

The Madison County Board of Zoning Appeals met on the above date at 9:00 A.M. with, John Randall, Jr., Chairman, presiding.

Members Present: Bill Maxwell, John Randall, Jr., Mary Jane Baker, Shirley Aubrey and Bill Hobbs.

Members Absent: None.

Also Present: Cory Wilson, Executive Director, Judy King, Plan Reviewer, Gerald Shine, Jr., Attorney, and Beverly Guignet, Secretary.

**CURRENT BUSINESS**

1. Roll call was taken with all members present.
2. The minutes of the preceding meetings were distributed to each member prior to the meeting. It was the consensus of the board to approve the minutes as corrected.

Chairman Randall informed the board today’s procedure was going to be changed. First the petition would present his case and then the director would present his staff report and recommendations. After they are done then anyone in the audience who wishes to be heard can speak. The board can ask questions at any time to anyone who is up here speaking. Also there will be a sign up sheet that anyone who wishes to speak needs to sign with their name and address.

**New Business**

Director Wilson stated the following two petitions (#580 & #581) have submitted a letter of withdrawal for their request. They decided to construct the building in a different location on the property therefore they did not require the variances. A permit was issued to them on Friday, April 18, 2008

1. **Petition: #580 Variance**  
Address: North side of CR 1025N, approximately 1/2 mile East of CR 300W  
Location: Monroe Township  
Petitioner: Michael & Joan Roberts  
Request: Variance to provide for an accessory structure located within the required side setback.

**. Petition #580 was withdrawn at the petitioner’s request.**

- Petition: #581 Variance**  
Address: 2538 West 1025N, Alexandria  
Location: Monroe Township  
Petitioner: Michael & Joan Roberts  
Request: Variance of development standards to provide for an accessory structure located in front of an existing dwelling.

**Petition #581 was withdrawn at the petitioner’s request.**

- 3. **Petition: #582 Variance**  
Address: 6608 South 450E, Markleville  
Location: Adams Township  
Petitioner: Wayne Hensley  
Request: Variance of development standards to provide for an accessory structure located in front of an existing dwelling.

The board was informed, as Petitions #582 and #583 are together they can be heard together but voted on separately.

Wayne Hensley, 6608 S 450E, Markleville was present representing this petition.

Mr. Hensley told the board he wants to build a garage. But because of the layout of his property it would be impossible to build in a different location on his property. The house sits on top of a hill and the property slopes to the back. The garage will be approximately 22 feet from the north property line. An eight-foot cedar fence will be installed.

Director Wilson stated staff recommends approval of the variance of this development standard.

The following issues were considered in formulating the recommendation:

**Land Use**

The subject site is a 2.709-acre parcel located on the east side of CR 450 East, approximately one-quarter mile north of US-36. This request would provide for the construction of an 875 square foot detached accessory structure located within the established front yard and 22 feet from the side yard. The property is zoned AG (agriculture) and the Comprehensive Plan recommends agriculture for this site. The property is surrounded by agriculture property.

The *Madison County Land Use & Development Code*, requires that the minimum side setback for any structure in the agriculture district is 25 feet. Additionally, no accessory structure is permitted to be located within the established front yard.

The Petitioner has indicated he wishes to build a barn on the north side of the existing turn around. The site plan and photos indicate the desired construction site is appropriate and acceptable by Staff due to the grade change behind the existing dwelling. According to the site plan, the well is located 46 feet north of the dwelling. Immediately east is an in-ground swimming pool.

**Site Inspection**

A site investigation confirms that the grade of the property declines sharply beyond the swimming pool. There does not appear to be sufficient area to accommodate any accessory

structure that would meet the Ordinance requirements. Additionally, Staff verifies that the application of the terms of this Ordinance will result in a practical difficulty in the use of the property.

**FINDINGS OF FACT**

*Would the approval be injurious to the public health, safety, morals, and general welfare of the community?*

No. There is a 6-foot privacy fence on the north property line, which will prevent this structure from negatively affecting the neighbors. The grant of this request would not pose a risk to the safety or welfare of the community.

*Will the requirements and development standards set forth in the district for such exception be met?*

Yes. The applicant has agreed to adhere to the requirements of the Ordinance with respect to the construction of the accessory structure.

