

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19TH DAY OF DECEMBER 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; 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 (*Wolgamood/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21st day of November 2013 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Wolgamood*) that the legal advertisements, having been published on the 7th day of December 2013 in the Goshen News and on the 10th day of December 2013 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

4. A motion was made and seconded (*Wolgamood/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.

5. The application of **Robert C. Dixon & Cynthia Ewing** for a 25 ft. Developmental Variance to allow for the construction of a detached garage 50 ft. from centerline of the right-of-way (Ordinance requires 75 ft.) on property located on the East side of Ash Road, 2,700 ft. North of US 33, common address of 56680 Ash Road in Baugo Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #56680AshRd-131125-1*. He noted a correction in the Staff Report under Finding #3, the word "either" should be struck.

There were four neighboring property owners notified of this request.

Robert Dixon and Cindy Dixon, 56680 Ash Road, Osceola, were both present on behalf of this request. Mrs. Dixon indicated they have a vacant lot next to them which is where they want to build the proposed garage. Due to the septic system, she said that this is the only possible location. Mr. Hesser noted it looked to him like the garage could be moved back a fair amount without affecting the septic system. She pointed out the septic tank on the aerial photo. Mr. Dixon said they are approximately 11 ft from the septic. Mr. Hesser noted the site plan shows a measurement of 27 ft. In an attempt to clarify, Mr. Mabry added that there was an original measurement on the front set back of 30-some feet and then on the site visit, one of inspectors confirmed that it was actually proposed to be further back and confirmed that with the contractor. He went on to say that is how the 50 ft. CL setback measurement was reached. Since that number changed, he indicated the separation between the septic system and the back wall of the proposed garage changed as well. When Mr. Hesser asked what that measurement should be,

Mr. Mabry stated it should be 50 ft. and 27 ft. Mr. Hesser further questioned that the Dixons are saying 11 ft. which Mr. Mabry indicated he did not know how they arrived at that measurement. Mr. Dixon suggested that is the number they started out with, but he did not know for sure. Attorney Kolbus suggested Mr. Dixon look at the site plan and provided a copy to him. Mrs. Wolgamood further asked Mr. Mabry about the change in the front yard setback. He indicated it changed because the original site plan showed a 35 ft. setback from the centerline of Ash Road as the measurement. However, on the ground and in reality, the building site that has been scraped out in advance is a 50 ft. setback from the center line. The site plan was changed to accurately reflect what is actually on the ground. She also questioned the 27 ft. measurement shown on the revised site plan which Mr. Mabry reported is a correct measurement. Mr. Miller asked Mr. Mabry if the correct measurement is 11 ft. instead of 27 ft., the proposed structure would be 66 ft. from CL so it would still require a 9 ft. variance. Mr. Mabry said that would be correct. Mr. Dixon said he could be mistaken in his measurements. When Mrs. Wolgamood inquired further, Mr. Mabry said a Code Enforcement inspector went out to take photos, saw the location of the proposed structure, and took the measurement. It was discovered that the front setback was 50 ft. rather than 35 ft. Mr. Hesser questioned what would be the problem with moving the garage as close to the septic as possible. Mrs. Dixon indicated she believed they could move the garage back further but might have to put it at a different angle to get the cars inside. When Mr. Campanello questioned a curb cut, Mrs. Dixon said their plan was to use the existing driveway and turn around on the property so there is no backing onto the roadway. She noted when they measured, they tried to make sure the proposed garage was not any closer to the road than the house at 56762 Ash Road. Mr. Campanello said it looks like they will be in line with that residence. Mr. Homan suggested possibly setting the garage back further on the property with a drive back. Mrs. Dixon indicated the fingers of the septic run pretty much to the south lot line. Mr. Dixon said they have three 100 ft. runners.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood indicated she doesn't know that she has a major issue with their request if, in fact, the septic system is in the way. She pointed out hearing some discrepancies and incorrect measurements during the hearing. Mr. Homan stated he can't vote on this site plan because it is too inaccurate. He suggested a corrected site plan and the septic layout from the Health Department as evidence. Mrs. Wolgamood recommended the request be tabled to allow petitioners to come back with a corrected site plan and septic layout. Mr. Hesser expressed that he disagrees with the Staff Report in Findings #2 and #3. He said he thinks there is room, and they could either comply or come much closer to complying with the statute by moving the garage back toward the septic without necessarily touching it. Based on what he has heard at this point, he said he would be inclined to deny the request. It sounds to him like a revised site plan might change some things, and he would not have an objection to tabling or continuing the request for a revised site plan with more detail. Mr. Campanello expressed agreement. Mr. Miller's indicated his initial thought when he looked at it with 27 ft. was to deny because there is plenty of room there to make that work and have a much less setback. He agreed with Mr. Homan's comments regarding the septic and indicated he would like to know exactly where it is located relative to that so he would also be in favor of tabling. Mr. Homan explained to the petitioners that tabling the request does not mean it will be approved, but they are asking for

corrected and more detailed information. The petitioners were informed that in order to get the petition on the January 16, 2014, agenda, the revised drawing must be submitted by January 6, 2014.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Robert Homan that the request for a 25 ft. Developmental Variance to allow for the construction of a detached garage 50 ft. from centerline of the right-of-way (Ordinance requires 75 ft.) be tabled to give the petitioners an opportunity to provide a revised site plan, to possibly consider alternate locations, and to provide information regarding the location of the existing septic system.

