second that.

Glen Minich said that he really likes the idea of the business and he hopes this doesn't stop them from looking in this area or county, it's just the size.

All approved. Motion carried 4-0.

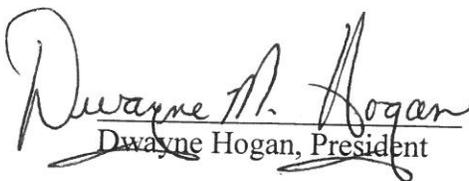
Paul Zona told them to look for a bigger spot because he thinks this is good for the area.

**OTHER BUSINESS:**

Paul Zona thanked Mr. Hamilton for many, many, many years of being the organic factor on this Board. Dwayne Hogan said that he would second that.

Melissa Mullins Mischke made a motion to adjourn. Paul Zona seconded. All approved. Motion carried 4-0.

There being no further business this evening, meeting adjourned at 7:26 p.m.

  
Dwayne Hogan, President

  
Annemarie Polan, Recording Secretary