*Will the proposed use subvert and permanently injure other property or uses in the same district and vicinity?*

No. The subject site is zoned agriculture and the property is surrounded by similar uses.

*Will the proposed use be consistent with the character of the zoning district and the Comprehensive (Comp) Plan?*

Yes. The area has a mix of agriculture and residential uses with barns being common to the character of the surrounding area.

Member Hobbs stated he investigated the site and agrees there is no other site on the property to build.

Mr. Shine stated he thought that Cory's presentation when he started off needs to be done before the petitioner comes forth. He should present what the petition is for, where it's located and what they are requesting and what our ordinance requires. Then the petitioner comes forth and presents their case. The state statute dictates this. Then Cory makes his recommendations and questions that he has. Then the audience has their time to speak or offer any written comments. That would give us a little knowledge of what we are here for.

The board was informed that proper notification was given.

There were no remonstrators present.

Member Hobbs stated he moved that Petition #582 be approved based on Findings of Fact and the staff recommendation. Would the approval be injurious to the public health, safety, morals, and general welfare of the community? No there is a six-foot privacy fence on the north property line, which will prevent this structure from negatively affecting the neighbors. The grant of this request would not pose a risk to the safety or welfare of the community. Will the requirements and development standards set forth in the district for such exception be met? Yes. The applicant

has agreed to adhere to the requirements of the Ordinance with respect to the construction of the accessory structure. Will the proposed use subvert and permanently injure other property or uses in the same district and vicinity? No. The subject site is zoned agriculture and the property is surrounded by similar uses. Will the proposed use be consistent with the character of the zoning district and the Comprehensive (Comp) Plan? Yes. The area has a mix of agriculture and residential uses with barns being common to the character of the surrounding area.

Member Baker seconded the motion.

The vote was unanimous in favor of the motion. **Petition #582 Variance was approved.**

4. **Petition: #583 Variance**  
Address: 6608 South 450E, Markleville  
Location: Adams Township  
Petitioner: Wayne Hensley  
Request: Variance of development standards to provide for an accessory structure within the rear setback

Wayne Hensley, 6608 S 450E, Markleville was present representing this petition.

Member Hobbs sated he would make a motion to approve Petition #583 for three feet and I would like to base that on the same Findings of Fact that I used for #582.

Member Maxwell seconded the motion.

The vote was unanimous in favor of the motion. **Petition #583 Variance was approved for three feet.**

5. **Petition: #585 Variance**  
Address: 8650 West 1050S, Fortville  
Location: Green Township  
Petitioner: Allen J. & Tyresa S. Kremp  
Request: Variance of development standards to provide for the construction of accessory structure prior to the construction of a dwelling.

Allen & Tyresa Kremp, 8650 W 1050S, Fortville were present representing this petition.

Mr. Kremp told the board they bought the property in 1994 for the sole purpose of building a pole barn and their house. At the time they ran in to a problem with getting a septic permit due to seasonal high ground water. They have obtained a septic permit after working with the Soil Scientist. They have purchased the adjacent property and now sewer has become available in the area and currently serves their primary residence. They are now asking for the variance so they can proceed with the pole barn and follow that with a new house.

**The following are pictures Mr. Kremp presented to the board. They are also on file in the Planning Commission office.**

Rec 4.22-08  
Plat 585-U



Page-1 South Side of W.1050 S. from east to west



Page-2 South Side of W. 1050 S. from east to west

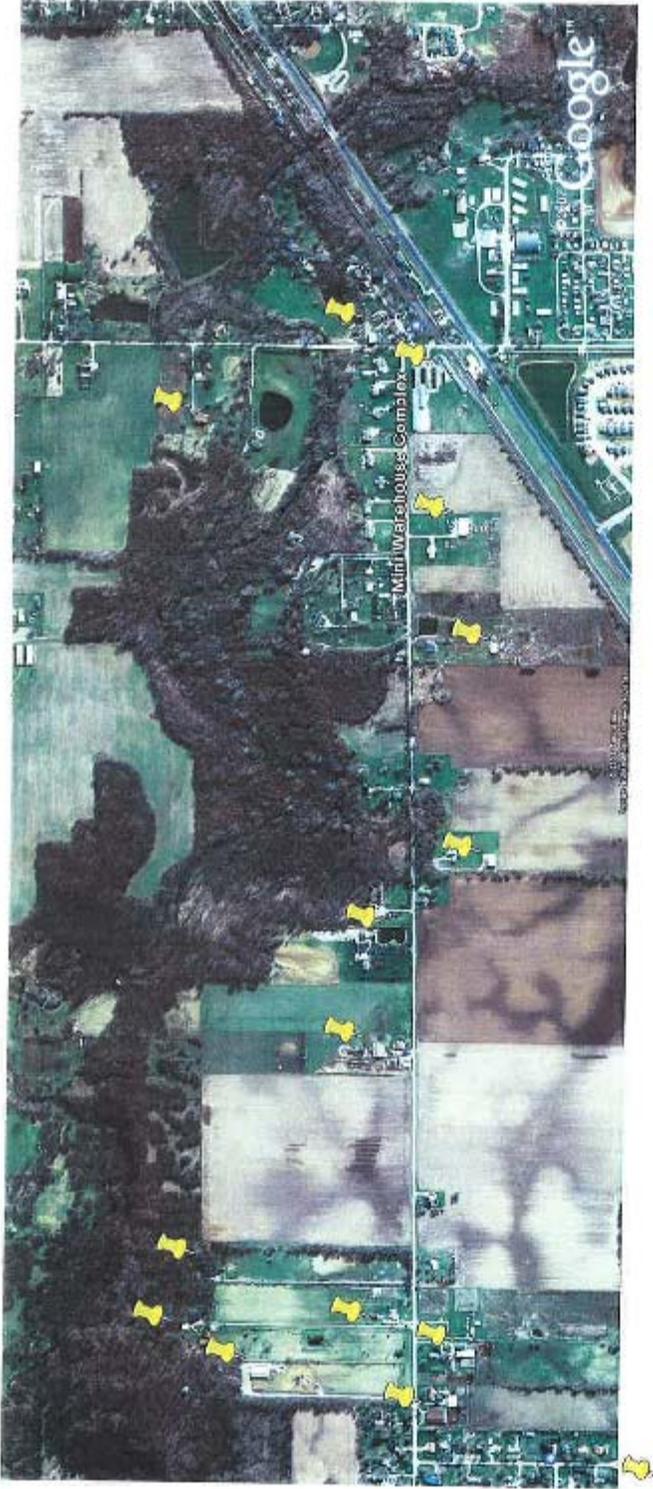


Page-3 North Side of W. 1050 S. from east to west



Random sample of buildings between S. 750 W. and SR-13

Page 1

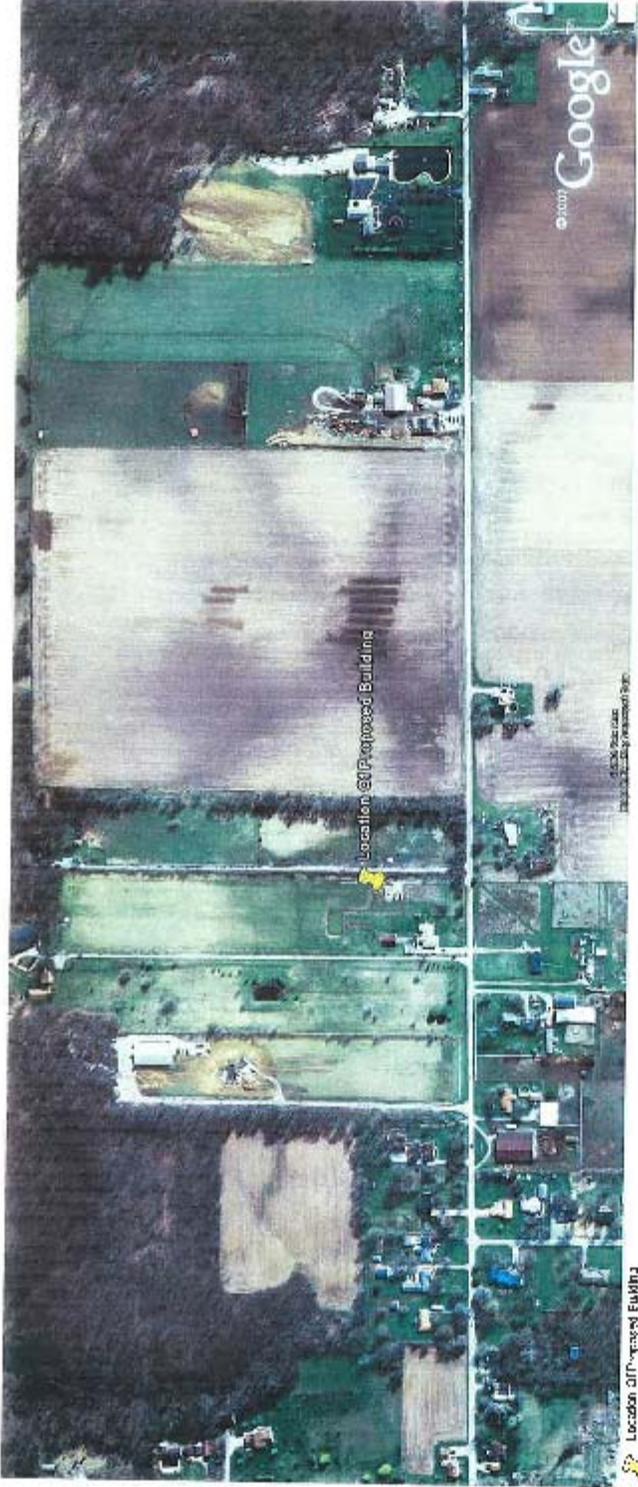


Page 1



Map 2008/04

Page 1



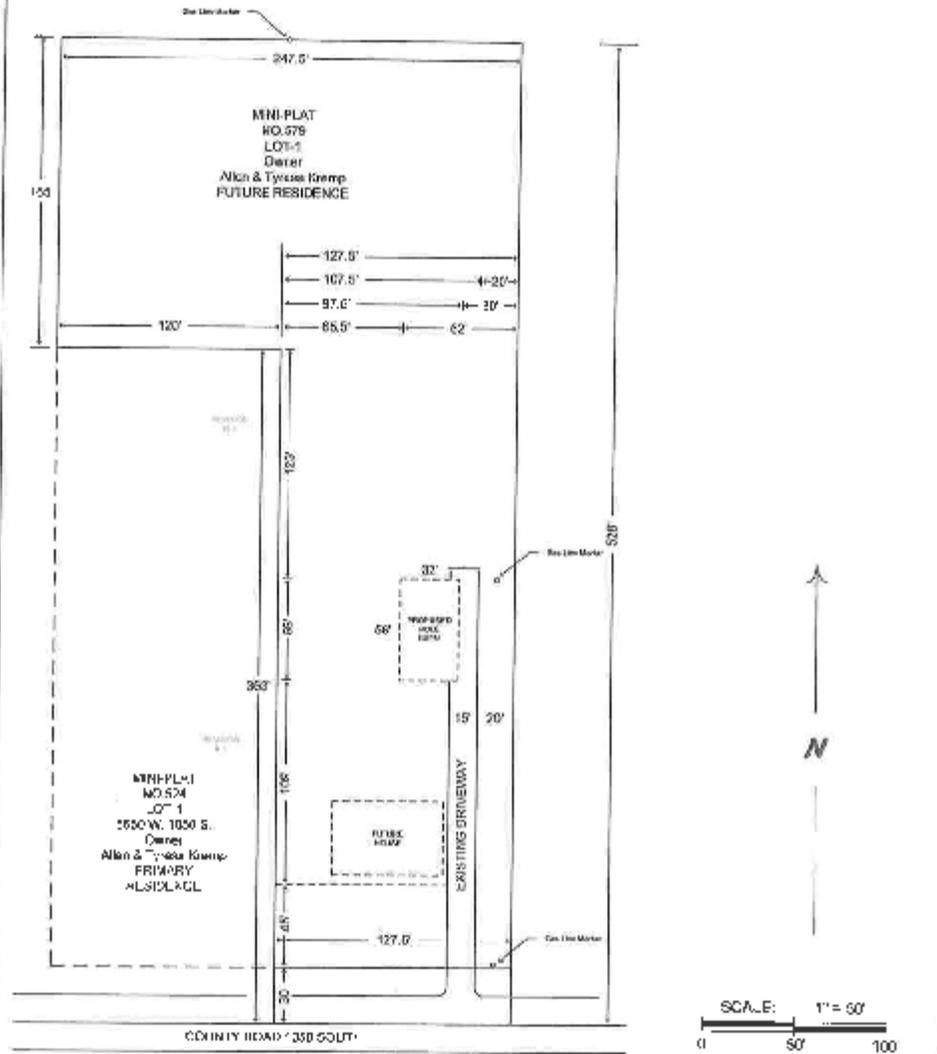
Location of Proposed Building

Location of Proposed Building

Location of Proposed Building

Rev 4-22-08  
P. 585

# PROPOSED LOCATION OF POLE BARN MINI-PLAT NO. 579 LOT-1



REVISIONS		
DATE	BY	DESCRIPTION

New Pole Barn  
Alvin & Tyrone Kemp  
2500 W. 1050 S.  
Alvin & Tyrone Kemp  
2500 W. 1050 S.  
Alvin & Tyrone Kemp

Mr. Kremp stated that he would be more than willing to sign a covenant if that was the board's desire that states the home will be started within two years from the date of issuance of the Certificate of Occupancy for the pole barn. My mother will use the existing home that we live in and we will live in the new house. I want to build the pole barn before the house to store the construction material while we build. After the house is constructed the barn will be used for a second garage. The barn will be 32' x 56' and the house will be approximately 1800 to 2000 square feet. There is no intent to turn this in to commercial use.

Director Wilson stated staff **recommends denial** of the special use.

The following issues were considered in formulating the recommendation:

### **Land Use**

The subject site is Lot #1 in Mini Plat #579 located on the north side of CR 1050 South, approximately one half mile east of SR-13. This request would provide for the construction of a 1,792 square foot detached accessory structure prior to the construction of a primary dwelling. The property is zoned CR (conservation residential) and the Comprehensive Plan recommends residential development for this site. The property is bordered by the Sunview Subdivision to the south and large lot residential area to the north, east & west.

The *Madison County Land Use & Development Code*, permits an accessory structure on a lot prior to the construction of the primary structure for a period of up to two years. This allows for the storage of building materials for the dwelling. A covenant is required by the BZA that the home be started within two (2) years from the date of issuance of the certificate of occupancy, and that no commercial activity occur within the accessory structure.

The Petitioner has indicated he may or may not be ready to build a dwelling within two (2) years. Additionally, petitioner expressed an unwillingness to commit to any kind of covenant, which would commit him to constructing the dwelling within any specified time frame.

The submitted site plan indicates the proposed pole barn would be 240 feet from the front property line. According to Mini Plat #579, a gas pipeline easement is located 210 feet from the front property line. The owner of the easement would not release any part of the easement and would not allow any permanent structure to be built within the confines of their easement without prior approval.

Staff has concerns that this structure would be used for commercial purposes since the petitioner has expressed unwillingness to construct a dwelling. Staff recommends denial because this request does not meet the standards outlined in the Ordinance.

### **FINDINGS OF FACT**

*Would the approval be injurious to the public health, safety, morals, and general welfare of the community?*

Yes. If the structure is used for commercial purposes, not approved by the Board, it is uncertain as to what use would take place in the structure.

*Will the requirements and development standards set forth in the district for such exception be met?*

No. Staff recommended alternative action negating the filing of this exception, which would meet the requirements of the current ordinance. However, petitioner is unwilling to commit to recommendations.

*Will the proposed use subvert and permanently injure other property or uses in the same district and vicinity?*

Yes. By potentially having a commercial structure with commercial activity, property values could be negatively affected.

*Will the proposed use be consistent with the character of the zoning district and the Comprehensive (Comp) Plan?*

No. The character around the proposed property is residential. A structure built without a dwelling will be out of character for the area.

Director Wilson told the board that we would not be here today if the petitioner had agreed to sign the covenant when we started going through this about a month ago. Therefore there would have been no need for a variance request today if they had agreed to sign the agreement that would have required a dwelling be started within two years..

Mr. Shine stated if he is willing to sign that then we would not have to continue any further.

Mr. Kremp told the board that yes he would agree to start the house within two years.

Mr. Kremp was told when he applied for the permit he would need blueprints of the house for the Plan office to keep on file.

Mr. Kremp stated he was told when he submitted his application for the pole barn he would need to apply for the house permit and that he would also need to submit plans for the house.

Mr. Kremp told the board that he has no plans for the house at this time, as his wife could not make up her mind as to what she wanted. So, he could not submit the blueprints of the house and the same time as he applied for the barn permit. I can pull the permit for the pole barn but I am not prepared to pull the permit for the house at this time.

Several board members stated they could not understand how a permit could be issued without a set of plans. The plans could always be amended if there were any changes to be made. Staff has request that a copy of their receipt from paying their twp. Required is a letter from Fall

Creek Regional Waste saying if they have paid their tap in fee and that yes they can tap in to the sewer line.

Director Wilson committed that the fee to Fall Creek Regional waste be submitted with the construction plans. We can table this for the next 30 days and if they are able to get construction plans, we can issue the building permits and they won't need the variance.

There were no remonstrators present.

Member Aubrey stated she would move to table Petition #585 for a month, otherwise it would have to be denied and they you would have a year before you could come back.

Member Hobbs seconded the motion.

The vote was unanimous in favor of the motion. **Petition #585 has been tabled for one month.**

6. **Petition: #586 Special Use**  
Address: 2642 East 150S  
Location: Union Township  
Petitioner: Charles R. & Jean Ehrhart  
Request: Variance of development standards to provide for 3-4 horses on a 3.89 acre lot.

The board was informed proper notification had been given.

Charles Ehrhart 2642 E 150S, Anderson, IN and his Realtor, Renate Eberbach were present representing this petition.

Mr. Ehrhart stated the horses would be for his grandchildren's use only. They are not for 4-H. There will be no boarding of horses, this is just for personal use only. There are two barns on the property. We would use the 24' x 30' red barn. We want at least three horses and no more than four. The removal of waste will be spreading it on other farms in the area.

The board was informed this property is for sale and if the variance is granted it does not run with the land but with the owner. Any new owner that wanted horses would have to go through the same process.

Director Wilson stated staff **recommends approval** of the special use request.

## SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

### Land Use

- ◇ The subject site is a 3.848-acre parcel located on the north side of CR 150 South approximately one quarter mile west of CR 300 East. This request would provide for the housing of four horses for use by the Petitioners. The property is zoned CR (conservation residential) and the Comprehensive Plan recommends residential development for this site. This property is surrounded by residential property.
- ◇ The *Madison County Land Use & Development Code*, requires the minimum lot size on which farm animals are permitted shall be four (4) acres. Additionally, the intent of the CR district is to allow for rural residences and small recreational farms without jeopardizing the residential character of the surrounding area.
- ◇ The Petitioner has indicated a desire to house up to four horses in one of the existing metal pole barns on the property. According to the petitioner, granting this request would reinstate the original purpose of the property, which seems to date back to the early 1800's when the homestead was built. There are a number of existing structures that obviously have been used for equestrian purposes.
- ◇ Staff found the subject site to be extraordinarily clean and in an orderly condition. The property contains two (2) barns that have housed horses in the past.

### **FINDINGS OF FACT**

1. *Would the approval be injurious to the public health, safety, morals, and general welfare of the community?*  
No. There are two (2) barns on the property with stalls and running water. It is apparent that this property has housed horses before. The grant of this request would not pose a risk to the safety or welfare of the community.
2. *Will the requirements and development standards set forth in the district for such exception be met?*  
Yes. The applicant has agreed to adhere to the requirements of the Ordinance.
3. *Will the proposed use subvert and permanently injure other property or uses in the same district and vicinity?*  
No. The subject site has been used for livestock in the past. Staff has received no remonstrators.
4. *Will the proposed use be consistent with the character of the zoning district and the Comprehensive (Comp) Plan?*  
Yes. This is a minor deviation of the current comprehensive plan. The Board has approved similar requests.

There were no remonstrators present.

Member Aubrey stated she moved to approve Petition #586 to stable horses for your own use per Findings of Fact. The approval of this petition would not be injurious to the public health safety and general welfare as there are two existing barns. The required development standards set forth in the district will be adhered to per application specified by staff. The proposed use will not adversely affect adjacent property as livestock has been on the site before. The proposed use is consistent with zoning district and other similar sites have been approved. I recommend only

three horses be allowed because that would one per acre. Waste will be placed on the pasture side of the petitioner. This variance will only be valid with this owner.

Member Baker seconded the motion.

The vote was unanimous in favor of the motion. **Petition #586 was approved.**

It was the consensus of the board to take ten-minute break (10:28:56 A.M.).

Meeting called back to order (10:38:47 A.M.).

7. **Petition: #584 Special Use**  
Address: SW corner of CR 500S & New Columbus Road  
Location: Adams Township  
Petitioner: Donald Bancroft  
Request: To provide for mineral extraction (timber removal and sales) on a CR-zoned property located within an urban area (special use grant required for mineral extraction within an urban area).

Dan Bancroft, Realtor was present representing the landowners.

Dan Bancroft, 1517 Winding Way, Anderson, IN.

Mr. Bancroft stated the landowners are requesting the right to sell the existing timber on their land. The trees need to be harvested from the land to achieve productivity. Fifty-seven acres of this land has been used for raising corn or beans to sell commercially. Since this was turned down by the County Commissioners for a subdivision the petitioners must look to an agricultural use.

The owner have the right to harvest the existing timber but to sell it or move it, requires a Special Use. If that were denied that would mean the harvested timber would need to be pushed into a locking area where nature would take many years to do its thing. By denying them the harvesting of the timber and by removing from productivity the locking area the Board of Zoning Appeals will be establishing a new criteria, if it proceeds in this direction.

The owners will stipulate that all trucks involved in timber harvesting will not park in the right of way or on any adjacent properties. A site man will direct traffic when trucks enter or leave the property. The owners stipulate machinery operations associated with timber harvest will restricted between the hours of 8 A.M. and 4 P.M., Monday through Friday and no more than eight individuals will be involved in a work force at any one time. There are still mature trees that are in good health that will not be harvested.

Timber removal properly executed enhances the site and encourages new growth, thus improving the environment. Staff of the Planning Commission has requested this board deny this request. We would request that you reconsider their determination.

Director Wilson stated staff **recommends denial** of the special use request.

## SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

### LAND USE

- ◇ The subject site is a 127-acre parcel located at the southwest corner of CR 500 South and New Columbus Road (Old State Road 109). This request would provide for the removal and commercial sale of the existing timber. The property is zoned C-R (conservation residential) and the Comprehensive Plan recommends conservation residential (CR) for this site. This site is surrounded by single-family residential development.
- ◇ The *Madison County Land Use & Development Code* identifies mineral extraction (timber removal) as appropriate for the general industrial district and would be permitted without the need for any approvals by the Board. However, if a site is located within an urban area and is zoned agriculture protection (AP), agriculture (AG) or conservation residential (CR), the Ordinance requires the filing of a special use request to the Board of Zoning Appeals in order to conduct mineral extraction (timber removal).
- ◇ An urban area, as defined by IC 36-7-4-1103 (b) for purposes of mineral extraction and forestry, is defined as all lands and lots within the corporate boundaries of a municipality, any other lands or lots used for residential purposes where there are at least eight (8) residences within any quarter-mile square area, and other lands or lots that have been or are planned for residential purposes contiguous to a municipality.
- ◇ The subject site, according to Indiana Code, is in an urban area. Staff has prepared an exhibit that confirms this. Exhibit "A" is a map/aerial of the subject site and surrounding properties with a quarter-mile "buffer" encompassing the site. It clearly indicates that there are more than eight (8) residences within a quarter-mile square of the subject, thus making the site located in an "urban area."
- ◇ The reason why the Ordinance requires a special use grant for this type of use in an urban area is to ensure that there would be no negative affects on surrounding residences, to identify if the request is the most desirable use of the land, and to ensure that there is sufficient infrastructure capable of handling large, heavy trucks. Staff is concerned that the grant of this special use request would be detrimental to the surrounding residential properties as the cutting and hauling of the trees would result in excessive noise that is not typically associated with residentially developed areas.
- ◇ The area where this site is located is heavily wooded. Many of the neighboring lots are wooded resulting in poor visibility for pedestrians and motorists. Safety concerns already exist and the grant of this special use would further contribute to those concerns.
- ◇ County Road 500 South is essentially a paved "cow path" with little maneuverability and access. There potentially could be damage to the road by the excessive weight of the trucks hauling the timber off site. Further, both New Columbus Road and CR 500 South have relatively small-improved rights-of-way. Large trucks may have to back onto neighboring lots resulting in trespassing if there is not sufficient maneuverability.
- ◇ In order for Staff to recommend approval of this request, more information is needed. Staff would like to see a detailed business plan that indicated hours and days of operation, delivery and pick-up times, and the number of workers expected on site at any given time. However, it should be noted that the submission of a business plan does not guarantee Staff's approval.

