

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20TH DAY OF JUNE 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 (*Wolgamood/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of April 2013 be approved as read. The motion was carried with a unanimous roll call vote.

A motion was made and seconded (*Wolgamood/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 16th day of May 2013 be approved with the following amendments: Page 13 in the middle of the page, motion and action taken says "approved" and it was "denied". Page 21 under action says "approved", and it was "tabled". The motion was carried with a roll call vote. Doug Miller abstained due to his absence at that meeting.

3. A motion was made and seconded (*Miller/Homan*) that the legal advertisements, having been published on the 8th day of June 2013 in the Goshen News and on the 9th day of June 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 (*Homan/Miller*) 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 **Lamar Miller** for a 2 ft. Developmental Variance to allow for the construction of a deck and roof 3 ft. from the Southwest side property line, a 2 ft. Developmental Variance to allow for the construction of a deck 3 ft. from the Southeast side property line, a 1 ft. Developmental Variance to allow for a proposed eave of the existing structure 4 ft. from the Southwest side property line, and a 2 ft. Developmental Variance to allow for a proposed eave of the existing structure 3 ft. from the Southeast 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 Drive 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 #50892NorthShoreDr-130520-1. He amended the Staff Report to remove condition #2 as it is listed as commitment #1.

There were three neighboring property owners notified of this request.

Lamar Miller, 26293 Thompson Avenue, Elkhart, was present on behalf of this request. He said he wasn't aware of the fact that he was going to need a variance for the deck and his plans have been changing as he has been going along. He realized he needs some sort of a roof structure over the entrance door which is about 2/3 of the way back in the top aerial photo being shown. He said the idea is that he wants to put an A-frame structure about five feet out from the end just to provide some shelter from rain at the door and visual appeal. He said there is going to be a deck around the back that wraps around. Mr. Miller indicated the back of the house is about four feet above the ground level, and there is going to be a deck going out the back at the floor level. Mrs. Wolgamood confirmed that when he is referring to the back, he is talking about lakeside. He wants to wrap the deck around to meet up with the sidewalk and the entrance area of the house. He reported there is already an existing deck at ground level that actually comes out closer to the property line than this deck will be built. When Mrs. Wolgamood mentioned the gutter issue, Mr. Miller said that is fine, and he can install gutters.

Steve Wogoman of 50908 North Shore Drive was present in support of this request. He said he also owns the property located at 50900 North Shore. He indicated the house he owns next to Mr. Miller's property is a rental. He stated the stockade fence has been removed in anticipation of this variance being accepted. If the variance is granted with the plan to develop Lamar's walkway down the side of the house, he feels it will do nothing but greatly enhance the appeal of his rental property and the neighborhood. When Mrs. Wolgamood asked if he, as the neighboring property owner immediately adjacent, had any objections, Mr. Wogoman said he had none whatsoever and encourages it.

There were no remonstrators present.

Mr. Hesser asked if the so-called northwest side was addressed when they previously talked about the garage. Mr. Homan and Mr. Mabry indicated that has been addressed.

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** 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 2 ft. Developmental Variance to allow for the construction of a deck and roof 3 ft. from the Southwest side property line, a 2 ft. Developmental Variance to allow for the construction of a deck 3 ft. from the Southeast side property line, a 1 ft. Developmental Variance to allow for a proposed eave of the existing structure 4 ft. from the Southwest side property line, and a 2 ft. Developmental Variance to allow for a proposed eave of the existing structure 3 ft. from the Southeast property line (Ordinance requires 5 ft.) 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).

The following commitments were imposed:

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

2. Gutters must be installed on the eaves on the southeast and southwest sides of the house prior to issuance of a Certificate of Occupancy. The gutters must divert rain water away from the two adjacent properties.

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 **STCR Real Estate LLC** for a Special Use for a wireless communications facility (Specifications F - #31.50) on property located on the Southeast corner of CR 2 and SR 13, common address of 10758 CR 2 in York Township, zoned M-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as Case #10758CR 2-130520-1.

There were 10 neighboring property owners notified of this request.

Gene Crusie of Maplenet Wireless, 4561 Pine Creek Road, Elkhart, was present on behalf of this request. He said Life Style RV and Evergreen RV are owned by the same company. Life Style RV has an office on the east of SR 13 north of the Toll road. Evergreen has a plant south of the Toll Road and west of SR 13. He indicated there is a ten acre woods in between which is blocking the line of sight. They first tried to put in a link that would shoot through the trees which is working marginally well, but it is not satisfactory. They need to build a tower. With a bucket truck and a crane, he said they determined 120 feet is the minimum height they can do to get line of sight between the two plants. This is for a private point to point link between the two plants. He indicated they also looked at using another tower but financially it doesn't make sense to do it that way. He reiterated they are asking for a Special Use permit which is needed to build a tower. He stated they are also asking for a variance on the landscape and fencing requirements because there is an existing fence which is secured, and it is not visible from the road because of trees. He feels it would be redundant to add another fence.

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 Special Use for a wireless communications facility (Specifications F - #31.50) be approved with the following condition imposed:

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

The following commitment was imposed:

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

Prior to voting on the motion, Mr. Hesser asked if this request was for Middlebury Community Schools as noted on the GIS aerial photo. It was clarified there is no conflict of interest for Mr. Hesser as the notation is for the school district not the property owner.

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 **Thomas B. & Carolina Hogendobler** for a Special Use for a home workshop/business for retail firearms and accessories (Specifications F - #45) on property located on the North side of Janiper Drive, 825 ft. West of CR 15, being Lot 54 in Ferndale Sub. 3rd Extension, common address of 23157 Janiper Drive in Concord Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as Case #23157JanpierDr-130517-1.

There were 27 neighboring property owners notified of this request.

Thomas Hogendobler, 23157 Janiper Drive, was present on behalf of this petition. He said he is running the business as a home occupation right now with 100% of the business being on-line sales which he ships out. He said he does not have his federal firearms license yet because he is waiting on this approval. He stated he was originally having customers by appointment only but read that wasn't allowed. As he is employed full-time as a firefighter for Elkhart City, and his schedule changes weekly, he indicated he can only run the business by appointments which will lessen the customer affect. He also wants to be able to complete legal transfers between private individuals for a lower cost. Mr. Hogendobler indicated there will be no signs and no additional parking. He further explained the maximum number of vehicles at one time would be two if he was completing a transfer.

When Mrs. Wolgamood asked how frequently he would anticipate this happening, Mr. Hogendobler said he would not as he is not going to advertise, and the business will be by word of mouth. When she asked if he has his business in the basement, he said he keeps his stock there and presently just sells accessories such as magazines, slings, and gun sights. He indicated he has been doing this since April. When Mrs. Wolgamood inquired about gun safes, Mr. Hogendobler reported he has two 66 gun safes to secure any guns he may have on site.

When Mr. Homan asked if he has or expects to have any type of reloading supplies or gun powder, Mr. Hogendobler indicated no and further stated the only gun powder he has at the house is for personal use. Mrs. Wolgamood mentioned staff making note about the discharge of firearms and confirmed with Mr. Hogendobler that he does not do that, has no plans to do that, and has no objection to that being a commitment.

Mr. Hesser also noted the staff report made reference to the covenants and restrictions and asked Mr. Hogendobler if he was aware of any that would prohibit this type of business. Mr. Hogendobler said there were none that he is aware of. Regarding about the commitment stating no discharge of firearms, Mr. Campanello said he does not think that should happen as it is already a law, but Mr. Hogendobler should be able to if he is going to protect himself. Mr. Campanello asked if this commitment would hinder Mr. Hogendobler from protecting himself on his own property. Attorney Kolbus suggested adding "related to the retail sales business".

Mrs. Wolgamood asked for a show of hands from the audience in opposition to this request. With four raised hands to speak, she asked that the speakers not be repetitious.

Helen Finnigan, 23127 Marydale Drive, Elkhart, was present in opposition to this request. She indicated she lives one block behind Janiper on the north side of Marydale and has lived there over 30 years. She reported she has seen the traffic increase over the years and does

not want any more traffic in the neighborhood. She feels if this request is allowed, it will open the door for other retail establishments in homes in the neighborhood. She also indicated concern about the responsibility and element of customers or clientele. She expressed a fear of customers scoping out their neighborhood for possible break-ins.

Also present in remonstrance to this request was Doug Barton, 23140 Janiper Drive. He lives directly across the street from Mr. Hogendobler and has for 40 years. He indicated the subdivision is old with very little turnover. He said they have concerns and reported the Detwilers, who set up the subdivision, said what was specifically allowed but noted he does not have a copy of covenants with him. Presently, he said the residence in question on average has six cars in the driveway daily, so he is concerned about any customers lining Janiper Drive or somewhere else. He stated there is no extra room for any additional vehicles or parking for any volume of business. He reiterated they do not want to open it up to business and want to keep it a residential area.

Deems Gallimore, 60312 Frederick Circle, was present in remonstrance. He submitted a signed petition *[attached to file as Remonstrator Exhibit #1]* at this time. He said he has lived there since 1969. He reported down Janiper Drive there is a natural gas trunk line underground. He said they are not even supposed to plant anything along Janiper Drive on top of the lines. He expressed concern and reported an incident with a dentist, Dr. Gerber, who had an office 200-300 feet off of CR 17, and there was an explosion caused by gun powder. He had been working with black gun powder for muzzle loaders because he was an avid hunter. From what he has learned, the gas line trunk is six feet in diameter and was there when the subdivision was built. He also indicated The Willows subdivision would not let houses be placed over the line. He mentioned the number of incidents in the area where they have been digging, cracked a line, and an explosion occurred. Where Dr. Gerber's incident occurred 200-300 ft. from the line, Mr. Gallimore questioned what would happen if an incident occurred in Mr. Hogendobler's 10'x10' basement. He also noted the mention of equipment and accessories in the petition and questioned what those items might be. He is concerned about the potential for disaster being so close to the gas line at this location. He also noted an oil line on the other side of the street. He questioned how unsafe the neighborhood would be if something happened. He expressed that the subdivision does not need a business in it, and this would set a precedent.

Also present in opposition to this petition was Jerry Hay of 60329 CR 15. He reported living there since 1972. He said the main reason for living in a residential area is because it is residential, and he would like to keep it that way. He believes the business should be in a separate location as it would detract from the neighborhood and add traffic. He noted the nearby shopping center has already caused additional traffic. When Mr. Campanello asked if he knows of any other kind of business such as carpenters or electricians who work out of their homes nearby, Mr. Hay noted one individual drives a company truck home at night but that is all he is aware of.

Lamont Sweisberger, 23138 Frederick Circle, was present in remonstrance. He also submitted a signed petition *[attached to file as Remonstrator Exhibit #2]*. He noted opposition for the reasons mentioned by the previous remonstrators.

Billy Bachtel, 23194 Janiper Drive, was present in opposition to this petition. When he stated he believed this is an unstable environment and believes family members at this location have been arrested for drug abuse, Mrs. Wolgamood pointed out they are talking about land use.

Mr. Bachtel said he is talking about the elements that may be coming to this location. Regarding parking, he said on Sunday morning there were four cars parked in the driveway and a truck in the yard. He also noted right across the street on the corner of the narrow road, there is a bus stop. He questioned having a gun dealership that close to a bus stop. He said if he wanted to live in an area with businesses, he would have built in an industrial park. He also expressed concern about the ability of emergency vehicles to get down the road if anyone parks in the road. He indicated school buses barely make it through.

At this time, Mrs. Wolgamood asked the petitioner to address issues such as traffic increase, the gas line, the parking overflow, and the sale of gun powder.

In rebuttal, Mr. Hogendobler stated he will not be selling gun power and only keeps it for his personal use which he plans to continue. He said he currently has five vehicles with three belonging to him and two belonging to his sons. He noted one son will be leaving for college soon. As far as businesses in the neighborhood, he noted a carpet cleaning business, and one next door neighbor who is present today previously ran a business out of his home. He stated either way, he will continue to run the on-line business out of his home.

The public hearing was closed at this time.

Mr. Homan noted he feels from a land use standpoint, it is pretty low impact even with the remonstrators present. Mrs. Wolgamood mentioned the fact that this request is by appointment only, and there are lots of approvals out there. She noted the gas line that goes through there has been there and is not going to change. She doesn't know that anything he is doing or will do that will interfere with it. Mr. Homan said parking on the street is a legitimate concern. With so many vehicles in the driveway, even with very little customer traffic, he noted Janiper Drive is a pretty skinny road and parking needs to be addressed somehow. The possible impact on public safety stands out to Mr. Homan. Because the representation and testimony of remonstrators has been that there are five or six vehicles in the driveway, he feels they should talk about street parking and questioned if that impact is a big problem. Mr. Hesser said he thinks granting this request would not authorize street parking and suggested they could add a condition of no street parking, which would make it a violation if that occurred. He said he understands the concerns that are raised. He noted what is represented versus some of the concerns that have been expressed, and pointed out that people are notified of the request but not told the scope of the operation in the brief notice that they receive. He said to hear what has been presented does not seem high impact and does not seem to raise the concerns mentioned by remonstrators with this size of operation. He noted one remonstrator mentioned covenant restrictions, and said covenants can be enforced even if they grant this request.

For clarification about reloading supplies, Mr. Homan asked the petitioner if he would sell ammunition. Mr. Hogendobler said he has a small amount for sale at this time, but pointed out that he has a larger amount for his personal use which Mr. Homan noted the Board has no jurisdiction over. Mr. Homan said if the Board is leaning toward approval of this request, he wants to add a condition about no on-street parking and also add some kind of restriction on the sale of gun powder and ammunition, although he noted he does not know how to enforce that. Mrs. Wolgamood suggested specifying no sale of ammunition and no gun powder related supplies for sale. Mr. Homan noted that takes the explosion hazard out of business.

As an avid gun owner, Mr. Campanello feels guns are to be sold in a gun store. He does not believe this request should be approved in a residential area especially with the number of

remonstrators present. He indicated he does not support this request. Mr. Miller said this is tough. If they were talking strictly about land use and there had not been as much public input, he could probably support it. But in this specific instance, he said he cannot support this request. When Mrs. Wolgamood asked them for specific reasons why other than neighbor input, Mr. Miller has an issue with traffic and parking. Being in the building business, he noted he lost a client to a gas line explosion, and it was very inadvertent. Since that time, he said he has been very sensitive wherever he gets involved in a situation to that environment. He noted the trunk line is huge, and that is a major problem. He noted he agrees with Mr. Homan's comments that Mr. Hogendobler can do what he wants in his own basement, but they are talking about public safety. He knows it deals with land use here but he tends to lean with Mr. Campanello when it comes to gun sales. He cannot support it for that reason and is shy on this issue. Mr. Campanello agreed with Mr. Miller's comments. Being someone who purchases guns, he noted he buys them from people who are trained to sell guns and do background checks. He does not believe selling guns out of a house is the right use for land in a residential neighborhood.

When she looked at this request and before the public hearing was held, Mrs. Wolgamood said her first thought was that this is very low impact which was also prior to the discussion regarding the gas line and increase in traffic on Janiper Drive. She said she could go either way as she sees both sides of the story.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **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 a home workshop/business for retail firearms and accessories (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 commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. No discharging of firearms on the property related to the business.
3. No parking on the street.
4. No sale of ammunition or gun powder.
5. Approved for a period of one year with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

Yes: Randy Hesser.

No: Doug Miller, Meg Wolgamood, Robert Homan, Tony Campanello.

After further consideration and deliberation:

Motion: Action: Deny, **Moved by** Meg Wolgamood, **Seconded by** Doug Miller that the Board deny this request based on the following Findings and Conclusion of the Board:

1. The Special Use will not be consistent with the spirit, purpose and intent of the Zoning Ordinance due to the increase in traffic, the safety of neighboring property owners, and the residential density in this particular area.
2. The Special Use will cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will not substantially serve the public convenience and welfare.

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

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

No: Randy Hesser.

8. The application of ***Leonard Penner & Lorena Penner*** for a Special Use for a public utility (placement of solar panels) (Specifications F - #31.50) on property located on the West side of CR 37, 1,600 ft. North of CR 44, common address of 67613 CR 37 in Benton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as Case #67613CR 37-130510-1.

There were 11 neighboring property owners notified of this request.

Leonard Penner, 67613 CR 37, was present on behalf of this petition. He noted his wife is also present. He said he has lived there since 1968 and enjoys the wetlands which are part of larger wetlands across the road. He reported they have added lots of trees over the years. This program offers them a unique opportunity to generate energy through NIPSCO, and he has an agreement with them. A second meter will be set up next to existing meter and sold back to NIPSCO. He expressed intent to keep all of the trees and buffering in place because they like the property that way, and it serves their neighbors well and provides a sanctuary for wildlife. He said the structure will only be visible for a brief period as you travel from the south going north on CR 37. With the trees they have planted, he noted the view will change as each year goes by.

Out of curiosity, Mrs. Wolgamood asked if NIPSCO sought them out or if the Penners contacted NIPSCO. Mr. Penner indicated he pursued NIPSCO after hearing about the program from friends.

Based on design, Mr. Miller asked Mr. Penner if he is building it which he indicated yes. Mr. Miller noted in previous petitions the Board has approved for solar panels, they were more of a commercial design, and Mr. Miller noticed from the drawing, it was a bit different. Mr. Penner said he has building experience and intends to build it himself with treated materials, set on a riser with small foundations, and the entire structure will be wood with panels facing south.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan pointed out solar panels are getting pretty popular. Mrs. Wolgamood noted Mr. Penner has ample room and a perfect location.

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 a public utility (placement of solar panels) (Specifications F - #31.50) be approved.

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 vegetative screening on the perimeter of the area proposed to contain the solar panels and in existence at the time of Special Use approval must remain in place.
3. The solar panels must be removed from the property when no longer providing a source of electricity.

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

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

9. The application of **James E. & Renee L. Hansen** for a Special Use for warehousing and storing of cargo trailers in an A-1 district (Specifications F - #44) on property located on the North side of CR 12, 2,020 ft. West of SR 13, common address of 12121 CR 12 in York Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as Case #12121CR 12-130517-1.

There were six neighboring property owners notified of this request.

James Hansen, 12121 CR 12, was present on behalf of this request. As part of his delivery business with his three sons, he said he would like to store cargo trailers from the manufacturer before they deliver them. He submitted at this time two letters from neighbors on both east and west sides [*attached to file as Petitioner Exhibit #1*]. Mr. Hansen noted there are between 10 and 20 trailers parked there temporarily. When Mr. Campanello asked how far away they transport these trailers, Mr. Hansen said it is usually between 400-500 miles. When Mr. Miller asked if they used flat beds to make their deliveries, Mr. Hansen indicated they use normal pickup trucks. Mr. Campanello asked if Mr. Hansen was aware of the complaint. Mr. Hansen reported he sold the land to the guy who complained. He explained they planted trees on the property line together with the neighbor to the east, and his son backed up and ran over a couple of trees which upset the neighbor who actually lives in Indianapolis. He noted the two letters from neighbors. He also indicated there are two operations just like this on the opposite side of the road back to the east and west with a lot more traffic than this operation would ever have. He reported they spoke with Deb from County Highway who recommended a commercial entrance to the drive. He said they have obtained estimates and are ready to proceed if this request is approved. Pointing it out on the aerial, he reported the commercial drive would be the east driveway. Mrs. Wolgamood noted the property of the complainant is a vacant parcel.

When Mr. Homan inquired about the length of time this operation has been running, Mr. Hansen said when the RV industry crashed, he started this business to earn income and support his family. Mr. Homan asked how many trailers he has had on average both high and low on the property. Mr. Hansen indicated a high of approximately 20. He also noted he owns 13 trailers himself which are not all on the property. He said about 10 is an average because they each haul

three or four a week. When Mr. Homan asked about contract drivers, Mr. Hansen indicated the business consists of himself and his sons.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello said it seems like there is already plenty of parking of trailers across the street and noted the two letters were submitted. Mrs. Wolgamood commented that immediately across the street is still zoned A-1, and any trailers there would be parked illegally. If they are talking about the parking of trailers in the manufacturing zone to the west and to the east, she noted it is a permitted use and cannot be compared to this in an A-1 zone. Having said that, she noted it is just him and his sons, and he has the letters in support from the two neighbors. If they are looking to approve the request, she noted Mr. Hansen offered to plant trees on the east side. In her opinion, trees are not going to hide the trailers so should not be considered as part of the request. She said she is surprised he got permission from the neighbor to the west. Mr. Hesser agreed and noted the area is hodge-podge with several different zonings. Mrs. Wolgamood noted she cannot imagine what the traffic is like on CR 12.

Mr. Campanello asked the staff about the added note at the bottom of the Staff Report about the SWPPP plan. Mr. Mabry said the reason is to make it known that it is needed and is the call of the Soil & Water Department, and even if denied, the activity has taken place there and needs notice. When Mr. Campanello questioned the activity, Mr. Mabry indicated there is apparent grading that has taken place on the property and possibly the compaction of the ground from the weight of the trailers. Mr. Campanello questioned the compaction of the nearby baseball field and inquired if that would get a SWPPP. He feels this is not relative to what is going on here. Mrs. Wolgamood thought Soil & Water Department is always involved when any soil is disturbed. The rule is one acre which is what this request is, but Mr. Campanello suggested the parking area be reduced to eliminate the need for a SWPPP.

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

Motion: Action: Approve, **Moved by** Tony Campanello that this request for a Special Use for warehousing and storing of cargo trailers in an A-1 district (Specifications F - #44) be approved based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will substantially serve the public convenience and welfare.

The following condition was imposed:

1. An updated site plan to be submitted reducing the size of the parking area to under one acre.

The following commitment was imposed:

1. Approved for a period of two years with renewal before the Elkhart County Advisory Board of Zoning Appeals.

Motion dies for lack of a second.

During further discussion, Mr. Hesser indicated he was leaning toward denial and would have stuck with that if anyone remonstrated, although he understands the petitioner's point.

Based on what has been represented, the consent of the neighbors, and considering the hodge-podge of uses in the area, he thinks he certainly could be convinced to approve it. However, he does not think the Board should be redirecting the petitioner with what we think is best for him versus what he has proposed. He also indicated he is not ready to throw the towel in on screening as he feels some effort should be made there. He does agree with and believes they should follow some of the suggestions of Attorney Kolbus. He would be open to approval with a motion that incorporated some of those.

Mr. Homan said his only comment that would support the staff's position for denial is that it is a hodge-podge, weird little part of the county but there has already been investment in residential as commented in the staff report. He pointed out there is a vacant lot next door owned by someone in Indianapolis, but it could be sold for residential property and could be a neighbor next door. Having a transportation lot next door could realistically hinder the sale and use of that property for that purpose. Unless the Planning Board or someone else wants to actually rezone some of this, it is still A-1, and there are still houses built all the way around this lot. It may be another incidence of a neighbor being upset and turning another neighbor in, but as far as the actual land use and affect of the adjoining land use, it is a pretty strong argument that the business at this location affects the value of the lot next door. He thinks the property owner of the vacant lot, who does not live there, has the ordinance on his side.

Mr. Campanello pointed out the two year time period on it, and the neighbor was notified and didn't show up. Mr. Miller noted he specifically doesn't have a problem with it. Having been through that area many times, he said it is definitely a mixed bag of uses. He reported the one thing that this Board has consistently done though is not set the ground rules in a situation like this, and he feels it is the petitioner's responsibility to clean up this request. He would be more in favor of tabling it until the petitioner brings back an amended site plan and some conditions.

Mr. Hesser inquired about asking staff to recommend a set of conditions and commitments if the Board were to approve it. Mr. Hesser said as long as it is less than what he has proposed, it does not have to be re-advertised. Regarding the site plan, Mr. Kolbus noted it is up to the petitioner if he wants to change it or not. Mr. Hesser pointed out that if they table the petition with that request, it does not necessarily mean the Board will grant it. Mrs. Wolgamood said that bottom line what they are saying is they are going to table it to allow the petitioner to get with staff to re-evaluate the site plan and come up with proposed conditions and commitments.

A second motion was made:

Motion: Action: Table, **Moved by** Tony Campanello, **Seconded by** Doug Miller that the request be tabled until July 18, 2013, Elkhart County Advisory Board of Zoning Appeals meeting, to allow the petitioner to work with staff to revise the site plan if desired, and to allow staff to prepare proposed conditions and commitments.

Vote: Motion passed (**summary:** Yes = 3, No = 2, Abstain = 0).

Yes: Doug Miller, Randy Hesser, Tony Campanello.

No: Robert Homan, Meg Wolgamood.

10. The application of **Steve P. & Julia A. Steffen** for a Special Use for a public utility (ground mount solar system) (Specifications F - #31.50) on property located on the East side of CR 21, 2,600 ft. North of CR 142, common address of 67024 CR 21 in Jackson Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as Case #67024CR 21-130520-1.

There were eight neighboring property owners notified of this request.

Eric Homan of Solar Energy Systems, 1952 W. Market Street, Nappanee, was present representing the petitioners. He submitted a packet of information and pictures *[attached to file as Petitioner Exhibit #1]*. On the large aerial, he pointed out the location of the solar array. As far as the documents that he has showing the flood plain, it actually cuts across the corner and drops back, so he believes he is out of the flood plain. With it being a ground mount, all of the inverters and everything are going to be a minimum of four feet off the ground, so he could sustain 4 ft. of water before any equipment is in the water. He noted all the equipment is outdoor-rated and sealed so water will not penetrate. He noted they have a signed agreement with NIPSCO so they are guaranteed to be in the FIT program. They have until February of 2014 to get this in operation before it falls off of NIPSCO's FIT program. FIT is a two meter system that you actually make money off of, and it is a 15 year contract. He noted that NIPSCO does not publicize this and indicated the NIPSCO program is full. He again showed the location of the ground mount system and explained they will then trench to the house where they will tie in with the existing system. There will be a second meter with disconnects on the house and on the ground mount system which is by code. He pointed out everything trenched in is all underground wire so there is no issue with the flood plain.

Mrs. Wolgamood mentioned there was only one recommended commitment in the staff report. She asked if the petitioner would have any objection to adding that solar panels must be removed when no longer providing electricity and screening must remain in place. Mr. Eric Homan said he does not believe either item is a problem.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood noted she mentioned those two commitments because that is what staff recommended in the earlier request but not in this one.

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

Motion: Action: Approve, **Moved by** Doug Miller, **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 Special Use for a public utility (ground mount solar system) (Specifications F - #31.50) be approved.

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 amended for staff review, to demonstrate that the location of the facility is out of the regulated floodway, and as represented in the petitioner's application.
2. The solar panels must be removed from the property when no longer providing a source of electricity.
3. The vegetative screening as shown on the site plan and in existence at the time of Special Use approval must remain in place.

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 **Timmy Jones** for a Special Use for a child care home in an R-1 zone (Specifications F - #23.10) on property located on the South side of Vista Dr., 300 ft. West of Ardmore Dr., North of Woodridge Dr., West of CR 9, being Lot 38 of Prairie View Heights 2nd, common address of 26150 Vista Lane in Concord Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as Case #26150VistaLn-130517-1.

There were 24 neighboring property owners notified of this request.

Timmy Jones, 26150 Vista Lane, Elkhart, was present on behalf of this request. He said he is a little confused about the "drop off area" as noted by Mr. Mabry whether he is saying on-street or the driveway is not sufficient. Mr. Mabry clarified by saying that staff wants to be sure there is adequate area for the homeowner's parked cars and vehicles of parents dropping off kids. They want the parents to be able to pull off the street into a safe area to drop off their children as they feel the street is an unsafe area to unload children. Mr. Hesser explained his concern is not necessarily a drop off area but somehow showing on the site plan that there is adequate room in the driveway for cars to pull in one after another without causing a log-jam. He noted that could be dealt with in various ways. Mr. Mabry suggested staff left that open ended to not specify any certain width of an addition to the driveway or anything like that, just some demonstration that children will be safely and conveniently dropped off at this site. When Mr. Hesser asked if Mr. Jones understood the concern of the staff and the Board, Mr. Jones indicated he did but asked if that same rule applies to the school bus that drops the kids off at the house because the bus drops kids off in the street. Mrs. Wolgamood inquired if they have children coming to the daycare that will be dropped off by school buses. Mr. Jones said no but that could happen.