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

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

6. The application of *Lamar Miller* for a Developmental Variance to allow for an existing deck 0 ft. from the Southwest property line (Ordinance requires 5 ft.) on property located on the Southeast side of North Shore Drive, 170 ft. South of Bell Avenue, West of SR 19, being Part of Lot 9A of Bell's North Shore Place, common address of 50892 North Shore Dr. 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 #50892 North ShoreDr-131125-1*. When Mr. Hesser said he was not clear on the meaning of the second sentence in the second finding, Mr. Mabry explained that because of the narrowness and extremely pie shape of the parcel, there is concern that part of the structure could cross the boundary lines.

There were three neighboring property owners notified of this request.

Lamar Miller, 26293 Thompson Avenue, Elkhart, was present on behalf of this request. He explained the new house is in the final stages as he tore down the previous old, ugly house on the property. He said he realized recently that he is closer than the previous variance allowed, and he also realized he made a mistake on the original site plan. When he tore the original house down, he left an enclosed sunroom. He said he was asked to do a survey when he requested one of the previous variances. At that point, there was no house and only the enclosed sunroom remained, and he had asked the surveyor to send him a projection of where the house would go to give him a better idea so he could draw a site plan. He said when he did that, he realized if he rotated the house slightly, he could get two more feet out of the house and still stay 5 ft. from the boundary lines. He forgot when he drew up the site plan for the previous variance request that he had shifted the house 2 ½ ft. He explained that the lot slopes down toward the lake, and the deck he is asking to get the variance for is actually an extension of the sidewalk beside the house from the street side. From the lake side, the deck ends up being 5 ft. above the ground level, and without the deck, it would be very difficult to have access to the back of the house. He indicated he sent some pictures to Mr. Mabry to further illustrate why he needs the deck. These photos were displayed to the Board on the overhead screen and copies are in the file for review. He also noted, with the help of his neighbor and a plum bob, they did some amateur surveying to make certain that they weren't crossing boundary lines which is also shown in the photos. When Mr. Hesser asked if Mr. Miller built the part of the deck that touches the western border of the

property, Mr. Miller said there was previously a deck there which was at ground level but he tore it down. He explained this new deck is built basically in its place but it is higher.

Steve Wogoman, 50908 North Shore Drive, was present in favor of this request. He stated he is the property owner of the two adjacent properties to the south. As indicated on the aerial, he rents out the adjacent property to the south of Mr. Miller and lives in the second house south of Mr. Miller's property. He noted the previous residence on Mr. Miller's property was structurally unsound, and a nice new home has been built in its place. He also said the previous deck was in pretty bad shape and came close, within a foot of the chain link fence which is still in place between the two properties. With the improvements that Mr. Miller is making, he said they tore down an old stockade fence that separated the two properties which was fairly dilapidated. He went on to say that the improvements Mr. Miller has made to his property and the surrounding neighborhood are going to benefit from this request. When Mr. Homan asked if the chain link fence was still on the property, Mr. Wogoman said it is and pointed out the fence on the aerial photo. Referring to his shed near the property line, basically right in front of Mr. Miller's steps, Mr. Wogoman said he intends to remove the chain link fence and relocate the shed on the property.

Lorell Nihart, 25799 Lake Drive, Elkhart, was present in opposition to this request. While he noted Mr. Miller's house is beautiful, he said he is proud of staff in their report and recommendation. He acknowledged there was an old, dilapidated house that needed to come down and a new one needed to be built to improve the neighborhood. He said there are rules that are supposed to be followed. He added that he was present to complain about a contractor who he feels knows better and should have done better. He thinks they want to see what they can get by with, get the neighbors to agree to, and make money. He expressed concern about what is best in the long term. Noting the narrow pie shaped lots, he mentioned a previous variance that was approved on a lake property went into foreclosure. He suggested being very careful on these small lots. Mr. Nihart stated he feels the contractor needs to go by the approved variances and not try to "get by" with things. He said he believes the Board should deny the request, and the deck should have to be removed.

In response, Mr. Miller mentioned it has been a long-going project and expressed frustrations with his contractor. He noted he did a lot of his own general contracting on this project. He reiterated that he didn't intentionally go beyond the original variance. He realized his mistake when he was drawing up a site plan for the building permit for the deck.

The public hearing was closed at this time.

Mr. Homan noted he has trouble with any request for a zero lot line and pointed out it is another site plan issue. Mr. Hesser expressed agreement and feels in this case, it is a "want" more than a "need". He also said he was bothered that this issue wasn't dealt with in October and noted Mr. Nihart's concerns. If it were a solid construction from north to south with a zero lot line, Mrs. Wolgamood said that she could not support this request. She said the portion that he is asking for is a covered 10 ft. for the zero lot line. Regarding the stairway, she noted a person could put cement all the way to the property line without any kind of variances so she doesn't know that she has a major issue with this particular request at zero. She did say that she would not like to wait until a Certificate of Occupancy is requested before a survey is done. Mrs. Wolgamood noted that Mr. Miller said he had a survey completed but indicated this needs an "as built" survey. Mr. Doug Miller clarified that the variance is for the side entrance to the house

which is the front door and roof structure or overhang. Mrs. Wolgamood also noted this parcel is on a conservancy district so it is not dealing with interference with a septic.

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

Motion: Action: Deny, 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 Developmental Variance to allow for an existing deck 0 ft. from the Southwest property line (Ordinance requires 5 ft.) be denied.

Vote: Motion failed (**summary:** Yes = 2, No = 3).

Yes: Robert Homan, Randy Hesser.

No: Doug Miller, Tony Campanello, Meg Wolgamood.

Mr. Hesser inquired about proposed conditions and commitments from those members voting negatively to his motion. Mr. Campanello suggested a condition that an "as built" survey be completed. When Mr. Hesser noted that would be a commitment, Attorney Kolbus indicated that basically the commitment would be amended to say, "Approved in accordance with the as-built survey submitted." Mrs. Wolgamood said her reason for saying "as-built" is because if this house is sitting on someone else's property and if the new addition is sitting on someone else's property, she thinks the Board needs to know about that before a decision is made. Mr. Doug Miller agreed.