## **FINDINGS OF FACT**

5. *Would the approval be injurious to the public health, safety, morals, and general welfare of the community?*

Yes. Staff is concerned that the limited visibility of the surrounding residences as well as the subject site could pose a safety risk for motorists and pedestrians with large trucks and flatbeds accessing the subject site.

6. *Will the requirements and development standards set forth in the district for such exception be met?*

No. As of now, there is little information concerning the removal of the trees and therefore no way of determining if all local, state and federal requirements would be met.

7. *Will the proposed use subvert and permanently injure other property or uses in the same district and vicinity?*

Yes, the removal of the trees on this forested lot will result in the character of the area being permanently changed, possibly negatively affecting surrounding property values. Further, with little maneuverability off of CR 500 S and New Columbus Road there is potential for truck traffic backing onto neighboring lots or even parking in front of or along the neighboring lots.

8. *Will the proposed use be consistent with the character of the zoning district and the Comprehensive (Comp) Plan?*

No. The subject site is surrounded by residential development and mineral/tree extraction resulting in heavy truck traffic would not be consistent with the area.

Director Wilson informed the board he would like to see this tabled for another 30 days.

Director Wilson felt there needed to be an updated business plan of operation, specifically what trucks are going to be used, and it would be nice to know what company they are going to be utilizing for this. The 1992 plan also needs to be updated.

It was the consensus of the board to take a five-minute recess (11:40:53 A.M.).

Meeting was called back to order (11:49:36 A.M.).

The following is a synopsis from several people who are concerned with this request.

Wolfgang Van Buchler, 2613 Marsha Drive.

Lorrie Wilson, 5120 New Columbus Road.

Benjamin Nagemgast, 925 Anderson-Frankton Road.

Barry Banks, 959 W 500S, Anderson.

Crist Blassaras, 60 River Forest, Anderson.

Norman Davis, 542 E 500S.

The main concern was over the loss of a heavily wooded lot. Further if this request was the “highest and best use” of the land? The most desirous use of this property is for residential or

recreational uses; need updated site plan along with more information; traffic flow; heavy machinery; is this a wetland area; how many trees will be harvested; protect the natural resources; preserve wildlife. Some also wanted to know if this was another way to get Simpler Time Village back in to the equation. Lose of sediment due to harvesting the timber.

Member Baker stated she felt enough information has not been provided. Without a plan we don't know for sure what they want to do. I would like to see in writing and I would entertain a motion to table this for 30 days, which would give them time to come up with a written plan to bring to us so we know exactly what they intend to do. I would like to see a topo map so we can see what the grade is. We are really concerned with the northwest quadrant. We want to know how many trees will be harvested. So, I move this be table until the May 27, 2008 meeting.

Member Maxwell seconded the motion.

The vote was unanimous in favor of the motion. **Petition #584 has been tabled until the May 27, 2008 meeting.**

**Miscellaneous:** Nothing presented.

Member Baker made a motion, seconded by Member Maxwell to adjourn. The vote was unanimous in favor of the motion.

Adjournment: 12:29:03 P.M.

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John Randall, Jr., Chairman

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Beverly Guignet, Secretary