When Mr. Campanello asked how many children they plan on having each day, Mr. Jones indicated under current state law the maximum is 12 minus any children residing in the home. As they have been foster parents for 12 years, he indicated they currently have two foster children in their home. He explained on their application they listed a maximum number of 10 children, and that is because they subtracted the two children currently residing in their home.

Mr. Hesser further explained the concern is if they have up to 10 or 12 people dropping off children, what will prevent multiple cars from pulling in at one time and not being able to turn around or get out and creating a problem where you have three or four cars at a time backing out onto the road. Mr. Jones said he gave the measurements of the driveway and believes it is between 70-80 foot long and at least 16 feet wide. They already have a van and a car there. In his opinion, Mr. Jones feels the driveway is sufficient room for vehicles when picking up/dropping off especially considering the fact that they are talking about various times during

the day. He questioned the chances of 10 cars showing up at exactly the same time. He does not feel any changes are needed. Mr. Miller confirmed that Mr. Jones' testimony is that the current driveway serves their needs. Attorney Kolbus suggested, if approved, placing a condition of no on-street parking related to the daycare business which would assist in remedying this issue as a possible option.

Mrs. Wolgamood asked if they are currently providing daycare. Mr. Jones indicated he is present because the house is in his name, and his wife is applying for a state license at this time. He explained that a person can babysit without a license, and she previously babysat for a family with three children. Due to loss of employment in that family, she is not currently babysitting. They decided to wait until she obtained her license to continue with the daycare. He pointed out that without a license, you can only have a maximum of five children. When Mrs. Wolgamood asked if Mrs. Jones had operated a daycare before, he stated she has not. They have just been foster parents for 12 years and babysitting sporadically or providing occasional respite care for another foster family.

Tracy Wilson, 58586 Ardmore Drive, was present in favor of this request. She did express concern that there are no traffic control signs in their neighborhood. She noted one car in particular that travels down Ardmore on a regular basis at a relatively high rate of speed for a small neighborhood such as this. Her only concern is for the traffic situation. She supports the daycare and believes it is a great way to operate.

Mr. Jones noted he has no power or authority over traffic controls.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller said his thought would be that this is fairly low impact in terms of the neighborhood. With respect to the traffic, he indicated that would be an issue for the Highway Department for speed limits signs and that type of thing. Mr. Hesser agreed it is low impact, and as Mr. Jones stated, it may well be that the driveway is wide enough for two cars, and there will not be a problem. He suggested adding the "no street parking" so that would violate the terms and be grounds for revocation to happen and also to just approve it for one year. He said that Mr. Jones may be correct, and there will be no problem at all.

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

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 this request for a Special Use for a child care home in an R-1 zone (Specifications F - #23.10) 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. A revised site plan must be submitted for approval by the staff showing an off-street drop-off area is provided on this property.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. No on-street parking related to the daycare with respect to loading and unloading.

3. Approved for a period of one year with review before the Elkhart County Board of Zoning Appeals.

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

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

12. The application of **Richard F. & Sandra F. Spencer (buyer) and Luella J. Freeby (seller-deceased)** for a Special Use for a beauty shop (Specifications F - #46) on property located on the North side of CR 26, 856 ft. West of CR 15, common address of 23131 CR 26 in Concord Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as Case #23131CR 26-130520-1.

There were 17 neighboring property owners notified of this request.

Sandra Spencer, 58316 Hemminger Drive, Goshen, was present on behalf of this request. When Mr. Miller asked if there is a beauty shop there now, Mrs. Spencer said there is not, and it is presently vacant. When Mrs. Wolgamood asked if it is a residential home and if there has ever been any business there, Mrs. Spencer indicated that it is a residence and has never been a business. When Mrs. Wolgamood asked if they anticipate living there, Mrs. Spencer said potentially either they or their son would live there. She did indicate there would be a resident in the home. She noted the area they are talking about using for the beauty shop is a breezeway area between the garage and the residence, and it does have a separate entrance from the outside. When Mrs. Wolgamood inquired about the number of chairs, Mrs. Spencer said according to the regulations, she can have up to three people but for the time being, it would just be herself. Mrs. Wolgamood questioned whether she does anticipate having more. Mrs. Spencer said maybe potentially but not right at the moment. Mrs. Wolgamood noted that the application indicates 0-2 part-time employees. Mrs. Spencer explained it would be her plus two part-time people as indicated in the ordinance. When Mrs. Wolgamood asked what ordinance, Mrs. Spencer indicated the regulations on the zoning of the Special Use. Mr. Mabry clarified that a home workshop/business would say that but a beauty shop is its own Special Use so there is not a cap in writing in the ordinance as far as the maximum number of employees. He suggested there might have been a miscommunication from staff to Mrs. Spencer. But Mrs. Wolgamood pointed out that the application does say two part-time employees.

Mrs. Wolgamood inquired about the number of clients she anticipates coming to the salon at any one time. Mrs. Spencer indicated not more than two to three at the maximum because you can only tend to one or two clients at a time. She further said she prefers to work that way as she does not want several clients waiting on her.

When Mrs. Wolgamood asked if there is a turn-around there now, Mrs. Spencer said there is not, but she is proposing one because it is a very busy road. She added that she would not even want to back out on that street. Mrs. Spencer said she wants to put a pad there for parking and turning around as it is too dangerous to back onto the road. The question of city water and sewer was asked by Mrs. Wolgamood. Mrs. Spencer reported both a septic system and well.

Debra Livergood, 23079 CR 26, was present but stated she is neither for nor against this petition. She said she lives in the second house east of this property. She was concerned about the safety and is glad Mrs. Spencer is aware of the issue. She said she is also concerned about

the possibility of it someday becoming a full blown beauty salon. She also mentioned concern about possible contamination of well water as she is unfamiliar with the chemicals used in a salon.

Jill Newton, 23156 CR 26, Elkhart, was present in opposition to this request. She stated she lives cattycorner to the property. She noted she has several concerns about this request. She stated Mrs. Spencer is not quite familiar with the street. As she has lived there for 21 years, she said she has watched it go from a back roads street to a main thoroughfare. She said you cannot even question trying to back out onto the street. She noted at Christmas time, they do not leave home until after 3 p.m. on Saturdays because you cannot get out of driveway.

She feels that they learned their lesson with the real estate business at 23107 CR 26 as they continually had more cars than were allowed parked in their driveway. Because no one lived in the structure itself, the grass only got mowed approximately once a month. She said they had a lot of problems with many things that went on there, and she worked there for a few years. She stated they just did not keep the property up because they did not live in it. She feels like they have been bullied quite a bit lately about people wanting to put businesses on that road and questioning whether or not it should be zoned for commercial business. She reiterated that this is a residential area with an entire neighborhood behind her house, and they would like to keep it that way. She said if you bring in one, you will allow more and more in the future. She noted that as much as they would like to see Mrs. Freeby's house sell, they would really like to see a family go in there and not a business.

She also expressed concern about the smell coming from the salon. With many of the neighbors having decks and patios in their backyards, she is concerned with smelling permanent solution and the smell travelling. She also noted concern about chemicals going down the drain into the well system, and she feels it would impact the neighborhood quite a bit.

In rebuttal, Mrs. Spencer addressed concerns by saying that previously she had a salon in her home in Walkerton for almost 13 years. She said all of the surrounding neighbors had no complaints and some even utilized the salon themselves. As far as the smells, she noted perm smell usually just stays within the room because it is just not that odorous and would not permeate the walls or go outside the building. As far as taking care of the property, she said they do own their home, and they have always owned one. Her husband is completely particular about his lawn, and there are no weeds in it. She emphasized they would definitely take care of the property and make sure it is well maintained. Regarding the traffic, she noted she works within a mile of the property so some of her clients would be the same ones she has now.

As far as people who live in that area, she feels it would be a great facility for them so they wouldn't have to travel outside the area to seek other services and would be a great service for the public and surrounding area. She said she cannot see it really adding that much traffic. She doesn't care to have more than one or two clients at a time to serve. She noted they want to keep the property as residential as when they would no longer have the salon, more than likely they would not want to keep it running. She indicated she is getting close to retirement in the next 10-15 years, and she would probably turn it back into a strictly a residence. Mr. Hesser asked Attorney Kolbus, if this request is approved, if the site plan itself were changed and they wanted to expand into different areas, if that would require that they come back before the Board which Mr. Kolbus indicated yes. He also confirmed with Mr. Kolbus that they can limit the number of outside employees. Mr. Hesser then questioned Mrs. Spencer about how many chairs

she would possibly put in this small salon area. She said possibly two at the most because it is very small. She indicated that space would also be needed for a waiting area in the breezeway.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello said it appears that she is not trying to build a big business, she is close to retirement, and probably has a following of clients. He said if she does keep it in the location as indicated on the site plan, he can vote for this request. Mr. Hesser noted the concern of the remonstrators about traffic has been noted and is being addressed by Mrs. Spencer.

Mrs. Wolgamood stated that her major concern is that with this type of request, even though it is a Special Use for a beauty shop, and there is nothing that says they have to live there, most of these kinds of applications are when someone wants to do this in their home and they live on site. In this particular instance, she is not going to live there which is a concern to Mrs. Wolgamood, and she would be more receptive if that were the case. But she knows what happened next door, too.

Mr. Homan asked if the realty company next door is still in operation. Mrs. Wolgamood said she believes it is vacant, and neighbors in the audience agreed. Mrs. Wolgamood further stated that it looks terrible. She pointed out that should not reflect on what these folks are trying to do but the Board allowed that and it ran amuck. She indicated that she does not know that she can support this request.

Mr. Campanello said he looks at this as her livelihood, and they are putting a lot of money into purchasing this property. He would imagine that they are going to keep it up because it is not like the real estate people who did not take care of the property. He feels this is very low impact but agrees that she needs a turn-around. Mr. Hesser noted if the maintenance is an issue, a time limit could somewhat address that.

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 beauty shop (Specifications F - #46) 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, the petitioner's testimony, and as represented in the petitioner's application.
2. Maximum of three employees including the owner.
3. No backing onto the county road.
4. Approval for two years with renewal before the Elkhart County Board of Zoning Appeal.
5. Turn-around to be installed prior to commencing of the business.

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 **Wayne R. & Vera C. Bontrager** for an amendment to site plan drawing for existing Special Use for a home workshop/business and a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the South side of CR 126, 500 ft. East of CR 33 North, common address of 14872 CR 126 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 #14872CR 126-130509-1. Letter of remonstrance from John Whetstone [*attached to file as Staff Exhibit #1*].

There were 10 neighboring property owners notified of this request.

Blake Doriot, P.O. Box 465, New Paris, was present representing petitioner. David Bontrager, builder, was also present. Mr. Doriot submitted a petition [*attached to file as Petitioner Exhibit #1*]. While discussing the petition, Mr. Doriot referenced the aerial map. He explained that residences with a “red check” have signed the petition. He noted that they are not requesting an expansion of the current business allowed by BZA. The current building, which contains lumber, will be converted for household storage, farm storage, family get-togethers, weddings and church. It will no longer contain any type of business storage. Mr. Doriot is requesting this be allowed because the only expansion they have had is at the house. He went on to say that there are six daughters and potentially six weddings.

He stated that they would like to construct the building indicated on the site plan, noting that it is drawn to scale. He explained that there is a letter of remonstrance from Mr. Whetstone, pointing out Mr. Whetstone’s property in relation to the proposed building. He believes the construction of the new building will lessen Mr. Whetstone’s exposure. Mr. Doriot stated that there are the same number of employees that they have always had in the shop, three. Mr. Hesser noted that the application indicates there will be two full-time employees. Mr. Doriot explained that there are three employees on site. The son has taken the father’s place, one son dropped out of business, and two sons-in-law have stepped in.

He went on to state that the proposed structure will not cause injury to neighboring property as the existing building will no longer be used for business. The new building will be used for business storage. He noted that the business has been in operation for 16 years with no complaints. He believes this request should be approved since they are not expanding, they will maintain the same number of employees, there will be no additional storage, and they are moving to an area where Dan is the closest neighbor. Mrs. Wolgamood asked Mr. Doriot if he received a copy of the remonstrance letter. She noted that the letter voiced a number of concerns she would like to have addressed. Those concerns include his belief that the operation is noisy when it starts up at 6 am and on holidays. They have a dust collector, and when it is emptied, the dust flies all over. There are 18 wheelers coming up and down the road, breaking up the road. Mr. Doriot stated that it is unlikely that all 18 wheelers are coming to this business. He noted that there are tractor-trailers for chicken coops, farms, and the dairies.

Daniel Bontrager, 15030 County Road 126, was present on behalf of this request. Mr. Bontrager stated that he previously resided in the residence, noting that it had been built in 1966. He explained that it started as a residence and a home business began in 1997. He noted that it has been operating ever since, having added two of the sons as employees. He explained that they are not increasing the business that is already in operation. They are requesting the same size building, moving all of the storage into that building.

Mr. Bontrager stated that as far as the noise, he acknowledges that the neighbor can hear the dust collector. He stated truck noise is more pronounced at the west end of the property. In terms of holidays and Sundays, the business is not in operation. He stated that he and his neighbor have gotten along well since becoming neighbors in 1966. Mr. Bontrager stated that the dust collector is on the north side of the building, and runs when they are working. He does not believe that the dust travels to Mr. Whetstone's property. He explained that the dust collector is emptied 2-3 times per week.

Regarding the 18 wheelers, he said they average two to three semis per week with lumber. He noted that there are several businesses down the road that utilize semis. Mrs. Wolgamood asked about the turn-around on the property. Mr. Bontrager stated that they have a circle drive presently. They might change the drive slightly, but they won't back out onto the road. They want to get the traffic away from the residence. He said they would like to have a wide drive and they will turn around. Mr. Homan questioned if there was presently an authorized curb cut. Mr. Doriot said it is a gravel drive. Mr. Homan sought clarification concerning the curb cut, and if they are approving the curb cut and improving the driveway that would loop around. Mr. Doriot said they will not have backing out, they want to reconfigure the drive. Since the requested building is the same size as the existing building, Mr. Homan asked about the 20x30 breezeway. Mr. Doriot explained it is there to go between buildings without getting rained on. Mr. Bontrager mentioned it was to ensure fire safety, by keeping the two buildings separate.

Mrs. Wolgamood asked if they are still assembling interior and exterior doors. Mr. Bontrager responded that they only deal with interior doors and trim. Mr. Homan questioned if they do any finishing or have acquired any new equipment. Mr. Bontrager replied that they do not do finishing and do not plan to acquire any new equipment. Mr. Hesser asked about the building to be converted for personal use. Mr. Doriot said that it is the building marked as existing ag storage. Mrs. Wolgamood noted that it is not existing ag storage right now, since it is used to store lumber. Mr. Bontrager explained that when he appeared before the BZA to obtain a permit for the building, he was told he that since he wanted to store a bobcat and tractor in the building, they are considered farm tools. Lumber is also a farm product off the ground. He was told he didn't need BZA, and he just needed to get a permit. Mr. Doriot noted that on 10/21/99, in response to Mr. Bontrager's request for an ag permit for raw wood lumber in the new building, Mr. Inbody stated that he considered it to be an agricultural use because trees grow on farms. Mr. Bontrager went on to list surrounding businesses that add to the traffic. He stated that he is not increasing traffic. Mr. Homan questioned the number of employees, both living on the property and not living on the property. Mr. Doriot explained that there are two employees not living on the property. The two employees that live off-site do not use vehicles to travel to or from work. Mr. Bontrager noted that all of the employees who work at the facility are partners.

David Bontrager, 10054 CR 18, Middlebury, was present in support of this request. He is Daniel Bontrager's brother, and is also the individual who filed the petition application. He stated that he may have inadvertently indicated on the application there are plans for expansion. He said that there are no plans to expand.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood reiterated that her primary concern is the future of the turn-around. Mr. Homan noted that the request is for a developmental variance for square footage. He stated that this is out in the country in an agricultural setting with mixed use buildings, and questions when it becomes personal versus storage. He said that he is not too concerned about the sq. ft. as long as the use/intensity of business on site remains the same. He believes that this flies in the face of previous boards because this was previously denied.

Regarding employees, Mr. Campanello points out that it has changed from sons to sons-in-law. Mr. Homan said he would be inclined to support the request as long as the Highway Department permits a third curb cut and is provided with a resubmitted site plan showing the turn-around in front of the building. Mr. Doriot said that is the plan, and they will go to Highway to get approval. Mr. Campanello pointed out that they are currently in compliance, and he questioned if it should be a condition. Mrs. Wolgamood said that they always place condition that a turn-around driveway be provided. Mr. Homan noted that it is a logistical change to the operation. If they approve the square footage variance, he would like to see a revised site plan for the business as it will operate in the future. Mr. Hesser asked Mr. Doriot how soon he will know whether he can provide that information. Mr. Doriot said it depends because Katie and Deb are on vacation, if someone else can look at it, they can have something in a week. He said it is likely there are other projects waiting, and it could be 10 days to 3 weeks. He said that he will clean up the site plan and submit it to staff.

Mr. Homan asked for Board comments regarding square footage issue. Mr. Hesser stated that he doesn't have an issue. It has been used for this in the past and it is not changing the use of what has been done for 13-14 years, they are just moving lumber storage. He does believe that some of the old verbiage needs to be cleaned up and the revised site plan is to be approved by staff.

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Tony Campanello, that based upon the petitioner's testimony, this request for an amendment to the site plan drawing for an existing Special Use for a home workshop/business and a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure, be approved by the Board with the following condition imposed:

1. A revised site plan to be submitted to the staff and approved by the staff illustrating highway access and turnaround driveway changes related to the business as presented by the petitioner.

The following commitments were imposed:

1. Special Use approved for the owner/occupant of the residence on site.
2. No more than two employees who do not occupy the residence on site.
3. No backing onto the county road.

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

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

14. The application of **Smith Weber Realty ½ Unt & Attn Weber Marilyn** for a Use Variance to allow for the construction of an accessory structure without a residence on property located on

the 254 ft. South of Homer Avenue, $\frac{3}{4}$ mile South of Hively Avenue in Concord Township, zoned R-1, came on to be heard.

There was no one present on behalf of request, and there were no remonstrators present.

Motion: Action: Table, **Moved by** Robert Homan, **Seconded by** Tony Campanello that due to the absence of the petitioner, this request be tabled until the July 18, 2013, Advisory Board of Zoning Appeals meeting. If the petitioner fails to appear for the July 18, 2013, meeting, the Board will act on the petition in their absence.

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 Robert Homan steps down and Lori Snyder steps in.**

15. The application of **Nathan & Angie Smith** for a Use Variance to allow for the construction of an accessory structure prior to the construction of a residence on property located on the North side of CR 40, 300 ft. East of CR 1 in Olive Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as Case #00CR 40-130515-1.

There were 10 neighboring property owners notified of this request.

Les Green, 58867 CR 105, Elkhart, was present on behalf of Nathan Smith. He stated Mr. Smith wants to withdraw his Use Variance proposal as they have gone in another direction with other plans.

There were no remonstrators present.

Based on Mr. Green's request:

Motion: Action: Withdraw, **Moved by** Randy Hesser, **Seconded by** Doug Miller, that the Board accept the petitioner's request to withdraw this application for a Use Variance to allow for the construction of an accessory structure prior to the construction of a residence.

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

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

It should be noted that Ms. Snyder steps down, and Mr. Homan returns.

16. The application of **Manolo & Kathryn J. Dosal** for a Special Use for warehousing and storing of masonry equipment (Specifications F - #44) on property located on the East side of SR 19, 450 ft. South of CR 36, common address of 64084 SR 19 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 #64084SR 19-130422-1.

There were 10 neighboring property owners notified of this request.

Manolo Dosal, 64084 SR 19, Goshen, was present on behalf of this request. He would like to be able to put up a building to store his equipment inside so that there is nothing outside. He said that he wants to put up a nice building, resulting in a better view for the public. Mr. Hesser asked about the need for a Developmental Variance for this request as proposed. Mr.

Mabry stated that the closest thing would be if square footage of accessory exceeded primary structure if this were a home workshop/business request. This request is a special line item, concerning warehousing and storing. Mr. Mabry explained that the request is somewhat wrapped in the ability to potentially exceed the square footage.

Mrs. Wolgamood asked if all the neighboring property owners were re-notified. Kathy Wilson replied that they were re-notified, and the hearing was re-advertised.

Tim Martin, 64670 CR 9, Goshen, owns property at SR 19 and CR 36, was present in support of this request. He stated that the Dosals have been excellent neighbors. They have been very courteous and have maintained their property. Mrs. Wolgamood asked if his property was affected by dust. Mr. Martin responded that he had asked his renters about any problems, and they stated they have never had any problems. Mr. Martin points out on the map that his property is located on the Southeast corner.

Sandy Kreps, 27870 CR 36, Goshen, is present in opposition to this request. She stated that her property butts up against the petitioner's property. She said that the petitioner does not live there and has never lived there. She stated that the petitioner still lives in Nappanee, and that no one resides at that address. Ms. Kreps went on to say that she previously expressed concerns about the petitioners and the property. She does not believe they should be able to continue building what they're building. She said that she has put up with the mess since 2009. She went on to say that they began digging the foundation for the existing building without a permit. When they did get a permit they were supposed to build, at the same time, the original house and garage, but they did not. Since last spring, the petitioner was allowed to build a house from an existing building which he has not yet done. She said there are eyesores and submitted pictures (*attached to file as Remonstrator Exhibit #1*).

She went on to say that the petitioner stated he does not have enough money to finish the house, yet he acquired a satellite dish, and a semi flatbed with his logo, which he parks on the property. She stated that he was told not to park the equipment in the rear, yet he continues to do so. There are large cargo trailers, small cargo trailers, two and three flatbeds, along with cement mixers, stone, and brick in boxes stored on the property. He was not allowed to have employees park back there, yet they continue to do so. He takes equipment out of the trailers and puts them in his van. He hooks up the cement mixers to the back of the van and leaves for the day. She stated that this has become routine. She said that he cut stone and has had cement delivered by a semi. Ms. Kreps is asking this not be allowed as she feels it will decrease the value of surrounding properties. She has lived at her address for over 30 years and can't sit in her back yard and enjoy it. She noted neighbors across the street that could not be here because of health issues as Charles and Wilma Weiner who reside at 27853 CR 36.

Mr. Hesser asked Mr. Dosal to address the concerns expressed by Ms. Kreps. He stated that since he purchased the property 2009 there have been numerous complaints by this neighbor. He said that she complains about everything they do, and he feels her opposition is personal. He stated that he purchased the property because he has a business and he wants to move from the city to his home on County Road 36. He noted that every time Code Enforcement has been out, they cannot find anything wrong. He said that the house is 90% complete, including a mound system and septic system. Mr. Hesser asked if the house is finished. Mr. Dosal responded that it is 90% complete. He is not living there at this time. His plan was to have the garage, and then in the future, when he sold his house in Nappanee, build a

house separate from the garage. Things did not go the way he anticipated. His house has been on the market for three years and has still not sold. He wants to sell the house so that he can work there. As soon as his house sells, he will move to this property. He feels that he cannot keep his neighbor happy no matter what he does.

Mrs. Wolgamood asked if he has continued to park equipment at the property. He stated that he has parked his truck and trailer there because he resides in a subdivision and has no room. He explained that he has two trucks, a cargo van, and two trailers. He acknowledged that he parked there after the Board told him not to in 2009. He explained that he stopped parking there for a while, but he has no place to put them. He has ten acres on his property with plenty of room to park his trailers. Having looked at the pictures submitted by Ms. Krebs, Mrs. Wolgamood asked Ms. Krebs the dates on the photos. Ms. Krebs replied that the photos were taken in April and May of 2013.

The public hearing was closed at this time.

Mr. Campanello asked if a farmer is allowed to have a tractor sitting outside all year. Mrs. Wolgamood replied that he could if he has more than 3 acres, and it is considered agricultural use. Mrs. Wolgamood acknowledged that what the petitioner has presented is beautiful. She stated that she does not know why the house has not sold, but the fact is that the home on SR 19 is still not finished, and the petitioner is still not living there. She noted that this is not a home/workshop business so technically a house would not be required. However, one of the conditions of the original approval was that it be approved for one year with the petitioner to come back before the board if construction has not started at that time.

Mr. Hesser noted that it has been started and is close to completion. He stated that what is done looks nice. Mrs. Wolgamood acknowledged that the home looks nice but points out that the petitioner was told that no commercial storage of any type of vehicles or commercially-related construction equipment could be stored on site, yet he continues to do so. She pointed out that he does have staff recommendation for approval. Mr. Hesser said that he does not like that the petitioner has basically done what he was told not to do. He states that his initial reaction to that type of situation would be to deny the petitioner's request, especially since he has been very reluctant to move forward with the house. On the other hand, Mr. Hesser noted that the petitioner is proposing a very nice structure and equipment would be stored inside, which would be an improvement.

Mr. Homan asked Mr. Dosal how quickly the building would be completed. Mr. Dosal would like to have building completed before winter. If approved, he stated that he will finish the house 100% before he breaks ground on the new building. He explained that he only needs to complete the flooring in the house.

Mr. Homan stated that he cannot remember why this was tabled. Mr. Mabry replied that the staff recommendation to applicant was to table request to improve the request. Mr. Homan asked if the staff recommendation for approval was based on the belief that all equipment and storage would be inside. Mr. Mabry replied affirmatively. Mrs. Wolgamood said that this new petition is a better fit according to staff. Mr. Hesser said with a home workshop the size and scope of operation is more of an issue than a Special Use for a different type of business. With a home workshop, the workshop is secondary to the residence. However, this could be approved without a residence. Mr. Homan asked about the number of employees. Mr. Dosal responded that he has one employee, his brother who lives right next door. Mr. Homan asked about

restrictions concerning number of employees, warehousing and storage. Mr. Mabry indicated that the application states there are no employees. Mrs. Wolgamood stated that he has given testimony of one employee, which they may be willing to accept. Mr. Campanello asked if they wanted to limit the number of employees since the construction industry is picking up. Mr. Hesser and Mr. Homan suggest limiting the number of employees. Mr. Hesser recommends approving two or three employees. Mr. Miller agreed with limiting the employees to three. Mr. Campanello stated that he has an issue with not allowing a business to grow by limiting the number of employees. Mr. Hesser explained that the size and scope of the operation is an issue, although to a lesser extent than a home workshop. He stated that it is important to take into consideration the surroundings.

Mr. Miller commented that this is a pretty aggressive time frame for completion of the house and the building. Mr. Miller recommended giving a time limit. Mr. Hesser said if he cannot make the time limit, he could come back for a major/minor change. Mr. Campanello said to give him into spring 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 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 warehousing and storing of masonry equipment (Specifications F - #44) 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. Construction of the home and of the proposed accessory building to be completed by December 31, 2013.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. All storage related to the masonry business must remain inside the proposed building.
3. The operation is limited to three employees, including the petitioner.

Vote: Motion passed (**summary:** Yes = 3, No = 2, Abstain = 0).

Yes: Doug Miller, Randy Hesser, Tony Campanello.

No: Meg Wolgamood, Robert Homan.

17. The application of **Brent E. & Glenda Martin** for a Special Use to allow for a renewable energy facility, anaerobic biodigester (Specification F - #31.50) on property located on the Southwest corner of CR 40 and CR 13, common address of 24242 CR 40 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 #24242 County Road 40-130520-1.

There were six neighboring property owners notified of this request.

Mr. Hesser noted that attorney Loren Sloat provided the Board with materials prior to today which they appreciate. He asked Mr. Sloat to stick to the highlights.

Loren Sloat, Nappanee, was present representing Brent & Glenda Martin. He submitted a packet *[attached to file as Petitioner Exhibit #1]*. Brent Martin is present for the hearing. Greg Shock and Barry Pharis of Brads-Ko Engineering are also present. Mr. Sloat asked how many staff reports the Board received regarding this request. The Board responded that they received one staff report. Mr. Sloat explained that the prior Friday he took the afternoon off. He knew a staff recommendation would be coming. The previous week on Thursday, Mr. Sloat spoke with both Brian Mabry and Chris Godlewski, instructing them to call him if they had any questions. He stated that at that time, he told them that he would really like a positive staff recommendation. On that Friday, his associate told him via the telephone that a staff report was received in the mail. His associate shared the results with him. Mr. Sloat then shared that letter with the Board. He noted that the recommendation was for denial. Mr. Sloat went on to say that he worked on the petition all weekend, Monday, and Tuesday. On Tuesday, he spoke with Brent Martin who shared with him the revised letter he received in the mail dated 6/4/13. Mr. Sloat indicated that he did not receive the revised staff report nor did Greg Shock or Barry Pharis. Mr. Hesser asked Mr. Sloat if he is prepared and ready to present today. Mr. Sloat indicated that he was ready and has been ready. Mr. Hesser pointed out that they are focusing on the merits of this petition. He went on to say that the concerns expressed by Mr. Sloat regarding the revised staff report will be looked into and remedied if things happened the way he stated. He said he understands Mr. Sloat's frustration.

Mr. Sloat noted that he had 13 pages of type written notes but would attempt to be brief. He stated that he visited three farms with biodigesters and has brought one owner with him to the hearing. He believes that nearly all livestock farms will eventually have biodigesters, as it will be the only way to survive in this environment. He went on to say that it is about treating manure not producing energy. He said that biodigesters on these farms are as much a part of the farm as cows. He said that cows make 8-10 gallons of milk per day and 10-12 gallons of waste per day. Manure is made year around and needs to be dealt with. He explained that for cattle in pastures, manure disposal is not a big deal. For cows not in a pasture, manure disposal is a bigger deal. When manure breaks down it releases gas. If the manure breaks down in the field, it is released into the atmosphere. Mr. Sloat believes that if it can be captured and regenerated, it would be a good thing. Biodigesters have been in commercial use on dairy farms in the United States since 1988. Mr. Sloat reviewed the power point display that was submitted to the Board as an exhibit.

He shared that in May of 2013, Agstar which is part of the USDA, estimated there were 202 biodigesters operating in commercialized farms in the United States. The dairy ones are concentrated in the north/northeast, our belt. Mr. Sloat stated that it is not a new phenomenon. In April, 2013, the USDA renewed memorandum of understanding with US Dairy Industry which is to continue research to help dairy farmers improve sustainability of their operation. This research will support the dairy industry that works to reach its long term goal of reducing greenhouse gas emissions by 25% by 2020. According to Mr. Sloat, one objective of the memorandum of understanding is to increase the construction of anaerobic digesters and explore innovative ways to use products previously considered waste, also known as manure, from dairy production, processing, and other handling systems.

He referenced a flow chart to explain the process. There is a waste stream, which is the manure. It contains about 15% solid material. That waste stream is deposited into anaerobic

digester where it is sealed air tight. It is a concrete structure where anaerobic digestion breakdown of materials occurs. Five percent of the solids come out and 10 percent are eaten up in the process. The biogas that comes out of there operates engine generated electricity, which can be used on a farm or sold on a grid to NIPSCO. It also creates heat. Heat is recaptured and reused, resulting in all the hot water desired on the farm. Mr. Sloat noted that some of the water can be piped to a neighbor for hot water. The solids come out on the other side and are separated. There is an effluence of some solids and those are separated. They go into dry matter and effluence storage.

Mr. Sloat explained that he visited a farm on March 21, 2013. He displayed a bag of dry matter from May 3, 2013. The dry matter can be used for bedding, fertilizer, or mulch. He referenced a picture of cows at Brent Martin's farm. He explained the layout of the farm and pointed out where the cows rest and eat. He provided information about the layout of a farm he recently visited where there is a truck that is a manure vacuum. He explained that the arms are extendable enabling them to suck up manure from the alleyway in the barn into the truck, and deposited into the receptor area. Some of the manure may come from a calf barn, a farm where there is pack manure, or a neighboring farm. It is put into a semi tanker where it looks like a truck load of milk going down the road. The receptor pit goes into an equalization cell where the temperature is adjusted, the pH is adjusted and everything is made correct to go into the anaerobic digester. The anaerobic digester is 16 feet tall, with 14 feet under the ground and 2 feet out of the ground. It is all concrete. Mr. Sloat pointed out the digester in photos. Biogas is trapped and run through the engines that are 3000 kilowatts. He noted they make 3 megawatts of power and that is enough power to power 1,200 homes. The heat is transferred out, the exhaust goes out and is a very high tech automated facility. It takes two guys to operate the facility. It operates 24/7 and is programmed to operate by itself at night and on the weekends. Mr. Sloat explained that the generator is right inside the doors. When the doors are opened up there is air intake on one side and the other end of the building stores dry matter.

He noted that at all the facilities he visited, the digesters were similarly located in terms of distance from the road. He stated that even 500 feet away he was unable to hear, see, or smell the digesters. After the gas is taken off of the system in the biodigester, the rest of the matter travels to another area. During this process the moisture is wrung out, before traveling over some separating devices, and results in the end product being dry matter. The board members smelled the end product (dry matter). Mr. Sloat pointed out that the dry matter is not odor-free, however, it did not smell like it did when it started out. He explained that a truck loads up the dry matter daily where it is hauled back to the farm and spread out for the cows. Concerning, the effluent storage (liquid), Mr. Sloat stated that it is possible to drink it once it is processed. He said it could be put around the barn for the cattle to drink. Mr. Sloat stated that the digester which is not a 25 million gallon digester is not enclosed. The effluent pond holds 25 million gallons; however, it is not part of the digester. The digester is the concrete tank referenced earlier with only two feet sticking out of the ground. He notes that it is 144 x 308, 16 feet deep, with 14 feet underground. Mrs. Wolgamood asked if the effluent storage is ever enclosed. Mr. Sloat replied that it is never enclosed. He said that the proposed pit would be 445 feet square. He explained that it is not desirable to be small because it could get full, which would create problems. He said that the effluence is pumped out into a semi tanker and it is then driven out to the field where it should be applied. It is sucked out of the semi and put onto the field. Mr.

Sloat stated that Brent Martin has 230 contiguous acres. The parcel where they proposed to put the digester used to be the old Christner gravel pit, which was then turned into an asphalt plant. Mr. Sloat pointed out the current access road going into the property, which is on the east side of the building. He showed the view from County Road 13, noting where the digester, dry service, and dry storage building will be located. He referenced pictures from the installation of a different biodigester that happened to be the same digester, with the same dimensions and size. He pointed out the area that has been excavated over the years as a gravel pit. He relayed that one of the positive aspects about this location is because it is so deep to begin with, extra depth can be added to capacity and size to the effluent storage since it is already dug out.

Mr. Sloat noted that in November of 2011 the Board approved a similar request for Culver Duck in Middlebury. He stated that that digester was only about 40% the size of the proposed digester. He said they are bringing in product from Constantine, Michigan, and other food waste to make the digester work. They have trucks coming in and are also located on a county road. He noted that there was a positive staff recommendation with no comments about trucks and noise. He pointed out the petition was two pages and speculated that the presentation couldn't have taken more than seven minutes.

Mr. Sloat stated that he thought this approval would be beneficial to Elkhart County because cows have been a problem for Elkhart County for a long time. This is a way for people and cows to share the same air with very little conflict. Traditionally, manure lagoons get full and have to be spread, often on frozen ground. This is a problem because the minute it starts to warm up and the snow starts to melt, it runs downhill to a ditch. With the use of a digester, the likelihood of that happening is virtually eliminated. This pit would be sized such that they could go probably a year plus without having to pump it and haul it out to the field. When it is taken out to the field, it is injected into the ground where it gets nitrogen and phosphates put back in. There are 35 units of nitrogen in 1,000 gallons of effluent. Putting it back on farm fields is a plus for growers. Mr. Sloat stated that he does not know a better place to locate a digester than right next to where it is produced. He noted that all neighbors are in support, with three of the neighbors signing a petition which he submitted at this time *[attached to file as Petitioner Exhibit #2]*. He believes there will be enough manure and cows to provide 1/3 to 1/2 of the needed manure. They will have to bring in manure from neighboring farms that will also use this digester. He believes this will provide ample benefits to the neighbors, such as curing their lagoon run-over problems, they will receive fertilizer, and their odor issues can be minimized. He believes the neighbors will be on board, and believes there will be enough material to do it.

He acknowledged that there will be some truck traffic, however, not as much traffic as there was when the property was a gravel pit nor when it was an asphalt business. Mr. Sloat stated that he spoke to the County Highway Department regarding concerns expressed by the staff. He submitted an email he received from County Highway in response to his inquiry *[attached to file as Petitioner Exhibit #3]*. Mr. Sloat shared that it is his belief that it is a win-win for everyone. He stated that Mr. Martin could address the manure problem, as he has had his share of problems. Mr. Martin would benefit by receiving bedding for his cattle, he would gain some revenue by selling the energy, it would reduce manure storage, run-over/spill issues, it will provide plant nutrients, and provide hot water for his farm. For neighbors, it would reduce odor, they would benefit from renewable energy, and it will reduce greenhouse gases. For the county, it will produce a tax stream of revenue, it will reduce complaints about manure spills, keep the manure

out of the county ditches, improve ground water quality and improve the water quality by regulated drains. Mr. Sloat recommended that the Board adopt the Staff Report with one caveat. He referenced condition #2, recommending that the property be subdivided in accordance with Elkhart County Subdivision Control Ordinance prior to issuance of any building permit.

Barry Pharis, Brads-Ko Engineering, was present on behalf of this request. He explained that this process has been going on for six months. He was asked to put together a plan of how to get this approved in Elkhart County. He contacted Mr. Mabry, explaining that the petitioner owned over 200 acres, there was no intent to sell any property, that the petitioner wished to put a digester on the property, and that within those guidelines, it would be an agricultural use in an agricultural district. At that time, Mr. Pharis wanted to know what method he would need to use to be able to proceed. Mr. Mabry informed him that in the state he previously worked for this type of thing would be fine, however, he would need to check with others in the office. In a subsequent phone call a few days later, Mr. Mabry said that the staff agreed with him that it would not need to be subdivided, as the BZA was the route to take.

Mr. Pharis said, with that knowledge, he put together a plan that they could move forward through the Board of Zoning Appeals. He then looked at all the other issues that could come up. They sought a traffic impact study and line of sight survey for County Highway. They submitted for review and approval, storm water protection and post construction plans, as required under the subdivision ordinance, although not required by the BZA. He explained that they had done those things to simplify the process in an attempt to receive approval at the hearing so that the process could begin.

He believes it would be an undue burden on the petitioner to take 18 acres out of 238 acres and say it must be subdivided, with a 90 day or more waiting period before getting permit. He is requesting that the Board not require that the property be subdivided. He said that they are not creating a parcel of land, and therefore, are not in violation of State law. The only thing happening is what has transpired with many other farmers in the county before. The bank says that they don't want the parcel entirety to be the mortgage, so legal descriptions are created. He speculates that Mr. Doriot as well as every other surveyor in town has done it. The bank writes a mortgage on that acreage, and the farm is left out. He states that it is the same situation.

Mrs. Wolgamood asked if he was going to create a deed for that piece of property. Mr. Pharis replied that he was not going to create a deed, noting that it is not going to be recorded. He stated that it will remain in the ownership of Brent Martin. They intend to create an 18 acre parcel just for the purposes of a site plan. He hadn't planned on attending the meeting, but after seeing the second staff report, he felt that he needed to be present to address the issue because he believes it goes beyond what needs to be addressed. Mr. Hesser asked if the difference between it not being a legal separate parcel would affect who has to be notified. Mr. Kolbus said that it if were a separate parcel Mr. Martin would own everything surrounding it.

Blake Doriot, P.O. Box 465, New Paris, was present speaking as County Surveyor, Elkhart County Drainage Board, for Jim Hess, the Soil & Water Board Chairman, the Natural Resource Director for Elkhart County Farm Bureau. He stated that that Board would be remiss not to approve the request. He believes the project is good and sound. He explained that he is in charge of 1,000 miles of regulated drain in Elkhart County. His biggest problem with regulated drains is manure. The problem is there are lagoons which get full. Mr. Martin and Mr. Doriot had a run-in years ago because his lagoon was full. He had to spread on snow, the sun came out,

and they had problems. There was an e-coli problem in this county. Mr. Doriot would love to see 10-20 biodigesters in Elkhart County, because there are 25,000 head of cattle. That is the equivalent to 250,000-350,000 people. He believes it is a good thing and would like to see more of these.

Mrs. Wolgamood asked Mr. Doriot if he had visited a site like this before. He explained that he had been up and looked at Culver's Duck Farm and at Fair Oaks. He said that as far as the gravel pit, when he worked at Rieth Riley, they would send 20 semis, and they would be running round-trip. The road held up then and he believes it will hold up now.

 Jeff Burbrink, 17746 CR 34, Goshen, was present representing the Extension Office. He stated that he believes this is the sort of project that will be the future of a lot of agriculture, particularly as the farms continue to get bigger. So much manure is generated with big farms, he feels this is a good route to go. He has visited numerous digesters, and the odor is almost non-existent. He noted that there is already a digester at Culver Duck Farm near Middlebury. The one thing he has noticed in his trips there are that the running generators are very, very quiet. They are in insulated boxes, and within the inside of the box it is very noisy. He agrees with Mr. Doriot concerning issues with e-coli and nutrients getting in the stream, particularly in that neighborhood. He believes this is the kind of system that if well managed would take care of the problems.

 Brian Firr, 332 W 100 N, Reynolds, IN, was present and is the principal owner of Biotown Ag. He was engaged by the petitioner to develop and bring this project online and help with the financing. He stated that he does have a lot of experience with this type of project. He said that his digester has been in operation for two years, and is a tremendous amount of work to get it up and running correctly. Concerning the lagoon capacity, he said that while it seems like a lot, more is better. It provides a lot of safeguards from having to apply manure at bad times and typically on most of dairy farms manure is being stored in lagoons as they exist. The odor in a lagoon that is storing the effluent will always be less than the manure that is being stored fresh in a lagoon. What really transpires in a digester is the breaking down of fatty acids. The fatty acids are broken down into methane gas. The decomposition of fatty acids are what make things stink. The quicker fatty acids break down, the worse they stink. The quicker they break down, the easier they will break down. They will not break down all of the organic matter in the digester. They will break down about 60% of it, but in doing that, they reduce odor and e-coli. They are finding almost no e-coli coming out. It is about taking manure and processing it into a more environmentally friendly product. He realizes that when looking at a project like this it can appear intimidating. He noted that an invitation was extended to the staff to come to Reynolds to look at their operation. He believes that in the final analysis, the Board will be glad that they approved the digester.

There were no remonstrators present.

Mr. Hesser asked for responses to the subdivision requirement. Mr. Mabry stated that he does not recall the conversation with Mr. Pharis. Mr. Mabry said he is okay with not subdividing if the Board is okay with it. Mr. Hesser clarified that Mr. Pharis is stating that the parcel they are dealing with is the whole parcel, but any issue the staff may have had with subdividing is addressed because the site plan lays it out. Therefore, it does not need to be subdivided because the site plan indicates what is going to be put where. Mr. Hesser asked the Board for any additional questions.

The public hearing was closed at this time.

Based on presentation, Mr. Hesser said that the digester is a great idea. He said that it was well thought out, and the site plan was very well laid out and presented.

Mrs. Wolgamood reiterates that the petition, site plan and additional information given to members prior to hearing today was helpful, as she spent a great deal of time reviewing the information. Mrs. Wolgamood voiced her support, stating that she thought it was a fantastic idea. She said that she hopes, if approved, the petitioner does more homework and gets it right, otherwise it will be an eyesore for Elkhart County. Mr. Campanello stated that he is pleased with the petitioner and what he is doing with the e-coli situation. He believes it will not become an eyesore and will be large enough to fulfill what they need.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Doug Miller, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use to allow for a renewable energy facility, anaerobic biodigester (Specification F - #31.50) be approved with the following condition imposed:

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

The following commitment was also imposed:

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

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

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

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

** It should be noted that Tony Campanello leaves at this time.**

19. The staff item for Board of Commissioners of County of Elkhart, Indiana (21968CR 38-130225-1) was presented by Brian Mabry. He said it has to do with the salt storage Special Use permit for the Board of County Commissioners that was approved not long ago at the intersection of CR 38 and CR 17. He reported there was an approval for the overall property to have a Special Use permit for the government facility which was for the truck storage barn and salt shed. Part of the condition of approval was then to exempt out a piece of the overall property that had the single family dwelling on it which the county was either going to eventually sell and rent out. At this point, Mr. Mabry said he has a primary plat drawing and could make this part of the file and show that this second Lot #2 which is .87 acre now to be exempted or netted out of the Special Use approval which will now truly only apply to the property that it is really meant to apply to. He stated they had given advance notice that this would be brought as a minor once the primary plat was ready. He added that the primary plat has not been approved yet but he does not see it, as far as the lot line, substantially changing between now and the approval by the Plat Committee.

Motion: Action: Approve, Moved by Randy Hesser, Seconded by Meg Wolgamood that the Board consider this request to be a minor change to the previously approved Special Use.

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

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

Absent: Tony Campanello.

20. Presented by Brian Mabry was a second staff item for Ted Webster (202WVistulaSt-120802-1). He reported Mr. Webster received a Variance in September of 2012 in Bristol to have a building closer to the Post Office next door than would normally be allowed. One of the conditions of approval was the demolition of a barn and garage. Mr. Mabry indicated the barn has been demolished, but Mr. Webster is requesting an extension to demolish the garage by December 31, 2013, instead of by October 16, 2013, due to making arrangements with a contractor. Mr. Hesser noted it would be an extension of 2 ½ months and asked if the other Board members had any objections. None were noted.

Motion: Action: Approve, Moved by Randy Hesser, Seconded by Meg Wolgamood that the Board consider this request to be a minor change to the previously approved Variance.

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

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

Absent: Tony Campanello.

21. Zoning Ordinance update was presented by Chris Godlewski. Plan & Policy are reviewing Module 2. After that, all three will review first half of policies. Mr. Miller noted he missed the meeting last month.

Mr. Hesser inquired about the issue with Loren Sloat. Attorney Kolbus said he would like to work with him on it and possibly what should occur in the future.

22. The meeting was adjourned at 1:19 pm.

Respectfully submitted,

Deborah Britton, Recording Secretary

Teresa McLain, Co-Transcriptionist

Randy Hesser, Chairman

Robert Homan, Secretary