

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 17<sup>TH</sup> DAY OF MAY 2012 AT 9:00 A.M.**  
**MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING**  
**4230 ELKHART ROAD, GOSHEN, INDIANA**

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: Robert Homan, Tony Campanello, Meg Wolgamood, and Doug Miller. Staff members present were: Ann Prough, Zoning Administrator; Mark Kanney, Planner; Kathy Wilson, Office Manager; and James W. Kolbus, Attorney for the Board.

2. Mr. Hesser noted that he had recused himself for item #8 of the April 19, 2012 meeting, but at the end of page 6, it did not indicate that he returned. A motion was made and seconded (*Miller/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19<sup>th</sup> day of April 2012 be approved as modified. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Homan/Campanello*) that the legal advertisements, having been published on the 5th day of May 2012 in the Goshen News and on the 7th day of May 2012 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

4. A motion was made and seconded (*Miller/Homan*) that the Board accepts the Zoning Ordinance, Subdivision Control Ordinance and Staff Reports as evidence into the record and the motion was carried with a unanimous roll call vote.

5. There were no postponements of business items.

**\* (*It is noted that Mr. Hesser stepped down from the Board at this time due to a potential conflict of interest.*)**

6. The application of *Altec Engineering Inc. (lessor) and Maplenet Wireless Inc. (lessee)* for a Special Use for a wireless communications facility (Specifications F – 31.50) on property located on the Southwest corner of CR 20 and Sassafras Street, common address of 28274 CR 20 in Baugo Township, zoned M-1, came on to be heard.

One photo of the property was submitted to the Board by the staff [*attached to file as Staff Exhibit #1*].

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #28274CR 20-120420-1*.

There were 25 neighboring property owners notified of this request.

Gene Crusie, 4561 Pine Creek Road, Elkhart, was present on behalf of MapleNet Wireless. He indicated Altec has a plant by the Indiana Toll Road and one by Mishawaka Road. The primary use for this tower is to connect those locations together so they can exchange their CAD drawings. The secondary purpose is to meet a large request from businesses in the industrial area that cannot get broadband or fiber optic capabilities. He stated this proposed

tower will become part of their network as well, and it will tie Elkhart to South Bend. He feels this is a win-win situation as they are solving Altec's solution and also filling a need for the community. As a side note, he stated they did approach Patrick Industries about using their tower which is across the street and down a little bit. A contract was mostly in place, but the final details could not be worked out. Altec makes fiberglass items. The tower is going to be placed in a corner, surrounded by molds as Mr. Crusie indicates on the enlarged aerial map. A waiver on the trees and landscape variance is requested due to the placement of the tower. He indicated they plan to put fence around it.

Mrs. Wolgamood asked about interest from companies to collocate towers on their towers. Mr. Crusie stated they find businesses that need to connect to other locations in Elkhart and the business is allowed to use the tower for that purpose. Because 120 feet is not very attractive to cell phone companies, he reported they do not get many requests from them for "collocation" which is what the Ordinance is referring to.

Mr. Campanello questioned what happens if a property or business gets sold. Mr. Crusie reported they were able to negotiate a much more favorable contract with these owners. He indicated it must be part of their sale agreement that if they sell the business or the property, MapleNet has up to one year to figure out another solution.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a wireless communications facility (Specifications F – 31.50) be approved with the following condition imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

Prior to voting on the motion, Mr. Homan noted that the need for landscaping as brought up in the application is not relevant to this request. He also said there is no need for a commitment as indicated in the Staff Report.

A roll call vote was taken and the motion was carried with a unanimous vote.

\* ***(It is noted that Mr. Hesser returned to the Board at this time.)***

7. The application of ***James H. Boyer (land contract holder) and Terry A. Miller (land contract buyer)*** for a Special Use for an agricultural use for the keeping of chickens, rabbits, ducks, and a pig on a tract of land containing three acres or less in an A-1 district (Specifications F - #1) on property located on the South side of US 6, 1,650 ft. West of CR 21, common address of 20566 US Highway 6 in Jackson Township came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #20566Us Highway 6-120424-1*. Also submitted was a letter in opposition to the request from Robert and Lisa Bickel *[attached to file as Staff Exhibit #2]*, who feel this property is too small for farm animals. They also mentioned prior problems with chickens being loose and in their yard.

There were 15 neighboring property owners notified of this request.

Terry Miller, 20566 Highway 6, was present on behalf of this request. He reported he has lived on the property for three years and was raising chickens and ducks until receiving a complaint in January. Mr. Miller stated he was not aware of the Ordinance.

Mr. Homan asked Mr. Miller about having various animals in the past. Mr. Miller stated he had one pig that he raised just to butcher. He indicated the horse was just there four or five days for his brother between boarding facilities. Mr. Homan asked Mr. Miller about any conversations with neighbors about his animals. When he first moved there, Mr. Miller indicated his chickens were loose and in a neighbor's yard. He stated the neighbor talked to him, and he then put up a fence for the chickens. When Mr. Homan asked the Petitioner if he has any animals at this time, Mr. Miller replied that he has a dog, but removed the farm animals when he received the complaint.

James Boyer, 72299 CR 9, Nappanee, was present in support of this request. He is the property owner who holds a land contract with Mr. Miller. He too was not aware of the three acre rule. In his opinion, he feels if Mr. Miller is keeping the animals on his property and out of neighbors' yards, the Petitioner should be allowed to keep the farm animals. Mr. Boyer said Mr. Miller is not keeping enough animals to be a nuisance. The animals are for his personal use and for participation in 4-H.

Mrs. Wolgamood asked if any roosters were involved in this request. Mr. Miller stated he had one rooster last year for 4-H but he does not need to have any. When Mrs. Wolgamood asked for the maximum number of chickens requested, Mr. Miller said for 4-H and agricultural purposes, he would need approximately 20 chickens.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan expressed sympathy for people who do not know the ordinances and reported the Board has occasionally made some exceptions for 4-H and for hens, not roosters. He reiterated that the request is large as it is for 36 animals and includes chickens, ducks, rabbits, and a hog. Mr. Homan suggested the possibility of reducing the request. Considering the Ordinance, Mr. Homan does not see how the Board can support this request. Neighbors are concerned about the impact of keeping animals in a residential area. Mr. Miller has an existing chicken coop and could probably keep a few hens together.

Being 4-H driven, Mr. Campanello feels 20 chickens sounds reasonable, but 15 would be ideal. Mr. Hesser agreed a smaller amount of chickens is reasonable. Mr. Homan thinks it is clear from the application, the petitioner's poultry use is not just for 4-H. The request is also for poultry for eggs and meat. This would be year-round and there would be waste produced. Mr. Homan feels this request is a "fly in the face of the County Ordinance" so if the Board is to approve anything, the environment needs to be recognized. Mr. Hesser expressed his disagreement of that characterization as he feels it is consistent with the Ordinance. An exception is needed to do it, and although the property is next to a subdivision, he said it is surrounded by agricultural property. Mr. Hesser suggests that if a person rented a 30 square foot parcel to the south of Mr. Miller, you could do everything you wanted.

Mrs. Wolgamood expressed agreement with Mr. Hesser, but also agreed that the request is for too many animals. She pointed out in the Petitioner's request, the Board has only heard about one child but it is unknown how many children might be in 4-H. She feels that as long as they are fenced and contained, 15 chickens is a reasonable amount. However, she indicated if a

complaint is received, the request can be revoked. She would not support the request for any pigs, rabbits, ducks, or roosters, and Mr. Miller concurred.

Mr. Homan asked and the Petitioner indicated that there is a chicken coop at this time as indicated in photos. Mr. Homan feels that the consensus of the Board at this point is to allow 15 hens on the property.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that this request for a Special Use for an agricultural use for the keeping of chickens, rabbits, ducks, and a pig on a tract of land containing three acres or less in an A-1 district (Specifications F - #1) be approved with the following condition imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff within sixty (60) calendar days after BZA action on the petition for placement in the petition file.

The following commitments were also imposed:

1. Approved for no more than 15 chickens (hens and no roosters).
2. The chickens to be fenced and contained as shown on the site plan.

A roll call vote was taken and the motion was carried with a unanimous vote.

8. The application of ***Board of Trustees Tri-Lakes Community Church*** for an Amendment to an existing Special Use for a church for an addition of a kitchen (Specifications F - #48) on property located on the West side of CR 23, 1,364 ft. North of CR 2, common address of 50755 CR 23 in Washington Township, zoned R-2, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #50755CR 23-120420-1*.

There were 29 neighboring property owners notified of this request.

Kevin Fuller, 50755 CR 23, Bristol, was present representing Tri-Lakes Community Church. Mr. Fuller indicated they will be saving the old bricks to use on the addition so it will tie in with the existing building. He stated the proposed kitchen area will be 32'x18' with the remaining space as a storage area for tables and chairs. He indicated there will be an open canopy over the sidewalk for inclement weather outside the door. He reported this addition will not affect the parking lot.

Mr. Homan asked the difference between a warming kitchen and a regular kitchen. Mr. Fuller described their intended use as congregational meals once a month. He indicated members will bring their dishes already prepared. Their plan is for a commercial grade stove, however, for church use only. Mr. Campanello asked if the church has been in contact with the Health Department concerning their requirements. Mr. Fuller indicated the Health Department will review the plan when submitted.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan indicated this is a fairly minor addition to the building and does not see where it would affect any adjacent properties.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Campanello*) that the Board adopt the Staff Analysis as the

Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a church for an addition of a kitchen (Specifications F - #48) be approved with the following condition imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

As recommended by the Staff, Mr. Homan said a Commitment is not required because this is an amendment to an older Special Use (approved in 1987). A roll call vote was then taken, and with a unanimous vote, the motion was carried.

9. The application of ***Faus Groom and Room, LLC*** for an Amendment to a Special Use for an existing animal boarding facility to allow for a mobile home to be used for dog training purposes on property located on the West side of CR 11, 187 ft. South of Indiana Toll Road, North of CR 6, being Lot 2 in Windsong Minor Subdivision, common address of 52677 CR 11 in Osolo Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #52677CR 11-120423-1*. Letter submitted from Elkhart City Police Chief, Dale Pflibsen, *[attached to file as Staff Exhibit #2]* verifying the mobile home is not occupied and that no utilities are connected. The mobile home is used for training purposes and he explained the importance of the training vehicles being parked in the shade.

There were 11 neighboring property owners notified of this request.

Brad Faus, 52677 CR 11, Elkhart, owner of Faus Groom and Room, was present on behalf of this request. He submitted a letter from Sheriff Brad Rogers in support of this request *[attached to file as Petitioner Exhibit #1]*. He acknowledged his error in placing a mobile home on his property without the proper authority or assistance. He indicated Monday thru Friday; they board dogs, groom dogs, and conduct obedience training for civilians. Also on the site, they train police dogs. There is a mobile home with six rooms which is needed to certify a police dog in narcotics, explosives, locker searches, and building searches. The Elkhart County SWAT team has used it practicing "room clearing" techniques.