Motion: Action: Table, Moved by Meg Wolgamood, Seconded by Doug Miller that the request for a Developmental Variance to allow for an existing deck 0 ft. from the Southwest property line (Ordinance requires 5 ft.) be tabled indefinitely for an as-built survey to be completed and submitted for review at a future Advisory Board of Zoning Appeals meeting.

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

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

No: Randy Hesser.

7. The application of *Homer Miller, Jr. & Delores Miller* for a Special Use for an agricultural use (keeping of two horses) on property containing less than three acres (Specifications F - #1) on property located on the North side of CR 34, 2,100 ft. East of CR 43, common address of 10359 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 #10359CR 34-131118-1*.

There were six neighboring property owners notified of this request.

John Schrock of Schrock's Custom Carpentry, 60218 CR 35, Middlebury, was present representing the Millers who are requesting two horses. When Mr. Hesser inquired about waste disposal, Mr. Schrock indicated it would be spread as fertilizer on their property or neighboring properties with permission. Mr. Campanello stated he did not have a problem with the proposed location of the barn either. Mrs. Wolgamood questioned if the neighbors to the north are aware of this request. As far as they know, Mr. Schrock said everyone is aware of it. She further asked if there were horses on this property before, and Mr. Schrock indicated not that he is aware of. Homer Miller, Jr., 10359 CR 34, Goshen, was present on behalf of this request. He said they are

planning on moving to this location and will need a barn for a few horses. He also noted there is plenty of room for pasture there. When Mrs. Wolgamood asked if he has talked to the neighbor to the north, Mr. Miller said yes and indicated they have no objections to the barn or horses.

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** 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 agricultural use (keeping of two horses) on property containing less than three acres (Specifications F - #1) be approved with the following condition:

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. Approved for a maximum of two horses.

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 *Ana L. & Alejandro Heredia (buyers) and Abraham J. Miller (seller)* for a Special Use for a beauty shop (Specifications F - #45) in an R-1 district on property located on the East side of 6th Street, 96 ft. South of Carlton, North of Hively Avenue, being Lot 2 of West View Park, common address of 2404 S. 6th Street in Concord Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #2404S6thSt-131114-1*.

There were 34 neighboring property owners notified of this request.

Frank Augustino, 120 W. LaSalle, South Bend, was present on behalf of this request as the attorney for Abraham Miller. He indicated Mr. Miller is an investor who buys properties at tax sales, fixes them up, and resells them, getting them back on the tax roll. Mr. Augustino indicated this would be a productive use for the property as the property has set vacant for several years and was set to be demolished at one point. He indicated Mr. Miller saved it, and he feels it would be a good investment for the property permitted to be used as a Special Use for the beauty salon. When Mr. Campanello asked if the owner did any rehab to get the property back in shape from the demolition stage, Mr. Augustino said there were problems with the outward appearance of it such as overgrown weeds. Mr. Miller trimmed the property and got rid of debris. He noted the attached garage will be removed. He noted on the inside, there was some issue with windows which the owner fixed. As it was a foreclosure and the home was sealed from use, the inside of the residence was actually pretty well preserved. Mr. Hesser questioned whether the driveway was gravel or paved, and Mr. Augustino said he believed it is cement. Mr. Hesser further asked about the plan for a parking lot.

Ana Heredia, 515 W. Carlton, Elkhart, was present on behalf of this request. She explained her property, which was purchased 12 years ago, adjoins this parcel on the east side, and she is trying to improve the neighborhood. In response to Mr. Hesser's question about future parking, she indicated the garage will be removed and the back area will be parking. She further explained they plan to put fence around the property as a buffer for the neighbors. Upon further questioning from Mr. Hesser, she indicated the parking lot area will be gravel at first, but they would eventually like to pave it. When Mrs. Wolgamood asked if she is planning to live there, Mrs. Heredia said no and indicated her house on the aerial photo which is immediately behind this parcel. When Mr. Hesser pointed out this is not set up as a home workshop as requested, Mrs. Wolgamood noted there is a provision in the ordinance for a Special Use for a beauty shop in an R-1 zone. When Mrs. Wolgamood inquired about city sewer, Mrs. Heredia said it has a septic. She further stated the Health Department informed her that she needed to show a septic pumping receipt which she submitted [attached to file as *Petitioner Exhibit #1*]. She indicated the septic is working properly, and the property has city water. When Mr. Campanello asked about the septic tank in relationship to parking, Mrs. Heredia said she believes it is shown on the site plan. When Mrs. Wolgamood mentioned fingers of the septic, Mr. Campanello said a lot of those houses do not have a field system but just a tank.

There were no remonstrators present.

The public hearing was closed at this time.

When Mr. Hesser suggested a revised site plan showing parking spaces, Mrs. Wolgamood said she understood the site plan to show five parking spaces. Mr. Hesser confirmed with Mrs. Heredia that the site plan shows the parking spaces. She also added that there is a large space in front of house which could be used for parking. When Mr. Hesser mentioned the septic, she noted the septic is right behind the house and the driveway is to the south. When Mr. Hesser further noted the parking spaces would be north of the driveway behind the house and questioned previous concern about that, Mr. Campanello said he mentioned it but didn't think it would be a problem with the septic as shown on the site plan.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Doug Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a beauty shop (Specifications F - #45) in an R-1 district be approved with the following condition:

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 (labeled "proposed") 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.

9. The application of *David W. Imhoff, Trustee, and Emma Imhoff, Trustee of The Imhoff Family Revocable Living Trust of March 20, 2009* for a Special Use for a home

workshop/business for shoe sales and repair and for seasonal walnut hulling (Specifications F - #45) on property located on the East side of CR 9, 2,550 ft. South of CR 30, common address of 62480 CR 9 in Harrison Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #62480CR 9-131125-1*.

There were seven neighboring property owners notified of this request.

David Imhoff, 62480 CR 9, Goshen, was present on behalf of this request. He indicated that Mr. Mabry explained very well the plans for the request. When Mr. Miller asked how long Mr. Imhoff has had the shoe business and hulling business at this location, Mr. Imhoff said he has had them both for about the same amount of time which is 11 years. Based on the lower aerial photo of the property, Mr. Miller inquired about any semis coming and going from the business. Mr. Imhoff indicated only after the hulling season when the walnuts are picked up and hauled away. When Mr. Hesser asked if various local people deliver smaller batches of walnuts that accumulate until the end of the season when they are hauled away, Mr. Imhoff said yes, and they are hauled to Stockton, Missouri for Hammond's Products. Mr. Miller further inquired if a semi can turn around on the property. Mr. Imhoff said the semi always backs in from the roadway and drives out. Based on the site plan, Mr. Miller asked if there was room to pull in, without backing in, and turn around on the property and pull out. Mr. Hesser noted the u-shaped driveway and asked if it is large enough for the semi to use. Mr. Imhoff said it would be possible for a semi to use that drive. When Mr. Hesser indicated the Board would strongly prefer that, Mr. Imhoff said he understood the reasoning. Referring to the same aerial photo, Mrs. Wolgamood asked if the u-shaped driveway goes between the two buildings, and Mr. Imhoff answered yes. She further asked if it is large enough for the semi to get through. Mr. Imhoff indicated he would prefer the semi turn around at the "U" of the circle drive, where there would be a "T" so the semi could turn around without making the complete circle. Mr. Hesser indicated as long as there is no backing onto or off of the road, there would not be concern whether the semi used the circle drive or is able to turn around on the property. Mr. Imhoff said there is room on property to turn around. While Mr. Campanello noted he understands the concern, he pointed out it is once a year. He also noted the property is surrounded by farm fields where semi trucks filled with corn would be backing on and off the roadway more frequently. He added that this request is very low impact. Mr. Imhoff added that the loading process is during the daytime.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller noted the only condition that he would add is there would be no backing in and no backing out onto the county road as a second commitment.

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 shoe sales and repair and for seasonal walnut hulling (Specifications F - #45) be approved with the following condition:

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. No backing in from the adjacent county road or backing out onto the adjacent county road.

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

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

10. The application of *Scott Cota* for a Special Use for an agricultural use (keeping of one horse and two goats) on property containing less than three acres (Specifications F - #1) on property located on the Southeast corner of CR 24 and CR 1, being Lot 1 of Mann Minor, common address of 29970 CR 24 in Baugo Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #29970CR 24-131125-1*.

There were 10 neighboring property owners notified of this request.

Scott Cota, 29970 CR 24, Elkhart, was present on behalf of this request to keep one horse and two goats on the property and get rid of the kennel license. When Mr. Miller asked if Mr. Cota had any problems with the proposed conditions, Mr. Cota said no. Mr. Hesser inquired if the goats would be contained within the fenced area as well, and Mr. Cota responded yes. When Mrs. Wolgamood inquired about the kennel, Mr. Cota said the kennel hasn't been there for a couple of years. She noted in the staff approval, they talk about a pony but in his request, it talks about a horse. Mr. Cota explained that currently he has a large pony on the property, but he applied for a horse because he was trying to avoid future problems. When the voided previous Special Use for a pony and two goats was mentioned, Mr. Cota said he wasn't aware that it was previously voided. Mrs. Wolgamood noted the parcel is 1.35 acres which is not a large tract. Regarding the request for a 24'x40' building, Mrs. Wolgamood questioned the size for two goats and a horse. Mr. Cota indicated he applied for a building permit for a pole barn for personal storage as well as a stable for the animals. When she questioned if he had already received the building permit, Mr. Cota reported the building is actually built, but he is unable to get the final inspection due to this situation.

Brian Blanda, 30036 CR 24, Elkhart, was present for this hearing. He noted he was present to get some answers as he had questions of his own. He reported he previously asked for a permit for a pony a couple of years ago and was told that three-plus acres were required for any type of farm animals. He indicated he even asked about a Special Use permit and was told the county did not offer those. He noted he has more property than the petitioner so he is curious about what is going on and is concerned. As an additional concern, he questioned if the hearing was to approve the building and the horse and goats. He reported the animals have been there since early May, and the building was just constructed. When Mrs. Wolgamood asked Mr. Blanda if he filed for a Special Use permit, he said he was told that he could not do that and unless he had 3.001 acres, no farm animals were allowed in Elkhart. He added that he is in the process of purchasing two acres from his neighbor so he will have 3.25 acres and be allowed to

have animals. Attorney Kolbus said that Mr. Blanda got bad information. From staff's previous questions, he noted it sounds like the barn should not have been built and noted the animals have been there for more than six months. Attorney Kolbus indicated the barn can be up, but it cannot be used for the animals yet. Mr. Blanda reported the animals are already in it. He stated that Mr. Cota said he applied for a permit to be used for personal storage and the animals. Mrs. Wolgamood indicated that Mr. Cota was correct as that is what he applied for and received. Mrs. Wolgamood suggested that there was a misunderstanding between Mr. Blanda and staff when he talked to them about the acreage and having animals. She indicated that staff was correct in telling him that he needed more than three acres to have animals in an agricultural zone. She went on to say that he could apply for a Special Use permit which is what Mr. Cota has done. Mr. Blanda reported Mr. Cota's property is technically in a neighborhood, and his property is zoned agricultural. Mrs. Wolgamood stated that Mr. Cota is also zoned agricultural. Mr. Campanello suggested talking with staff following the hearing. Mr. Blanda reported that he is still going to purchase the additional land from neighbor so there are no issues.

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** 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 an agricultural use (keeping of one horse and two goats) on property containing less than three acres (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 commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for one horse and two goats.
3. A proper shelter must be provided within three months.
4. All previous approvals for a kennel shall be null and void.
5. Manure shall not be stockpiled on the property and the property shall kept clear of any waste.

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

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

No: Meg Wolgamood.

11. The application of *Harry Mishler & Amelia Mishler* for a Developmental Variance for a sign to exceed 4 sq. ft. per side on property located on the West side of SR 13, 1,280 ft. North of CR 40, common address of 65730 SR 13 in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry noted this request was before the Board last month where the Special Use was approved to have the general store as a home workshop/business. He pointed out one of the rules of a home workshop/business is to limit the size of a sign to four square feet per side. This item

was tabled for the Developmental Variance for the sign size to get more information about the proposed size and location. He presented the Revised Staff Report/Staff Analysis, which is attached for review as *Case #65730SR 13-130923-1*.

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, was present on behalf of the Mishlers.

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan that the public hearing be reopened for the purpose of hearing information with respect to the sign.

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

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

As an update, Mr. Doriot reported that Harry Mishler's attorney in LaGrange has put together the land contract to combine the two parcels which is something the Board had requested. He reported Harry will be back in town on Saturday to sign the land contract and get it notarized. Mr. Doriot indicated he will be recording it in the next couple of weeks. He said their contractor is presently talking to INDOT about the drive entrance. He referred to two drawings in their packets. Regarding the gable sign, he noted the sign will be 200 ft. from the road. As the Board and staff are concerned about the size of the sign, he demonstrated the scale of the sign from the road with a calculated scaled down drawing from the podium to the Board members' desk so they could see the actual visual impact of the sign on the gable which is roughly 6%. When Mr. Miller inquired if the sign would have unlighted block letters, Mr. Doriot indicated yes. He added that it will not be much different than if they just put a farm name sign, such as *Mishlers Farm, Established 2014* on the building which just gives identification to it. He noted it will be done tactfully. Referring to the sign in front, Mr. Doriot indicated it will be a 6'x6' sign placed at the right-of-way line. Mr. Hesser noted the questionnaire indicates 4'x6', but Mrs. Wolgamood pointed out the drawing shows 6'x6'. Mr. Doriot said if the questionnaire indicates the smaller size, they would make it that size. Regarding being injurious to health, safety, morals, and general welfare, he said he believes it will be more injurious to have a sign that is not large enough to see. Although the road is straight, he said that road is SR 13. They would like people to be able to drive down road, see the sign, and make a safe turn. Regarding this not resulting in a hardship, he noted his previous comment also applied to this concerning the road and safety. He noted it is not a lighted sign, and it will have flowers planted around it to make it look nice. He indicated their plan for wording on the sign is *Mishler General Store, Bents & Dents, closed Sunday and Wednesday*. He further indicated they have no plans for changing lettering as the sign is simply for identification. When Mr. Miller asked which size he should be considering, Mr. Doriot said they would like 6'x6' but if the Board wishes to make it 4'x6', that is okay. Mr. Hesser questioned if the questionnaire would affect the advertisement of the request, and Mr. Kolbus stated no. He further stated the advertisement was for developmental variance to exceed four square feet per side. Mr. Doriot said the Mishlers would prefer 6'x6' but if the Board deems 4'x6', they will accept that. When Mr. Homan asked if the gable sign is on both gables, Mr. Doriot said there will just be one on the gable facing east. He reported the gable is 12 ft. wide and roughly 6 ft. tall.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan expressed his irritation that this went through as home workshop because it is larger than that. He noted the specific rules for signage for a home workshop which would be totally blown out of the water. He stated he has a problem with that and indicated it could have been handled differently. Mrs. Wolgamood indicated agreement with Mr. Homan's comments. She did say that she agrees that they need sign out front and would also agree that because it is on SR 13, they possibly need a larger sign than the 2'x2'. She further stated she does not agree that they need the billboard on the side of the building because the building itself with the parking lot out front, the gable out front, and with a sign out front by the roadway, they are not going to see the sign on the building. She indicated the building says what it is. With respect to Mr. Homan's comment, Mr. Hesser noted the home workshop/business was approved 5 to 0. Mr. Homan indicated it was approved with a four square foot sign. With respect to the sign, Mr. Hesser indicated he agrees the Board should grant something bigger than the four sq. ft. He said he doesn't believe traffic will see a four square foot sign. However, he questioned whether it needs to be as large as requested. He also stated he does not have a problem with the concept of a second sign. He noted that you don't want customers pulling up to the house because there are other buildings on the site plan. He further explained that he can see the reason for the second sign and the rationale for the sign being larger than four square feet. Mr. Campanello noted a similar store on SR 119 that has a sign on the building and a pretty big yard sign as well. Because of the traffic at that location, it was a good reason to put it there so people can see it from far away. Mrs. Wolgamood questioned whether that sign is legal. Mr. Miller said just last week, he was north and east of Goshen on his way to Middlebury, and he is fairly certain there were 6'x6' signs that are not permitted at some of these conservative homes, and he understands the rationale behind it. He pointed out the Board has already approved the home workshop/business. He said he does not want to say he doesn't discount the sign and the gable, but he noted he almost has to think it's like him building a pole barn and putting up an "Established" sign. Mrs. Wolgamood argued that is an agricultural use, and this is not. While Mr. Miller indicated he understood, he said Mr. Mishler is asking for a 6'x6' sign to get the traffic into that facility without going past, without slowing down, and without being too small. He commented that he doesn't know that is a bad thing. He expressed agreement with Mr. Campanello that at least the Board is considering this ahead of time as opposed to approving it after the fact. Mr. Campanello commented that this is an entrepreneur trying to make a living, and a sign is needed to establish what he has there. He said he feels a 6'x6' sign is not enough for an entrepreneur, and a sign is needed on the building as well.

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

Motion: Action: Deny, **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 a Developmental Variance for a sign to exceed 4 sq. ft. per side be denied.

Vote: Motion failed (**summary:** Yes = 2, No = 3).

Yes: Robert Homan, Meg Wolgamood.

No: Doug Miller, Tony Campanello, Randy Hesser.

As a concern, Mr. Hesser said he does not know that two signs this large are needed. His view is that the gable sign should be smaller as it is just there to identify the property. He does not think it is going to be something that is necessary to the means of the business. Attorney Kolbus questioned if it would assist the Board to take each sign separately. Mr. Campanello also suggested they could make a condition about what the size of the sign could be. Mr. Hesser said 4'x6' is a pretty large road sign, and people would be able to see it. Mrs. Wolgamood said if a motion is made for a 4'x6' double faced unlighted sign, she will vote yes. She further stated if the gable sign is included, she will vote no for both signs.

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood that the Board approve this request with two signs placed in the locations indicated on the site plan and that the road sign be permitted to be up to 24 sq. ft. double sided, unlighted and the gable sign on the building be limited to four sq. ft. with the following commitments imposed:

1. The two proposed signs to be located on the Real Estate in accordance with the original site plan submitted with the application and designated "Site Plan for Variance".
2. The road sign permitted to be up to 24 square feet, double sided and unlighted.
3. The gable sign on the building is limited to four square feet.

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

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

No: Robert Homan.

12. The application of *Juvenal Moreno* 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 North Park Avenue, 1,635 ft. East of CR 9, being Lots 174, 173, and the West 16 ft. of 172, common address of 25681 North Park Ave. in Osolo Township, zoned R-2, came on to be heard.

Noting Mr. Moreno was not present, Mr. Mabry presented the Revised Staff Report/Staff Analysis, which is attached for review as *Case #25681North ParkAve-131018-1*. He noted the petition was tabled last month for the petitioner to potentially revise his plans and include some property to the east. On December 3, 2013, he indicated he spoke with Mr. Moreno who said he has not yet purchased the property to the east and was not sure when that would happen. He reported the recommendation for denial remains. He also reminded the Board of the option to dismiss that would be more favorable to the petitioner so he could apply again in a shorter period of time if he wished to do so. Attorney Kolbus pointed out if the Board denied it, this request is just for the one lot, and the petitioner could come back with the request including the second lot which would be a substantial change of circumstances. The time period would not apply if the Board agreed it was a change of circumstances. Mr. Kolbus stated he believed the Board still had the option to deny or dismiss. Mrs. Wolgamood mentioned the additional cost involved if denied or dismissed, and the petitioner re-filed as opposed to continuing to table the request. Mr. Hesser questioned if the petitioner expands the request to include the second parcel, it would have to be re-advertised and it wouldn't require a separate filing fee. Mrs. Wolgamood said there would not be if they tabled the request. Mr. Mabry said the request would need re-advertised because of the change in the shape of the property. Attorney Kolbus also suggested the neighboring property owners could change because the size of the property is expanding.

When Mr. Hesser questioned further what the petitioner wanted at this point, Mr. Mabry said what he got from the petitioner was that he did not know when he would purchase the additional property. Mr. Kolbus noted the petitioner did not indicate whether he would be present today or not.

There was no one present in the audience to speak regarding this petition.

Mr. Homan noted a lot of hanging questions that do not seem to give the Board much direction. Attorney Kolbus suggested the Board could table the petition and have staff request that the petitioner either appear or indicate in writing that he does not want the Board to proceed as it stands. Mr. Homan suggested if tabled, he wouldn't table it for more than a month but just to give the petitioner a chance to give staff to get a more adequate response. Mr. Hesser suggested that if it is not reheard by February or March, it could be dismissed. Mr. Kolbus said they try to only continue petitioners out so long, like six months to a year and indicated 90 days would be fine. Mr. Hesser and Mr. Miller both agreed with 90 days.

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

Motion: Action: Table, **Moved by** Robert Homan, **Seconded by** Meg Wolgamood 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 tabled until the March 20, 2014, Advisory Board of Zoning Appeals meeting for petitioner to provide further evidence or information, with the application to be dismissed at that time in the absence of the petitioner.

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

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

13. The application of *Jerry D. & Cynthia Hawkins* for a Special Use for child care home in an A-1 district (Specifications F - #23.10) on property located on the North side of Falcon Lane, 810 ft. East of CR 33, being Lot 7 of Dry Run Creek, common address of 14849 Falcon Lane in Benton Township, came on to be heard.

Mr. Hesser noted the public hearing was closed at the last hearing but a question remained with respect to restrictive covenants being in place.

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Doug Miller that the public hearing be reopened limited to the issue pertaining to the existence and enforceability of restrictive covenants and if any information has changed from what is represented.

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

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

Mr. Mabry indicated the update to the Staff Report is the staff note at the end. He submitted the following exhibits: the covenants that were submitted by the remonstrators [attached to file as Staff Exhibit #1], the limited title search conducted by Attorney Kolbus [attached to file as Staff Exhibit #2], and a signed petition of supporters obtained by the petitioner [attached to file as Staff Exhibit #3]. When Mr. Campanello asked if the covenants were recorded, Attorney Kolbus said they were recorded on the face of the plat and it shows up in the title search that they are subject to the restrictive covenants on the plat. Mr. Hesser further questioned that they were the ones submitted by the remonstrators at the last hearing which Mr. Kolbus indicated yes, although not the official

recorded document. Mr. Hesser reported the Board can approve a use but cannot supersede or invalidate the restrictive covenants. He went on to say, if the Board were to approve the use, it does not mean the neighbors cannot sue them to enforce the covenants. It would just mean that they are not in violation of the Zoning Ordinance. Attorney Kolbus said they are viewed as independent of each other as the Board cannot enforce them, but the neighbors still can regardless of the action the Board takes today. Mr. Hesser also noted the Board can consider the restrictive covenants, and it does have a bearing on the type of evidence as they proceed. He gave an example of his view and understanding as if there were restrictive covenants in place that had been consistently enforced and followed, he feels there is no reason for the Board to deviate from them. Mr. Miller suggested there could have been a precedence set. Mr. Hesser suggested if someone came to the Board and wanted to do something that went contrary to the restrictive covenants, he thinks it would be incumbent upon them to show that the covenants have never been enforced, and other people have done things like this. He suggested those would be the type of things that the Board could consider. Mr. Hesser reminded the audience this hearing is just dealing with the issue of the covenants and anything that has changed.

Cindy Hawkins, 14849 Falcon Lane, Goshen, was present on behalf of this request. Mention was made of a petition of supporters that she gathered that Mr. Mabry previously submitted into evidence *[Staff Exhibit #3]*. She also noted a letter from one of the neighbors who wanted to make known that they had never seen or signed the covenants until this situation *[attached to file as Staff Exhibit #4]*. She said she is certain there are other neighbors who were not aware of the covenants, but that was the one person willing to put it in writing. Mr. Hesser confirmed that argument goes to the fact that some neighbors claim they have not seen or were not aware of the covenants. As he did not compare names, he asked if any of the names on the petition to support were the same names that were on the opposing petition previously. Mrs. Hawkins said no and indicated she did not go door-to-door to try to convince neighbors to switch sides. At Mr. Hesser's request, Mrs. Hawkins pointed out the residences of signatures in support on the aerial photo of the subdivision. She noted Ashley Lambright and Michelle Griffith actually live in Shady Lane Acres so the covenants would not apply to them, but they were still within the 300 ft. range of notification. She also noted it was the same developer so possibly the same covenants. Regarding the issue of the covenants not being upheld, she reported she previously babysat when they first moved in, and she has been teaching piano lessons there the entire time. She said she asked the developer specifically prior to signing the covenants if her businesses were the kind he was talking about, and he said no and indicated that would be fine. She noted swimming lessons were given in the neighborhood for years, and now there is a massage business at that same location. She also noted a photography business in the neighborhood. She indicated these are the businesses that she is aware are currently being operated. She noted the covenants talk about noise so she mentioned a dirt bike track behind one house and a one house has a lift in his garage for auto mechanic work. As far as she knows, none of these things have been a problem for neighbors that she is aware. Mr. Campanello inquired further about when she talked with the developer about the covenants under the home business area and asked if she said she was going to give piano lessons and babysit. Prior to purchasing their house, she stated she babysat and taught piano which is part of what they were looking at that house for and indicated they would not be able to buy it if that was an issue. She said the developer said those were not

the kinds of things that the covenants were talking about, so they purchased the house and have been doing it.

Scott McCrindle, 14821 Falcon Lane, Goshen, was present in opposition. He reported he is the adjoining neighbor to the east and was unable to attend last meeting due to employment. He noted his father appeared on his behalf and read his letter at the previous hearing. He said babysitting is totally different from setting up a child daycare and with the size of her residence, he believes she could have additional children in the future. As an adjoining neighbor with at least one dog, he mentioned concern about the possibility of his dog biting a child next door at the daycare if the child reached across the fence. He said as the homeowner of a dog, in that case, his dog could either be destroyed or placed on a list. He reported the Hawkins have no immediate fence around the yard for the kids and the swing set in the back yard is in dilapidated condition. He also said their shed has been there for four years, is still not completed, and has large wasp and hornets nests because it is not enclosed. Mr. Hesser noted the proposed site plan includes a fence around the perimeter to meet the State licensing requirements. He noted the petition previously submitted in opposition is over 67% of the residents of the neighborhood. Dan Voglezang was also present in remonstrance. He stated he resides at 14804 Falcon Lane which is two houses east of the house directly across the street. Mr. Hesser reminded him that his comments should specifically address the covenants. He stated they purchased the lot, and he built the home himself as an employee of Team Construction. When Mr. Campanello asked if he knew of any other businesses in the neighborhood such as carpenters who work out of the back of their truck and do side jobs, Mr. Voglezang said he is not aware of a carpenter. Mr. Voglezang questioned the definition of a business and stated he does not know of any established businesses within the subdivision. After the request was tabled last month, he said he was the one who went to the Recorder's office and brought in a copy of the recorded covenants. When Mr. Hesser asked if Mr. Voglezang was aware of the covenants when he purchased his house, Mr. Voglezang said yes. In response to Mrs. Hawkins' comment about people not receiving them, from his 14 years of experience with Team Construction and building over 450 homes in Elkhart County, he would say 80% of those homes were built in a subdivision that they did. He said he is very familiar with those subdivisions he built homes in and said 100% of those subdivisions had similar covenants and restrictions. Referring to Page 5 in the covenants under the home business item, it says no lot shall be used for any purpose other than as a single family residence. He noted mention of people doing things that might be considered a business but again questioned the definition of a business. He said he feels obtaining a Special Use permit does qualify it as a business. When he referred to Page 8 and amendment of covenants, he noted the covenants can be amended but there is a procedure for that. Mr. Hesser said no one is claiming anything was amended. He stated he purchased the property with the idea of having some reassurance of certain things being allowed and not being allowed. He pointed out the Hawkins are great people but feels the request should not be allowed because so many people in subdivisions rely on covenants when purchasing property. As far as buyers not receiving copies of covenants when purchasing property in that subdivision, he said he thinks the original people, who bought a lot and built a house, got them. But as far as the system beyond that with resales and newer homes, he said he feels that is a responsibility for the buyer and for the seller of the property, and he does not have control over that. He stated the covenants are still valid. He

noted the wording in the covenants that they have the right to take this further if necessary and said he has heard that the neighborhood will do so.

In response, Mrs. Hawkins noted she doesn't have proof of the other businesses but reiterated that the massage business is there.

The public hearing was closed at this time.

Mr. Campanello noted if the Board were to deny this request, the issue wouldn't go any further; but if they were to vote for approval, it would be up to the neighbors to take it further. In some previous cases, Mr. Hesser said the Board has approved uses when covenants were not recorded. Additionally, he said the Board has done it from both sides. He expressed frustration because to him a child care facility is a fairly low impact use, and having kids in a neighborhood is usually considered a good thing. But the neighborhood is within their rights to say they won't have home workshops, and they have not established a pattern of home workshops being allowed. To his view, someone giving piano lessons or something similar is not a home workshop. This request is going beyond that as there are public ramifications to it because the kids are outside. Because of that and because they have evidence that the covenants are recorded and in place, Mr. Hesser said he would vote to deny this.

Looking at the road and how this will affect traffic, Mr. Campanello said he has a problem with the extra cars in and out of the subdivision especially near the cul-de-sac. Attorney Kolbus pointed out the focus is land use. Mr. Hesser said if they were to approve a home workshop, the Board would consider those turn around issues but stated he doesn't even get that far because of the covenants being in place. Also in the absence of anything that says they have been disregarded, he does not think it should be approved.

Although he thinks it is a decent request, Mr. Homan noted 60% of the neighbors are against it and feel it will hurt their property so he doesn't think he can disagree with them. Mr. Miller said he does not think it is a bad thing to want to take care of kids in your own neighborhood and questioned that people feel it is going to affect property values. He does not think it is right although he understands that it is a property use issue.

Mrs. Wolgamood said she feels that the request is valid, and the Board has seen numerous requests like this over the years. She felt the petitioner made a very good presentation, but also thought the remonstrators made good presentations. To her, the covenants have been broken, and nothing has been done about that so the covenants whether recorded or not are not an issue. However, when 19 out of 28 residents who are opposed to something in a subdivision, she stated she feels that says something so she would vote for denial. She did note she previously lived beside a daycare for almost 20 years, she had a dog, and the kids and dog loved each other. She noted it was her responsibility to make sure that her dog stayed where it was supposed to stay. Mrs. Wolgamood said she never had one complaint because the neighbor ran an excellent home daycare so it can and does happen. She again pointed out the number of neighbors who are opposed to the request. Having said that, she noted if the Board approves the request, the neighbors still have an option because they have recorded covenants which are for at least 25 years in duration.

Pointing out that they have spent a lot of time on this request, Mr. Hesser said when they do that it means the request is either extremely controversial or it is a close, hard call which he believes is the case in this request. He feels the Board understands both sides. Attorney Kolbus said he believes to base the decision solely on the covenants, goes beyond what they should be

looking at. Although they should, “consider” it, he said the decision should be based solely on land use. While Mr. Hesser understands that, he said in his view, it is a very weighty factor.

The Board examined said request, and after due consideration and deliberation: **Motion: Action: Denied, Moved by** Randy Hesser, **Seconded by** Robert Homan that the request for a Special Use for child care home in an A-1 district (Specifications F - #23.10) be denied based on the following Finding and Conclusion of the Board:

1. The Special Use will not be consistent with the spirit, purpose and intent of the Zoning Ordinance.

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

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

No: Doug Miller.

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

15. The first staff item, regarding the 2014 agreement for legal services, was presented by Chris Godlewski. He indicated it would be a simple straight approval by the Board with a motion. When Mrs. Wolgamood asked if the fee included Hearing Officer, Mr. Godlewski said he believed legal services is all legal services for the BZA including Hearing Officer which Mr. Kolbus confirmed.

Motion: Action: Approve, Moved by Meg Wolgamood, **Seconded by** Tony Campanello that the Board approve the 2014 agreement for legal services.

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

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

16. The second staff item for an amendment to BZA Rules of Procedure for compensation was also presented by Chris Godlewski. He noted there is nothing in the rules that spells out compensation for the Board members. He proposed a one line sentence to say that full time board members would receive a \$125 stipend and the alternate would receive a \$40 stipend. Mr. Hesser asked if the Rules of Procedure was the appropriate place for that as that is for the Commissioners to decide. Mr. Godlewski explained that in the Plan Commission Rules, compensation is spelled out, and this is just a matter of including it in the rules to say they are going to do that. Attorney Kolbus said it is done in the Plan Commission and is approved as the council approves the budget. Mr. Godlewski pointed out this would be consistent. Mr. Kolbus noted the issue would be if the council wouldn't approve the budget. When Mr. Hesser asked if there was specific language proposed, Mr. Godlewski said he verbalized the one line sentence but did not prepare anything in writing. Attorney Kolbus suggested a draft for next month's hearing. After some discussion, it was determined they can wait until January.

17. The meeting was adjourned at 11:05 a.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary