

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 18<sup>TH</sup> DAY OF APRIL 2013 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. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

**Roll Call.**

**Present:** Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

2. A motion was made and seconded (*Homan/Wolgamood*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21<sup>st</sup> day of March 2013 be approved as read. The motion was carried with a unanimous roll call vote.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

3. A motion was made and seconded (*Wolgamood/Homan*) that the legal advertisements, having been published on the 6<sup>th</sup> day of April 2013 in the Goshen News and The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

4. A motion was made and seconded (*Miller/Campanello*) 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.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

5. There were no postponements of business items.

6. The application of *Larry J. & Mary A. Lehman* for a 35 ft. Developmental Variance to allow for the construction of a storage building 40 ft. from centerline of the right-of-way of CR 13 (Ordinance requires 75 ft.) and for 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 CR 13, 780 ft. North of South County Line Road, common address of 72898 CR 13 in Union Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #72898CR 13-130320-1*.

There were four neighboring property owners notified of this request.

Larry Lehman, 72898 CR 13, Nappanee, was present on behalf of this request. Mrs. Wolgamood said the staff recommendation is for denial. He indicated his house is 49 ft. from the center of the road. He said this request will not affect people traveling down CR 13 as the only view affected will be from his driveway. He said they could set the building back a little further so they would have more of a view coming out of the driveway. He noted the building is not for horses and said it is strictly for storage of two buggies, a pontoon, and a boat. He has one horse which is kept in the existing barn.

When Mrs. Wolgamood asked about the drawing of the site plan, he stated the contractor drew it up. She noted she had some difficulties with some of the dimensions shown. She believes it was due to the house and barn being drawn to 1/20 scale, but the proposed building is very much out of proportion to the house and barn. She also mentioned a 136 ft. notation and stated she cannot find that dimension. She questioned why the building could not be moved to the north and east. Mr. Lehman said it will take away from his horse pasture, and the building will be on the east property line. Mrs. Wolgamood said she thought there would still be 20-25 feet to the property line, and noted she also looked at the legal description for measurements.

He suggested turning the building to have 60 ft. going north and south instead of east and west and pointed out then he would be 60 ft. away from the road. At this time, he submitted a drawing showing the building as he just suggested *[attached to file as Petitioner Exhibit #1]*. Mr. Homan said new drawing is still not to scale. Mr. Lehman mentioned that he also wants an 8 ft. lean on the proposed building. He added that he would like to get his buggies out of the barn and into a new building as his wife complains that the buggy smells like a barn. When Mr. Homan asked the eave height, Mr. Lehman indicated it is 10 feet. Mr. Lehman reported that he talked to neighbors to the north and east, and they had no problem with the request.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood reiterated that the second drawing is not to scale either. She said the bottom line is that she agrees with the staff recommendation. Mr. Campanello suggested he come back to the Board with a proper drawing. Mrs. Wolgamood pointed out that she measured, and he has ample room to the east. Mr. Homan noted the house already has variance for the setback. Looking at the aerial for adjacent residences, he noted all of the houses are pretty close to road. As this request is even closer, he said he would not be in favor of 40 ft. setback. Regarding the last criteria that strict application of the ordinance will not result in an unnecessary hardship to the use of property, Mr. Homan said he could build up to the square footage of his house and be within the ordinance. He stated he also agrees with staff on this request.

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

**Motion: Action: Deny Moved by Meg Wolgamood, Seconded by Robert Homan,** that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 35 ft. Developmental Variance to allow for the construction of a storage building 40 ft. from centerline of the right-of-way of CR 13 (Ordinance requires 75 ft.), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be denied.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

7. The application of *John Lapierre (lessor) and Sam Rulli (lessee)* for a 130 ft. Developmental Variance to allow for the placement of an LED digital sign 170 ft. from a residence (Ordinance requires 300 ft. from a residence) on property located on the West side of CR 17, 190 ft. North of Suburban Drive, South of SR 120, being Lots 1 & 2 of 6 Span PUD Phase II, common address of 54595 CR 17, Ste. #1 in Concord Township, zoned B-3 PUD, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #54595CR 17, STE. #1-130315-1*.

There were seven neighboring property owners notified of this request.

Todd Lehman of Signtech Sign Services, 1508 Bashor Road, Goshen, was present on behalf of Rulli's. He said Signtech presented signage options for this location at Rulli's request. With technology at other locations on signs, Mr. Lehman indicated Mr. Rulli would like an electronic message center at this location, too, as it is the most effective way to advertise weekly specials, catering, etc.

When Mrs. Wolgamood asked, Mr. Lehman indicated on the photo of the sign that the message center would be in the top two squares above Le's Nails. He also noted that nothing below that will change. Mrs. Wolgamood clarified that this electronic message center is only for Rulli's.

Based on Mr. Homan's inquiry, Mr. Lehman said there are two existing façade signs on the building that will be refaced, and this request is for two signs on the free-standing sign. Mr. Hesser asked if the residence is actually used as a residence at this time as he knows there are a couple of residences that actually house businesses. As a result of her measurement, Mrs. Wolgamood believes this request takes in approximately five or six houses along CR 17.

When Mr. Campanello asked about other LED signs already in use in that area, Mr. Lehman indicated McDonald's and the gas station have LED signage. Additionally, Mrs. Wolgamood noted there is a church farther north on CR 17 with LED signage. Mr. Lehman pointed out there are several businesses south on CR 17 who use LED signage.

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: Action:** Approve, **Moved by** Meg Wolgamood, **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 130 ft. Developmental Variance to allow for the placement of an LED digital sign 170 ft. from a residence (Ordinance requires 300 ft. from a residence) be approved with the following conditions 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).
2. 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 = 5).

**Yes:** Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser

8. The application of **William Christopher & Christina A. Rogers** for a Special Use for a home workshop/business for a precision machine shop (Specifications F - #45) on property located on the West side of Clinton Street, 180 ft. South of 3rd Street, being Lot 3 of New Paris (Original Town), common address of 68455 Clinton St. in Jackson Township, zoned R-3, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #68455ClintonSt-130325-1*.

There were 37 neighboring property owners notified of this request.

William Rogers, 68455 Clinton St, was present on behalf of this request. He said he is currently a machinist in the orthopedic industry, and he is looking to start his own full-time business in orthopedic machinery, instruments, and possibly some automotive. He indicated he and his wife would run the business. Mrs. Wolgamood pointed out there is an attached garage that was not noted on the site plan so the site plan is somewhat incorrect. Regarding the questionnaire, in reference to #24, which says he is looking to bring revenue and possible job opportunities, Mrs. Wolgamood asked if he meant to add additional employees to his business. Mr. Rogers said he means for other businesses to reap the benefits of his operation.

Regarding #6 where he indicated there would be no parking and no open storage, she asked about parking for clients coming to his place of business. Mr. Rogers stated he does not anticipate an abundance of clients at one time so parking will be available in his driveway. He said he does not anticipate needing more parking than that. Regarding the privacy fence, Mrs. Wolgamood asked if it is existing and if it has a gate to allow for ingress and egress of trucks. Mr. Rogers said the fence is already there and has a gate which will be open for business hours.

She confirmed that he would be having just UPS deliveries and noted other businesses in area would have those same deliveries. She also confirmed he plans to have one unlighted sign on the building. He further explained he is purchasing an existing business that is up and running and is moving the entire business to this location just as it is. He stated the current building is the same size as the one he is proposing now. Mr. Rogers said the current business has a 1'x6' sign on the side of the building which he was planning on using. However, he was informed he is only allowed a 1'x4' sign which he will comply with as required.

Regarding #12 which lists tools, equipment, and machinery, Mrs. Wolgamood said she asked her husband about a C & C milling machine which he said does not make much noise and is computer operated. She went on to say that he explained this type of machine would make less noise than her sweeper. She mentioned the welder which is normally run by a compressor. While many people have welders in their garages, she feels a normal compressor does make a lot of noise. Mr. Rogers stated that the C & C machinery will also take a compressor to run. He said this compressor will be located in the building, and it is a very quiet machine and the noise is just a hum and does not sound like an engine running. In the existing pole building, he reported you cannot hear the compressor outside the building. When Mr. Rogers was unsure about the horsepower, Mr. Campanello asked if the size is approximately 4 ft. tall and a couple of feet wide and suggested it is possibly three horsepower. If approved, Mrs. Wolgamood asked if he anticipates heating and air conditioning in the building. Mr. Rogers said the building will have both and will not have the doors open at anytime because of the machinery. He explained

he has had personal issues with his neighbors making noise and has dealt with it for quite a few years, so he is willing to spend extra money to not have issues with his neighbors.

Mr. Campanello suggested the equipment is valuable, and Mr. Rogers would not really want anyone to know that equipment is even there, so he feels the request would be very low impact. When Mrs. Wolgamood inquired about the large building immediately to the south of his property on the aerial, he said he believes the telephone company uses the pole building for storage of vehicles and equipment. She also noted a residence, accessory structure, and church surround his property. When Mr. Homan asked the height of the building, Mr. Rogers indicated 10 ft. high ceilings and noted the peak of the roof will not exceed 18 ft. He indicated he had a photo album of the existing shop if there were questions about machinery. The Board indicated they felt comfortable with the information they were provided.

There were no remonstrators present.

The public hearing was closed at this time.

Based on the discussion and what has been submitted, Mrs. Wolgamood reported she does not have an issue. She noted she would like a correct site plan showing the existing garage submitted to staff within 15 days if this request is granted, and the other Board members agreed.

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

**Motion: Action:** Approve, **Moved by** Meg Wolgamood, **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 home workshop/business for a precision machine shop (Specifications F - #45) be approved with the following conditions 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.
2. Prior to the issuance of a Building Permit for the machine shop, the 18' x 25' frame garage and the 10' x 8' framed shed with no foundation, as designated on the site plan, must be removed as proposed by the petitioner.
3. A corrected site plan showing the existing garage on site to be submitted to the staff within 15 days for placement in the file.

The following commitments were also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. No noise beyond the normal expectations of a residential use may leave the site.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

***\*\*It should be noted that Randy Hesser steps down at this time due to a conflict, and Alternate Board Member, Lori Snyder, steps in.\*\****

9. The application of *First Baptist Church of Elkhart (owner) and John S. Morse, Jr. (co-owner)* for an amendment to an existing Special Use for a church (Specifications F - #48), and for a Special Use to allow for an athletic stadium (Specifications F - #4) on property located on

the Northwest corner of CR 17 and CR 10 (Bristol Street), common address of 53953 CR 17 in Osolo Township, zoned A-1/ R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #53953CR 17-130325-1*. He noted the amendment is due to the original Special Use permit applying to the entire shaded property on the aerial, and if this were approved, the church related Special Use would be amended to only include the church property itself. Additionally, he noted if approved, a separate Special Use permit would be issued for the proposed stadium site. He pointed out throughout the Staff Report there is an error stating CR 8 which should be CR 10. Additionally, he explained there are proposed amendments that petitioners have discussed with staff, but the recommendations and the analysis are based on the officially submitted drawings and information from the time of the submittal.

There were 95 neighboring property owners notified of this request.

Gary Frank, Architectural Group 3, 201 S. Nappanee Street, Elkhart, was present on behalf of this request. He introduced other team members present representing this project as Richard Newberry, President of the First Baptist Church Board; Phil Byars, Executive Pastor; Debra Hughes, Civil Engineer of Marbach & Brady; Dave Bailey, General Contractor and Project Manager; Craig Wallen, President of CTT Communications, representing the ball field; and Doug Bawler, Acoustical Designer. He reported there have been several misconceptions for the ball field such as it is proposed at the corner of CR 10 and CR 17, not CR 8. He also noted it is for approximately 1,600 spectators and explained the ball field is for new players who hope to develop skills to take them to minor and major leagues. He explained they are not looking at retail sales. He reported Kroger's was previously looking at buying that corner when CR 10 was being developed. He said part of the curb cut that was originally developed was for some type of retail facility. Mr. Frank stated the growth of the CR 10 and CR 17 intersection has exploded over the last several years. With the expansion of that intersection, he feels what was at one time residential is not really a residential corner. He stated there is no way to sell that property for a house. He also noted the cost of project is closer to \$5 million than \$10 million. He explained the Special Use with the church to the north has certain easements and agreements with the ball field to work together as one unit and noted the ball field will actually use part of the church parking lot for overflow parking. He also indicated some cross easements for streets which have been approved through a letter which was included in the Board members' packets. From a zoning standpoint, he said he thinks that whatever is located in that corner needs to act as a buffering agent to the residential area. He added that it is not high end commercial, and it is not residential but needs to be treated as a buffer to the surrounding area.

Craig Wallen, President of CTT Communications, Box 301, Osceola, was present on behalf of this request. He started off by saying he believes they are going to operate one of the finest multi-use sports and entertainment facilities in the region by promoting and contributing to local and communitywide economic development by job creation and through quality of life and communitywide pride. He said they really feel that they will be long term good neighbor at this location year-round with day-to-day staffing and assure such things as timely trash pickup immediately following the events by stadium personnel, security, traffic control when and if needed, beautiful landscaping and trees with as much green space as possible, public access to the nature trail which will surround their property, rental use of indoor suites available year-

round to the community for parties and receptions, limited firework displays (before 10:15 pm). In summary, as a lifelong resident since 1978 who lives within three minutes of the proposed ballpark himself, Mr. Wallen said he feels it will be a great asset to the community.

When Mrs. Wolgamood asked if he is the operator of the property, he clarified he is the owner and operator of CTT Communications, which is purchasing the land from the church.

Giving some history for this project, Mr. Frank indicated they met with the Elkhart County Zoning Department about initializing this project and what needed to be done. He said the church is a Special Use and the surrounding area is R-1. He reported they were told a Special Use application was all they needed which is basically a review of zoning. He went on to say approximately one day prior to the Staff Report being mailed out; they were told they did not provide enough detail in their information for this project. He indicated they have been scrambling over the last several weeks to provide the detail that the staff was seeking even though it is only a Special Use application, not a DPUD. At this time, he submitted a packet of information that they have developed over the past several weeks *[attached to file as Petitioners Exhibit #1]* to each Board member and pointed out the information being shown on the easel is the same.

Mr. Frank indicated the site plan has been adjusted and tweaked several times over the few weeks from what was original submitted. He said it has been well thought through to address potential concerns and to increase the quality of the land. Using the aerial, he pointed out the heavily wooded site, the intersection, and a future youth building towards the rear of the church property. He stated the ball field overflow parking lot which belongs to the church is just south of the church. Regarding the wooded area that he feels has been of concern, he indicated the green highlighted area on the large aerial will remain. He also said the wooded area around church will remain. Regarding the walking path which is also used by cross country teams for track meets, Mr. Frank stated it has been extended through the ballpark to enlarge it from its present size.

He noted the baseball field orientation is to the northeast and is also located to the corner of the intersection attempting to keep the noise at the noise generator area which is the intersection and keeping it as far away from the residential area as possible. He stated the ball field will actually be recessed, and fans will be overlooking it when entering the stadium. He noted there will be concessions and the parking lot will house 270 vehicles and the overflow parking at the church will hold 285 additional vehicles which meets the zoning requirements.

As indicated on the aerial, he stated the main access point will be from CR 10 to the south with entry signs. He noted a video board which will be located basically off the first baseline. Regarding signage, he reported a proposed low profile sign at the intersection of CR 10 and CR 17 and an entry sign at CR 10 which is approximately 64 square feet showing the entrance for First Baptist Church and the stadium. Regarding lighting, Mr. Frank said the lighting does not extend out beyond the property lines as the lights shine down into the field from the perimeter of the field. He also noted the parking lot lighting is confined on the interior of the site. He said they have also taken care and have provided a berm with low shrubs to block headlights of exiting traffic.

Doug Bullard, CR 42, Wakarusa, was also present on behalf of this request. He noted his business is out of Elkhart, and he has been involved with the Elkhart area since 1994. He indicated everything he does spans from broadcast. He reported he is involved with broadcast

sports for NBC, Comcast Sports Net in Chicago, public address for Elkhart Community Schools, and the Elkhart Jazz Festival. Mr. Bullard indicated they want to bring sound and the video scoreboard. With his background, he feels it will bring a real professional feel to what is going on in the ball park. The concept of it being family entertainment is something that he thinks Elkhart has always been known for and what this project is designed to do with creating a family environment. He said they wanted to be a part of something that brought family entertainment and something that people could be a part of that does not cost major league prices.

To address the concept of the sound level coming from the ball park, he said the sound system has been designed to cover the field of play and the stands. Looking at the way the stadium is laid out which is facing northeast, he indicated it will be facing away from most of the residential areas. He noted most major league ball parks face that direction which is the rule of thumb and in this case, most residential areas are to the south and southwest from the ball park. He said the sound system has been designed to basically broadcast inside the park, and he pointed out the recessed stadium aids in keeping sound within the stadium. He also pointed out the existing tree lines create a natural soundproofing barrier and separation so the trees are functional as well as beautiful.

From his professional broadcasting experience and working with stadiums such as Wrigley Field which is in a neighborhood, he said they have to reduce sound after a certain point. He noted at Wrigley Field after the "seventh inning stretch," the sound system is turned down. He stated the way the system is designed, that can happen automatically. He went on to say that they have tried to design something that creates the atmosphere they need but will not bother neighbors with all of the speakers facing toward the field. When Mr. Campanello asked about wind carrying sound, Mr. Bullard stated it does and noted wooded areas will knock down noise but winds can still carry the sound depending on the frequency. When Mr. Campanello indicated the noise level of a packed house and a home run with noise of fans and fireworks will be loud, Mr. Bullard said that fireworks will not be lit after a certain time. He noted Mr. Wallen mentioned earlier that they are willing to work with the time frame of the fireworks.

Mr. Campanello asked how they corral the noise of the fans. He noted with the stands being recessed into the ground, all of the sound is pushed out toward center field. In addition to the trees being a barrier, he said the land that field is dug into and the building structure behind the stands will also knock down noise and curtail  $\frac{3}{4}$  of expected crowd music. When Mr. Campanello brought up the subject of organ music, Mr. Bullard mentioned anything that is broadcast audio-wise is going to be off of a digital source for audio and there will not actually be an organ so it can be restricted to a certain volume and made to fit any regulations that are set out.

When Ms. Snyder asked the total acreage for this project, Mr. Frank stated it is approximately 16 acres. He added that all of the structures are single story except for the press box. He noted the suites are above the bleachers which also help block sound. He also pointed out that brick is one of the main materials to be used which bounces sound off and the speakers will be behind the audience facing toward the field. Mr. Bullard said the concept is sound generated close to the subjects, and they have tried to be very particular in where they place the sound and how they control it. Mr. Frank also pointed out that this is a very small stadium saying it is smaller than some high school stadiums but noted it is designed to feel big.



Regarding drawings that were provided, Mr. Homan questioned the elevation and height of the structure in relation to CR 17 and CR 10 and what it will look like from the street.

Debra Hughes of Marbach, Brady & Weaver, 3220 Southview Drive, Elkhart, was present on behalf of this request. She said CR 17 drops about 6 ft. as it is going from the church entrance on the west side down toward the intersection and the ball field is set at elevation 759.5 which the bottom of the field would be approximately the intersection elevation. So as the road climbs going north, she said it would go along that same elevation with the field at elevation of the intersection. Mr. Homan mentioned the berm at the south side of CR 10 but stated he does still not understand what the visual impact would be from the south side. Mr. Frank said the seating area is approximately 7 ft. high with the top row of seats being at grade level. Ms. Hughes explained further using the grading plan that the intersection is at 760 and the field is 759.5 which is approximately the elevation of the intersection. She went on to say as the elevation climbs going north to 766, so if the bleachers are set seven feet above the field that would put them at 767, which is one ft. higher than the road elevation. When Mr. Campanello asked about the elevation of the south properties and Mr. Homan asked about the elevation of the new cul-de-sac, Ms. Hughes said she would say the cul-de-sac is at 750, which is another 10 ft. down. When Mr. Campanello asked about the height of the berm along CR 10, Ms. Hughes referred to the retaining wall that was built along CR 10 to minimize grading impacts on properties there. She suggested for the corner property the high point would probably be 756 which is about 3 ½ feet lower than the bottom of the field which is set down in a bowl to contain the visual impact and the sound. Mr. Homan asked how high the lighting is for the field lights. Mr. Frank said he believed they are 80 ft. When Mr. Campanello asked how that height compares with lights on the by-pass, Ms. Hughes indicated a highway light would be 40-50 ft. above an intersection and used the Toll Road as an example. Mr. Frank used Elkhart Christian's lights on their soccer field that are 90 ft. tall for a comparison.

Regarding soil tests for septic system, Mr. Frank said they doubled the standard recommended size for commercial use by the county. He noted the retention area around there and pavers in parking lot to help absorb some of the storm water.

Phil Byars, Executive Pastor of First Baptist Church, 53953 CR 17, was present on behalf of this request. He said this land was purchased with the intent to sell someday and not build on. Pastor Byars noted that the church is concerned with what goes on the land they sell. As they are selling the land, he pointed out that the church is not building a baseball stadium. He stated they would be excited about selling the land to someone who is putting a baseball stadium in there because of the fact that it is a ball park and not a shopping center that would be used 24 hours a day or even an eight to ten hours per day with a lot of traffic and a lot of use. He said they are excited about it being a park setting. The concerns of First Baptist Church as they worked with the proposed owner of the property would be to maintain the park feeling that they have out there by leaving up as many trees as possible. He pointed out that he knows the congregation and surrounding neighborhoods enjoy the walking trails. He said the church has tried to maintain them since they built there on the property as the walking trails were there prior to the church being located there. In the negotiations and discussions, he stated the church has made it clear that it is very important that the trails remain and are kept as natural as possible to maintain the park feel of the area. Pastor Byars stated the church is excited about having something in that

area and adjacent to their property that they can be in a partnership with as part of their negotiations are to use part of the church parking lot for overflow parking for the stadium. As a church, he said anytime they can get exposure to their property and exposure to their ministries, it gives them the possible opportunity of sharing the gospel. He also pointed out that it is a seasonal type of event-based property. He noted the intention to plan ball games versus church events and working out a partnership so they do not have the impact of the church being present when games are scheduled.

At this time, Mr. Homan asked for a show of hands from the audience in the very full boardroom in support of this request, and a few people raised their hand. When he asked for a show of hands of remonstrators, most of the audience raised their hands. Having heard the petitioner's presentation, he said those present in support of the petition having additional evidence material to the discussion would now have an opportunity to speak.

Victor Burson, 910 Benham Court, Elkhart, was present in favor of this request. He thanked the audience for being present to discuss this issue. On the subject of what makes a Special Use special, he noted what it means to the Board may not be the same as the residents. But he stated he understands it has land use designed in a plan that considers all of the growth potential for that particular parcel of land and not all questions can be answered to satisfy everyone. Having spent years working on a sports complex in Kansas City, Missouri of the Chiefs and the Royals, he said when they designed the buffers, it was in consideration of the people that live near the sports complex. Growing up in Elkhart, he indicated they did not have a place to play ball unless they walked to Studebaker Park. He stated he is asking that when this plan is considered, the Board should be aware of the dreams of our children to be able to play some organized sports. He pointed out it should be a "buffer" not a "barrier". He noted when the lights went out in the boardroom earlier, everyone got quiet. He pointed out when it gets dark, the sound diminishes.

Jan Lange, 3923 Sawgrass Cove, was also present in favor of this request. She pointed out she lives near the jail, the landfill, and the fire station so she has some understanding of the concerns of the neighbors. She talked about the Chicago Cubs announcing an agreement for the city's \$500 million private renovation of Wrigley Field, and the mayor praised the deal to update the 99 year old stadium because it will provide more jobs and new revenue for the city without spending taxpayer dollars. She pointed out that the mayor saw it was a good thing for many which is what she feels the Board has to consider. As with the Wrigley Field project creating many jobs, she said she looks at this project the same way. She noted Craig Wallen has worked on this project since 2004 and has received no funding for this project. She reiterated the idea that this will create more jobs and revenue for this particular area which also translates into possibly better education, better roads, safety, and law enforcement. She said Executive Director, Kevin Deary, who is a good friend of hers, has a heart for kids. She also noted Craig Wallen has a heart for kids and baseball. She indicated family entertainment can grow a community and provide a lot of dollars which would be beneficial for all residents of the community.

Mr. Homan noted when hearing from remonstrators, speakers should not repeat issues previously addressed.

Franklin Troyer, 22117 CR 10 W, was present in opposition to this request. He stated he has lived there over 30 years and wanted to purchase five acres from a previous owner of the church property involved in this request. Regarding the rerouting of church traffic, he stated that was previously denied by the Commissioners and the County Council. He said he feels this is a good idea but the wrong location. Regarding the structure of the road, pointing out the curves on CR 10 on the aerial, he stated they were promised at the hearing that there would not be any road cuts when the new CR 10 was built. However, he said there are two: one for the First Baptist Church and one for the development of the 80 acres of the agricultural land. He also noted there was supposed to be a median and new trees. He said this area was supposed to be the "entry of Elkhart". He said that corner is a disaster and a hazard ready to happen. If nothing else, he said at least the entry has to be another place and suggested using the existing church drive. He stated the road was not designed for this kind of entry. Mr. Troyer said this looks like land that has no real use for anyone else so he feels this is all about the money. He talked about the intersection being on a slope. With the added traffic that would be coming in, he said his concern is that at this new intersection, traffic would back up coming from the east and cause a traffic jam. He said safety is the number one issue. As he lives within 200 feet of the project, he said bright lights and loud noise through the night is not what he calls residential living.

Mike Rody, 53891 CR 17, was present in remonstrance. He indicated his 3 ½ acre property is just north of the church and shares a driveway with the church. He reported living there for 21 years. He said they worked with the church when the church was built, and the church was a very good neighbor at the time. However, he noted the church never made it known that they planned on selling retail, and events are retail. He pointed out the lights will be pointed right straight at their house, as will the noise. Although they previously supported the church's efforts, he said they no longer do. Regarding the buffer zone, he said one already exists which is a large area of trees. If any trees are torn down or removed, he said it will change everything in that area as they will hear the intersection, bridge, and boat noise. If overflow parking goes into the church parking lot, he said traffic will be able to exit on CR 17 and will not be restricted to Bristol Street alone. He reported that will create additional traffic and all kinds of problems. He noted what they refer to as the "Baptist parade" two or three times a week when they watch traffic enter and exit which he said he has no problem with. However, he stated he has a problem with retail, noise, and listening to spectators and big microphones. He spoke of having rental properties in Goshen who has codes that say in an area where there are residential and commercial properties combined that the sound must be down to a certain decibel level from the listener's point of view at 10 p.m. He said he is aware that Elkhart City is very concerned about noise and noise codes. Regarding revenues, he stated this is not in the city limits and questioned if there are plans to annex this into the city because as of now, as it is county property, he does not know how this will be revenue for the city and is not a consideration as far as he is concerned. Regarding the curved roadway in that area, he said it is treacherous. He stated it is actually reverse sloped in comparison to the slope of a racetrack. He said the amount of traffic travelling through there now is ridiculous without adding more to it.

Bob Whitehead, 54160 Stonebridge, was also present in remonstrance to this request. He pointed out the neighborhood where he resides on the aerial and indicated the subdivision entrance which is on CR 10 has already been adjusted for the initial CR 10 expansion. He stated

several of the properties within his neighborhood border the church property line. He reported the neighborhood has several concerns such as lighting, sound control, and fireworks. Although they have said they will be able to control them, he pointed out the information is all hypothetical at this point, and they will not know the actual impact of those issues until the facility is built and in operation. He added that by then, it is too late to adjust from there.

He stated the neighborhood's other concern surrounding this is regarding Section D, paragraph 2 of the application (per the website) for zoning request which says they "must prove without a doubt that there is a need for the location of the ballpark at this location due to a lack of supply of suitably zoned land available". He said there is an ample amount of commercially zoned property north and south of this location which he said is known by CTT Communications based on their 2010 attempt to purchase properties located near the US 20 by-pass. At this point, he stated they are not opposed to a ball park in Elkhart, but they are opposed to where they want to put it based on the traffic flow, lights, sounds, effect on the community, and possible sale of alcohol at this facility with all of the children in the surrounding neighborhoods.

When he brought up Section C, paragraphs 1 and 2 for the posting of the property when requesting a zone change based on their application for 10 days prior to this meeting, he said it is the responsibility of either the church or CTT Communications to post signs along with viable routes of CR 17 and CR 10. He said he has pictures on his i-pad that will show no signs have been posted as to this meeting and their intent to change zoning. Mrs. Wolgamood said she feels he may have been misinformed somewhere along the line because that is the criteria for zone change. She explained that this is a request for a Special Use permit and the underlying zoning will remain R-1 if this request is approved. She said they do not have to post the property for a Special Use permit. Mr. Whitehead said that courtesy should have required it.

Mike Bontrager, 54140 Riverview Drive, was present in opposition to this request. He said he lives directly west of the ball park and has owned the property since 1983. He stated there would be a 15-20 foot buffer of some trees to the septic area. He pointed out that he loves sports and attends approximately 50 athletic events a year. He said everyone knows that noise, traffic, and lights are common concerns for a facility such as this.

He noted an additional concern is whether or not this is a realistic business plan. With this being a \$5 million facility, he questioned if they need to turn a profit, if they are ok to break even, what will happen if they lose money, and how long they can afford to lose money. Mr. Bontrager said he thinks most positions there will be filled by volunteers so he cannot see that it will have any job impact other than the construction jobs during the project. He said he believe sports at this level will not draw the parents as spectators and will be non-local ball players. He stated he is concerned with what the residents will be left with if this stadium is not profitable and pointed out they will not get to choose who the next neighbor is if it would go to auction.

He indicated he believes the people know this is a bad location and not the spot to do it and that is why they are making efforts to lower the sound and the lighting. He said he thinks the only thing that can be driving this location is the lower cost but said it would cost more to prepare this site than if they bought something that was properly developed. He indicated there is not city water and sewer on this property. He suggested the stadium would make more sense by the Sports Center, the former Farmers Market, or downtown at the former Federal Press

location which would draw people downtown. At this location, he said the only motivation is the seller is motivated and the buyer is excited about a cheaper opportunity.

Eric Thomas, 22388 CR 10, was present in remonstrance to this request. He pointed out that he works in recreational vehicle industry and gets up at 4:30 a.m. so he goes to bed early which would be before the 10:00 or 10:30 p.m. suggested cut-off time for fireworks. He also brought up the fact that fireworks scare pets, and this location is in a residential area. Mr. Thomas said when they reconstructed CR 10, they did a beautiful job. He noted travelling down CR 17 from the Toll Road and entering the CR 10 corridor, it is a beautiful entrance into the Elkhart area, and he does not want to see the trees destroyed.

Bill White, 22804 Fair Oaks Court, was present in opposition to this request and noted he is the secretary of the Hunters Run Homeowners Association. He brought up that he believes it would be more beneficial to more businesses to have the stadium located south of the river as there are more commercial establishments that would benefit from the traffic whereas those on the north side of the river will only suffer from that same traffic. He added that a stadium north of the river is extra disturbing because then they will need to start worrying that suddenly this area will start looking attractive to someone who wants to put in a strip mall or some such businesses to benefit from that traffic. He questioned if the Board would be able to say no to that opportunity if they say yes to the stadium. He mentioned that CTT wants to call this a symbol of revival. In Hunters Run, he said they see it differently. With the prospect of industrial expansion moving into the north and the prospect of a stadium moving in to the east, he said they would see the stadium as a symbol of lack of commitment by the County to protect their neighborhoods. He begged that the staff recommendation of denial be followed and preserve the residential neighborhoods.

Mary Kasa, 22750 Timberstone Court, was also present in remonstrance to this petition. As the President of the Timberstone Homeowners Association, she said she can say unequivocally that the neighborhood is not happy about this. She pointed out that they have in the past had their pleasant rural atmosphere usurped by outdoor concerts at the church. While she realizes the church is trying to spread the word, they moved to the country because they want the country atmosphere, and noise is a concern. She questioned other possible uses for the stadium besides baseball that will create traffic, noise, and light pollution in the area and asked if they would be attempting to obtain a liquor permit. She noted that beer and testy traffic situations do not mix. She expressed she is also well aware that even if they do not sell beer as they are catering to a college crowd, the beer will be there regardless.

Harry Sims, 54100 Riverview Drive, was present in opposition to this request and pointed out his property on the aerial photo. He stated he is speaking for the other 25-30 residents that are his friends. He stated many have lived there 25+ years. He questioned where the water supply is going to come from and where the septic drain fields will be located. With a possible 1,600 people drinking water and spraying the ball field, he questioned the affect it will have on the neighborhood water supplies. He pointed out in that area, there is water at eight feet, and it goes down to about 32 feet which means that water table is on the high side. He said if they put in shallow wells, they will suck the water off the top of the neighborhoods because the stadium is on the top side of the water supply. He also expressed concern about sewer drainage run off into the neighborhood water supply. Mr. Homan confirmed that Mr. Sims' well is 32 ft.

with water at 8 ft., and Mr. Sims stated the wells are the same all along River Place as well as Stonebridge subdivision. When Mr. Homan asked for someone from Stonebridge to confirm the depth of their well, Mr. Whitehead said his well is 32 feet with water at 8 feet.

Betty Wesselhoft, 54206 Laguna, Bristol, was present in remonstrance of this petition. She stated she travels CR 10 every day. She brought up the reconstruction of CR 10 with all of the curves and said her understanding is that the stadium entrance will be on CR 10. She questioned if the entrance would be located at the existing curb cut where the Sheriff's patrol cars sit sometimes. Mr. Homan confirmed that would be the location of the stadium entrance. She questioned if all of the construction vehicles will be entering and existing there which she pointed out, will hold up traffic and possibly cause a major accident.

Darrell Higgins, 54081 Stonewood Drive, was present in opposition to this request. With the overflow of parking, he questioned what is to prevent people from parking in their neighborhood, walking through the trails to the ball park, and asked if there would be security for that. He also questioned the effect the stadium will have on their property values.

Mr. Homan asked for rebuttal from the petitioner at this time and mentioned some specific areas to address such as CR 10 with the s-curve approach to CR 17, the existing curb cut, concern about safety, and entrance and exit with limited field of view in both directions. He questioned how this does not impact public safety in a significant way or if there has been discussion of any provision to add a center turn lane or a traffic signal. He pointed out that public safety is part of the responsibility in the decision of the Board, and he questioned how the safety issues are being addressed.

Ms. Hughes said currently the church has an access point on CR 17 that is full access. She noted discussions with the Highway Department. While officially they have no position on a Special Use land use issue which is their appropriate role, she said it is reasonable to explore traffic as a concern. She reported she learned that during the design of CR 17, the Highway Department did attempt to close the CR 17 driveway of the church so there is a desire on the part of the Highway Department to limit access on CR 17 which they have no medium to do that at this point. She noted that this project would give them the needed vehicle because there is a shared use. She indicated the Highway Department wanted the church to change the driveway to CR 10 and was unsuccessful in their attempt to make them comply which is why the Highway Department intentionally put the existing curb cut on CR 10. She said this project does provide an entrance for the church from CR 10. She noted in exchange for that, the Highway Department would like the church to give up their full access driveway on CR 17 and to limit their traffic to right in, right out only which is a significant decrease for the church in terms of access because giving up full access is a big concession. She added that the method of limiting access is still to be worked out, but they do want the church to limit access on CR 17 then the CR 10 entrance would become the full access intersection.

She reported the traffic speeds on CR 17 are 55 MPH north near the Toll Road and then decrease to 45 MPH at the intersection. She said the downgrade slope means that sometimes those speeds are exceeded, and sometimes people are not slowing down as they should be. In looking at the two driveways and considering which one is safe, she said she feels the higher speed on CR 17 with the greater amount of truck traffic, and the full access intersection is a higher probability from a collision standpoint than the CR 10 drive where the speed is 35 MPH

because of the approach to or exit from the intersection as opposed to a mile of open road coming south from the Toll Road.

On the balance, she said she would think the CR 10 access would be considered safer. As far as getting the traffic off the road, the Highway Department wants a deceleration lane which would be a right turn lane that would be in addition to the two lanes that are there to allow traffic making a right turn into the park to slow down without impacting through traffic. She said they have also requested a longer left turn lane as there is a shorter existing left turn lane into the curb cut which is approximately a 3-4 car storage lane. She indicated they have asked them to evaluate a longer left turn bay with associated road widening to accommodate traffic that would be coming from the west. She also said all of the details are yet to be worked out based on the decision of the Special Use.

Mr. Campanello mentioned that a good amount of the property and berm along CR 10 will have to be taken out for a deceleration lane making the road even closer to the properties on south side of CR 10. She responded by saying that the design for an acceleration/deceleration lane would all be on the north side of CR 10. She said it is a deceleration lane for all traffic coming away from the intersection and the acceleration lane is a space on the east side of the drive that would allow cars turning right to accelerate before they get into the traffic flow. Mr. Campanello asked if there would be a median to keep people from turning left into the stadium which she indicated no as it would be a full access intersection. She indicated the left turn restriction she was speaking of is on CR 17. She reiterated that the exact details have not been worked out, but the idea is that it would be completely within the existing right of way meaning that there would be no additional right of way taken for this process.

Mr. Homan asked Ms. Hughes if she has looked at the ground water impact from an engineer standpoint in terms of usage and impact of the septic system on area ground water as it is a shallow aquifer being 8 to 32 feet. She indicated soil borings have been collected for the commercial septic system, and they have been sent to the State Department of Health who will give a design requirement for that field. She stated they do not have that information at this time, so she cannot comment on the size of the field. She noted they have made estimates which are shown on the plan based on the size of the stadium. Mr. Homan confirmed that whether it will be a mound system or not is still undetermined at this time. Mr. Campanello asked about soil borings where the field will be located since the plan is to make the field in a bowl and questioned any possible dewatering problems during construction as the aquifer is so close to eight foot in this area. Ms. Hughes stated she does have a copy of the soil borings if the Board is interested in seeing them, but no evidence of ground water was found in these borings although they were relatively shallow borings because the septic system is a relatively shallow installation of no deeper than three feet usually. She pointed out this is not a structural boring.

Mr. Homan asked the petitioner to address the issue of why the stadium should be at this particular location. Mr. Frank indicated that they feel from a traffic standpoint, it is an excellent location to pull people to the ball field. He said you do not put the ball field out at the farthest point and used Coveleski Stadium and Wrigley Field as examples as they are near populated areas. He said they looked at other locations from a business standpoint, but from the business plan that the owner has developed, they feel that this is the best most appropriate location to attract a crowd. He noted the stadium would be on city water there, so they will not be doing a

well. When the crowd disagreed, Pastor Byars confirmed for Mr. Frank that the church is on city water and fire hydrants are available on that property. Regarding the traffic, he stated the entrance is what the Engineering Department is suggesting and is shown on diagram C10 so the Board has documentation that they are committing to abide by engineering's recommendations. He added that through the careful design, he feels they have met and exceeded most of the concerns that the Board should have.

Mr. Homan conferred with the other Board members that they feel they have heard enough testimony. The public hearing was closed at this time.

Mr. Campanello said he looks at this as the wrong location for this and feels the Highway Department is not thinking clearly about allowing all of the traffic to turn into this driveway and curb cut. He believes the stadium will have an impact on surrounding neighborhoods concerning their wells and way of life that they are looking for. As much noise as this is going to cause and disruption to their lives, he said this is the wrong place to do it.

Mrs. Wolgamood noted the church purchased the property in speculating so a ball field and strip mall are not a given thing in an R-1 zone which is single family residential. She indicated it is a completely different process for a zone map change and that is not done by this Board. She said when you look at the expanded aerial photo, you see nothing but roof tops. She noted some of those roof tops are in agricultural zones but most are in residential.

Regarding the traffic situation, when the Highway Department indicates that they would rather the drive be off CR 10 versus CR 17, she said the County Highway Engineering Department does not care about land use. She pointed out that the Board of Zoning Appeals does care and that is their job. She expressed appreciation for all of the work that everyone has done regarding this petition as this is much more information than this Board normally gets with requests for stadiums or ball parks. She asked to be corrected if she was mistaken in pointing out that Mr. Wallen was involved with the property to the south on Verdant and CR 17. Mr. Wallen confirmed they were in the process 3-4 years ago. She said they went through the process of a Planned Unit Development, and they received the approval at that location which she feels is an excellent location for what they are proposing. She pointed out there are very few roof tops near that location. Mrs. Wolgamood noted at this location there is city sewer although they do have access to city water. She reiterated that this is the wrong place.

Regarding the previous question of possible additional uses for the stadium if the ball field fails, she pointed out it is not the job of the Board to do that. She pointed out the question of the liquor license was not addressed. Regarding the mention of property values, she said she believes because this is so highly residential that property values within a mile will be affected because of the traffic and all of the other conditions. Mrs. Wolgamood said she cannot vote for this.

Mr. Homan pointed out with the sound and lighting issues, he feels the petitioner has done a great job of attempting to demonstrate their intent to control sound and lighting, but he reiterated that no one can know the end result until it is actually built. He noted that is a large concern to him. Mrs. Wolgamood mentioned the height of the lights and although they may be turned off at a set time at night, they are still there and it is light pollution. She reported she does not live very far from the Toll Road entrance and exit, and she sees light pollution from those



lights which are reportedly only 40 ft. high. With these proposed lights being 80 ft. high, she said an entire neighborhood will be lit up.

Mr. Miller mentioned a couple of other things jumped out at him with the first being that the comparison was made with Wrigley Field in Chicago which is a 99 year old institution. This is a brand new institution, and they have one opportunity in our county to get this zoning right. Secondly, he noted that if you go to major cities that are putting in ball parks such as Philadelphia, they have all of their ball parks (basketball and baseball) in one location, and it is 20 blocks south of the city in a commercial area. He stated he is seriously concerned about traffic and noted that the impact a church has on a neighborhood is different than the impact of a facility of this type. He commented that the Board is charged with the responsibility of health, safety, and welfare, and for that reason, he cannot support this request.

Mrs. Wolgamood pointed out there are two requests: one for an amendment to the Special Use for a youth building for the church and one for a Special Use for the ball field. Regarding the youth building, she said she does not know that she has a problem with it, but they skipped over it because of the larger issue of the ball field. She noted that they did not get into what the proposed building was going to be utilized for, but also noted they have adequate parking for it and does not know that it would be anything major. She suggested either they need to think about it, discuss it further, or ask any questions about that portion before they just do a blanket motion.

Looking at the drawing, Mr. Homan said they can see where the youth building would be located. Mr. Frank said the storage building is center field of the baseball stadium to house maintenance equipment. Mrs. Wolgamood asked if it has any actual use by the church, which Mr. Frank indicated it does not. She indicated her point was that they have two petitions in front of them and need to address both. Mr. Campanello mentioned they do not have a drawing of the youth building, how they are going to take care of it, or if there will be facilities inside. Mrs. Wolgamood suggested they may not have enough information to address that issue at this time. Regarding the amendment to the Special Use for the church, Mr. Homan asked staff if the amendment is required only because of the youth facility or if it is also required to allow the church to sell the property as a baseball stadium. Mr. Mabry responded that it is sort-of both and added that the staff recommendation focuses more on the change of the boundaries of the church's Special Use permit and not much attention was given to the placement of the youth buildings. He added that it is both related to adding those buildings to the site plan of the Special Use and changing the boundaries of the church's Special Use. Mrs. Wolgamood noted the church's existing Special Use includes the entire property. Mr. Mabry clarified that it would be to make the church's Special Use apply to the rectangular piece of property for the church which would be the amendment. Mr. Campanello mentioned he is having a hard time with the Special Use for the youth building, and they should allow remonstrance by neighbors as well in how it is being used and suggested maybe it is something they need to come back on. Mr. Homan asked staff if it would require a revised site plan for the church regarding their amendment. Mr. Mabry explained that the original submittal and any of the revisions are showing the youth building on there. He suggested if the ball park were not part of the equation, and they were only applying for an amendment to the Special Use for the church to place those two building there, it would go before the Board. Additionally, if it were approved, the next step would be applying for an

Improvement Location Permit where there would be a greater level of detail showing structural elements of the youth building. If the original Special Use for the church is the entire area, and they are selling part of the property, Mr. Homan questioned if they would have to submit a site plan excluding the land they own but would not be part of the Special Use if approved. Attorney Kolbus said they would have to amend their original site plan to exclude the southern portion.

Attorney Kolbus stated if there is concern by the Board about the youth center and the Board wanted to deny the request today, it could be done without prejudice as to the youth center allowing them to come back without waiting the time period stated in the rules. He added that the youth center was not really addressed by either side today.

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

**Motion: Action: Denied, Moved by Robert Homan, 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 an amendment to an existing Special Use for a church (Specifications F - #48) be denied. The Board further moved that if the church wants to submit an amendment pertaining to the youth center, they would not be restricted by the time limitation/waiting period traditionally imposed by the County.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

**Yes:** Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Lori Snyder

**Motion: Action: Denied, Moved by Robert Homan, 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 the request for a Special Use to allow for an athletic stadium (Specifications F - #4) be denied.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

**Yes:** Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Lori Snyder

**\*\*It should be noted Randy Hesser returns and Lori Snyder steps down at this time.\*\***

10. The application of *Nathan L. Nisley (land contract holder) and Myron S. Yoder (land contract purchaser)* for a Special Use for a home workshop/business for retail sales of optics and bird watching merchandise (Specifications F - #45) on property located on the South side of CR 12, 1,505 ft. West of CR 35, common address of 14544 CR 12 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 #14544CR 12-130321-1*.

There were eight neighboring property owners notified of this request.

Paul Hostetler, 54824 CR 33, Middlebury, was present on behalf of this request representing Myron Yoder. For approximately the last year, he said Mr. Yoder has been selling binoculars and other bird watching merchandise with most of his sales being at trade shows. Mr. Hostetler stated Mr. Yoder would like to set up a small storefront at his residence to sell some of these same products. He indicated they would like to make the proposed building portable for future growth if the company ever grows larger than this building. If that occurs, he reported Mr. Yoder would move the business in town.

At this time, he submitted a petition with signatures *[attached to file as Petitioner Exhibit #1]*. When Mr. Homan noted there are no addresses listed with the signatures, Mr. Hesser requested Mr. Hostetler show on the aerial the residences of the signing neighbors. Mr. Hostetler indicated two neighbors on the east side and one neighbor to the north. When Mr. Homan inquired about the other retail sales items besides binoculars that would be sold, Mr. Hostetler indicated scopes, bird houses, and seed would be the extent of it.

Mrs. Wolgamood confirmed that there would be no outside storage. Mr. Hostetler indicated that Mr. Yoder is projecting that 90-95% of his sales will occur at shows. He added that to get a dealership for the binoculars, he is required to have a storefront. Mr. Homan noted no outside display is allowed, and everything must be contained in the building. Mr. Homan questioned staff about a 12'x16' building being allowed to be portable. Staff noted the requirement that over 200 square feet must be on a foundation.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said he feels this is a very low impact operation.

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

**Motion: Action:** Approve, **Moved by** Robert Homan, **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 for a home workshop/business for retail sales of optics and bird watching merchandise (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 also 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 = 5).

**Yes:** Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser

11. The application of *Freeman Miller (buyer) and Martha E. Miller (seller)* for a Special Use for an agricultural use for the keeping of horses on a tract of land containing three acres or less (Specifications F - #1) on property located on the North side of CR 40, 1,580 ft. West of CR 43, being Lot 2 of Replat of Meadowland Minor, common address of 11299 CR 40 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 #11299CR 40-130325-1*. He submitted a letter from Maynard and Barbara Miller expressing concern about the proposal *[attached to file as Staff Exhibit #1]*. He also noted the revised site plan laid out on the tables for the board members which shows the reduction in the size of the barn with a five foot separation from the existing barn and the setback to the west side is one foot shorter than originally proposed.

There were five neighboring property owners notified of this request.

Paul Hostetler, 54824 CR 33, Middlebury, was present representing the petitioners. He said the house was recently purchased by an Amish family who use horses as transportation, and they would like to build a small horse shelter on the west side of the existing shop building and finish perimeter with fencing for pasture. He noted the property next to this one has an approval for six horses on just less than three acres so he feels this request for two horses on almost an acre is reasonable based on the surrounding properties.

He did indicate that the building might become an issue with the Health Department because it would be on the reserve area for the mound septic system. He reported the existing building, which was built prior to the procedure that referred all building permits to the Health Department, is already partially on that reserve. He added that he did not discover that until after the petition was submitted. He said according to Mark from the Health Department, unless they allow a portable horse shelter, the project might have to be completely cancelled and the existing building used for the horse.

Mr. Hostetler stated the purchase of adjoining land is a possibility at some point in the future. If that happens, he indicated a building permit would be pursued for a barn. However, at this time, he said unless a portable building is approved, they will not be able to build a barn right away.

There were no remonstrators present.

Regarding the letter in remonstrance questioning the size of the parcel, Mr. Hesser said he felt it is really an issue of maintenance. He asked how the petitioners plan to address the storage of hay and waste issues. Mr. Hostetler said they were hoping to have hay storage in the same proposed detached building, but they may have to use the existing building if they do not get the Health Department's approval. As there is not enough pasture land to maintain a horse strictly on pasture grass, the petitioner will be feeding hay year-round. But Mr. Hostetler noted there is plenty of room for hay storage in the existing building. He said the waste from two horses is not so much that it cannot be used on site. Mrs. Wolgamood mentioned the amount of room needed for a mound system and noted that is probably going to be a huge issue for the Health Department. He reported H & H Tiling & Excavating has looked at the possibilities of a reserve area with the existing buildings and easement along the front, and there is no area big enough. Mr. Hostetler added that if the petitioner's septic goes out, he will have no choice but to look for buying more land.

The public hearing was closed at this time.

Mr. Campanello pointed out if this is approved, the petitioner will still have to deal with the Health Department. Because this is such a small lot, Mr. Homan questioned if there is any lot too small for a horse. Mrs. Wolgamood pointed out it is a small lot with issues as it is a lot in a subdivision and the request is for two horses. Attorney Kolbus reminded the board that they can grant up to what is requested so they could approve only one horse if they feel the need to do so. Mr. Hesser said he thinks it gets down to the management of hay and waste but agreed that it is small.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **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 Special Use for an agricultural use for the keeping of

horses on a tract of land containing three acres or less (Specifications F - #1) be approved with the following condition imposed:

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

The following commitment was also imposed:

1. Approved for two horses.
2. Approved in accordance with the revised site plan submitted dated 4/12/13, or a subsequent date to that based on the action of the Health Department with regard to the portable building, and as represented in the petitioner's application.

**Vote:** Motion passed (**summary:** Yes = 4, No = 1, Abstain = 0).

**Yes:** Robert Homan, Doug Miller, Tony Campanello, Randy Hesser

**No:** Meg Wolgamood.

12. The application of *Harvest Ministries A Church Association* for a Special Use for an existing church and to allow additional parking (Specifications F - #48) on property located on the East side of CR 1, 700 ft. North of CR 12, common address of 54820 CR 1 in Cleveland Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #54820CR 1-130322-1*.

There were 22 neighboring property owners notified of this request.

Enos Yoder of DJ Construction, 57594 Heritage Way, was present on behalf of this request representing Connections Church, formally Harvest Ministries Church. He indicated the request is to establish a Special Use for the church to allow some site improvements and possibly some future building expansion. He reported this property has been a church since the 1960's, and back in 2004, the property was purchased from the Wesleyan denomination by the previous operators of Harvest Ministries Church. He said they both passed on but their children and the church members have continued the work and vision. More recently, in January of this year, he said the church merged with His Place Worship Center which was operating out of leased space. Now that the two churches have combined, he expressed a need for more adequate parking. He noted a seating capacity of 90 and parking for 23, and while it meets the zoning minimums, it does not meet the practical minimums of today's customs. He indicated the goal is to have a Special Use established and to address parking needs. He noted they appreciate the staff recommendations and accept the conditions. Mrs. Wolgamood questioned why the parking lot could not be placed to the east instead of going south toward the residence. Mr. Yoder reported the septic system is located there. He added that this seemed to be the most practical short-term solution to allow them some flexibility on how they expand in the future. She also inquired if they had talked to the neighboring property owner to the south regarding the buffer, possible type of buffer, or the height of the buffer which Mr. Yoder indicated they have not.

David Powell, 26927 Carriage Court, Elkhart, was present on behalf of this request. He stated he is the Senior Pastor of the church since the merge. With the joining of two congregations, he reiterated the need for additional parking and noted the proposed additional parking is in an area they would probably never build on.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello noted Mrs. Wolgamood's question about what the neighbor might want to see as the buffer. Mrs. Wolgamood pointed out that the petitioner did not say specifically what they would put there as the buffer, and she does not feel that four ft. tall trees planted is much of a buffer. She said they have always been very diligent in making sure that headlights when they are parked facing a house do not shine in for any reason, and she thinks opaque fences are ridiculous. Mr. Mabry added that the specific wording came from staff, and he suggested he should have worded it to say if it were plantings that it be continuous blockage as the intent is not to have spaced out plantings. He also noted the height comes from the fact that the parking area being there and quite a distance from the actual building itself, is mainly to block headlights and the appearance of the vehicles at that level. He pointed out that they left the options open in case the Board wanted to zero in on a specific requirement. Mr. Hesser said he believes the staff report adequately addresses it. Mrs. Wolgamood inquired about a time frame for adding buffer. Mr. Campanello indicated he thinks it should be completed at the time of construction of the parking lot, and it should be a commitment to a solid berm, solid fence, trees, or row of bushes instead of just something where headlights would be a problem for the neighbor. Mr. Homan pointed out that the neighbor was notified and made no effort to remonstrate. He inquired, and it was confirmed that the planting area would be 5 ft. wide. He noted a fence would be easier to fit the site plan. Mrs. Wolgamood mentioned the option to table this request and have them come back with a more specific plan. Mr. Hesser noted he is not in favor of tabling it because he feels the Board is manufacturing a problem and asking the petitioner to solve it. Mrs. Wolgamood pointed out the staff report suggests commitments, but there is no time frame and no specifics on the type of buffer. She said she believes the Board has every right to know what they are planning to do before it is approved. When Mr. Hesser asked, Pastor Powell stated they would like to move on this rather quickly because it is something they need right now. He said they are not opposed to either fence or evergreens. He added that if headlights in the neighbor's yard are the concern, a fence would work the best, and they are open to that. He reiterated that neighbors were invited to be present today, and the church has been next to these people for many years. He pointed out if there were any problems with them and this request, he feels they would have been present. When Mr. Homan asked if the fence would be constructed at the same time as parking lot, Pastor Powell stated it would be. Mr. Miller said the fence needs to be installed concurrently with the parking lot.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **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 Special Use for an existing church and to allow additional parking (Specifications F - #48) 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 petitioner must provide screening along the lot line (a distance of 150 ft.) that separates the subject property from the residential property (54864 CR 1) to the south of the proposed parking area. Screening may consist of evergreen plantings, a berm, an opaque fence or a masonry wall a minimum of four feet in height at planting or installation. Screening must be installed concurrently with the construction of the parking lot.

**Vote:** Motion passed (**summary:** Yes = 4, No = 1, Abstain = 0).

**Yes:** Robert Homan, Doug Miller, Tony Campanello, Randy Hesser.

**No:** Meg Wolgamood.

13. The application of *Robert G. Spaugh Sr. and Dorothy J. Spaugh (land contract holders) and Robert C. Rody (land contract purchaser)* for a Special Use for a home workshop/business for a lawn care and plowing business (Specifications F - #45) on property located on the West side of Lakeland Road, 292 ft. South of Lake Drive, being Lot 11 of Lakeland Gardens, common address of 51531 Lakeland Rd in Osolo Township, zoned R-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #51531LakelandRd-130325-2*. He noted on the staff report under recommended commitments imposed #4, screening must be provided between lots 4 and 5 which are to the north which is a correction as the staff report incorrectly reads to the east. He pointed out those lots on the aerial. Attorney Kolbus suggested if approving the request, it should outline exactly which lots the buffering is to cover.

There were 34 neighboring property owners notified of this request.

Robert Spaugh, 29386 CR 16 West, was present in favor of request. He stated he purchased the property as an investment and is selling it to Mr. Rody on land-contract. He said they are willing to do whatever needs to be done if this request is approved. When he stated he was confused about the staff report regarding screening, Mr. Campanello pointed out area to be buffered on the aerial for Mr. Spaugh. When Mr. Spaugh expressed confusion about the maintenance and storage of equipment in the existing accessory building or in the designated area shown on the site plan, Mr. Mabry explained it further. Mr. Spaugh indicated they have no problem with the screening. When Mr. Hesser asked about possible covenants or restrictions for operating a business in the subdivision, Mr. Spaugh indicated he did not know. When Mr. Hesser asked the same question of the staff, Mr. Mabry indicated he is not aware of whether or not there are any such restrictions.

Tina Rody, 51531 Lakeland Road, was present on behalf of this request. She submitted a petition signed by all adjacent neighbors [*attached to file as Petition Exhibit #1*]. Mr. Hesser pointed out that outside storage for a home workshop/business is not allowed. When he asked what types of things would be stored outside, she said they have a large leaf vacuum that she compared to what the city might use to pick up leaves which cannot be stored inside the building.

Robert Rody, 51531 Lakeland Road, was also present on behalf of this request. Regarding outside storage, he said it is basically two trailers, and the vehicles associated with the

business would be outside. He noted all of the small items are kept inside. He explained that the leaf vacuum is a trailer. Mrs. Wolgamood mentioned she drove past this site. She asked about the large piece of equipment sitting in front of the building which Mr. Rody confirmed to be the leaf vacuum. On her site visit, she noted a trailer sitting in front of the vacuum and approximately six to eight other vehicles along with an abundance of wood storage. Mr. Rody indicated the wood is for personal use. When Mrs. Wolgamood asked about the length of time of the wood storage, Mrs. Rody indicated they have lived there for two years. When Mrs. Wolgamood questioned some items located on the north side of the building, Mr. Rody said it is just odds and ends and some scrap he has not taken in yet. Mrs. Rody indicated the blue truck in the photo is a plow truck. Mrs. Wolgamood indicated that it appears as though the buffer is not going to shield anything. Mr. Rody pointed out that they talked to the surrounding neighbors, and they indicated they have no problem with the request. Mrs. Rody noted that most of the neighbors are elderly and call the Rodys for snow removal as they are unable to do it themselves. Mrs. Rody reported contact with the neighbor across the street who they thought would have the most problem, and that neighbor indicated she had no problem with the request. She mentioned they were surprised some had complained as all they talked to were fine with their request.

When Mr. Campanello asked how much they could store inside the existing accessory building, Mr. Rody indicated the equipment that is already in it. Mrs. Rody further explained that includes lawn mowers, weed eaters, and blowers. When Mrs. Wolgamood asked, Mrs. Rody said none of the vehicles go inside of the building as they are out and ready to go. Mrs. Rody also mentioned they have a signature from the owner of one residence and signatures from both the owner and renter of the second residence to the north where the screening is recommended. Mr. Miller asked how many total vehicles for both personal and business use are located on the property which Mr. Rody indicated is nine. Mr. Homan explained the specific rule for a home workshop/business which says no outside storage. When Mrs. Rody asked for suggestions on how they might improve the request, Mr. Homan said the problem would be solved if everything were stored inside. Mr. Campanello suggested staff did not explain the correct type of request to the petitioners. Mr. Rody agreed that they do not know the proper procedures. Mrs. Rody stated they purchased the property knowing it had a little more than an acre and that it would be perfect for what they had but not knowing that they were not allowed to run this business on their property.

There were no remonstrators present.

Mr. Hesser questioned how to reconcile the storage issue regarding the definition compared to what is represented here. Mr. Homan noted they have required other lawn businesses move because they were not able to contain their operation within a building as they simply got too large which has been the precedent. He added that now they are faced with the petitioner's request, their operation, the staff analysis, and what the Board's past history has been.

After reading over the ordinance, Mr. Mabry asked other staff members if they recall from the staff meeting when this petition was discussed regarding the word "equipment". He said he wondered if the Board's precedent has been to consider vehicles related to the home occupation as equipment. In previous home workshop/businesses when there has been a vehicular element like snowplowing or landscaping businesses, those have been treated as things



that are storage related. Without the benefit of a long history of in-person decisions, he questioned if any of the staff remembers the discussion from the staff meeting.

Mr. Hesser asked Attorney Kolbus about the legal requirements for deviating from those as it seems they have sometimes allowed for additional employees or a larger sign. Mr. Kolbus said one way to do this is to require a Use Variance. He added some previous petitions have required the entire area to be screened where they store their equipment, vehicles, or materials although he cannot recall how those applications were filed. He pointed out there is a Special Use for construction storage yard which is probably how those were filed.

Mr. Campanello pointed out that he has not heard any remonstrance to this petition, and the petitioner does have a list of neighbors who have no objection to this request. He noted he would have a better feeling of which way to go if remonstrators were present. Mr. Homan said there was one complaint which is worth something, but he pointed out that outside storage in a home workshop/business has not been allowed. He noted he understands what they are doing and appreciates it but as far as what the Board does, outside storage has not been allowed. Mr. Campanello suggested they come back to the staff to figure out the best way to file this application. Mr. Kolbus pointed out it may have to be a Use Variance because a construction storage yard is a Special Use in certain zones but not a residential zone. Mr. Homan pointed out there are no guarantees the Board would approve a Use Variance.

Mr. Campanello also suggested the petitioner would need to come back with a better drawing of the outside storage on the property, specific distances, and to scale as much as possible. Mr. Campanello noted the Board has had hundreds of petitions in the past for Special Use that they have had to make difficult decisions on dealing with outside storage. Mrs. Wolgamood added in particular with home workshop/businesses because under item #2 of the staff analysis, the parameters are in place that say no outside storage. She also noted in the recommendation for approval, staff is saying ok to that provided the petitioner complies with the requirements placed on this request. Mr. Homan noted the County Ordinance is very specific about the rules for a home workshop/business. Mrs. Wolgamood reiterated an earlier hearing for a home workshop/business which was a very small building for binoculars and a few other bird-watching items, and they asked him about outside storage even on a small scale like that. When Mr. Rody asked how they define the business equipment, Mrs. Wolgamood explained that she is saying they are requesting a home workshop/business and their business does not really qualify for it.

Mr. Campanello reiterated that there may be another route to take in filing their application. Mr. Hesser pointed out there are different arguments that can be made, and you cannot predict how someone else is going to think or how they are going to look at it. He noted with this petition today, the Board is expressing concern about the storage issue. He suggested tabling this request for two or three months to give them an opportunity to talk with staff and look at alternate ways to approach this request. In the meantime, there would be no enforcement. Mr. Campanello added that he thinks staff owes them some help. Mr. Homan suggested the solution may be to move the business.

The public hearing was closed at this time.

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

**Motion: Action:** Tabled, **Moved by** Tony Campanello, **Seconded by** Doug Miller, that this request for a Special Use for a home workshop/business for a lawn care and plowing business (Specifications F - #45) be tabled by the Board until the July 18, 2013 Board of Zoning Appeals meeting.

**Vote:** Motion passed (**summary:** Yes = 4, No = 1, Abstain = 0).

**Yes:** Robert Homan, Doug Miller, Tony Campanello, Randy Hesser.

**No:** Meg Wolgamood.

14. The application of *Borkholder Trust, Larry J. Borkholder and Alta Mae Borkholder, as Co-Trustees* for a Special Use for a home workshop/business for a woodworking business (Specifications F - #45) and for 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 North side of CR 34, 840 ft. East of CR 33, and East side of CR 33, 1,350 ft. North of CR 34, common address of 14835 CR 34 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 #14835CR 34-130325-1*.

There were 14 neighboring property owners notified of this request.

Paul Hostetler, 54824 CR 33, Middlebury, was present representing the petitioner on behalf of this request. Regarding the Special Use for a home workshop/business, he said Mr. Borkholder's intent is to have room for his sons to learn and work in the business with him. Mr. Hostetler said he is not looking to hire employees outside of his family. Regarding traffic being generated by the home workshop, Mr. Borkholder indicated two to three trucks with trailers per week pick up his products for delivery. He said parking was addressed on the site plan if he does have a customer who wants to look at the products he builds but he generally does not have customers who come to his property. Mr. Hostetler said the building which was a pig farrowing house could revert to its original use if the woodworking business discontinues. He has another insulated accessory storage building that is used for church gatherings which is why he does not want to move into that building which is also used to store the buggy, bicycles, and lawn mower. He noted a large barn for animals and a farm implement storage building on the property.

When Mrs. Wolgamood asked if he is currently making furniture in this building now, Mr. Hostetler said yes. She asked about a dust collector which Mr. Hostetler said that he does. It is either located on the backside or on the inside of the building. He noted he does not know much as it but said it is a vacuum that collects the dust in bags and then uses it as bedding in the barn. Mr. Miller confirmed that all of the incoming product and the manufactured product will be stored inside. Looking at the site plan, he asked if any traffic coming in and out can turn around on the property so they do not have to back out onto the County road. Mr. Hostetler stated that was correct. Regarding vehicle traffic coming and going from the property, Mrs. Wolgamood asked if the trucks with trailers he referred to are semis, which he said no. The vehicles are typically pick-up trucks with a cargo trailers and occasionally a box truck.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller said Mr. Hostetler has adequately addressed all of the concerns.

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

**Motion: Action:** Approve, **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 home workshop/business for a woodworking business (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 = 5).

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

**Motion: Action:** Approve, **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 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. 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).

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

15. The application of *Willard A. Stutzman (lessor) and Travis Barrier (lessee)* for a Use Variance for a portable sign on property located on the Northeast side of US 33, 350 ft. North of Lewis Avenue, common address of 23737 US 33 in Concord Township, zoned B-3, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #23737US 33-130319-1*.

There were 25 neighboring property owners notified of this request.

Present on behalf of this request was Travis Barrier, 56220 Hoosier Avenue, Mishawaka. He explained that he is a military veteran and owner and sole employee of a precious metals business at this location. Many of his customers have fallen on hard times and he offers them a service from someone they know they can depend on and trust. Without this portable sign, he said his business would quickly fail and those same people would have to find other means to meet their needs. He does not feel the approval of the use of the portable sign for a period of one year would adversely affect the use or the value of the surrounding area, nor would it interfere with the Elkhart County Comprehensive Plan. He said there is not a suitable area for a permanent sign due to the entrances to the property being adjacent to the property lines leaving only the area between the road and the building, which is used as a parking lot. In addition, the

median blocks all southbound traffic from entering the property, which limits the number of possible customers to his business and requires supplemental signage to compensate. He is also a full-time student that solely depends on this business and sign as the only means to feed and house his two children. If this request is denied, Mr. Barrier said it will directly result in the closure of his business and cause an unnecessary hardship for his family.

Mr. Barrier was asked to clarify why there is not an appropriate area on the property for a stand-alone sign because the leased space is inside the entrance of another business (questionnaire #31). He explained that he shares a door with a video store so that detracts from the visibility. He said his customers actually have to walk into a video store to get to his business, which also affects his customers from being able to see his business from the road.

Mr. Hesser asked if his business has a sign on the face of the building and Mr. Barrier said he does, but it is limited due to the gutter and the way the building is designed. He said each space only has a certain amount of room for a sign so his sign is smaller and not substantial enough. He said he talked to the previous tenant of the area he is in and was told that after the median was put in, he lost 40% of his business, which is why he had to leave.

Mr. Campanello recalled a truck parked there with a sign. Mr. Barrier said the previous owner had the same type of business and had a box truck parked there with a banner sign. They used a lot of different ways to advertise, which he said he does not do.

Mr. Hesser pointed out there are other signs along US 33 and he questioned how close they can be to the road. Mr. Mabry said they have to be on private property and not in the right-of-way. He doesn't know if the size of the sign has any impact on the setback, but generally the smaller signs could be right at the right-of-way line. When Mr. Hesser asked where the property line would be, Mr. Mabry said the parking lot is generally the line in most situations.

Mr. Hesser asked the petitioner if he wants a permanent sign, but Mr. Barrier reiterated he is a full-time student, and he just wants to keep doing what he is doing while he is in school for another year or so. The only way he said that is possible is to keep the portable sign.

For clarification, Mr. Hesser said portable signs are only permitted 60 days per year, 30 days at a time.

Mrs. Wolgamood asked how long the sign has been there, and Mr. Barrier said he thinks approximately six months. She noted that days and hours of operation are indicated in the questionnaire as 10:00 a.m. to 6:00 p.m., Monday through Friday, and 10:00 a.m. to 3:00 p.m. on Saturday and Mr. Barrier said that is correct. Because the sign is portable, she asked if it could be moved inside in the off hours. Mr. Barrier said it would take at least two people to move it inside due to its weight and size so it's not that portable.

Mr. Campanello asked if he has considered a sign on wheels in a parking space, but the petitioner said those are also considered portable signs and would have the same restrictions.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Kolbus pointed out the petitioner is only asking for a year. Since you usually graduate in May, he suggested the Board grant it through May 2014 should they approve the request so he could finish his school year. Because there was no time in what was advertised, he feels they could go beyond a one year timeframe.

Mr. Homan asked if the petitioner has talked to Mr. Stutzman, the property owner. Mr. Barrier said the owner has no objection to the sign, but he is not willing to pay the additional costs that would be involved due to the difficulties with the property. It was then noted that a statement from Mr. Stutzman is included in the file.

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

**Motion: Action:** Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello, that the Board approve this request for a Use Variance for a portable sign 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 given the location.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved. There is no other location to place this sign based on the business location.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.

The following condition was imposed:

1. Approved the Use Variance for a period through the end of May 2014.

**Vote:** Motion passed (**summary:** Yes = 4, No = 1, Abstain = 0).

**Yes:** Robert Homan, Doug Miller, Tony Campanello Meg Wolgamood.

**No:** Randy Hesser.

16. The application of **TOBT2, LLC** for a Use Variance to allow for the construction of an accessory structure without a residence in an R-1 zone on property located on the South side of West Lawrence Street, 225 ft. East of Wayne Street, common address of 301 W. Lawrence Street in Middlebury Township, zoned M-1/R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #0WEST LAWRENCE STREET-130312-1*.

There were 26 neighboring property owners notified of this request.

Todd Taylor, 508 Crystal Valley Drive, Middlebury, was present on behalf of this request. He explained that this property was the former home of Big C Lumber, which was destroyed by fire in late 2010 or 2011. According to Mr. Taylor, the property has been an eyesore ever since the fire. Since the staff photos were taken, he said the concrete for the entire property, with the exception of one retaining wall along the side of the tower, has been removed. It is still awaiting final grading, but he said it will probably be several weeks before that is done due to the current condition of the property. Mr. Taylor pointed out the location where he is proposing to construct a new building to store a pickup truck and lawn mower, and to house his "man cave". This building will be on R-1 zoned property and he said the remaining property is zoned M-1.

When asked if he bought all of Big C Lumber's property, Mr. Taylor pointed out the properties he purchased and where he will access his property. He explained that the road is used by the Town of Middlebury to access their well building once or twice a day. It is his understanding the Town is going to raise the water tower 30 ft. so he is not planning on doing

anything else on the property due the placement of the cranes used to lift the water tower. When completed, he does anticipate putting up a split rail fence to delineate his property line from the Pumpkinvine Trail.

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: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of an accessory structure without a residence in an R-1 zone 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 = 5).

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

17. The application of **Todd Amos** for a Use Variance to allow for converting an existing building into a second dwelling on a parcel and a 100 ft. lot width Developmental Variance to allow for the existing structures (Ordinance requires 100 ft.) on property located 1,310 ft. South off of State Line Road, 2,065 ft. West of CR 17, common address of 21692 State Line Road, Lot A 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 #21692State Line Rd-Lot A-130325-1*.

There were 13 neighboring property owners notified of this request.

Dennis Amos, 21692-Lot A State Line Road, Bristol, was present representing his son, Todd Amos, on behalf of this request. Dennis Amos and his wife currently live in the house on the subject property, and there is a two-story, 28 x 40 ft. structure in the back. Their son has been in Afghanistan for a few years and will be coming home in 2014. Mr. Amos said his son would like to live in the existing residence and convert the building in the back for living quarters for he and his wife. According to Mr. Amos, the previous owner had three horse stalls in the structure, and there was electricity with a room for storage.

Mr. Hesser asked if the upstairs portion of that back building would be converted, but Mr. Amos said the entire building would be converted into a residence. When asked if there is any plumbing in the building, Mr. Amos said no, but there was electricity to the building when they bought it. He then described the building as block walls on the lower section, and they put siding on the building two years ago.

When Mr. Homan asked if there is room for a septic system for this building, Mr. Amos said he has talked to the Health Department. They did a soil boring at the back of the building, but he has not received the results. If this Use Variance is approved, he said the Health

Department has indicated they would either have to put in a new system or put in an additional system behind the building so the property would have two septic systems.

Mrs. Wolgamood questioned why they feel they need to live there. Mr. Amos explained that he and his wife lost their home about five years ago to foreclosure so they have been living in the existing residence since their son was in Afghanistan.

There were no remonstrators present.

Mrs. Wolgamood noted that this parcel is served by an easement from State Line Road and she questioned who maintains the driveway. She also questioned how many homes are served by this easement. Mr. Amos said there are currently eight families who come down that lane. He and another neighbor, Terry Proffitt, have snow plows on their trucks so they maintain it. He also said Mr. Overholt, the farmer who lives at the back of the lane, grades the drive when it gets muddy during this time of year.

The public hearing was closed at this time.

There was discussion about what happens at the time the parents no longer reside there if this Use variance is granted. Mr. Kolbus suggested they could impose a commitment that requires it no longer be used for residential purposes, and Mr. Miller felt that might be the best option at this point in time. When Mr. Hesser questioned the appropriate wording, Mr. Kolbus advised they restrict it to the petitioner's parents, Dennis and Beth Amos.

Mr. Campanello questioned the procedure should there be a dawdy house ordinance in the future and Mr. Kolbus said they would just remove the commitment.

During further review and clarification of this request, it was noted that the developmental variance would be required regardless of whether the Use Variance was granted or not. Mrs. Wolgamood then pointed out that the existing house was built prior to the adoption of the zoning ordinance. Although it is legal non-conforming, Mr. Kolbus advised that it would be good to have the Use Variance to eliminate any issue in the event the residence would be damaged or destroyed.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Doug Miller, that the request for a 100 ft. lot width Developmental Variance to allow for the existing structures (Ordinance requires 100 ft.) be approved based on the following Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare.
2. Approval of the request will not cause substantial adverse affect on the neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan, that the Board approve the request for a Use Variance to allow for converting an existing building into 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.

The following condition was 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 occupancy of the second residence is limited to the petitioner's parents.

**Vote:** Motion passed (**summary:** Yes = 4, No = 1, Abstain = 0).

**Yes:** Robert Homan, Doug Miller, Tony Campanello Meg Wolgamood.

**No:** Randy Hesser.

18. The application of *R & B Sherck Land Inc* for a 3 to 1 depth to width ratio Developmental Variance for proposed Lot 'A', and for a 3 to 1 depth to width ratio Developmental Variance for proposed Lot 'B' on property located on the East side of CR 31, 1,758 ft. South of CR 10 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 #0CR 31-130201-1*. He reported that the Plan Commission approved the plat for Sherck Estates at their most recent meeting contingent upon approval of these developmental variances.

Present on behalf of this request was Gregory Shock of Brads-Ko Engineering & Surveying, 1009 S. 9<sup>th</sup> St. Goshen, representing the petitioner. Mr. Shock explained that the subject properties (Lots A & B) will be Lots 3 of 4 of a proposed six lot subdivision to be known as Sherck Estates. Displayed and submitted to the Board were an aerial photo with the area of the proposed subdivision outlined in blue [*attached to file as Petitioner Exhibit #1*], and the primary plat for Sherck Estates [*attached to file as Petitioner Exhibit #2*]. The intention for this subdivision is to have large estate-type lots, anywhere from four to 19 acres in size, using the topography and wetlands as amenities to these lots. He then reported that Primary approval of this subdivision was unanimously granted by the Plan Commission on April 11<sup>th</sup>.

Mr. Shock pointed out two areas of wetlands on the property and said they have given the required 100 ft. of frontage for Lots A & B. They looked at 250 ft. of frontage, but they had trouble with the wetland areas to get the needed width and be able to get the driveways in so they decided to have one driveway servicing these two lots and Lot 5.



Mr. Hesser asked if they have a joint agreement for this access, Mr. Shock said they are in the process of creating a cross-maintenance and cross-access agreement, and to maintain the flow of the water across the lots.

Mr. Hesser then questioned the size of these lots. While referring to the plat (Petitioner Exhibit #2), Mr. Shock said the largest is 19+ acres and the smallest is 4.3 acres with an average lot size of a little under 11 acres. He then referred to the aerial photo (Petitioner Exhibit #1) pointing out the 66 acres they are developing (highlighted in blue). He noted that Dr. Sherck's property is highlighted in the lighter lines where he currently resides.

According to Mr. Shock, the surrounding uses are residential or residential in nature and are similar lots to what they are proposing. He noted that there are approximately five to six "flag lots" in the area, which he pointed out to the Board, and some have less than the required frontage. In addition, there are three or four lots with no frontage and are served by easements. Therefore, he feels what they are requesting is consistent with the surrounding uses in the area. In order to adherence to the 250 ft. of frontage, he said they would have to get into the wetlands area, which they do not want to disturb, so they are requesting 3 to 1 depth to width ratio developmental variances on Lots A & B in order to accomplish their goal.

Mr. Campanello suggested they may need DNR approval if they move any closer to the wetlands and Mr. Shock agreed. This is a rolling site and he said they have as much as ten to 13 ft. difference between the wetland areas and above. There are some areas where they can get a little closer, but there are other areas that are lower and they want to stay as far away as they can from those areas.

Adlai Schrock of Schrock Homes, 2523 Messick Drive, Goshen, was present in support of this request. In working with Dr. Sherck on this project, he said he walked this site many times and they have actually positioned the lot lines to what would work as near as they could comply. They also made the lots work to where it was reasonable for septic systems on the lots and reasonable for the location of each home due to the topography. He said they are very familiar with wetlands and they know the requirements for them. He then explained that Attorney Gordon Lord is doing the Covenants and Restrictions for this development.

Mrs. Wolgamood clarified that this developed has been reviewed by the Technical Advisory Committee if primary approval has been granted so they are aware of the wetlands.

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: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello, that the Board approve this request for a 3 to 1 depth to width ratio Developmental Variance for proposed Lot 'A', and for a 3 to 1 depth to width ratio Developmental Variance for proposed Lot 'B' based on the following Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare.
2. Approval of the request will not cause substantial adverse affect on the neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The following condition was 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).

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

19. The application of *James Mullins, Jr. & Stephanie L. Mullins* for a Special Use for a home workshop/business for a welding business to include wholesale/retail sales (Specifications F - #45) on property located on the East side of CR 23 (Division Street), 230 ft. South of 3rd Street, being Lots 3 & 4 of Cowan's Addition, common address of 68260 CR 23 in Jackson Township, zoned R-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #68260County Road 23-130222-1*.

**Motion: Moved** by Randy Hesser, **Seconded** by Doug Miller, to reopen the public hearing at this time

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

Stephanie Mullins, 68260 CR 23, New Paris, was present on behalf of this request.

Mr. Hesser recalled in previous discussion that they were basically using this welding shop to assemble canopies. He then asked the petitioner if she has seen the Staff Report and if she is agreeable to the conditions recommended by the staff. Mrs. Mullins said she has not seen the revised Staff Report and she was given a copy to review. Basically, Mr. Kolbus explained that with the recommended conditions, they would meet what she represented in their application and questionnaire, and this would be for the canopy business.

Mr. Mabry suggested that they refine Commitment #2 to say "commercial welding" as it is not intended to limit small-scale personal welding for personal purposes; however, Mr. Kolbus felt that is covered with the existing wording.

Mrs. Mullins said she does not understand what type of signage is permitted and where a sign should be located. Mr. Hesser said the signage is limited to 4 square feet per side, and Mr. Mabry said it has to be located 55 ft. from the center line of the right-of-way. Mrs. Wolgamood also noted that the sign needed to be non-illuminated. If there are any deviations from these requirements, the petitioner was advised that a developmental variance would be required.

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: Action:** Amend, **Moved** by Randy Hesser, **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 Special Use for a home workshop/business for a welding business to include wholesale/retail sales (Specifications F - #45) be approved with the following conditions imposed:

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

The following commitments were also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Welding to take place with the home workshop business may only be associated with the proposed canopy-making activity.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

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

21. The first staff item for Kenneth Bontrager (60099ECountyLineRd-130220-1) was presented by Brian Mabry. He stated the petitioners are requesting to modify the site plan (dated 04/01/13). At the previous BZA meeting, he noted the Board had requested an accurate revised site plan, but now the petitioners also want to change some things about the barn that was approved. He noted the memo highlights the three requested changes. Mr. Mabry said he is presenting this as a staff item as he did not feel comfortable with an administrative approval. Mr. Hesser stated it appeared to him that the first two items are for a lesser request. He noted the third item is for an eight foot setback that Mr. Mabry said was previously approved for a 20 ft. setback which has a required side yard setback of five feet. When Mr. Hesser asked if the previous approval specified 20 feet, Mr. Mabry indicated it was marked on the approved site plan. It was noted there were no remonstrators at the previous hearing. Mr. Hesser indicated the only item he would question is the change of the previously approved 20 ft. to 8 ft. setback. He pointed out it is a smaller building.

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Doug Miller that the Board consider this request to be a minor change.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

22. The next staff item was for Todd Wise (23970ByrdAve-120221-1) and was presented by Mr. Mabry. He indicated this request was approved a little over a year ago for a 60'x40' accessory pole barn. Mr. Mabry said Mr. Wise is requesting an extension of the 90 day deadline for the Improvement Location Permit from the original approval and a change to increase the size of the building to 64'x40'. When asked if she recalled the petition from the Hearing Officer meeting, Mrs. Wolgamood said she recalled the property and the area, but did not remember if neighboring property owners were present. She went on to say if there had been an issue, she would have sent it to the full board. For clarification, Mr. Hesser stated this would be for approval of the 90 day extension and increase in the size of the barn by four feet.

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Doug Miller that the Board consider this request to be a minor change.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

23. Rock Run Church of the Brethren (20061697) was also presented by Mr. Mabry. He noted a packet of information was on the tables today prior to today’s meeting. He indicated a previous Special Use approval for a transitional women’s shelter which is no longer in operation. He said they would like to add a 35’x40’ open pavilion to the Special Use permit site plan to be used by the church for various social and worship functions. He explained the church is on a separate parcel across CR 33. Mr. Hesser said he is not comfortable saying this is a minor part of a Special Use that is really no longer existing. Attorney suggested that the Special Use for the women’s shelter should be rescinded. Mr. Hesser said this should probably be considered part of the church which Mr. Kolbus stated was correct. Mr. Hesser suggested there should be a new petition. Mr. Miller said he felt this is a major change.

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood that the Board consider this request to be a major change.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

24. The meeting was adjourned at 1:55 pm

Respectfully submitted,

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Deborah Britton, Recording Secretary

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Randy Hesser, Chairman

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Robert Homan, Secretary