Mr. Faus then submitted a proposal/site plan to fix the problem *[attached to file as Petitioner Exhibit #2]*. He would like to add a new drive and erect a building to replace the mobile home. The mobile home is not ideal but it serves a purpose in what they are doing. They service police agencies from out of the county and the state that come for dog training. Mr. Faus also noted this helps the local economy because they are staying in hotels, buy gasoline, and eating in restaurants while they are here. He mentioned he has personally talked to every one of his surrounding neighbors with no objections. Neighbors have indicated they like having the police presence. Traffic travels slower in that area because of the police cars. The Board is invited to observe the training. Mr. Faus is asking for a 24 month period to get a building, a drive, and adequate parking.

Sheriff Rogers has written a letter in support of the services Faus Groom and Room is providing. A few times a year, the facility is used for staging prior to a SWAT team call-out. Mr. Faus would like to be able to continue what they are doing. The submitted future plan suggests using Barry Pharis as the engineer for the project. He indicated the proposed building will take the place of the mobile home which will be removed. This summer, he plans to paint it and put skirting around the bottom so it is not an eyesore. The dogs have to be placed in the

environment they will be working in. They have permission from some factories to use their facilities but that involves dealing with security guards and alarm systems. The mobile home is an ideal set-up for the dogs while they are in the training process.

Regarding the parking situation, Mr. Faus stated the parking lot has 10 spaces. He stated the only time they are ever full is on holidays when there is a high volume of dog boarding. Most of the time, there are 10-15 dogs in the kennel being boarded and groomed with them coming and going at different times. Police cars are parked in the yard to keep the cars and dogs cool and in the shade. The proposed new building will have an overhang so every parking space up against the building will be in the shade.

From the aerial photo, Mrs. Wolgamood asked about the nine cars parked in back. Mr. Faus stated those vehicles, which have been drained of all fluids, are used for narcotics and explosives training on searching vehicles. Mrs. Wolgamood then asked if the current Special Use includes training of dogs. Mrs. Prough stated it does not. Mrs. Wolgamood indicated this has gone over and above what was originally granted by the Board. Mr. Faus stated he has owned the building for six years and as far as he knows, this facility has always trained dogs.

James Carrico, P.O. Box 1991, Elkhart, owner of 52634 CR 11 since 1989, appeared in favor of this request. He stated the facility has changed ownerships but what he has seen there has not changed much except for the placement of the mobile home. This business, with owners past and present, has always been a good neighbor. He feels they have always done their part in the community to make things good, and he has never had an issue or problem. Mr. Carrico reported Mr. Faus has even called him reporting situations of concern at his property. He feels the police presence is safer and a deterrent for illegal activity. The mobile home has not been a nuisance and is not unsightly in his opinion, and he wholeheartedly supports this petition.

There were no remonstrators present.

Mr. Hesser asked for clarification if the mobile home is unoccupied with no utilities hooked up and used only for training purposes. Mr. Faus indicated that was correct. Addressing the nine vehicles parked in the rear, Mr. Faus stated they are all drivable with a few of them being licensed to the Sheriff's Department. Mr. Hesser suggested he does not think he has a problem with what is going on there. However, the cars are outside storage and need to be part of this request as well. Mr. Homan asked about how often law enforcement agencies use the property for training, and Mr. Faus reported approximately five days a week.

The public hearing was closed at this time.

Mrs. Wolgamood stated she thinks what Mr. Faus is doing is great for the community, and she does not doubt police presence being good for the neighborhood. The fact that no other complaints have been received was mentioned. The mobile home was the issue but the facility has expanded beyond the original Special Use. Mr. Faus has indicated he would like to build a new building. Staff also requested Mr. Faus to address parking. The vehicles on property for training purposes were not shown on site plan and were not included in the original Special Use. Mrs. Wolgamood reiterated that Mr. Faus has asked to use the mobile home for two years with the unknown future economy.

Mr. Hesser points out that the issue today is that the Petitioner is asking to be allowed to continue this for two years. However, he does feel that the vehicles that are being used for training aids should be shown on site plan.

As he drives past frequently, Mr. Miller has observed the only time cars are parked in the side yard is during training. All other patrons are using the driveway and the prescribed parking

area. With the presentation made this morning, Mr. Miller stated he can support this for two years.

There was also discussion about the affect this mobile home would have on the values of adjacent properties. If the mobile home is allowed to stay, Mr. Homan said he would like it to be removed as soon as possible. He would allow more than 30 days, but he is uncomfortable about the possibility of it being there for years. Although the dog training was never part of the Special Use consideration, Mr. Homan acknowledged that training for law enforcement purposes does serve the public well.

Mr. Miller stated it is a matter of semantics but the mobile home is training tool and it is not hooked up to water, sewer, or electricity. However, Mrs. Wolgamood feels it is still a structure that has been placed there without proper permits. Mr. Campanello questioned the possibility of the Sheriff's Department placing the mobile home at their shooting range since it is their property and they use it. Members of the Board discuss if this would be the same dilemma. Mr. Campanello pointed out that the county and its residents are benefiting from this. Mrs. Wolgamood stated she does not have a problem with even two years but asked the attorney if the Board says yes for two years, does the Board have the right to ask for a commitment that at end of the two years, Mr. Faus not come back to Board to ask for a renewal. Mr. Kolbus thinks a person always has a right to ask for an amendment either to the petition or the conditions or commitments related to it. Mr. Miller asked if it can be specified as non-renewable. Mr. Hesser and Mr. Kolbus stated a person can always ask for an amendment. If a number of residents came to object, Mr. Campanello stated he would have a problem with approving this but such was not the case.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to a Special Use for an existing animal boarding facility to allow for a mobile home to be used for dog training purposes be denied with the petitioner given six (6) months to remove the unit (mobile home) from the property. The motion did not carry with the following results of a roll call vote: Miller – no; Wolgamood – yes; Campanello – no; Homan – yes; Hesser – no.

If anything is approved for any term, Mr. Hesser feels there should be a revised site plan that shows the cars used for training purposes. He then asked if that is a significant change that would require a new notice. Due to the fact the petition itself has outdoor training in it, Mr. Kolbus felt there is sufficient notice that there would be activity outside. However, he did say it should be reflected on a revised site plan.

Should they require a revised site plan, Mrs. Prough suggested they also designate the area where they will be parking for the training and where that outdoor training is.

Mrs. Wolgamood then moved that this request for an Amendment to a Special Use for an existing animal boarding facility to allow for a mobile home to be used for dog training purposes be tabled for a period of thirty (30) days to allow Mr. Faus to submit a revised site plan showing the outdoor training, including the vehicles used for the training, the parking for the existing building as well as the parking for the outdoor training, and the proposed building to be constructed in the future.

Mr. Hesser noted that the public hearing would need to be reopened to allow for the submittal of that revised site plan. He also said he would like the staff to have the opportunity to

review that revised site plan, and if recommending approval, to come up with conditions and commitments they feel would be appropriate.

In further discussion, it was determined that the revised site plan would need to be submitted within a week of today's date (by May 24<sup>th</sup>) for the staff to review and for it to be placed in the Boards' packets for the June meeting.

Mrs. Wolgamood then amended her motion to table this request for a period of sixty (60) days. If the revised site plan is completed within the following week, the petitioner was advised that it could be brought back to the Board in June. Mr. Miller seconded the motion as amended, and the motion was carried with Mr. Campanello voting in opposition.

10. The application of **Kevin M. & Erin E. Eberle** for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing three acres or less (Specifications F - #1) on property located on the South side of CR 38, 820 ft. East of CR 3, being Lots 2 and 3 of Searer's Subdivision, common address of 28862 CR 38 in Olive Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #28862CR 38-120423-1*. Mrs. Eberle informed Mrs. Prough the maximum number of chickens that she would need is 20.

There were 15 neighboring property owners notified of this request.

Blake Doriot, P.O. Box 465, New Paris, was present representing Eberles in favor of this request and submitted photos *[attached to file as Petitioner Exhibit #1]*. He indicated the Eberles are involved in 4-H poultry and pointed to the location of the chicken coop on the aerial photo. In explaining the 4-H process, Mr. Doriot stated normally you get the fancy birds around the first of April and they finish out in July at the fair, at which time it is easier to sell roosters off. The Eberles currently have one rooster that has been around for 2-3 years and is considered a pet. Mrs. Eberle said they would like to keep the rooster because she tried to give it away at the last 4-H meeting, and no one wanted a rooster of that age. The Eberles have said if they get any fancy birds or roosters, they would be sold at the end of the fair which is an easier time to get rid of birds that age. They will also raise roosters which they will get next week, and broilers which they will get in two weeks and they will be finished and sold by the fair. The Eberles also plan to keep 3-4 layers. Mr. Doriot stated the chickens did get out but a fence was erected to contain them. The coop is located near the center of their two parcels in a pine grove. Mrs. Wolgamood asked if 3-4 layers would be kept year-round which Mr. Doriot indicated was true. He also indicated year-round at any one given time, 20 would be the most birds kept from April until the end of July. Other than the one rooster they have, they are only asking for roosters for a short period of time. Roosters come as chicks so they should not start crowing until end of June. Mr. Doriot indicated that the "x" on the map is where the coop is. Mrs. Prough stated they could not see the coop from the road. The fence has been improved since the chickens got out. According to Mr. Doriot, the Eberles have indicated they will be more than happy to round up their chickens if they get loose.

Tim Loutzenhiser, 28810 CR 38, Wakarusa, was present in opposition of this request. He indicated on the aerial map that his west property line is adjacent to the Eberles. Mr. Loutzenhiser submitted photos, a copy of the subdivision plat, and a letter from another neighbor, Dennis and Sarah Myers *[attached to file as Remonstrators Exhibit #1]* who expressed that the



chickens have been in their yard, one went in their garage when it was open, and the rooster chased their grandson while he was playing in their yard. Mr. Loutzenhiser said the challenge they have had in their neighborhood is way beyond the escape of chickens one time. He reported this has been a three year problem with several complaints being made on this topic. The truck cap topped chicken coop is visible from his breakfast nook in the back when the leaves are down, and he is uncomfortable with the cosmetic look of it. He stated the neighbors on the other side can see the fencing from their back yard. According to Mr. Loutzenhiser, there is a permanent and perpetual covenant for Searer's Subdivision for this very purpose. The document is very clear that it is binding for all future property owners the way it is listed. However, he is unsure what level of strength the covenant has in this process. When he pulls into his driveway, the chickens, sometimes as many as 15, have to scatter. He reported there is more than one rooster. Periodically, one rooster will sit on his air conditioning unit right outside of his bedroom window and crow in the morning. This has been an on-going issue, and they have called and complained. He explained in the pictures, manure can be seen on the front porch, the back porch, and on the rear deck of his home. Mr. Loutzenhiser indicated he has called Mrs. Eberle but the problem continues. He recounted an incident on a cold day last November. They had just cleaned their porch and were expecting company. The chickens were running around, and there was fresh manure on their porch. His wife called the Eberles to complain. About an hour later, the two young girls came by with a bucket of water and a brush to clean porch. He indicated drivers have stopped to complain to him about "his" chickens being in the road. Using a pointer, Mr. Loutzenhiser showed on the aerial photo where the chickens "hang out" in his yard. He feels 4-H is a good thing but part of it is raising, nurturing, and maintenance of the animals but that is not what they have experienced in their neighborhood. If this petition is approved for up to 20 chickens, he feels it will be more and more difficult to have some sense of comfort in this area. Also mentioned by Mr. Loutzenhiser, is a fire pit where Mr. Eberle burns trash and plastic causing them to keep their windows closed all summer. He indicated none of the neighbors has ever talked to Mr. Eberle.

Mr. Campanello asked about problems with chickens in his yard since the fencing has gone up. He stated since this complaint, maybe only one chicken has been loose. However, he said the rooster is a big problem because of the noise issue. However, Mr. Loutzenhiser suggested delaying this decision until after this year's fair to allow the Eberles time to make other arrangements.

Beth Flickinger, 28803 CR 38, Wakarusa, is also present in opposition to this request. She lives across the street from the Eberles. She stated she was chased by the rooster while she was in the Loutzenhisers' yard. She explained she was checking on the Loutzenhisers' cat. The rooster was on the opposite side of the Loutzenhisers' lot and came toward her aggressively as she rushed back across the street. Mrs. Flickinger stated in the past couple of weeks, the chickens have been contained and if they remain so, she does not have a problem with the request.

Blake Doriot reappeared to address the restrictions in the covenants. He indicated the restrictive covenants would be civilly enforced. Mr. Hesser asked if he believes those covenants to be accurate, however Mr. Doriot indicated he has not seen them and was not aware of them until today. He stated he appreciates the comments and expressed that he would not want the birds on his porch either. He would like to ask the Board at this time to withdraw the rooster portion of this request and would offer that they come back after fair to review this again to see if

the Eberles have kept the birds contained. If there has been a Code Enforcement complaint, they will put this petition at the mercy of the Board. He expressed that he can understand a three year problem and will explain to Eberles that they need to be good neighbors if they want to continue in 4-H poultry. As far as the restrictive covenants are concerned, he suggested the possibility of the Eberles working something out with the neighbors.

The public hearing was closed at this time.

Mr. Homan expressed that the roosters are a problem and agreed with the suggestion of no roosters after this 4-H season. If this request is approved for just hens, Mr. Homan would like to be sure to specify a number. Mrs. Prough noted the Staff Report indicates 20 chickens. Mr. Hesser relayed that he is conflicted as a rooster should be allowed in A-1 zone; however, they are not keeping the chickens contained. If the restrictive covenants are valid, the Board's approval does not supersede them and could still be enforced by the neighbors. Mr. Hesser also feels this petition should be postponed until after the Elkhart County 4-H Fair.

The Board examined said request, and after due consideration and deliberation, Mrs. Wolgamood moved that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, she further moved that this request for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing three acres or less (Specifications F - #1) be approved with the following conditions imposed:

1. Approved for no more than 15 hens and no roosters, with any roosters currently on site to be removed from the property within one (1) week.
2. The Special Use limited to the time period through August 2012.

In further discussion, Mrs. Wolgamood said they can file for another Special Use if they want to come back with another plan. She feels their history has not been good. Mr. Hesser agreed, but he also said he feels there is an issue with respect to restrictive covenants. If everyone is in agreement to postpone any decision until August, he would prefer to do that.

Mr. Homan said he thinks the motion is a conservative approach, but given the past history, he feels it is a reasonable approach so he seconded Mrs. Wolgamood's motion. A roll call vote was taken, but the motion did not carry with the following results: Miller – no; Wolgamood – yes; Campanello – no; Homan – yes; Hesser – no.

Mr. Hesser then moved to table this request until the August 16, 2012, Board of Zoning Appeals meeting. Mr. Homan seconded the motion, and the motion was carried with Mrs. Wolgamood and Mr. Homan voting in opposition.

***(It should be noted that the order of upcoming cases is changed at this time to Fairfield first, Wilhelm second, and Runels will be third.)***

***(It should be noted that the meeting is turned over to Mr. Miller at this time. Mr. Hesser steps down for the next two cases due to a possible conflict.)***

11. The application of ***Fairfield School Building Corp*** for a site plan Amendment to an existing Special Use and a 25 ft. Developmental Variance to allow for an electronic message board sign 275 ft. from a residence (Ordinance requires 300 ft.) on property located on the Northeast corner of US 33 and CR 31, common address of 67530 US 33 in Benton Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #67530US 33-120410-1*.

There were 24 neighboring property owners notified of this request.

Ben Tonagel, Principal of Fairfield Jr./Sr. High School, 67530 US 33, Goshen, and Chad Bailey of Vanadco Sign, 10625 SR 10, Argos, were present on behalf of this request. Mr. Bailey indicated he and Mr. Tonagel have been working on this project for over a year. The school finally has the grants and funds in place to be able to afford to get the message board sign. They looked at putting it on the existing sign out front but thought the new location was better for traffic. Mr. Bailey talked to the neighbors, the Troyers, who live directly across from the school and within 300 feet who indicated they had no problem with sign. The proposed message board has automatic dimming with multiple stages as it gets dark. Mr. Bailey also indicated the neighboring property has trees that will block the sign.

Mr. Miller asked if the message board will be on 24 hours a day and 365 days a year. Mr. Bailey indicated that it will be left up to the school to shut down the sign during night time hours if they so choose.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he does not have a problem with this request and Mr. Campanello agreed. Mr. Miller indicated he thinks it is good placement for the sign. Mrs. Wolgamood feels the sign should be turned off at night. Mr. Homan asked if the sign was two separate parts, with the school name on the top portion and the message/LED portion on the bottom, and if they operate independently. Mr. Bailey indicated yes. Mr. Homan then suggested the LED portion not run all night. Mr. Tonagel does not believe that would be a hardship, and it is reasonable to have a period of time when the LED portion is shut off. Mr. Campanello asked why the Board would stipulate that and suggested it be left to the neighbors to "police" it themselves.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Homan*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a site plan Amendment to an existing Special Use and a 25 ft. Developmental Variance to allow for an electronic message board sign 275 ft. from a residence (Ordinance requires 300 ft.) be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within ninety (90) calendar days from the date of the grant and construction work completed within one (1) year from the date of the issuance of the building permit (where required), unless specific permission for additional time is granted by the Elkhart County Advisory Board of Zoning Appeals.
3. The existing free-standing sign located on US 33 to be removed from the property within thirty (30) days of completion of the new electronic message board sign.

The motion was carried with the following results of a roll call vote: Miller – yes; Wolgamood – no; Campanello – yes; Homan – yes.

12. The application of *Michael & Sue Ellen Wilhelm* for Use Variances to allow for existing accessory structures on property without a residence and not subdivided in accordance with the

Subdivision Control Ordinance on property located on the East side of CR 21, 762 ft. North of CR 44, common address of 67806 CR 21 in Jackson Township, zoned A-1, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #67806CR 21-120423-1*.

There were 4 neighboring property owners notified of this request.

Mike Wilhelm, 67976 CR 21, was present on behalf of this request. He said these buildings were on his family's farm, and he has been using them for the past 25-30 years. Originally, there was a farmhouse on the property, but it was torn down. The adjacent property owner is Mr. Wilhelm's son. Without the farmhouse, there is no electricity to those buildings. He stated he would like electricity to the buildings as it is hard to do anything without it. He mentioned he stores a couple of vehicles there in the winter and would like to be able to put a battery tender on them and basic normal storage things. According to Mr. Wilhelm, when the family farm was sold, he bought the three acres so no one else would buy the land and build a house right next to his son. Mrs. Wolgamood asked if he is requesting 200 amp service to which he indicated yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello indicated this request seems pretty cut and dried.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Campanello*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for Use Variances to allow for existing accessory structures on property without a residence and not subdivided in accordance with the Subdivision Control Ordinance be approved with the following condition imposed:

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

The following commitments were also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application, which stated the parcel will be purchased or inherited by the owner of the adjacent property, common address of 67796 CR 21, New Paris, IN 46553.
2. Approved for personal domestic storage only with no business to be conducted on site.

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

*(It should be noted that Mr. Hesser returns to the Board at this time.)*

13. The application of **Jeff Runels** for a Use Variance to allow for the construction of an accessory structure prior to the construction of a residence on property located on the East end of Shadow Hill, Northeast of Fishers Pond, East of Old Country Lane, East of SR 13, being Lot 18 of The Farm Subdivision Section 3, common address of 54087 Shadow Hill in York Township, zoned A-1, came on to be heard.

One photo of the property was submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #54087SHADOW HILL-120423-1*.

There were 13 neighboring property owners notified of this request.

Marv Schmucker, 1789 E. Bristol Street, Elkhart, was present on behalf of the Petitioner and submitted a site plan and a letter from Petitioner *[attached to file as Petitioner Exhibit #1]*. Mrs. Wolgamood asked and Mr. Schmucker confirmed this site plan has not changed from the copy previously submitted. Mr. Runels had originally bought Lot 18 which is 18 acres. He then purchased an additional ten acres to the north that is wooded. This year, Mr. Runels, purchased two additional lots in front of his land. Mr. Schmucker stated Mr. Runels just wants a nice place to himself back there. The subdivision named "The Farm" went back to the bank and Mr. Schmucker purchased it in 2009. He stated instead of trying to develop these into individual lots, which would not be a wise choice right now, he made four large parcels throughout "The Farm" of the undeveloped land. He indicated those parcels have sold well. They have their own restrictions, and this petition is within those restrictions which are over and above agricultural limitations. Mr. Runels would like to use this barn to play indoor basketball, and he would also like to store two 4-wheelers, a tractor, and a mower there for use on that property. Mr. Schmucker indicated these are the only things Mr. Runels will be doing that are not considered agricultural use as this property is zoned A-1. Using a pointer, Mr. Schmucker shows Dave Fought's property, located to the south, which includes a new horse barn and fenced acreage with a few cows which is the only use that will occur on his land at this point in time. Mr. Schmucker stated Mr. Fought has purchased additional parcels and is also under contract to purchase more. The barn is proposed in the back Southeast corner of Mr. Runels' property. Mr. Schmucker said Mr. Runels has entered into a contract with him to build a home on this property overlooking the pond in the future, but Mr. Runels is unsure of the timing of when he wants to build it. Mr. Miller asked if the horse barn on the neighboring property is built to agricultural standards with a dirt floor and no running water. Mr. Schmucker said it has concrete floor and running water, but it is used for horses. According to him, it is a really nice horse barn as all structures built have to pass the architectural control of "The Farm". When asked by Mr. Campanello, Mr. Schmucker indicated Mr. Fought lives on the adjacent property. Mrs. Wolgamood questioned where the Petitioner resides. Mr. Schmucker believes Mr. Runels resides in Cromwell and also owns a home in Mishawaka. She then asked about the frequency of Mr. Runels visits to this property which Mr. Schmucker was unsure of.

Heidi Ott, 11695 Pied Piper Parkway, Cromwell, Jeff Runels' girlfriend, was present in favor of this request. She gave further explanation saying they do currently live in Cromwell. That is their primary address, but he does own another home in Granger which is currently rented. They consider the property in this petition to be their "eventual home". She stated their goal is to build a home there in next two years. Mr. Hesser asked Ms. Ott how big a house they are planning on building. She indicated it will be a minimum of 4,500 sq ft. In reviewing the site plan, Mr. Miller indicated the proposed building has a kitchen, bathroom, and the loft room could be construed to be a bedroom. In the future, Mr. Runels would like to utilize the loft as his poker room according to Mr. Schmucker. He indicated this barn would be finished in phases. The upstairs would not be finished at this point in time but rather at a later date.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller says the Board has always struggled with granting accessory structures prior to construction of a residence because they always try to think forward about what would happen if this plan does not come to fruition. Mr. Hesser agreed. He commented about the size of the building being large, but they plan to build a large house there too. He expressed the possibility of potential future problems if the house were going to be smaller with such a large accessory structure. He stated this is a huge lot, and he does not think the building would be out of place but feels it is going backwards in procedure. Mr. Hesser noted sometimes exceptions are made with accessory buildings on lake property or something nearby but the Board almost never makes exceptions in cases similar to this one. Mr. Campanello indicated this situation would be different if there was a building permit for the house and although he does not agree with the Ordinance, the Board has to follow it.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Campanello*) that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of an accessory structure prior to the construction of a residence be denied. The motion was carried with a unanimous roll call vote.

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

15. The staff item for Sugar Grove Church was presented by Mrs. Prough at this time. She indicated the Board members' packets include a letter from Mr. Enos Yoder regarding the placement of temporary banner signs on one of the ball diamonds for the church which was not submitted on the original site plan. They are requesting to put these signs up temporarily during baseball season from March 1 to October 31. Mrs. Prough referred to a copy of a site plan that was approved by the Board in May or June of 2011 [*attached to file as Staff Exhibit #1*]. She said they want to put 3'x5' banner-type signs on the fence in area of a ball diamond. Their letter indicates they will be facing the ball diamond so it could be possible that they will be visible from CR 17 traffic. Mrs. Prough told Sugar Grove Church she would present this to the Board to determine if it is considered a major or minor change as Sugar Grove did not address signage when they obtained the permit. Mr. Hesser indicated that he does not know that what they are proposing makes a huge difference to the use of the property. His concern would be that in the initial and the expansions of this site, there have been significant remonstrators with some concerns. In light of the past concerns, Mr. Hesser would hesitate to do this without a public hearing giving them a chance to express any objections they might have. The other Board members expressed their agreement. Mr. Kolbus stated he believes it would be a major change to the site plan and requires a public hearing.

A motion was made by Mr. Hesser that the Advisory Board of Zoning Appeals finds that this request would be a major change to the site plan and requires a public hearing before the Board of Zoning Appeals. Mrs. Wolgamood seconded the motion, which carried with a unanimous roll call vote.

16. The staff item for Culver Duck was also presented by Mrs. Prough at this time. She indicated it is in the Board members' packets. Culver Duck previously requested and was granted a Special Use permit to add their digester to the property. As part of the Board's approval, they were asked to incorporate that area into a Conditional Use permit to tie in with the

rest of the property. Mrs. Prough stated Culver Duck has done that, and it was approved by the Plan Commission in May of 2012. Now they would like to revoke the Special Use and operate under the Conditional Use permit. Also, Mrs. Prough indicated if the Board revokes the Special Use, Culver Duck will record a new commitment saying they are terminating the original commitment on the property. She indicated Board action is needed to do this.

Mr. Hesser asked if Culver Duck is changing what they do or if this is basically just a housekeeping issue. Mr. Kolbus indicated it would be housekeeping as it was originally under a Special Use with a commitment and now it will be under a Conditional Use. However, that does not change what Culver Duck is going to do. Mrs. Prough indicated there was a slight shift of the units to the North a bit, not real significant. The Plan Commission has approved the changes, and it will go to the County Commissioners. Culver Duck wants to get started on the Building Permit project. Mrs. Wolgamood questions paragraph #2 of the letter when they also request the Planning staff release any needed building permits related to the Conditional Industry Use immediately; and if not approved by the Commissioners, they would take any action necessary. She stated she does not think the Board of Zoning Appeals has anything to do with saying the Planning staff can release permits. Mrs. Prough said she has already made the decision to start the process so it is a mute point. She indicated the Board is just taking action to revoke the Special Use.

A motion was made by Mr. Campanello that the Advisory Board of Zoning Appeals accept the revocation of Special Use Permit #12215CR 10-111031-1. The motion was seconded by Mr. Miller and was carried with a unanimous roll call vote.

17. Another staff item was brought to the attention of the Board by Mrs. Prough. Not included in their packets but received by the Board today was a letter and photos from Susan Johnson who resides on Winding Waters Lane expressing her concern with the building that was constructed on the Shawn Nolke property. Ms. Johnson just wanted her comments heard and photos seen. Mrs. Prough submitted letter and photos for record at this time *[attached to file as Staff Exhibit #1]*. She stated Ms. Johnson has contacted her, and Mrs. Prough expressed that she cannot do anything as the Board took action on the request and there was nothing in the Petitioner's application that talked about the architectural style of the building. Mrs. Prough stated she went as far as to listen to the minutes, and there is no mention as it just was not brought up. She stated the building height was not an issue for the Board with the only issue being the size. Mr. Nolke is meeting the height and setback requirements as verified by the Building Department. The height requirement of 25 feet was discussed, and Mr. Nolke is within that. Mr. Homan stated the issue was a Developmental Variance for the size. Mrs. Prough said they calculated and Mr. Nolke could have gone with a 30 ft x 40 ft building and would not have even had to come before the Board. But Mr. Nolke wanted to go with the 40 ft x40 ft because of his cars and getting them in the building. She indicated to Ms. Johnson that she would forward the information to the Board. For the benefit of discussion, Mr. Homan stated he was at the location last night. The photos are taken from the neighbor's back yard, and the building cannot be seen that well from the street. Although he indicated it was not discussed in great detail previously regarding what is a proper drive or is a proper drive even needed for this building, Mr. Homan reported he did see a well worn rut driveway back to the building. He feels it looks worse than the building does. He reiterated Mr. Kolbus had a good point that once this has been approved, it is hard to go back and say that they need a driveway. Mr. Homan feels it affects the curb appeal of the house and

the neighbors on either side. He stated he does not know if the County or the Board does anything about it. But as far as visual impact, the representation here leads them to believe the building is right on the curb, and it really is not. Mr. Hesser inquired if there was site plan which there was. Mr. Homan indicated when he drove out there, the building looked as he expected, but the driveway makes it look worse than it is. When asked by Mr. Hesser if the Board needed to take any action on this item, Mrs. Prough indicated she told Ms. Johnson said she would pass the information along.

18. The next staff item was brought to the attention of the Board by Mrs. Prough having to do with the approval of the extension for the temporary driveway for a gravel pit for Scott & Karrie Clark. She received a call from the neighbor on the corner, Dennis Pynaert, who was originally in opposition. He was very upset and felt that it should not have been done as a minor change. He indicated there should have been a public hearing, and they should have been notified. Mrs. Prough stated Mr. Pynaert wanted her to express that to the Board, and she indicated she would.

19. The staff item for Dana Bontrager was presented to the Board by Mrs. Prough. A packet was received 05/16/12 from Loren Sloat *[attached to file as Staff Exhibit #1]* and is in on the table in front of the Board members today. The Board previously granted a Special Use permit for Dana Bontrager back in October 2011. He was doing warehousing and storing for his excavation business and his semi transport business. Mrs. Prough indicated it is located on the West side of CR 33 and South of CR 20 in Middlebury Township. Included in the packet is a copy of what the Board approved. Mr. Bontrager is going to be constructing a 100 ft x100 ft building which he submitted would be located 60 ft from the North property line with a driveway to circulate to the North and come around to the South. Now he wants to move the building out to 20 ft from the North property line instead with the driveway along the South. Mr. Bontrager requested a building permit for that. She informed Mr. Sloat that could not be done without presenting it to the Board or amending the permit. Mrs. Prough reiterated the changes would be 20 ft from the North property line and the driveway will now be all on the South side. Copies of the site plan originally approved *[attached to file as Staff Exhibit #2]* were passed out to each member. Mr. Hesser verified that a semi can still turn around in the driveway. Also in the packet from Mr. Sloat is the new design. When asked about the need to move the building and driveway, he said it will make more efficient use of the business. Additionally, he may be required to put a mound system in for his septic which would be located on the South side of the building and will limit his storage and driveway area. Mr. Sloat has also included a letter from neighbor to the north, Marlin Miller, who was present at the meeting and did speak in support of the request at the 60 ft. setback. Mrs. Prough informed Mr. Sloat if he wants to do this as a minor or major, she suggested he get support of these changes from Mr. Miller which he has. Mrs. Wolgamood mentions that Mr. Campanello made a statement to her during these proceedings that if it were him and he lived to the North, he would prefer the new site plan which shows everything on the South side. Mrs. Prough agreed that this change would be less impact because trucks will not be going on the North side.

A motion was made and seconded (*Hesser/Campanello*) that the Board approve this request as a minor change to the site plan.

Prior to the roll call vote, there was further discussion on whether there is ample room for trucks to enter the property and turn around. Mr. Homan felt the actual dimensions of the gravel



area (turnaround and parking) should be shown on the revised site plan and Mr. Kolbus pointed out that the revised site plan is showing an on-site turnaround.

The motion was then amended by Mr. Hesser to approve this request as a minor change in accordance with the revised site plan (Staff Exhibit #2 dated 5/17/12) that shows an onsite turnaround. Mr. Miller seconded the amended motion, which then carried with a unanimous roll call vote.

20. The staff item for Lyndon and Danielle Yoder was presented by Mark Kanney. A letter was received from them *[attached to file as Staff Exhibit #1]* requesting the previous Use Variance be revoked. In 2006, the previous property owner, Tori Fehr, was permitted a Use Variance to build a child day care center. The day care was closed and the bank repossessed that property. Mr. Kanney indicated the Yoders are going to make this their home. Mr. Hesser asked if the Board could revoke this without a public hearing, and Mr. Kolbus indicated yes. Mrs. Wolgamood clarified that the Yoders requested a revocation of a Special Use but it was, in fact, a Use Variance.

A motion was made by Mr. Hesser and seconded by Mr. Miller that Use Variance #20061429 for a child care center at 109 Sunset Ct., Wakarusa, be rescinded by the Advisory Board of Zoning Appeals pursuant to the landowner's request.

Prior to voting, Mr. Homan noted there are four lots and Mr. Kanney explained that they are collectively known as 109 Sunset Court, Wakarusa, the petitioned area. He said you would take any one or all of them out of the Use Variance.

The motion was then carried with a unanimous roll call vote.

21. The meeting was adjourned at 11:36 A.M.

Respectfully submitted.

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Deborah Britton, Recording Secretary

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Randy Hesser, Chairman

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Robert Homan, Secretary