

MINUTES

ELKHART COUNTY BOARD OF ZONING APPEALS MEETING

HELD ON THE 18TH DAY OF OCTOBER 2012 AT 8:30 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: Tony Campanello, Meg Wolgamood, and Doug Miller. Board members absent: Bill Kuhns. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Zoning Administrator; Mark Kanney, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Wolgamood/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of September 2012 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Wolgamood/Campanello*) that the legal advertisements, having been published on the 6th day of October 2012 in the Goshen News and on the 8th day of October 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 (*Campanello/Wolgamood*) that the Board accepts the Zoning Ordinance and Staff Report materials as evidence into the record and the motion was carried with a unanimous roll call vote.

5. There were no postponements of business items.

Mrs. Wolgamood informed the Board that she must leave today at 11:30 a.m. due to a family issue. She also stated she would like to do the Staff Item for Osolo School before she leaves if time allows.

6. The application of *Jeffrey Alan Ax* for a renewal of a Special Use for warehousing and storing of a semi-trailer and tractor in an A-1 district (Specifications F - #44) on property located on the West side of East County Line Road, 1,450 ft. North of CR 38, common address of 64711 E. County Line Road in Clinton Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #64711ECountyLineRd-120919-1*.

There were four neighboring property owners notified of this request.

Jeffrey Ax, 64711 E. County Line Road, Millersburg, was present on behalf of this petition. He stated they are currently putting a modular home on the site which is set, and the exterior work is completed. He indicated the proposed plan for moving in is Monday, Tuesday, or Wednesday of

next week depending on final inspections and Certificate of Occupancy. Brian Mabry submitted a letter of support *[attached to file as Staff Exhibit #1]*.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood indicated she felt the request was pretty straight forward as there have been no complaints filed.

The Board examined said request, and after due consideration and deliberation:

Motion: Moved by Randy Hesser, **Seconded by** Doug Miller 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 renewal of a Special Use for warehousing and storing of a semi-trailer and tractor in an A-1 district (Specifications F - #44) 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 commitment was then imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application, with the Special Use to automatically become permanent when the mobile home has been removed from the property.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

Action: Approve

**** It should be noted that Mr. Hesser steps down at this time.****

7. The application of **Jeffrey G. & Lois A. Hoover** for a Special Use for a public utility (solar panels for electrical production) (Specifications F - #31.50) on property located on the North side of CR 8, 3,700 ft. East of CR 27, common address of 16295 CR 8 in Washington Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #16295CR 8-120919-1*.

There were five neighboring property owners notified of this request.

Austin Williams of Home Energy, 1013 Elroy Drive, Middlebury, was present representing the petitioners. He stated that since the application was filed, the owners are hoping to be able to relocate the panels approximately 50 feet closer to the creek which would still be within the five foot limit on both sides, 75 ft. front setback, and the 10 ft. rear setback by a substantial amount. Based on the size of the property and the movement of 50 feet back, he does not feel it would make a significant difference.

Mrs. Wolgamood asked Mr. Williams if he was talking about 50 ft. closer to the creek to the west. He indicated on the aerial photo, it would be moving to the north. She asked if the drainage ditch shown is a legal drain. Mr. Kanney indicated the setback from a legal ditch is 75 ft. from the top of the bank. Mr. Williams said they can definitely be 75 ft. from the creek if that is the requirement. He further stated this is the best site for the solar array, and the home owner

would really like the view of the meadow. Mr. Williams indicated if the Board approves the request as it is, he will tell the homeowner that is the only option for this, and they can also go back to the drawing board. He reiterated the solar array will be significantly far enough from the property lines, and they can definitely be 75 ft. from the creek if that is a condition. He said as far as the spirit of the special use just to have production if that is possible, they will find a site that meets the requirements. Mrs. Wolgamood asked the number of panels to which Mr. Williams stated 32 panels. He further stated each panel is roughly 30x60 inches, and the array will be placed four high laying portrait. Mr. Miller asked if the footprint of total array is approximately 14x40 which Mr. Williams indicated was correct. He stated it will be tilted at approximately a 35 degree angle so a view from directly above would actually show the footprint smaller because of the angle, but the face is that square footage.

There were no remonstrators present.

The public hearing was closed at this time.

If approved, Mrs. Wolgamood suggested in the approval it is reiterated the required 75 ft. setback from the top of bank if that is a legal drainage ditch.

The Board examined said request, and after due consideration and deliberation:

Motion: Moved by Doug Miller, **Seconded by** Tony 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 Special Use for a public utility (solar panels for electrical production) (Specifications F - #31.50) 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 imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The vegetative screening on the perimeter of the area proposed to contain the solar panels and in existence at the time of Special Use approval must remain in place.
3. The solar panels must be removed from the property when no longer providing a source of electricity.
4. If the ditch is a county drainage ditch, the 75 ft. setback from the top edge of the ditch to be maintained.

Vote: Motion passed (**summary:** Yes = 3, No = 0, Abstain = 1).

Yes: Doug Miller, Meg Wolgamood, Tony Campanello.

Abstain: Randy Hesser.

Action: Approve

It should be noted that Randy Hesser returns at this time.

8. The application of *Edd A. & Pamela Banks* for a Special Use for warehousing and storing of three trash trucks, one semi tractor and one semi trailer in an A-1 district (Specifications F - #44) on property located on the South side of CR 26 and Northwest side of

US 20 Bypass, 1,900 ft. East of CR 1, common address of 29650 CR 26 in Baugo Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #29650CR 26-120924-1*.

There were 12 neighboring property owners notified of this request.

Pamela Banks, 29650 CR 26, Elkhart, was present on behalf of this request. She stated they would like to park their empty trash vehicles on the property. She further stated they also use the semi-tractor and trailer for some agricultural purposes such as hauling hay. She indicated the proposal also states that occasionally the semi-tractor and trailer may be parked on the driveway because if her husband drives in after dark, it is safer to park on the driveway. Mr. Hesser asked where the semi is usually parked which she indicated on the aerial photo. She said it is close to the property line to the side of the house. She submitted a list of signatures from the majority of the neighbors who are in support of the request *[attached to file as Petitioner Exhibit #1]*. She further stated they are in the process of putting some rock in part of the drive to help keep the trucks from sinking down. She said it makes it easier for the trucks when entering and exiting.

Mrs. Wolgamood inquired about employees. Mrs. Banks stated it is only family members. She further stated she or her husband drive the trash trucks with only one truck being run at a time. She stated her son helps her with the trash. Mr. Miller asked how long they have been operating at this location. Mrs. Banks stated they have had the trash route longer, but trucks have just been on this property since June 2012. Prior to June of this year, she indicated the trucks were stored at a previously owned auto salvage business which they have since sold. Based on the economy, she said it was not feasible for them to maintain that property to warehouse the trash trucks. For nearly the last four years, the semi truck has been parked on the driveway or across their front yard at times. She said they figured the neighbors would not mind as long as it did not block the traffic view.

When asked, she reported her husband is an owner/operator of the semi, and he is allowed to haul almost anything you can put on a flatbed trailer. She stated he is not certified to haul hazardous materials and never will be as he does not wish to have that responsibility. Besides the high liability insurance, she said they would also never want any hazardous materials on their property or near their farm animals.

Mr. Hesser asked if all three of the trash trucks are licensed to which Mrs. Banks stated they are at this time. When asked by Mrs. Wolgamood if they have put in a new driveway, Mrs. Banks stated they use the existing driveway that they have always used which she indicated is right along the tree line near the west property line. She indicated they have a hay field around their house. She added that due to the dry hot summer, they put electric fence around the majority of it for the cattle they share with her in-laws on the west adjacent property. In looking at the aerial photo, Mr. Hesser had Mrs. Banks confirm the driveway for the house, and she indicated they use a separate driveway for the trucks. Mr. Hesser asked if the vehicles are parked in the cow pasture. Mrs. Banks indicated they are part of the time. When asked by Mrs. Wolgamood how the truck is pulled onto property, Mrs. Banks indicated when the semi is parked on the driveway, he pulls in and backs out. She further added if he needs to, he backs up partially then pulls through their yard. She stated her husband feels if he is going to tear up any one's yard, it will be his own yard. She also said sometimes her husband pulls into their far yard

and circles around toward the house to get the truck pointed toward the road so that he just pulls forward to exit their property.

Robin McLaughlin, 29511 CR 26, Elkhart, was present in opposition to this request. She stated for the record she was not the anonymous caller, but she does object to this petition. She feels one issue is the safety of these trucks moving in and out of the property. She said there is additional traffic as people drive there to use the trucks. She also indicated one of the trucks they use to haul trash is actually a horse trailer. As they are older trash trucks, she feels they do not look very nice. When you choose to move to the country, she said you expect to get away from town, business, and commerce. She believes prospective buyers of the homes in the neighborhood would also expect to not have a trash business running in their neighborhood. She added that these trucks are visible from the by-pass, and she does not think it is the impression we want to give visitors as they are entering Elkhart County. When asked by Mr. Hesser to do so, she indicated her property on the aerial photo.

Mrs. Banks stated they planted trees along the back of the property, and they attempt to keep the trucks on the west side of property. She acknowledged they are older trucks but stated they do try to keep them clean and maintained. When she was not able to drive a truck, she said they used the horse trailer for a short time. She added that the trash was removed from the horse trailer and placed in the trash trucks and not left in the horse trailer.

The public hearing was closed at this time.

Mr. Hesser indicated this request is a lot. Mrs. Wolgamood said she is in complete agreement with the staff recommendation. Mr. Miller pointed out there are two driveways and several trucks parked on a piece of property, and this is one time he would support the staff's recommendation also. Mr. Hesser did state that he feels the recommended finding #2 possibly goes a bit too far, and he is not sure he agrees with it completely but does agree with the rest.

The Board examined said request, and after due consideration and deliberation:

Motion: Moved by Randy Hesser, **Seconded by** Doug Miller that this request for a Special Use for warehousing and storing of three trash trucks, one semi tractor and one semi trailer in an A-1 district (Specifications F - #44) be denied based on the following Findings and Conclusions of the Board:

1. The Special Use will not be consistent with the spirit, purpose and intent of the Zoning Ordinance. The purpose of an A-1 zone is to provide an environment for agriculture/residential land use. Using the property as outdoor warehousing and storing for a trash hauling business is inconsistent with the purpose of the A-1 zoning district.
2. The Special Use will not substantially serve the public convenience and welfare. Elkhart County has adequate land zoned or built to accommodate this type of business.

The motion was then **Amended** by Randy Hesser and **Seconded** by Doug Miller to impose the following condition:

1. The existing trucks are to be removed from the property within 60 days.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

Action: Deny

9. The application of **Douglas G. & Kristi J. Penner** for a Special Use for a home workshop/business for automotive and truck mechanical repair (Specifications F - #45) on property located on the North side of CR 38, 1,575 ft. East of CR 33, common address of 14695 CR 38 in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #14695CR 38-120921-1*.

There were seven neighboring property owners notified of this request. Doug Penner, 14695 CR 38, Goshen, was present on behalf of this request. When looking for property to purchase, he indicated this site caught his eye because of the shop. He stated he has been doing business for quite a number of years. However, at the previous location, he had numerous staff, and he felt he was getting more into people management which he wanted to change. At this present location, he said his intention is to do automotive and some truck repair. He does feel it is a bit limited for trucks because of the access. He would like to be able to work with his family, at home, and provide them a place to work together and keep them at home.

He reported he thinks has talked with all of the neighbors and feels he has their support. As this is his home, he feels it is in his best interest to keep it as neat and orderly as he possibly can. He said he feels this is probably a concern of the neighbors. He stated the neighbors indicated they feel a need for this service in the local area. As shown in some of the photos, he noted the east and north sides have arborvitaes planted which will continue to grow taller as a barrier.

When Mrs. Wolgamood asked if he is currently operating the business, he indicated he has not. He stated he has been doing his own work and did some for a friend. Additionally, she asked how many vehicles Mr. Penner anticipates being parked there when he begins operation. In response, he said on the north side of the shop there is a cement slab which could hold at least six parked vehicles, but he does not know that he ever plans to have that many. He identified this area of the parking location for the shop. Mrs. Wolgamood asked the length of time a vehicle would stay to which Mr. Penner responded he would say one week at the most with it being inside the majority of the time.

He confirmed that this business would be mechanical repair only. She asked if the large trucks Mr. Penner is speaking of are semi trucks to which he responded yes. Mr. Campanello commented that Mr. Penner will probably get business from nearby farmers. Mr. Penner did indicate some interest from some neighbors. He added that a friend parked a semi truck and tank trailer there recently to see how it would work. Mr. Penner stated he pulled in and backed onto the concrete slab. He further indicated he would not park any vehicles there larger than this size. There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she reviewed the minutes of the previous approval for Myron Yoder, and he had outside storage. She thinks the concrete pad shown on the site plan is where he was required to keep all of his outside storage, which is what Mr. Miller is suggesting. She said she cannot imagine that anyone who would purchase the property would do anything to harm the property value. Lastly, she said there is no one present in opposition to this request, and she does not think that six vehicles parked outside is a major issue.

Mr. Miller said the request does not seem very intense.

A neighboring property owner in support of this request asked to address the Board at this time.

Motion: Moved by Meg Wolgamood, Seconded by Tony Campanello to reopen the public hearing.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

Isabel Rodriguez, 2108 Bashor Road, was present representing her father who owns the property on the south side of the road where he has a barn and a few farm animals. Ms. Rodriguez said her father feels this home workshop/business would benefit them as they use trucks in working with their farm animals, and this is located right across the street.

Public hearing was then closed.

Based on the petitioner's presentation, Mrs. Wolgamood stated she has no opposition to this request. Mr. Campanello and Mr. Hesser indicated they feel this was a low-key operation. If there were cars parked outside, Mr. Miller said the line of sight would be minimal as the storage is on the north side of the road.

The Board examined said request, and after due consideration and deliberation:

Motion: Moved by Meg Wolgamood, Seconded by Doug Miller that that this request for a Special Use for a home workshop/business for automotive and truck mechanical repair (Specifications F - #45) be approved based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance as the petitioner testified it is a very low use of the property.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of the neighbor's property provided there be no more than six vehicles parked at any one time, and that those vehicles be parked as presented by the petitioner on the north side of the building.
3. The Special Use will substantially serve the public convenience and welfare as indicated by Ms. Rodriguez.

After further discussion, the motion was **Amended** by Meg Wolgamood and **Seconded** by Doug Miller to impose the following commitments:

1. Approved for a period of four years with renewal before the Elkhart County Advisory Board of Zoning Appeals.
2. Approved in accordance with the site plan submitted and as represented in the petitioner's application (this includes no employees and days and hours of operation).
3. Approved for automotive and truck mechanical repair only with no body work or painting of vehicles.
4. Limited outside storage at any one time of six vehicles on the existing concrete slab on the north side of the shop building.
5. No backing out.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

Action: Approve

10. The application of *John & Tammy Moore* for a Special Use renewal for existing warehousing and storing of trucks, trailers, and machinery for a snow plowing, property maintenance and light excavating service business in an A-1 district (Specifications F - #44) and a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the East side of Ash Road, 530 ft. North of CR 28, common address of 60904 Ash Road in Baugo Township, came on to be heard.

Mr. Mabry submitted a letter of remonstrance [attached to file as Staff Exhibit #1]. Mr. Kolbus stated copies had been given to the Board previously and confirmed that a copy was given to the petitioner.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #60904AshRd-120921-1*. He indicated all conditions of the original Special Use approval from 2011 are to be recorded as commitment on the property with condition #10 modified as follows: if a valid complaint is received by code enforcement, the Special Use will be returned to the Board of Zoning Appeals for further review with potential for revocation of the Special Use permit.

There were six neighboring property owners notified of this request.

John Moore, 60904 Ash Road, was present on behalf of this request. In response to the letter submitted by Mr. Mabry, he said he did pretty much everything that Mrs. Prough had asked him to do previously. Mrs. Wolgamood said the letter indicates that Mr. Moore has complied with everything and this past year has been the quietest year so far.

Mark Dawson, 56679 SR 15, Bristol, was present in favor of this request. He stated he is employed by Mr. Moore doing bookkeeping services. He said he believes since this happened on September 15, 2012, he has been there eight or nine times mid-morning or late afternoon. He further said in those times only twice there was even an employee there. He indicated Mr. Moore had his son in there cleaning the building. The last time he was there, he said it was raining and his employee was in the shop cleaning his Bobcat. Although he is not there every day, Mr. Dawson said it has been very quiet the times he has been there.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser observed that the Staff Report does not say anything about times, and he wondered if they should interpret that as being unlimited. Mrs. Wolgamood stated she specifically noted that on her staff report to discuss, and she is not in favor of an unlimited period of time. She said she would not have an issue with four or five years then coming back before the Board. If there are valid complaints, she said the staff has the right to bring it back before the Board prior to the end of the time period. She indicated it is her feeling that Mr. Moore has done everything he said he was going to do, and she did not take the letter that was submitted as one in remonstrance.

The Board examined said request, and after due consideration and deliberation:

Motion: Moved by Meg Wolgamood, **Seconded by** Doug Miller 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 renewal for existing warehousing and storing of trucks, trailers, and machinery for a snow plowing, property maintenance and light excavating service business in an A-1 district (Specifications F - #44), and a Developmental Variance to allow for the total

square footage of accessory structures to exceed the total square footage in the primary structure, 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 then imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. All conditions of the original Special Use permit granted on September 15, 2011, to be recorded as commitments, as modified by the Board, specifically:
 - a. Days and hours of operation Monday through Friday from 7:00 a.m. to 5:00 p.m. and Saturday from 7:00 a.m. to 12:00 p.m. The property owner is exempt from these hours due to snow-plowing and non-production work.
 - b. Number of outside employees will be limited to two.
 - c. No burning of off-site debris.
 - d. No hauling in debris from job sites with the exception of firewood to be used by the Petitioner for personal use.
 - e. No loading of trucks before 7:00 a.m.
 - f. Stockpiles limited to two piles, not to exceed two tri-axle loads into approximately 15 ft. x 15 ft. areas, and not to be more than three ft. above the existing six and one half foot privacy fence.
 - g. No parking of vehicles along the north driveway property lines.
 - h. Six and one half foot privacy fence to be maintained in good repair (obscured wood fence).
 - i. Approved for the owner/occupant of the residence on site.
 - j. Approved for a period of five years with renewal before the Elkhart County Advisory Board of Zoning Appeals. If a valid complaint is received by Code Enforcement, the Special Use will be returned to the Board of Zoning Appeals for further review with potential for revocation of the Special Use Permit.
 - k. All repair on equipment to be done inside the building unless unable to repair inside due to height and weight restrictions of the building; outdoor repair to only occur on the east side of the building.
 - l. Approved in accordance with the revised site plan submitted dated August 26, 2011.
 - m. Thirteen pieces of equipment to include dump trucks, bailers, bobcats, back-up snow-plows, backhoe and excavator as represented by the Petitioner.
 - n. No signs.
 - o. No scrap metal or scrap vehicles related to the business on site.
 - p. All vehicles must be operational and plated.
 - q. No sale of firewood.
 - r. No grinding of debris on site.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello

Action: Approve

11. The application of *New Hope Pet Rescue, Inc.* for a Developmental Variance to allow for a kennel on a tract of land containing less than three acres, for a 30 ft. Developmental Variance to allow for said kennel 20 ft. from the East front property line (Ordinance requires 50 ft.); and for a 40 ft. Developmental Variance to allow for said kennel 10 ft. from the West rear property line (Ordinance requires 50 ft.) on property located on the West side of CR 29, 500 ft. North of CR 56, common address of 72555 CR 29 in Benton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #72555CR 29-120820-1*.

There were five neighboring property owners notified of this request.

Angie Wright, 72555 CR 29, Syracuse, was present as co-founder representing New Hope Pet Rescue. She indicated New Hope Pet Rescue became a non-profit organization in 2004, and they are here to stay. She said they bought this property through foreclosure which is why they did not come to the Board before the purchase. They would like to use many of the existing buildings on the property for an adoption center and for a sanctuary. She stressed that New Hope is not really a kennel, but Zoning did not know how to categorize them as a pet rescue. She said they will not have dog runs outside, with dogs running inside and out, and barking. Most of the animals on the property will be cats. She stated any dogs they have are kept in foster homes so they are more likely to learn house manners and get adopted. She added dogs may be kept there in an emergency situation when they do not have placement for a dog immediately.

She said the house would be used for a caretaker so there is always someone on the property to care for the animals and the property. She added that they have a volunteer list of willing people to help provide care if needed. She said they would like to use the existing garage possibly for adoption days or storage, the small barn and two sheds for storage on the property, but everything else will be cleaned up. For the area they consider the dog park, she said the property will be cleaned up so it is pleasing to the eye.

As far as traffic going in and out, there are not any trees blocking view from either direction so it should not cause in problems with traffic. She stated the property is sheltered from the north and south by trees to buffer noise. She added that most of the back property line is sheltered by trees, and they are willing to put up more trees if needed to surround the property.

She said the property is un-tillable farmland that sat empty for a year before they purchased it. They would be housing and re-homing domestic animals in a farm area. She said there will never be any breeding as their goal is to provide a place for neglected or abused animals or animals that are in need of help. She said they will be another option for Kosciusko and Elkhart counties for a place to take their animals rather than the shelter.

She further said New Hope does not euthanize and will care for an animal as long as it needs their help. As they have had many requests in Syracuse and the surrounding area for a dog park, she said it would be a good addition to community of Syracuse, and they have a good reputation as a pet rescue in town. She said they would like to have a larger dog park, but they are willing to work with the Board and staff. When Mr. Campanello asked about the memorial

garden, Ms. Wright said it will be a garden area where someone can plant a tree in honor or memory of a something or someone. Mr. Campanello clarified that no pets will be buried there.

Debbie Sweazy, 8864 East Blackpoint Road, Syracuse, Board member for New Hope was also present in favor of this request.

Mr. Campanello commented about the 20 foot setback off of CR 29, saying he can see why they are asking for the extra space for the dogs to have more area to run. Ms. Sweazy added that the dogs are not going to be kept there and will not be running around in there all the time. It is a place for owners to bring their dogs for some exercise.

Ms. Wright said some dog parks separate areas for small dogs and large dogs. She is not anticipating a number as large as 20 at a time with their owners as they are going to come and go depending on their work hours. It will not be a year-round thing as most people are not out running their dogs in deep snow.

In looking at the application where the request indicates a 50'x50' building to house cats and a small number of dogs, Mr. Miller inquired about the actual number of each. Ms. Wright indicated honestly they do not want 100 cats, but they could easily get that many. She said they want to have a 10'x10' area for cats so there would only be six or seven cats together at one time. As cats get sick easily and illness could spread quickly if they are all confined in one area, they would have separate 10'x10' areas. They will follow veterinary association recommendations for the number of cats in each area. When Mr. Miller asked about the traffic of a normal day, Ms. Wright suggested a possible schedule of a volunteer arriving in the morning and one in the evening to care and clean if there are too many animals for the caretaker to keep up alone. She anticipates maybe 10 vehicles a day for the dog park. She pointed out that not all would be coming and going at the same time. As far as people coming to look at the animals, she would say just a few times a week.

She indicated there is so much room for cats because once a cat is approximately six months old, they are very hard to place as everyone wants a cute little kitten. She did say the trend is toward adopting animals now and getting adults, so they are doing better with more adult adoptions. She said as they are figuring seven cats to a run with room for 10 runs, they could easily have 70 cats. She reported they get calls daily to take in cats. She added that they have to stay within their budget so they are only going to care for what they can which depends on public donations.

In response to Mrs. Wolgamood's question about the waste from 70 cats, Ms. Wright said they would bag it for trash service. She stated a trash truck would be the only large vehicle entering and exiting the property.

When Mr. Miller asked about the hours for the dog park, Ms. Wright indicated daylight hours so suggested closed by 6 pm in the winter and 9 pm in the summer. She said all dogs will have proof of vaccinations, and the owner signs a waiver accepting responsible for their pet if it would harm another animal. The dog will also have a tag to show approval for the dog park and the owner would have a swipe card.

Mrs. Wolgamood inquired about animal adoption days. Ms. Wright said adoption days would be held once a month at the most. She said people would come in to look at the animals, and people who foster dogs in their homes could bring foster dogs in for the day also. She indicated the garage could be used for adoption days. She added that the 50'x50' building would

house the cat runs, an office area, a restroom, and a washer and dryer. Mrs. Wolgamood clarified that for the most part, the dogs are kept at individual homes. Ms. Wright said they would only keep dogs there in an emergency situation, and their housing would be temporary. A drawing of the interior of the proposed 50'x50' building is submitted *[attached to file as Petitioner Exhibit #1]*.

Ms. Sweazy added that some of the 10'x10' runs could be used to segregate certain cats due to illness. Ms. Wright mentioned a cat they house now that is allergic to food and has a special diet so she is isolated by herself. Lastly, Ms. Wright said that she and her husband have had a boarding/grooming kennel for 20 years so she has a business sense as well as the ability to care for animals and knows what they are getting into with this request. New Hope has a good board in place and many volunteers.

Eric Chupp, 72643 CR 29, Syracuse, was present in opposition to this request. He said he is the south boundary landowner. He indicated he has several questions he would like to have answered such as what is the limit on square footage for a building on a parcel less than three acres. He asked if someone will be living there at all times. As he has small children, he is concerned about a dog coming over onto his property. As indicated on the aerial photo, he shares the south property line of New Hope property. He said he is concerned about the noise and hours as he feels 6 pm in the winter and 9 pm in the summer is late to have public access. He further expressed concern about his driveway being the "turn around" for people who miss New Hope's driveway, and feels it is a safety issue for his children. If he were to ever sell his property, he is concerned about the property value because of the public access.

He mentioned he believes New Hope's property has a mound system, and he is concerned about run-off water on his property and possible disease. In looking over the questionnaire on #4, he wonders how close New Hope can build to their existing septic system. Regarding #8, he said his home is on adjacent property. Referring to #13, he was wondering why there is not a sign if it is a public area and again he expressed concern about people missing New Hope's driveway and turning around in his. Making reference to #19 regarding conversation with "neighbors" regarding this proposal which Ms. Wright answered yes, he stated he was not aware of this request until another neighbor informed him. He stated the former owner or renter of New Hope's property had possibly six dogs on the property, and he had two of those dogs on his property one evening. He expressed concern for his children. Although he has nothing against the petitioner, he said he does not approve of this request on a two acre lot and in his neighborhood.

In attempting to answer some of Mr. Chupp's questions, Mr. Mabry said there is a rule about square footage in a residential zone about accessory storage not exceeding the primary living space which does not apply in an agricultural zone. He stated the square footage of the house as indicated on the application is to remain as it is. In response to the question about the sign, Mr. Mabry stated the variance request is not for a sign, but there could be a sign there that fits the requirements. Regarding the question about septic setbacks, Mr. Kanney said the building could not be on top of the septic but there are not necessarily setbacks. Mrs. Wolgamood pointed out that would be a Health Department issue.

Martha Haab, 16308 CR 52, Syracuse, was present in opposition. She said she owns the agricultural property to the west of the New Hope property. She stated that is heavy soil, and she

is concerned about run-off with another large building on the property. She also expressed concern about the septic and where the waste is going to go. She stated she opposes anything being closer to her property than 50 feet. She said she does not want a kennel there period as she feels it is not a large enough parcel and it will devalue the land.

Dale Grady, 72419 CR 29, Syracuse, was present in remonstrance to this request. He also expressed concern about how far the building will be from the septic system. In looking at the site plan provided, the proposed building is going to be 10 feet from the property line on the west side and 20 feet from the property line on the east side. He also said they have an existing 20'x40' building behind the 50'x50' building, and he wonders how they can be 10 feet from the property line. He said the location where they have proposed to put this building will be over both septic tanks going to the mound system, and the mound system pretty much takes up the majority of the dog park in the field. He added that if the building is constructed in the dog park area, there is not enough room, and he is concerned about run-off for the Haab property and running into the culvert. He stated this property is not large enough for a kennel, and he feels Syracuse does not need another pet rescue. Mr. Grady, too, expressed concern about the feces and does not feel bagging it for trash service is properly disposing of it for the landfills. He indicated his road is the busiest hub going into Syracuse off of US 6 besides SR 13, and said there is a car going by every three minutes. He stated he has a car turning around in his driveway three times a day. He questioned why New Hope would not put up a sign to advertise their location.

Don Chilcut, 72440 CR 29, Syracuse, was present in opposition to this request. He stated he lives across the road from the New Hope property. He said he does not agree with it or believe the property is large enough. He expressed concern about the busy roadway and the turn-arounds. He also mentioned concern about the property value.

Larry Miller, 66601 CR 37, Millersburg, was present in remonstrance of this petition. He stated he is not a neighbor to this property but knows some of the neighbors. He mentioned the hearings earlier this spring on zoning issues with kennels on less acreage and variances on setback requirements. He stated he feels out of respect for the neighbors who are opposed and because of the size of the property, it should be denied. He added that they are doing a good thing but a larger parcel would work better for what they need.

Don Haab, 16308 CR 52, Syracuse, was present in opposition to this request. He stated his wife owns the land behind New Hope. He said they have owned it for approximately 20 years, and he has farmed it for 40 years. He reported they have installed tile on the back side of it just west of the proposed kennel. He feels there are too many buildings there already. He expressed concerned about more run-off as he should install another string of tile close to the fence to fix the existing run-off into their fields. He said he is not in favor of this request at all.

Ms. Wright responded by saying they have no problem with taking the 20'x40' building down. She stated Mr. Chupp was aware of this as he told her if this request did not pass, he would like to purchase the property. She also indicated Mr. Chupp was keeping his horse there in the pasture. She reported they did have renters there for two years, and to her knowledge they only had two dogs living in the house while they rented. She pointed out that if this does not work for New Hope, anyone could move into the house and have five or six dogs. She said the areas for the dogs on their property will be fenced.

Ms. Sweazy added that the dogs will be accompanied by their owners at all times, and it is not a kennel but a building to house cats. Mr. Hesser clarified that the cats will not be outside at all.

Regarding Mr. Chupp's concern about the south end of the property, Ms. Wright said there is a creek and woods separating them so she does not believe there will be any problems with dogs or Mr. Chupp's children crossing the properties. She stated she understands the concern about people turning around in their driveways. She indicated they are not saying they will not have a sign, but they just do not plan to have a big sign out by the road. She added that their plan is to have a sign on the facade of the building. Ms. Sweazy also indicated if the neighbors want a sign by the road, New Hope can do that.

Regarding the dog park, Mr. Campanello questioned if they will ask for donations from patrons using it and how will they care for it, specifically the dog feces. Ms. Wright said ideally, owners will pick up their own dogs' feces, but also, staff will have to check the dog yard daily. In response to concern about discarding the feces, she said they have never had anyone tell them they are not allowed to bag it and dispose of it with their trash service.

Mr. Campanello asked how important the dog park is to this request. Ms. Wright said she feels the dog park is more important to the community. For New Hope, the dog park would bring more attention to the pet rescue by the public and would help them get more donations. She added that it is not vital to their organization. She stated she is not aware of any other rescue organizations in Syracuse besides them, and they are working out of their homes which is the reason they need a facility.

Talking about the mound system, she said they are not building on the septic. Ms. Sweazy added that they are not putting in a restroom, and the house will be no different now than if a renter was in there. She said they are not incorporating an increase in the sewer, septic, and water usage by adding this building. Ms. Wright pointed out that the rescue itself would have less run-off than if a family was living in the house.

Based on previous testimony, Mr. Miller said they have indicated they will take down the 20'x40' building. Ms. Wright said they do not have to but if the neighbors are worried about too many buildings on the property, they will remove the building as it is just for dry storage. Ms. Sweazy said the property is unsightly right now and needs to be cleaned up, and they are looking to improve the appearance of the property.

Mr. Miller asked for their thoughts on the hours of operation for the dog park. Ms. Wright stated they are flexible and suggested 6 p.m. in the winter and 9:00 p.m. during the summer. She said they are willing to work with the Board and the neighbors. Mr. Miller reiterated that the goal is for rescue of cats. Ms. Wright stated dogs are a big part of it, too, but they go into foster homes. She added that New Hope is not and will not be a kennel.

The public hearing was closed at this time.

Mr. Campanello said he does not believe it is the right area for a dog park. He stated he stopped going to a dog park in the winter time because of feces and run-off. He feels this is too close to neighbors for a dog park.

Mr. Miller mentioned the amount of testimony from the neighboring property owners who obviously are not in support of this request. However, the testimony that was given is that this is going to be used primarily as a rescue for cats, all indoors, and not a kennel. He further

said he struggles a bit with the number of buildings on the property and would encourage them to remove the 20'x40' building. Mrs. Wolgamood reiterated that they offered to remove it. Mr. Hesser also mentioned they offered to remove the sheds as well. Mr. Miller indicated he would be in support of that.

Mr. Hesser stated he believes many of the concerns raised are people thinking kennel means dogs, and he does not see it as a problem for the cats as it will have very little impact on the neighborhood. However, he said he is not sure about the dog park as he has not used a dog park and does not know what affect shrinking the area to the required setbacks would do. Aside from the dog park with the buildings cleaned up, he indicated he would not object to request.

Mrs. Wolgamood pointed out they have no control over people turning around in other peoples' driveways. She stated she believes she recalls one of the two ladies present indicating they are willing to try to work with the 50 ft. setback for the dog park if necessary and that variance request is not approved. She said she thinks what they are trying to do is fantastic, and she understands they are here because they do not have three acres. If they remove 20'x40' building and construct a 50'x50' building and comply with the setback requirements for the dog park, she indicated she does not know that she has a problem with the request with those modifications. Mr. Hesser said he felt a revised site plan is needed showing removed buildings and done to scale with staff approval. He added he would require the same with the dog park with both to be included with the file for future reference.

Mrs. Wolgamood brought up the subject of the hours of operation and the mention of 6 p.m. during the winter and 9 p.m. in the summer because it stays lighter. She added that they do not have to accept the 9 p.m. closing. Mr. Campanello said at Nelson's Dog Park, people hang out with their dogs and it can get pretty loud at times with quite a number of parked cars there. He further stated that dog park is approximately five acres with a pond at the rear of the property. He indicated he is not sure how it is going to work in such a small area. He indicated it is more of a congregational area where people make friends, get together to talk, and it is the same people all the time. As there is no one around in the area of Nelson's Dog Park, he added that he thinks 9 p.m. is too late in this neighborhood.

The Board examined said request, and after due consideration and deliberation:

Motion: Moved by Doug Miller, **Seconded by** Randy Hesser 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 Developmental Variance to allow for a kennel on a tract of land containing less than three acres be approved with the following condition imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).

The following commitments were imposed:

1. A revised site plan to be submitted showing to scale the outline of the dog fence, the removal of all the sheds conveyed in the public testimony, and the removal of the 20 ft. by 40 ft. structure shown on the current site plan as barn storage.
2. Hours of operation for the dog park to be 6:00 p.m. through the winter months and 8:00 p.m. through the summer months.

Vote: Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser.

No: Tony Campanello.

Action: Approve

Motion: Moved by Doug Miller, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that the request for a 30 ft. Developmental Variance to allow for said kennel 20 ft. from the East front property line (Ordinance requires 50 ft.) be denied with the dog fence to meet the required setbacks; and that the request for a 40 ft. Developmental Variance to allow for said kennel 10 ft. from the West rear property line (Ordinance requires 50 ft.), be approved for the construction of the 50-foot by 50-foot building.

Vote: Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser.

No: Tony Campanello.

Action: Deny/Approve

12. The application of *Dixie Shrock* for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence and for a 50 ft. lot width Developmental Variance to allow for said residence (Ordinance requires 100 ft.) on property located on the West side of CR 27, 1,750 ft. South of CR 24 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #OCR 27-120924-1*. He said that the Plat Committee's approval is dependent on approval of this request. In addition, he said if the BZA denies this variance request, then they will need to redraw the plat so that it meets the standards and proceed through the plat approval process again with the new drawing.

There were seven neighboring property owners notified of this request.

Jeff Barnes of Wightman Pietrie, 412 S. Lafayette Blvd., was present representing Dixie Schrock who was also present. He said she desires to do a five acre one-lot subdivision to build a house on this property that is approximately 77 acres. The approximate time of construction of the house is spring or summer of 2013. He indicated one factor of this request is the proposed location of the house shown on the aerial which is roughly 550 ft. off of the county road with another factor being the desire to incorporate a portion of a wooded island. He said they originally attempted to incorporate the entire island, but it made a very irregular parcel which could impact or hinder the farming operations that go on there as well. He further stated there was a desire to maintain just five acres. Mr. Barnes said the reason for the minimal road frontage was to lessen the impact on the farmland and to have less maintenance and lawn care. He stated the 50 foot access is just to have access to the back of the parcel.

When Mr. Miller inquired about the 200 feet of width at the road, Mr. Barnes said with the placement of the house with a scenic view to the north, being five acres, and to incorporate a portion of the woods, they came up with this solution or geometry.

There were no remonstrators present.

Mr. Hesser asked who owned the three acre parcel pointed out on the aerial which belongs to Ms. Schrock. Mrs. Wolgamood asked about taking some of the north parcel property as a possibility. Mr. Barnes stated he would have to calculate that again but he guessed roughly three acres of farm land. He added the problem with doing that, to maintain the five acres, it could affect the location of the house as she has a nice spot picked out. Also, he said it would impact more farmland. Mrs. Wolgamood asked about the impact on the farm land where she wants to build. Mr. Barnes stated it does impact a small section of land that has been used for farming. Mrs. Wolgamood asked if Ms. Schrock owned the entire parcel. Mr. Barnes stated it is actually in a trust and is currently being split so Ms. Schrock will maintain the south 38 acres and her sister-in-law will maintain the north portion. When Mrs. Wolgamood asked if Ms. Schrock has 38 acres on one parcel could she build a house on it, Mr. Mabry indicated yes. He further said she could do an administrative subdivision.

The public hearing was closed at this time.

Mrs. Wolgamood stated she thinks in most instances when a request is made for only 50 foot of lot width it is because it's been that way for years, and there is no more property available for the required 250 ft. eliminating the need for a 3 to 1 depth to width ratio. She added that she feels this is a self-imposed hardship as the petitioner has 38 acres; therefore, she cannot support this request.

Mr. Hesser said he understands the rationale for what the petitioner wants to do. But he feels this is self created, and there has been no testimony for evidence of an undue hardship. Mr. Campanello expressed agreement.

The Board examined said request, and after due consideration and deliberation:

Motion: Moved by Doug Miller, Seconded by Meg 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 3 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence and for a 50 ft. lot width Developmental Variance to allow for said residence (Ordinance requires 100 ft.) be denied.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

Action: Deny

13. The application of *James W. & Debbi Jo Stack* for a 3 to 1 depth to width ratio Developmental Variance and for a 40 ft. lot width Developmental Variance to allow for the construction of a residence (Ordinance requires 100 ft.) on property located on the East side of CR 33, 2,330 ft. South of CR 42, in Benton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #0CR 33-120924-1*.

There were nine neighboring property owners notified of this request.

Blake Doriot of B. Doriot and Associates, P.O. Box 465, New Paris, was present representing the Stacks who were also present. He submitted a packet of aerial photos *[attached to file as Petitioner Exhibit #1]*. He indicated the packet contains various configured parcels within the immediate area that are similar to this request. He also referred to a large aerial photo containing all of these parcels. When Mrs. Wolgamood asked about the size of the "immediate" area, Mr.

Doriot said 1.5 miles is farthest property that he is referring to. He said the Stacks bought this piece of property from a neighbor, Mr. Smith, who was in need with a sick family member. He also said Mr. Stack now has terminal melanoma, and they need to get their family business in order. Mrs. Wolgamood asked if Mr. Smith owned the property to the south when he sold this property to Mr. Stack. Mr. Doriot indicated on the aerial where Mr. Smith lived and said no. He added that the property to the south is owned by Prairie Dairy Farms. He said they need these two variances to make it a buildable parcel. He added that if the Board requires, they will file for a minor subdivision. Mr. Doriot indicated they have had soil borings in this area. It will have an on-sight septic area which will probably be a mound system.

Regarding a statement in the staff report about the road and too many drives, he said they can come very close to meeting the 150 foot driveway separation requirement. He said they talked about it being hilly. He submitted a sight distance calculation which he completed *[attached to file as Petitioner Exhibit #2]*. They have approximately 700 feet of sight distance north and 600 feet of sight distance south.

He added that as the vehicle count for that road per day is 338 vehicles, it is not a major thoroughfare. He said the driveway is not going to really impact this situation. He stated this road will never be a north/south corridor because of the Elkhart river and because there is a township jog in the roadway. Mr. Doriot feels the access will be safe so it will not be injurious to the public.

He reported that the Stacks went to neighbor to north and asked to purchase 39 feet to have 100 foot frontage, and they would do a minor subdivision there. He stated the individual was not interested. Mr. Kolbus clarified that the Stacks do not own the parcel immediately to the north. Mr. Doriot stated this is the only parcel the Stacks own in this area. He said they respectfully ask that this request be approved as it is a hardship, and they will go through the subdivision ordinance if required. He stated they can have a safe driveway, and it has been done close around this area before.

Mr. Campanello asked about a drainage ditch on the property. Mr. Doriot said there is a low spot that sometimes runs water which would have to be fixed with drainage for the driveway. He added that he believes they do meet the requirements, and they can support a septic. He said they have a safe access, and they have attempted to reduce the number of variances by attempting to purchase property from a neighbor.

Jim Stack, 15225 CR 42, Goshen, was present on behalf of this request. He stated the two houses up on the highway would have problems if the pond was not there.

Myron Slabach, 67348 CR 33, was present in opposition to this request. He stated he owns the original Smith farm. He stated there are already six houses on the original farm that Dale Smith split up about ten years ago. He stated it does not look like a good place for a building site, and he is not looking forward to having neighbors right beside him. He stated Mr. Stack has been using his drive and crossing the neighbor's property to feed his cattle the last couple of years because of the drainage ditch.

Rose Hostetler, 67350 CR 33, Millersburg, was present in remonstrance. She stated she owns the land that the Stacks wanted to purchase for their 100 foot easement. She stated they would rather not have a subdivision or houses behind their house and yard. She stated originally

when Mr. Stack bought his property, they traded some land so he could have an easement with the understanding that it would stay agricultural. She added that nothing was done in writing.

Mr. Camp asked Ms. Hostetler if she understands that there will only be one house on that property. Ms. Hostetler questioned whether there could ever be more than one house on that property. Mrs. Wolgamood stated if there were to ever be more than one, there would have to be a road constructed, and they would have to go through subdivision regulations. There would be a whole process they would have to go through in order to have more than one house. At this point, they are asking for a lot width variance and a 3 to 1 variance for one house, and then they would go through the procedure of the subdivision control ordinance. Mr. Hesser mentioned that he thinks it is confusing to people that when the word subdivision is used, they think it means more than one. Mrs. Wolgamood reiterated that it is a one lot minor subdivision for one house. Ms. Hostetler stated they do not really want even one house in their back yard. She would like for the Stacks to have everything in order because of his illness, but she has a concern that if the property south of the Stacks ever got sold, there could be a huge subdivision put in back there. Mrs. Wolgamood stated that is true, and the ordinance would allow for it. However, that is not being addressed at this time.

Robert Shoemaker, 67410 CR 33, was present in opposition to this request. He stated he was one of the first to build on Dale Smith's mini subdivision. He stated one of the reasons he did is because he was told the whole piece was enclosed in three lots. He thought he did not have to worry about a subdivision behind him. He also stated the main natural drainage for that area comes right across the back of that pond from the next farm south. He stated it is under water and very muddy in the spring and fall when the rains come. He does not feel it would be a good place to put a home, and he really does not want a house behind his either.

Mr. Campanello asked Mr. Doriot if the piece of property right next to the farm is a buildable lot or if it is owned by the farm. Mr. Doriot stated he surveyed it for Mr. Smith, and Mr. Smith is building or has built his house as indicated on the aerial. He indicated Mr. Slabach is the last one in the neighborhood. He indicated the access on the aerial. Mr. Doriot said they understand that water goes through there, and they would have to allow it to go through. He added it would have to be done in the building of their driveway, and it is something you have to overcome. In response to Ms. Hochstetler's comment about the large subdivision, he stated Tim and Lowell Stultzfus who own property to the south are not interested in anything but farm land. Mr. Doriot stated ideally they will be back further than right on top of the houses in front. He added that is something they can sort out in the subdivision ordinance. If required, he said they can put some setbacks for the house. He reiterated that it will be a one lot minor subdivision.

Public hearing closed and reopened.

Mr. Stack added that because of the pond, he cannot imagine they would want to place the house in front of where the fence is located. He said it would be really expensive to do it any other way because there would be a lot of landfill.

The public hearing was closed at this time.

Mr. Campanello said he believes it is a good case for approval as there are other 3 to 1's in the area. Mr. Miller agreed and added that sometimes you have to consider highest and best use of real estate. Given the surrounding property, he added that this makes sense. There is one

driveway that is configured similarly. As he believes they have exhausted their options, Mr. Miller is in favor of approval. Mrs. Wolgamood added that Mr. Doriot has given some good facts about the 150 foot driveway separations, the sighting distances to the north and south, and only 338 vehicles per day. She stated she agrees with Mr. Campanello that the configuration is what it is as there is no additional property. She said if they agree to it, there is the construction of a home or if they deny it, the property is just there. Mr. Hesser commented that he always struggles with the third finding, however, this is more of a hardship, and it is not self-imposed. He added coupled with the other references and obligations that have been offered to alleviate some of the future concerns that people have, he said he can accept it.

The Board examined said request, and after due consideration and deliberation:

Motion: Moved by Doug Miller, **Seconded by** Meg Wolgamood that the Board approve this request for a 3 to 1 depth to width ratio Developmental Variance and for a 40 ft. lot width Developmental Variance to allow for the construction of a residence (Ordinance requires 100 ft.) based on the following Findings and Conclusions of the Board:

1. Will not be injurious to the public health, safety, morals or general welfare.
2. Approval of the request will not cause substantial adverse affect on the neighboring property. There is supporting evidence that there is an appropriate amount of separation between driveways, and there are sight lines sufficient to allow safe ingress and egress from this property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of this property. Given the configuration and the attempts to buy additional property to meet the guidelines, this is potentially the best use for the property.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Doug Miller, Meg Wolgamood, Randy Hesser, Tony Campanello.

Action: Approve (It was noted that this will be required to go through the minor subdivision process for one lot.)

Because Mrs. Wolgamood wants to participate in a staff item coupled with the fact that she has to leave at 11:30 a.m. and Mr. Hesser has to recuse himself from this hearing, the Osolo School staff item will be heard at this time.

14. Staff Item for Osolo School was presented by Brian Mabry. He stated there is a request from Osolo Elementary School to do a new driveway as shown on the site plan and aerial photo. Since the school was built, there have been some minor Special Use amendments for some portable buildings in the past. This is being brought before the Board as a major/minor change. If it is minor, they would be able to complete the driveway without any further action on the part of the Board. If it is major, they would need to schedule a public hearing and have the decision take place at that time.

Mr. Miller asked if the driveway will be gated. Ms. Wolgamood said that is what is suggested. From the materials he has seen, Mr. Mabry indicated it would gated and used specifically for pick-up and drop-off times before and after school for parent vehicles. Mrs. Wolgamood indicated the driveway would be entrance only and would be gated so it would be

restricted. She also indicated the hours for the new driveway would be from 7:45 a.m. to 8:30 a.m. and then again from 1:45 p.m. to 2:45 p.m. and then the gate would be locked.

Mrs. Wolgamood said she worked with Deb Hughes many years ago regarding a church school in Elkhart City. She further explained they had a situation where the parking lot was on the opposite side of the street from the school. When the city did not want to vacate the street at the request of the church, Deb helped them by designing a gate that was closed except when kids were dropped off by parents. She said they worked with the neighbors, and it worked beautifully. She mentioned that as of a few months ago, the gates were still there. She feels it is a great way to accommodate a good traffic flow.

Mrs. Wolgamood said she visited the site, drove up and down Jackie Lane, and located where the entrance was going to be. As she also travels CR 6 frequently, she said she has seen the issues the school has with parents parking on the berm. She also commended the parent who contacted Jeff Taylor and got this ball rolling. She stated she has one major concern which is the fact that this is a residential street, and there are four houses that would be impacted by vehicles passing their homes. She included that it is also a dead end street with no turn around. Parents will be using those four driveways to turn around. Her biggest concern is that it is a residential street used to get to and from homes, and people lining up prior to when the gates are open could be an issue for emergency personnel. Lastly, she stated she thinks homeowners on Jackie Lane should have opportunity to voice their opinions or concerns.

Mr. Campanello mentioned the football field, baseball field, and possibly soccer field back there which will probably generate traffic on Jackie Lane whether this gate is there or not.

Debra Hughes of Marbach, Brady, & Weaver, 3220 Southview Drive, Elkhart, was present representing Osolo School. She indicated they had the same concern about residents on Jackie Lane so letters were delivered to homeowners on Friday, October 12, 2012 *[attached to file as Petitioner Exhibit #1]*. The homeowners were invited to contact either the school or Ms. Hughes. She indicated she spoke with one neighbor who said cars already wait on Jackie Lane because they are waiting to get out on CR 6 to get around to the driveway, so she was not opposed to it. According to Ms. Hughes, Dr. Woods also received one phone call from another neighbor whom he met with, and she was also acceptable to the request.

Tony Gianesi, Director of Building Services for Elkhart Community Schools, 2720 California Road, Elkhart, was also present on behalf of this request. He reiterated that parents do park on Jackie Lane for pick-up now, and parents do park along Jackie Lane for the ball games and various activities at the school. He stated their proposal indicates a 20 foot wide drive so that they can single or double stack cars, depending on the need. He said they have an average of 13 parental automobiles that pick up every day, but there have been as many as 30. With Marbach's design, he stated they are able to accommodate all 30 on that drive. He stated Osolo School has always tried to be a good neighbor as the neighbors are also students' parents. He stated there are three students who live across the street, and they walk over and enter through the walk-thru gate. He stated the school is very concerned. He stated the concerned parent who brought this to the attention of Jeff Taylor from County Highway and then to Elkhart Community Schools obviously made them act.

Mrs. Wolgamood asked if they felt they have done their job in notifying the immediate neighbors to the east. Ms. Hughes stated that giving the neighbors a letter on Friday does not

give them a lot of time to consider this request. However, she believes if they had a serious concern, they would have responded. Ms. Hughes added that the neighbor she spoke with actually called before the letter was delivered as she saw the survey trucks and called the office. She further stated the neighbor who contacted Dr. Woods was responding to the letter. She indicated the reason to ask for this as a minor change is to allow construction this fall. Otherwise, they are looking at the spring and the end of the school year with five or six months passing without addressing the safety issue.

Mr. Campanello agreed that it is definitely a safety issue for CR 6 during these times. Mr. Gianesi said the route of the driveway is entering from Jackie Lane coming onto the property. They would line up to pick up near the gymnasium closest to the school, and then proceed out to CR 11 which is much easier to get out onto. He added that there is a stoplight at the corner of CR 6 and CR 11. He indicated there would be gates at both ends. He pointed out the asphalt drive is through the play ground which would actually benefit the school. As they certainly do not want traffic in there during the school day, he said the drive would only be used before and after school. He indicated the driveway will not be fenced off as they need the ability to cross it to get to the athletic fields.

Mrs. Wolgamood asked Ms. Hughes how many cars can stack up from the point where the new driveway goes west onto the property going south to CR 6 on Jackie Lane. Ms. Hughes indicated approximately 10 if vehicles if they are waiting there before the gate opens. Mrs. Wolgamood asked if there was a possibility that some vehicles would still be out on the berm on CR 6. Ms. Hughes said she does not think so as the plan is to open the gate at 1:45 p.m. and school dismissed at 2:20 p.m. She added that she thinks there is some flexibility with opening gates if cars are stacking up on Jackie Lane before that time as they want everyone on the property while they wait.

Mr. Campanello mentioned that he would imagine the school will monitor and keep cars off the berm from now on. Mr. Gianesi indicated they will as much as they possibly can. To be good neighbors, he said they do not want vehicles stacked whether it is on CR 6 or on Jackie Lane. He said that was a concern they heard from both neighbors, and they want to address that issue.

Motion: Moved by Tony Campanello, **Seconded** by Meg Wolgamood that the Board consider this request a minor change.

Vote: Motion passed (**summary:** Yes = 3, No = 0, Abstain = 1).

Yes: Doug Miller, Meg Wolgamood, Tony Campanello.

Abstain: Randy Hesser.

It should be noted that Mrs. Wolgamood leaves at this time and Mr. Hesser returns.

15. The application of *Clarence S. & Dora Ann Wingard* for a Use Variance to allow for the construction of a second dwelling on a parcel and for a Special Use for a home workshop/business for an existing bicycle shop (Specifications F - #45) on property located on the South side of CR 16, 335 ft. West of East County Line Road, common address of 10104 CR 16 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #10104CR 16-120924-1*. Mr. Kolbus asked if the packets were missing some information as he has a Use Variance questionnaire. The commitment is with site plan submitted and represented in petitioner's application, but he has no site plan and none of his questionnaire deals with the Special Use. Mr. Campanello indicated he had site plan. Mr. Kolbus wondered if there is a part of an application dealing with the Special Use. Mr. Mabry indicated he had a Special Use application. Board members were provided with copies at this time. Mr. Doriot indicated part of the questionnaire was completed after the bike shop was discovered when the site was inspected.

There were nine neighboring property owners notified of this request.

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, was present representing the Wingards who were also present. Mr. Doriot stated he was not aware of the bike shop until staff made him aware of it. Giving some history of the bike shop, he stated Crystal Valley Bicycle Shop was located in LaGrange County. After the owner passed away, Clarence's son who worked at the bike shop, purchased it and moved it to their property. The bike shop has been in operation on the property since that time.

He said most of their customers are local neighbors who ride bicycles. He added that they get some business from the Pumpkin Vine bike trail which is one mile to the north. Mr. Doriot indicated they have adequate room for parking as most of it is buggies and bicycles. He indicated the second request is made to keep the family farm in one contiguous piece. In keeping with goal #2 of the Comprehensive Plan, a sense of community and rural character, which Webster's Third Collegiate Edition dictionary defines community as a group of people living in a particular district. Mr. Doriot explained he likes the word "district" as these neighbors are probably mostly in the same district church. He continued with the definition saying community is a group of people gathered together as a smaller social unit within a larger one. Pointing to a large aerial photo, he added that describes the group of people each indicated by an "x" on their property who signed the petition in favor of this request *[attached to file as Petitioner Exhibit #1]*. He said there are also signatures from nearby neighbors across the LaGrange County line. He said the fifth definition is ownership or participation in common which perfectly describes how the Wingards want to own this property in common. He reiterated that they have a signed petition by all the property owners shown on the aerial with an "x".

In response to staff report saying this request would be injurious to the public health, safety, morals, and general welfare of the community, Mr. Doriot pointed out that the community has signed the petition. Concerning safety, he submitted a sight distance diagram *[attached to file as Petitioner Exhibit #2]*. He stated almost 4,200 vehicles travel this road per day. He added when they subdivide this parcel with a house where soil borings were completed and a conventional septic system will be located, they will be required as a separate piece of ground to have 150 foot of separation. The sight distance to the east from the driveway is 600 feet. He said he put a new drive with a 150 foot separation on a road that has 4,200 vehicles per day travelling on it. Mr. Doriot stated if he was sitting in the driveway in his truck with only 450 feet, and he wants to turn west, he can probably do it although it would be close. However, that would not be the case for a horse and buggy. He said a parcel here that the County would probably grant access to is not safe for the general motoring public.

Regarding the second item concerning the use and value of the area adjacent will be affected substantially in an adverse manner, he stated neighboring property owners signed in support. He also pointed out the area where the house would be located on the large aerial map indicating the area of the impact is small. Again making reference to the Comprehensive Plan where it references rural character, he said they want to build a small rural style home. He stated the property values of the neighbors are not going to be affected. He reiterated that the neighbors are present and have signed the petition.

Regarding the need for the Use Variance arising from a condition that is peculiar to the property, he mentioned again the driveway stating it is particular to the property and the rural character in the Comprehensive Plan. He said the Wingards want to keep the property as one piece in the family. He further stated when Clarence and his wife are gone, the son will move in and a child will take over the family farm. Mr. Doriot stated Mr. Wingard loves his farm but wants to slow down. He further stated the bike shop will allow the son to quit working in a factory and work at home with his children. The Wingards would like to be nearby to help care for the grandchildren.

Concerning item #4 stating strict enforcement of the terms of the Zoning Ordinance would not constitute an unnecessary hardship if applied to the property, Mr. Doriot stated it might not cause a hardship to property but he again expressed concern about the driveway. Mr. Doriot has members of the audience raise hands if they are in favor of petition. Mr. Doriot stated he moved ahead cautiously when he saw only three members of Board remained but did so because of time.

Mr. Campanello asked how many properties in that area already have two dwellings. Mr. Doriot asked members of the audience, and they indicated the majority have them. He indicated it is a common, normal occurrence in that area. Mr. Doriot asked that the board follow the Comprehensive Plan with the sense of community and rural character. He added that a subdivision would require them to build an adequate entrance. He feels the entrance would be unsafe if headed toward Middlebury.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated that he does not have a problem with the bike shop and that Mr. Doriot made excellent argument with respect to line of sight for the driveway. As he grew up in an Amish community and is familiar with dawdy houses, Mr. Miller said he thinks the request makes sense in this specific case. Mr. Campanello expressed agreement. Mr. Miller stated he knows the board needs to look at this about being a hardship, and pointed out the line of sight when dealing with a buggy is critical, and the board needs to be cognizant of that.

Mr. Hesser clarified that he does not think the bike shop is an issue and a good case has been made with respect to the points in the staff analysis. He further stated he understands the arguments made by Mr. Doriot, but that does not change the ordinance or laws that have to be met to get to a Use Variance. Although he appreciates the arguments made, Mr. Hesser said he does not think that a need arises from something that is peculiar to the property or it is an undue hardship. Additionally, he pointed out that in order for the board to take any action, there must be three affirmative votes. Mr. Hesser suggested they vote on each item separately, and proceed

accordingly. He added if they are unable to reach agreement, the petition will be tabled to a later meeting.

The Board examined said request, and after due consideration and deliberation:

Motion: Moved by Tony Campanello, **Seconded by** Doug Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request and for a Special Use for a home workshop/business for an existing bicycle shop (Specifications F - #45) 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 commitment was imposed:

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

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Doug Miller, Randy Hesser, Tony Campanello.

Absent: Meg Wolgamood.

Action: Approve

Motion: Moved by Tony Campanello, **Seconded by** Doug Miller that the Board approved this reequest for a Use Variance to allow for the construction of a second dwelling on a parcel based on the following Findings and Conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

Vote: Motion (**summary:** Yes = 2, No = 1, Abstain = 0).

Yes: Doug Miller, Tony Campanello.

No: Randy Hesser.

Absent: Meg Wolgamood.

Motion: Moved by Randy Hesser, **Seconded by** Tony Campanello that the Board table this request for a Use Variance to allow for the construction of a second dwelling on a parcel until the November 15, 2012, Board of Zoning Appeals meeting.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Doug Miller, Randy Hesser, Tony Campanello.

Absent: Meg Wolgamood.

Action: Tabled

Mr. Doriot mentioned his displeasure that a Staff Item was moved in front of this petition and a Board member left as this now puts Mr. Wingard behind on building his house.

16. The application of **Raymond P. Statler, Jr. & Leslie A. Statler (lessor) and Kimberly L. Benedict (lessee)** for a Use Variance for warehousing and storing of construction equipment in an R-2 district on property located on the North side of Sunset Avenue, 306 ft. West of Independence Street, being Lot 54 of Rose Lawn, common address of 25355 Sunset Avenue in Osolo Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #25355SunsetAve-120822-1*.

There were 20 neighboring property owners notified of this request.

Kimberly Benedict, 25355 Sunset Avenue, Elkhart, was present on behalf of this request. She stated she would like to purchase an established septic business and simply store equipment inside on the property. She said she feels this would be no different than buses or trash trucks driving there every day. She further stated the office would be strictly for their use, and there would be no customers coming to the residence. She reiterated she just wants to store equipment on property, and there would be no signs for the business. Ms. Benedict reported she has lived in this neighborhood for years, and they have improved neighborhood houses with the use of this equipment. She reported regular business hours for the trucks leaving and returning.

From her testimony, Mr. Miller asked if the trucks would be leaving in the morning and returning later in the afternoon which she indicated was correct. He also asked about the total number of vehicles which she stated she believes is six total pieces of equipment. Mr. Campanello asked and Ms. Benedict reiterated that the equipment would be stored inside the existing buildings. She expressed the desire to keep the business in the family.

Christy Statler, 25393 Sunset Avenue, Elkhart, was present in favor of this request. She stated she lives down the street. She indicated she also has a pole barn behind her house. She stated Ms. Benedict has ample room in the existing pole barns to put any necessary equipment. She added that since Ms. Benedict has lived there, they have improved the property considerably. She does not feel that this request will be a problem because they seem to care about the appearance of their property. She also feels it would benefit Ms. Benedict to be able to store the equipment on the property for security purposes. She stated she did not feel it would cause any hardship for the neighbors. She feels it would benefit the area to keep them there.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser indicated he is again stuck on “peculiar to property” and “undue hardship”. Mr. Campanello stated from a small business perspective, it is good to have equipment on site for security and to do maintenance on the equipment after hours. He pointed out Ms. Benedict has indicated there will be no outside storage or materials, and the buildings are existing.

Mr. Miller stated it is a stretch, but in some ways that is a “peculiar” aspect of the property that they live there, have a business, and have the equipment. He agreed that Mr. Hesser’s point was valid. From a common sense standpoint looking at this, Mr. Miller stated he does not struggle with this at all. Attorney Kolbus mentioned Use Variances are supposed to be difficult, and that is why they are set up that way as they are probably the most difficult thing to be granted. He added it should be an extreme circumstance related to the land. Mr. Miller stated he would be in support of upholding the staff’s recommendation.

The Board examined said request, and after due consideration and deliberation:

Motion: Moved by Doug Miller, **Seconded by** Randy Hesser 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 for warehousing and storing of construction equipment in an R-2 district be denied.

Vote: Motion. (**summary:** Yes = 2, No = 1, Abstain = 0).

Yes: Doug Miller, Randy Hesser.

No: Tony Campanello.

Absent: Meg Wolgamood.

Motion: Moved by Randy Hesser, **Seconded by** Doug Miller that this request for a Use Variance for warehousing and storing of construction equipment in an R-2 district be tabled until the November 15, 2012, Board of Zoning Appeals meeting.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Doug Miller, Randy Hesser, Tony Campanello.

Absent: Meg Wolgamood.

Action: Tabled

17. The application of *Timothy D. & Raeanna J. Kidder* for a Use Variance to allow a residential use in an M-2 district on property located on the South side of North Park Avenue, 180 ft. West of Adams Street, 950 ft. East of Johnson Street (CR 9), being Lots 215 and 216 of North Park, common address of 25812 North Park Avenue in Osolo Township, came on to be heard.

Mr. Mabry stated after further research, staff discovered that the property is actually zoned R-2. Since it was published in the newspaper, this item remained on the agenda. As the property is zoned R-2 with the ability to obtain a building permit without any special approval, staff recommends dismissal of this request.

Motion: Moved by Randy Hesser, **Seconded by** Doug Miller that this request for a Use Variance to allow a residential use in an M-2 district be dismissed as recommended by the Staff.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Doug Miller, Randy Hesser, Tony Campanello.

Absent: Meg Wolgamood.

Action: Dismissed

18. The application of *Linda Lange Armstrong* for a 1,745 sq. ft. lot coverage Developmental Variance to allow for the construction of an addition and deck to an existing residence (Ordinance allows 2,415 sq. ft. maximum) and for a 14 ft. Developmental Variance to allow for said construction 11 ft. from West rear property line (Ordinance requires 25 ft.) on property located on the West side of Bridge Town Road, 600 ft. North of Old Port Court, being Lots 37A & 74 of Bayridge Section 3, common address of 3377 Bridge Town Road in Washington Township, zoned R-1 PUD, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #3377BridgeTownRd-120817-1(A)*.

There were five neighboring property owners notified of this request.

Phil Jenkins of Martin Brothers Contracting, 26262 CR 40, Goshen, was present on behalf of the petitioner who could not be present. He stated Ms. Armstrong would like to make some improvements to her home with the main reason being that the screen porch is basically an unsafe environment. He said through that process they have made some improvements to the house such as the way it functions in adding an addition to the south side of the property as well as to the west. He stated they concur with the staff findings, and this appeal was approved by the Hearing Officer on September 19, 2012. He submitted a letter in support from Marion Schreck who was present earlier but had to leave *[attached to file as Petitioner Exhibit #1]*.

Cindy Hansen, 3387 Bridgetown Road, was present in favor of this request. She stated her home is directly south of the Armstrong residence. She indicated her home will be the most impacted by this request. She further stated she feels it is in the best interest of the homeowner, neighborhood, and community. Speaking as a neighbor but also as a realtor, she indicated she is always in favor of homeowners making improvements to keep the values of home up.

Since there was no one present to speak in opposition, Mr. Hesser asked if anyone could offer any input into the opposition from the meeting of the Hearing Officer. Attorney Kolbus reported the objection was from the neighbor who owns the property immediately to the north on the opposite side from where the construction is to take place. Mr. Mabry indicated that if he recalled correctly, the objection was because she believed the addition would block light or air.

In response, Mr. Jenkins stated their request for the rear yard setback to the west for a 14 foot variance is on the south side of the property. He said the actual deck, which would affect the objecting neighbor's property, is actually 23.7 feet from the property line. Therefore, that side is the least impacted, and she is the least affected by the petition. Regarding the rear yard setback, he further indicated there is currently a wood deck out from the lower level of the house that is 11 feet and the reason they requested the 14 foot variance because it is existing. He explained the actual new deck that is proposed will be 12 feet from the property line at the main level.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation:

Motion: Moved by Randy Hesser, **Seconded by** Tony 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 1,745 sq. ft. lot coverage Developmental Variance to allow for the construction of an addition and deck to an existing residence (Ordinance allows 2,415 sq. ft. maximum), and for a 14 ft. Developmental Variance to allow for said construction 11 ft. from West rear property line (Ordinance requires 25 ft.), be approved with the following condition imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).

The following commitment was then imposed:

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

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Doug Miller, Randy Hesser, Tony Campanello.

Absent: Meg Wolgamood.

Action: Approve

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

20. Osolo Elementary School(90-55-SU) – see Page 20 under item #14 for this staff item as a major/minor change for a driveway.

21. Randy Tinder(OCR 105-111024-1) – Mr. Mabry indicated this item is off the table as the necessary information was not provided.

22. The staff item for Willard Zimmerman(992529) for a major/minor change was presented by Brian Mabry. Mr. Sloat provided a letter stating Mr. Zimmerman passed away on August 3, 2011. Someone bought the property and is requesting to occupy the mobile home. Mr. Hesser asked when the Special Use was approved. Mr. Kolbus indicated it was in 1999, and the procedure has since changed. Mr. Mabry clarified that the person who wants to occupy the mobile home is the owner.

Motion: Moved by Randy Hesser, **Seconded by** Doug Miller to approve the request to change from the named individual to the owner/occupant to reside in the mobile home.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Doug Miller, Randy Hesser, Tony Campanello.

Absent: Meg Wolgamood.

23. The staff item for Wilbur Lehman(24793CR 52-120625-1) was presented by Brian Mabry. He stated very recently there was an approval of a home workshop/business for cabinet making. He said he received a letter from Loren Sloat with both the approved site plan and a revised site plan proposing a 10 foot change to the east. Mr. Mabry indicated it was approved as a 30 foot setback for the shop and a slightly greater setback for the office and parking area. With this request, he stated now the shop, office, and parking would all be 20 feet from the east side property line.

Attorney Kolbus asked if Mr. Mabry recalled whether there was an issue on that side yard. Mr. Mabry indicated he does not recall that there was an issue, and he does not believe that neighboring property owner was either present or responded in favor or opposition to the original request. Mr. Campanello read aloud from the minutes from the prior hearing that Mr. Sloat reported no complaints from neighbors concerning the petition.

Attorney Kolbus mentioned the turnaround area on the site plan and wondered if any board members recalled if that was an issue at the hearing. Mr. Hesser questioned if the setback could change from 30 feet to 20 feet without re-advertising. Mr. Kolbus stated this is a change in the site plan. Mr. Miller expressed agreement with Mr. Hesser because it is talking about a 30% change in the side yard setback. Mr. Mabry deferred to Mr. Kanney who reported the side yard setback in an agricultural use/zone is 10 feet. Attorney Kolbus said it meets the side yard

setback as he is just moving the building location. This change still does not require any Developmental Variance. Mr. Kolbus said the board still has to decide the statement that it is a significant increase into what was there, and it needs to be resolved one way or the other.

Mr. Kolbus believes he recalls discussion regarding the size of the building and the setback from the center line of the road. Mr. Mabry indicated this request did have a negative staff recommendation when it came in. Mr. Mabry stated if staff were to give an opinion on this, he would say this site plan change is a minor change from his perspective. Mr. Miller pointed out that the structure size has not changed.

Motion: Moved by Doug Miller, **Seconded** by Randy Hesser that the change proposed for Wilbur Lehman is a minor change to the Special Use.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Doug Miller, Randy Hesser, Tony Campanello.

Absent: Meg Wolgamood.

24. A Zoning Ordinance re-write update was presented by Chris Godlewski. He stated they are at a decision point now with the Plan Commission from a recommendation of the committee that is reviewing the document. Some members of the Plan Commission will decide how to approach residential use in agricultural districts. He said he believes that is a decision they have to make amongst themselves before they continue forward some more. He reported they will still go forward with doing the critiques of the existing and the denied ordinance to bring awareness to the committees and the boards.

25. The meeting was adjourned at 12:31 p.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary