

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16TH DAY OF MAY 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: Brian Mabry, Zoning Administrator; Mark Kanney, Planner; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

Absent: Doug Miller.

2. Minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of April 2013 were not completed at this time. They will be submitted for approval at next month's meeting.

3. A motion was made and seconded (*Wolgamood/Homan*) that the legal advertisements, having been published on the 4th day of May 2013 in the Goshen News and on the 5th day of May 2013 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

4. A motion was made and seconded (*Wolgamood/Homan*) 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. Regarding postponements of business items, Mr. Mabry indicated Item D for Sugar Grove Church is requested to be withdrawn, and Item K for Manolo & Kathryn Dosal is requested to be tabled until the June meeting. When Mr. Hesser asked if they could deal with those issues prior to their scheduled times on the agenda, Attorney Kolbus said they are generally handled at their scheduled time, particularly if there is a request to table in case anyone is present. He also suggested the postponement of business item be removed from the agenda because they are never acted on until their scheduled time. Mr. Hesser pointed out if anyone is present for either of those petitions, they can be informed of the requests. When he asked members of the audience if anyone was present regarding either petition, Mr. Mabry said the two applicants are here but no one else is present at this time that may have an opinion about the requests.

Mr. Mabry apologized for instructing the petitioners to be present at 8:30 a.m. when he thought the vote would be held for the withdrawal and tabling. Mr. Hesser indicated he is only aware of one situation where they have not granted a request for postponement or withdrawal and suggested the petitioners could leave if they wanted to. Mr. Mabry agreed and offered to contact them after the meeting to let them know the results of the hearing.

When Mrs. Wolgamood questioned the reason for the request to table the Dosal petition, Mr. Mabry reported originally the request was processed as a home workshop/business. In finding out more information from the applicants regarding what they are wanting, he said it

seems outside storage and contractor's yard in an agricultural or business district would be more appropriate. But staff did not come to that realization until a day or two ago so that is why they are requesting to table the petition. Mr. Hesser informed both parties they were free to leave.

6. The application of **John E. & Pamela S. Lehman** for a 50 ft. lot width Developmental Variance (Ordinance requires 100 ft.) and for a 3 to 1 depth to width ratio Developmental Variance on property located on the East side of CR 25, 3,200 ft. South of CR 50, common address of 70984 CR 25 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 #70984CR 25-130422-1*.

There were six neighboring property owners notified of this request.

Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th Street, Goshen, was present representing the Lehmans. Using a large aerial photo on an easel, he indicated some years ago, the Lehmans purchased three tracts on three separate deeds: a 40 acre tillable parcel on the county road, a 30 acre tillable parcel behind it, and a partially wooded 30 acre parcel that has a ditch going through it. In 2002, he said they obtained permission and a permit to build a home on one of the parcels. Now in 2013, with a combination of age and health issues, Mr. Lehman can no longer take care of the 30 acres, including the mowing of five acres.

In re-evaluating and attempting to downsize, they have some options. One option was to be able to market a 100 acre farm in three deeds. The second option would be to market their 30 acre residence and keep the other two pieces as tillable and lease them. The third option would be to create three tracts. He indicated as these three deeds were prepared prior to March 1, 2009, legally they could sell this property as a residential tract. But the problem they face is that the driveway meanders on and off their property and the neighbors'. He reported there has been no problem or issue and an easement could be granted. But the Lehmans would like to get this cleared up and in compliance with the ordinances.

To accomplish that, Mr. Pharis said they needed to come up with a strip that comes from the 30 acre parcel out to the county road. He noted that the northern two parcels are prime tillable land. They initially looked at making it a 100 ft. strip so they would not have to request a variance. He indicated that additional 50 ft. drive is the hash marked area on the aerial but would take away 1.5 acres of prime tillable land. They decided to request the variance for the 50 ft. strip to have the driveway built on their property but to accomplish that they need to create a new deed to increase the parcel to 31.7 acres. Additionally, he stated the 40 acre parcel will also need a new deed because of the decrease in size. Unfortunately, he said the communication from Brads-Ko to staff was not clear enough to indicate that their intention with these variances is to do a subdivision of the 30 acre parcel and create a legal tract of land with a new driveway. Even with the subdivision, they are still required to have these two BZA approvals. One is the frontage of less than 100 feet, and the other is the 3 to 1 variance because just to get for the driveway to the 30 acres is 1,300 feet. Mr. Hesser asked if the parcel would be able to be sold as residential with a parcel that is accessed by a lease as pre-existing/grandfathered and would not need the 3 to 1 because it is a tract created prior to March 1, 2009 which Mr. Pharis indicated yes. When Mr. Hesser asked if staff also agreed with that statement, Mark Kanney indicated yes. But Mr. Pharis noted they would need to put an easement across the neighbor's property where

the drive meanders on and off which would have been the simple solution. However, because of his fear of possible future problems for a buyer or if the neighbors sell, he recommended this route.

Mr. Hesser pointed out two things this request involves that the Board generally does not like which is a “flag pole” lot and a lot accessed by an easement. Mr. Hesser asked Mr. Pharis if what he was saying is that the flag pole lot is there, and they can fix the access easement by having a legal driveway which Mr. Pharis indicated is correct.

Mrs. Wolgamood questioned when the house was constructed on the 30 acres and how it managed to get built. Mr. Pharis indicated the home was built on 100 acres and prior to March 2009. Now the hardship becomes if Mr. Lehman cannot take care of the 30 acre parcel and he needs to downsize, his option was to go to a realtor and sell the entire 100 acre farm with 70 tillable acres and 30 acres with the residence, in this market, he would have been clobbered. The other option was to take his property the way it is, have Brads-Ko write an easement across the neighbor’s property and sell it to a buyer which Mr. Pharis did not think it was good for the Lehmans, the neighbor, or a buyer.

He said Brads-Ko suggested they create a parcel that has frontage and a new driveway on their parcel and then subdivide it. He noted they can use the Administrative Subdivision in a process like this because it is all built. They are not adding anything and not building anything. They are just creating a legal buildable lot but two variances are needed to do that. When they received the building permit for the house on the 100 acres, Mrs. Wolgamood asked if the 100 acres was all on one deed. Mr. Pharis said it has always been three separate parcels on three separate deeds. He indicated they are just trying to eliminate the hardships they face by allowing them to subdivide their residential tract and then they would have three tracts to market. If necessary until the market turns, they could lease the tillable land as they have been doing. He said there has been some interest from neighbors about buying this. He reported Mr. Lehman just thought now would be the time to get everything in order in the event a buyer comes along with money.

Mr. Pharis apologized for any confusion and reiterated they are not trying to create a buildable parcel out of this. They want to subdivide it. Mr. Campanello asked if they went with the 100 ft. frontage for the driveway, what stops him from taking 50 ft. of it and still letting the farmer use that extra acre. Once you lose control of it, Mr. Pharis said when they sell it, the new buyer has it and that is 1.5 acre of prime tillable land. He stated that is why when they looked at it, they were surprised how big it was as the 50 ft. strip adds approximately 1.29 acres which is why they did that. They did not think it was a significant problem when you weighed taking the driveway and building a driveway on property that is connected to the tract of land that the house is on. He said he understands that the Board is not keen on this. Regarding staff’s second point against the approval that this will set a precedence, he said he feels every case stands on its own and how you approach it is based on that client’s needs.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser noted his previous concerns were addressed. He also noted this is not a self-created problem. If it were, he would have a problem with the 100 ft. Mrs. Wolgamood said she does not know that she has a major issue saying yes to this request. She stated her concern is

that it was originally granted on the 100 acres but Mr. Pharis had confirmed it was three parcels to begin with. She said she thinks the situation being created now is far better than how it exists because he will have gained property out to the roadway. Mr. Hesser and Mr. Homan expressed agreement.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello, that this request for a 50 ft. lot width Developmental Variance (Ordinance requires 100 ft.) and for a 3 to 1 depth to width ratio Developmental Variance be approved based on the following Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare.
2. Approval of the request will not cause substantial adverse affect on the neighboring property. With the creation of 50 ft. of frontage, this will relieve any issues now or in the future regarding easements.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The following condition was imposed:

1. Development of this property is required to go through the appropriate subdivision regulations (minor subdivision or an administrative subdivision).

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

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

7. The application of *Wisler Yellow Creek Mennonite Church* for a Special Use for an existing church and for an addition to said church (Specifications F - #48) on property located on the Northwest corner of CR 50 and CR 13, common address of 24039 CR 50 in Union Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #24039CR 50-130422-1*.

There were seven neighboring property owners notified of this request.

Present representing the church was Timothy Martin of Ti-mar Construction, 64670 CR 9, Goshen. As a contractor, he said they would like to tear off the 8 ft. front porch which has a flat roof that is bad. They want to build a new 12 ft. enclosed front porch to be used as part of the entryway. Regarding the addition, he said they would like to relocate the restrooms there on each side.

When Mrs. Wolgamood inquired about the existing porch being a drive-thru/drop-off canopy, he said it is not. She asked if it will interfere with the traffic flow for the entrance and exit from the parking lot. He indicated there is plenty of room as there is 48 ft. of limestone in front of the porch presently. He added that it will still function entirely like it does now. When Mr. Hesser asked if they would still have adequate parking, Mr. Martin indicated yes and noted the parking areas are on either side of the building. Mrs. Wolgamood further asked if they have entrance and exit signs to make sure traffic flows well and questioned which drive would be used as she noted four curb cuts. Mr. Martin stated that is how it is currently as the drive used depends on which direction the person travels from. He noted most traffic is automobiles. Mr.

Campanello mentioned the EGIS and said it shows that they have plenty of room there as the existing drive is 36 ft. in front of the porch. Mr. Martin said the drive will be narrowed up a bit but will still be useable.

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 an existing church and for an addition to said church (Specifications F - #48) be approved with the following condition imposed:

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

The following commitment was also imposed:

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

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

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

8. The application of *Horacio H. & Martha A. Muro* for a Special Use for a soccer field (Specifications F - #4) on property located on the South side of CR 38, 551 ft. East of CR 21, in Elkhart 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 38-130422-1*.

There were eight neighboring property owners notified of this request.

Mr. Hesser noted that the north and south indicators are reversed on the site plan.

Bertha Cruz, 65808 New Dawn Avenue, Goshen, was present on behalf of this request. She stated Martha Muro is also present and indicated Horacio and Martha Muro are the current owners of the property. Additionally, Alex Cruz, who is in charge of the Goshen Gladiators soccer teams, was present. Using a power point, she gave some history of their program which got started because of the interest in teaching kids the fundamentals of soccer at lower prices. She stated they are working on by-laws for state approval by the Indiana Soccer Association, and the organization has been growing rapidly with a total of 60 kids at present.

Mrs. Wolgamood pointed out that while what they are doing is great, the Board is more interested and concerned with hearing about the land use at this location. Touching on some of the concerns in the staff report, regarding CR 38 becoming very busy, Ms. Cruz noted it is very busy especially during the week with work traffic. Because staff is recommending denial, if it would change the decision, she noted they are willing to change their application by eliminating Sunday activities, limiting games to Saturdays only, and limiting practices to two days a week.

Regarding the concern about neighboring property, she said they are putting fences up but offer to place additional fencing if recommended by the Board. She noted noise during practices would be limited as no vehicles would be going back and forth like on game days. They do not feel noise will be an issue during the week. She did note during the games there

may be cheering but indicated there is only one house beside the property which is separated by trees. Regarding noise, Mrs. Wolgamood inquired about a possible sound system. Ms. Cruz indicated there will not be any music or speaker devices and said noise is limited to peoples' voices.

Regarding the public convenience and welfare of the community, she explained she understood that as saying it will not benefit the community. She said they feel they offer training for kids that is not offered around here, and it is a good opportunity for kids. When Mrs. Wolgamood asked who oversees the entire process and makes sure the rules and by-laws are in place, Ms. Cruz indicated that she does. She added that everyone would have to read a document and sign it when Mrs. Wolgamood asked how the patrons are informed of the rules of the club.

Mrs. Wolgamood inquired about sanitation facilities. Ms. Cruz said their plans include installing a well for access to restrooms, hand washing, and water. Mrs. Wolgamood further inquired about the possibility of portable toilets. Ms. Cruz reported in the beginning they would use portable toilets until they get permanent restrooms built.

Regarding concessions, Ms. Cruz indicated she listed concessions because that is a future plan for a year or so down the road. But they do not want to deal with concessions at this time. For the parking lot, she said they want to put down some type of dust-proof stone gravel. When Mr. Hesser asked about the number of parking spaces, she said approximately 40. Mr. Homan inquired if they have talked to the Highway Department as far as curb cuts, and Ms. Cruz indicated they have not as of yet. He also asked if they talked to the residential property owner next to field. Ms. Cruz indicated she has not but stated she was told staff sent out letters. Mrs. Wolgamood asked if they were using the property presently which Ms. Cruz indicated they are not. When Mrs. Wolgamood inquired about possible removal of trees, Ms. Cruz said some trees have already been removed as the current owners are planning to build a residence there if this request is not approved.

Alejandro Cruz, 65829 Tropicana Avenue, Goshen, was present on behalf of this request. He explained he got started with this about a year ago when his son wanted to continue to play soccer after the season was over for the Goshen Parks/Goshen College program. He went on to say that his son was not accepted onto other teams because of his lack of experience and skill. Because of the need for his son and many others, he began working with kids practicing their skills. When Mr. Homan inquired where they practice now, Mr. Cruz said he went to Goshen Parks and, for a fee, got permission to use their facilities on Tuesdays and Thursdays from 5:00 to 7:00 p.m.

Phillip and Mackie Ray, 19810 CR 38, were present in opposition to this request and reside at the second residence to the east of this property. While he is not against kids playing soccer, he said this is a residential area and the road is very busy. He also questioned where the parking will be located and mentioned when games are ending and new ones are beginning, the traffic and parking will be double. He also expressed concern about the property value of the surrounding area if this request is approved. Mrs. Ray reported a \$300,000 investment in their home alone.

Mr. Ray noted a nearby location at CR 19 and CR 36 which has five soccer fields. Mrs. Ray also noted soccer fields at the middle school, Pringle Park, Goshen College, and off of Deerdorf Road near industrial park. He said this is not the appropriate location. Mrs. Ray stated

they are at the age where one of these days they are going to want to sell their property. She noted their yard is immaculate. She expressed concern about their property value when they are ready to sell in two to three years with the soccer fields in operation. He said he feels there are other locations that would be more adequate.

She mentioned the proposed property is not level as it is rolling and questioned how they would put a soccer field there. She noted the church right beside the property is on a mound system because the property is so low. She believes they would have problems with any kind of septic system. She noted they have conventional septic system in their front yard, because they are higher up on the land.

Also present in remonstrance to this petition was Aaron Kindig, 19852 CR 38. He stated his property is immediately adjacent to the east of the proposed soccer fields. He noted he has two children, ages 8 and 3 years old. He reiterated that the Rays keep an immaculate yard. While he respects and commends their program and its goals, he also feels this is not the correct location. He also noted the proposed parcel is rolling from east to west with several hills and also has one big hill going north to south. He believes it would take a considerable amount of moving ground to place soccer fields there. He agreed that the road is traveled quite extensively. He noted cars waiting to turn left into soccer fields will create a lot of congestion.

Regarding Saturday being game days, he said that is a nice outside day for him with his two daughters. The weekend is the best two days to play outside. Mr. Kindig questioned if they would use some type of portable sound system and also expressed concern about what would happen if ownership changed. He respects their rights as a property owner but said that everyone has property rights and those rights are intertwined and affect all of them. He said the rules are there to protect all of their property rights and to ensure the rules of the game do not change in the middle of the game. He noted the rules and zoning were in place when this property was purchased and said zoning is set for a reason and should only be changed for an exceptional reason. He asked the Board to enforce property rights for all involved and asked that they not change the zoning.

In rebuttal, Ms. Cruz said she understands the concerns of neighbors. She noted they are just asking for a Special Use permit which is allowed in an A-1 zone and are not changing zoning. She noted if someone else purchased the property, they would have to go through the same process to get something approved. When Mr. Hesser asked if substantial excavation work would occur on the property, she said they were planning to level the area on the south end of the parcel for the soccer fields with a higher level in the middle, and the parking area would be out towards road.

Martha Muro, 65829 Tropicana Avenue, Goshen, was present in favor of this request. She stated she is the owner of the property and understands the concerns of her neighbors. She said she is not too sure this would be the permanent address for the soccer fields as they are currently looking to purchase property where they can build an indoor facility for year-round play as well as outdoor fields. She indicated this proposed location would be only for the summer months and suggested this might only last two to three years. She pointed out it is more like a non-profit organization.

Regarding the suggestion to play at other nearby soccer fields, she said they are not allowed to practice at those locations. She indicated Goshen Gladiators are currently paying Goshen Parks to use their facilities.

The public hearing was closed at this time.

Mr. Campanello suggested it will take a lot of money to excavate that area and change topography of the land. He also expressed concern that might cause problems for the nearby neighbors including the two churches. He noted CR 38 is a mess already.

Mrs. Wolgamood said existing traffic is a major concern to her. She also noted concern that they have not talked to County Highway Engineering Department yet to know what they need. She commended Ms. Cruz on her presentation and said she also understands the issues of the neighbors regarding noise and changing the lay of the land. Noting the nearby houses on larger tracts of land and subdivision to the north which were created for residential properties, she expressed she feels the area is not for something of this nature. Mr. Campanello noted the wider roadway at the church and thinks the county will have a hard time allowing it without a turn lane there.

Mrs. Wolgamood said she understands there may be a need but has a problem with this location and the investment they may have to make. Mr. Homan stated they are putting together a very good program, but he is concerned that this is not very far from the neighbors who have indicated this will impact their lives and use of their property.

Mr. Hesser noted after the motion was made but before the vote was taken that he does not agree with the findings of staff about the lack of an organization. His view is that he would be more inclined to postpone this request to give them an opportunity to develop this better and give them a chance to come back with better presentation to answer some of the many questions.

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

Motion: Action: Denied, **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 soccer field (Specifications F - #4) denied.

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

Yes: Meg Wolgamood, Robert Homan, Tony Campanello.

No: Randy Hesser.

9. The application of *Sugar Grove Church of Goshen, Rural Elkhart County, Indiana, Inc.* for an amendment to an existing Special Use for a church to allow for additional parking (Specifications F - #48) on property located on the East side of Old CR 17, 250 ft. South of CR 118, common address of 58512 Old CR 17 in Concord Township, zoned A-1, came on to be heard.

Mr. Mabry reported that a letter has been received from Enos Yoder of DJ Construction Company, Inc., requesting the withdrawal of the application at this time. This letter was then submitted to the Board for review *[attached to file as Petitioner's Exhibit #1]*.

Motion: Action: Withdrawn, **Moved by** Tony Campanello, **Seconded by** Meg Wolgamood, that the Board accept the petitioner's request to withdraw this application for an amendment to an existing Special Use for a church to allow for additional parking (Specifications F - #48).

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

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

10. The application of **Benjamin A. & Amy Jo Miller** for a Special Use to allow for a wind turbine and solar panels (Specifications F - #31.50) on property located on the West side of CR 35, 430 ft. North of Rosewood Drive, being Lot 4 of Old Hickory Estates, common address of 57319 CR 35 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 #57319CR 35-130422-1*. He noted the second finding in the staff report, which he also noted is misnumbered, is referring to the house to the *north*.

There were 20 neighboring property owners notified of this request.

Benjamin Miller, 57319 CR 35, Middlebury, was present on behalf of this request. He wants to put solar panels on the side of his garage. He noted roughly 16 total should be able to fit which is approximately four kilowatts, and they would be mounted on poles with a grid they attach to. When Mrs. Wolgamood asked if they will extend above the roof line, Mr. Miller said they will not. When Mr. Campanello asked, Mr. Miller said the solar panels will cover the windows which he indicated are not bedroom windows. When Mrs. Wolgamood inquired about the turbine, Mr. Miller said upon further research, he has decided to cancel the turbine portion of this request as the return on the investment will take way too long.

There were no remonstrators present.

The public hearing was closed at this time.

When Mr. Campanello asked Attorney Kolbus about the procedure since he eliminated part of the request, he indicated the request can be changed to less than what was requested.

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 to allow for solar panels (Specifications F - #31.50) be approved with the following condition imposed:

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

The following commitments were then imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application and testimony.
2. The solar panel must be removed in the event they become inoperable.

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

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

(The request for a Special Use to allow for a wind turbine was withdrawn by the petitioner.)

11. The application of **Barbara L. Herzberg** for a Special Use for a commercial greenhouse in an A-1 district (Specifications F - #12) on property located on the Northeast end of Via Giovanni, 500 ft. Northeast of Via Pisa, North of US 20 by-pass, East of CR 15, being Lot 37 of

Kennedy Manor Second, common address of 56576 Via Giovanni in Concord Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #56576ViaGiovanni-130418-1*. He submitted three letters of remonstrance at this time [attached to file as Staff Exhibit #1, #2, #3]. He noted one of these letters has a copy of the privately enforced deed restrictions for the subdivision which indicates this might not be allowed.

There were ten neighboring property owners notified of this request.

Present on behalf of this request was Barbie Herzberg, 56576 Via Giovanni. She said she put up a greenhouse as she was previously employed by Sautter's who went out of business. She also noted prior to that she owned another greenhouse business. Last year, she indicated she started her own business and rented greenhouse space that she had to fix up, and it did not work out well for her. She reported her business is not a storefront. She has a small business with a small amount of clientele. She said if anyone were to come to her location, it would be by appointment only. Since Sautter's has closed, she has had the opportunity and has been working with some of the floral shops selling wholesale to them. She also mentioned she has begun growing some fresh herbs and vegetables for a few local restaurants. As she makes deliveries, there is no need for a parking lot, and it does not generate any additional traffic. She said she does not advertise and has just a small number of contacts.

She indicated with the tree foliage now, you cannot see the greenhouse and noted the photo in the staff report was taken prior to the trees blooming. She also indicated the greenhouse cannot be seen behind the house. As far as greenhouses, this is a small one and noted it is not a permanent structure in cement. In her mind, it is a small urban garden and her vision was more to do what she loves at home and distribute her goods. She also mentioned possibly selling her goods at a farmer's market type of venue.

As she talked to her two adjoining neighbors, she thought this would not be a problem. Therefore, she was surprised when she got the letter regarding the complaint. She said they have more UPS, Fed-Ex trucks, and everything else coming into the cul-de-sac than you would see actually come to her home if she was lucky enough to have a client to do that.

When Mr. Campanello asked how long she had resided there, she indicated 16 years. Mr. Campanello inquired if she got a copy of the covenants for subdivision when she closed on her home that Mr. Iemma included with his letter of remonstrance, specifically #15 which says no horses, stables, barns, or out buildings shall be built upon, kept, or placed upon the lot or premises. As it has been many years, she does not know and indicated it may be in all of her paperwork in a file somewhere. He said normally everyone gets a set of these restrictions when closing on a house. She said she talked to Mr. Iemma's son who lives in her neighborhood, even in her cul-de-sac, who was fine with it. He did explain his father's situation that because he owned the neighborhood, he would have to write that letter based on the old covenants.

When Mr. Homan asked when the greenhouse was installed, she indicated this past winter. When he inquired further about the construction of the greenhouse, she said it is actually called a hoop house. She explained a commercial greenhouse sounds really big. She said there is a fan inside for circulation of air but it has no concrete floor. She has black plastic on the ground as a floor to keep weeds from coming up. When Mr. Hesser asked if she disputes the neighborhood restrictions, she said she does not recall reading them but it was a long time ago.

Mrs. Wolgamood questioned if there were any other large out buildings in the subdivision comparable to the greenhouse. Ms. Herzberg said there are some other sheds or larger garages for storage. She noted it is all fenced in so you cannot physically see the greenhouse.

Doyle Bloss, 56623 Via Giovanni, was present in remonstrance to this request. He said he lives a couple of houses down from Ms. Herzberg and pointed out his property on the aerial. He indicated they have lived there for 20 years and received a copy of the covenants when they purchased their home which they still have. As far as he knows, most of the people who have added garages have requested and had previous approval through the subdivision. He said it is currently a dated but generally quiet and peaceful subdivision that contains no thru streets. In his opinion, it is in a moderate state of deterioration which is adversely affecting property values there. With anything like this, he is concerned about what affect it might have on property values as he will probably want to downsize and sell their property in a couple of years. He believes everyone in the neighborhood would attest to the fact that they do keep their property up nice and have put a lot of money in it over the years. He also expressed concern with traffic increase and her business plan. He realizes it does not sound very big to start with, but he would expect any business that starts out would be the smallest it is ever going to be. Then if it is successful, it will grow from there. His concern would be what kind of restrictions would be on growth in case something would change to create more traffic. He is certainly not out to try to discourage anyone from making a living but this is a sub-divided lot less than ½ acre. It is really not appropriate for running a business.

Mr. Hesser asked Mr. Bloss to describe the businesses to the east which he stated was previously farm land owned by Bullards which has developed into an industrial area since they have lived there. He said it has not been a plus to their neighborhood. He noted they hear semi-trucks, the back-up beepers, trucks idling, and noise from bowling area which has turned into a little bit of a bar every Wednesday and Saturday night. They have seen a slow deterioration and are concerned about any additional deterioration, and they would like to not have that happen if possible.

When Mr. Campanello asked if he knows of any other neighbors running businesses out of their homes, Mr. Bloss said he suspects somebody is doing some babysitting which does create some traffic. When Mr. Campanello asked about possibly an electrician that Ms. Herzberg noted, Mr. Bloss said it could be true but he does not know. Since Mr. Homan noted one of the remonstrators was from out-of-state and he used to live in a subdivision very much like this one with more and more rentals which was contrary to the covenants, he asked Mr. Bloss if that would characterize Kennedy Manor these days or if they are pretty much homeowners. Mr. Bloss said he does not know of anyone who is renting, but they did have a house that was moved in from the CR 17 development. He noted it is not well cared for at all, and it is an eyesore to the neighborhood. He said they just have a concern with their investment, property, and the hard work they have put into it over the years that this does not deteriorate it. He stated if it can be proven that this is not going to be a problem for their concerns, then they certainly have no issues. He noted they are not out to be bad neighbors and did not file the complaint.

Mr. Homan asked Ms. Herzberg to respond to Mr. Bloss's comments, specifically the mention of a business starting out small then gets bigger and what would be her expectations. In

rebuttal, she did say that she hopes she will become more successful and will be able to afford to have a large location. If that happens, she said she will be the first one to look for a spot to put another greenhouse up somewhere else where it could be more of a retail thing. However, that is not her situation right now. She said their cul-de-sac is one of the nicest areas in the neighborhood which is nice and quiet. She said the traffic that would possibly come once in awhile to her home is going to be very limited, maybe one time a week as opposed to an open house with possibly 15 people. She also suggested possibly purchasing a home on land more suitable to having a greenhouse in the future which is not an option at this time. Noting he thought she commented on this before, Mr. Homan asked if she has spoken with her neighbors on both sides of her property. Ms. Herzberg indicated yes and noted Mr. Bloss lives south of the Iemmas and the Emersons. She said the Emersons and Dillard's live on either side of her, and she talked to both of them. She noted Mr. Bloss did not know about the greenhouse until he got the letter because you cannot see it. She said she had more traffic when her teenagers were home than she would have from her business because she makes deliveries.

Mr. Campanello said he goes to Panel Solutions which is the business behind her property and did not notice the greenhouse because of the trees. He also drove through the cul-de-sac and really did not notice it at all. He noted the only thing he is looking at is the covenants that the Iemmas brought forth years ago. That is his only concern.

The public hearing was closed at this time.

Mr. Homan said he is sensitive to the covenants of the neighborhood and it is not the job of the Board to enforce them. Mr. Hesser said his understanding is that they also cannot supersede them. If they were to approve this, the neighbors can still sue, but the Board can still consider the covenants. Although it is not the request, Mr. Homan said the representation of this business made him think of a home workshop because it is in a greenhouse, it is very low impact, only one employee, and it is pretty light weight. Attorney Kolbus said what brought it into Special Use for a greenhouse was that she wants retail sales from the site. Mr. Mabry added that the reason it was processed as a greenhouse specifically is because that is a called out use in the list of special uses. Mrs. Wolgamood pointed out that it is not like she has a greenhouse that she grows produce for her own use which Mr. Homan pointed out would be just a garden. Mr. Homan questioned staff, if this greenhouse was not for commercial sales but a privately used greenhouse, if the Board would be talking about taking it down because it is not allowed although it might not be allowed from the covenants. Mr. Mabry said aside from the covenants, it would be allowed for personal use with the proper setbacks as long as it did not exceed accessory storage square footage. Mr. Hesser said as far as what she is doing, he does not find it offensive or disruptive to the neighborhood, but it violates the covenants and the rules. He understands the need to enforce the rules and believes the Board has to take those into consideration. Mrs. Wolgamood also pointed out that if Ms. Herzberg had come in for a building permit for the greenhouse structure originally, she would have been denied based on the square footage which would have required a Developmental Variance.

Because of the issues with the covenants and the building square footage, Mr. Homan said his motion is going to be that the Board accept the findings of the staff and that the request be denied. When Mrs. Wolgamood suggested talking about removal, she and Mr. Homan noted they were sure Ms. Herzberg would have stuff growing now in the greenhouse. Regarding

square footage, Mr. Campanello asked the possibility of splitting the one greenhouse into two smaller ones. Mrs. Wolgamood said it would be the same as it is the total square footage, and there are other structures on the property that would have to be included in that. When Mr. Homan asked Ms. Herzberg if she has plants growing in the greenhouse currently, she said she does. When he asked the frame of the grow season, she said it normally starts in February and she is considered seasonal. He noted the typical grow season ends by late summer or early fall. Regarding the crop growing in the greenhouse right now, if this does not get approved, Mr. Homan said she is going to have to do something with those plants and the question is how much time she needs to be able to do that. Mr. Campanello suggested October or November for end of grow season.

She asked if she can contact Mr. Iemma regarding the covenants to see if she could do something different with the situation as they were established many years ago. She indicated when she talked to his son, he felt that Mr. Iemma would possibly be able to help the situation. She questioned if that would be a possibility. Mr. Homan indicated the issue with the covenants is not really something the Board can handle but said if she wants to keep that building there regardless, she will have to make some peace with the neighborhood in terms of additional buildings. He heard someone say that other landowners have gotten the approval of the neighborhood for free-standing garages which technically do not fit the covenants either but that is a different issue that needs to be worked out with the neighborhood. But today with this particular request, Mr. Homan said if the Board says no to this request, he wants to give her time to use what she has planted and is growing now. Without putting a second crop in, he asked how much time she needs. She said she was going to do mums for the fall season. When Mr. Campanello asked if those were already planted, she said she was going to get some plugs. But with the basil and that kind of thing, she was hoping with Luccheses who likes the fresh stuff that was going to give her a little bit of something through the winter. She said she is just really shocked right now which Mr. Homan stated he understands. Mr. Campanello suggested allowing it through this season into November with removal after that.

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

Motion: Action: Approve, **Moved by** Robert Homan, **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 commercial greenhouse in an A-1 district (Specifications F - #12) denied with the following conditions imposed:

1. That the business entity of growing flowers and herbs for sale cease by November 1, 2013.
2. The building to be removed from the property by December 31, 2013.

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

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

12. The application of *Trustees Brethren Church* to repeal Special Use #20061697 for transitional housing for women (Specifications F - #14) and for a Special Use for an existing church (Specifications F - #48) on property located on the Northeast corner of CR 38 and CR 33 & the Northwest corner of CR 33 and CR 38, common address of 64985 CR 33 in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #64985CR 33-130422-1*.

There were eight neighboring property owners notified of this request.

Cynthia Bates, 404 EMS D15 Lane, Syracuse, was present on behalf of the church. She said this started several years ago when they began the planning phase of a pavilion. Last year at a congregational business meeting, they approved to use money that they have to build the pavilion. This spring they contacted John Byler, with Cornerstone Construction, who came up here and spoke with Mr. Mabry, and they started the process. They discovered they hadn't informed Planning & Development that they had discontinued their contract for operation in 2009 of the women's shelter which was approved in 2006. It was also discovered they never obtained a Special Use permit for the church as it was founded in 1850. They are attempting to rectify those issues at this time to allow them to build the pavilion on the parcel just north of the parsonage.

She noted a total membership for the church of 160. As they are very proud of their property, they maintain it and it is landscaped. She said some of the original 20 acres has been sold off over time. The pavilion will fit nicely in the area they have picked for it although there are a few trees that will need to be removed. They try to hold several outside services during the summer. At this time, she said they set up chairs in front of the parsonage but with tree debris, it gets to be a little bit messy. Having a pavilion with poured concrete will assist their elderly members as they will be able to drive right up to the pavilion. Ms. Bates said they use that area for parking, but they really will not lose any parking by putting in the pavilion. She noted they also hold an ice cream social every year in June that will be held in the pavilion which will have 100 amp electric service run from the parsonage. Referring to the site plan and the designated parking areas, Mr. Homan inquired about the surface. She said it is grass parking and noted the area is rock hard so stone is not needed. She noted one of their members plows the snow around the church with a farm tractor and a blade. Because they have stone in that parking area, they get stone into the grass area. At present, she said on average there are no more than 10 cars parked in that area but it can accommodate more. She noted on the north end of the property, there is a large grassy area which could also be used if needed and they could utilize the church parking. A photo of the proposed pavilion was submitted *[attached to file as Petitioner Exhibit #1]*. Ms. Bates stated it will be an open-air pavilion with 6"x6" posts, steel roof, poured concrete floor, and a small enclosed area at the back for storage of tables and chairs.

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** Robert Homan, **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 to repeal Special Use #20061697 for transitional housing for women (Specifications F - #14) and for a Special Use for an existing church (Specifications F - #48) be approved with the following condition imposed:

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

The following commitment was also imposed:

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

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

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

13. The application of *Charles H. & Sharon Smith* for a Special Use for an agricultural use for the keeping of farm animals on a tract of land containing less than three acres in an A-1 district (Specifications F - #1) on property located on the Southeast corner of CR 40 and CR 17, common address of 21970 CR 40 in Elkhart Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #21970CR 40-130423-1*.

There were five neighboring property owners notified of this request.

Present representing the petitioners was John Bowers of the County Highway Department, 610 Steury Avenue, Goshen. He reiterated that the Highway Department acquired right-of-way in fee simple form that has now reduced this agricultural piece of ground to less than three acres. Removing one of those bundles from their sticks of rights has become a potentially compensable issue. He is here seeking approval to maintain the use that they had previously. When Mr. Hesser asked if there were currently any farm animals on the property, Mr. Bowers reported there are not. However, in the past, he believes they have had cattle, and they may or may not want to continue to have cattle. Part of the thought that he has had is a three acre parcel inherently limits itself to the number that you can typically have. But to actually specify number and so forth, they would like to retain their rights. Mr. Hesser inquired if there is presently fencing on the property. Mr. Bowers stated there is some fencing that can be seen on the aerial that is a fenced pasture area. Mr. Hesser reiterated that the owners do not have any specific request; however, they want to keep their rights as if the parcel were still more than three acres. When Mrs. Wolgamood asked if they have to go through the subdivision process, Mr. Bowers indicated at this point they do not based on discussion with staff.

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** Robert Homan, **Seconded by** Tony Campanello, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of farm animals on a tract of land containing less than three acres in an A-1 district (Specifications F - #1) be approved with the following condition imposed:

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

The following commitment was imposed:

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

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

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

14. The application of *George A. Jr. & Carolyn S. Reed Trustees (life estate)* for a Special Use for a solar panel (Specifications F - #31.50) on property located on the North side of CR 48, 1,900 ft. East of SR 19, common address of 27681 CR 48 in Union Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #27681CR 48-130422-1*.

There were three neighboring property owners notified of this request.

Attorney Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners. It is noted that his power point presentation was included in the Board members' packets. He indicated he thinks the staff report has covered the facts well. They are putting in a ground-mounted solar panel at this location. On an aerial showing an enlarged area of the site plan, he pointed out the location of the home, the solar panels, and the farm area. He stated it is passive. He pointed out the gravel road and indicated it is not intrusive to the neighborhood. The solar panels will produce a small amount of electricity for use on the farm, with any excess electricity being put back on the grid if more electricity is generated than the farm need. Mr. Sloat noted that the staff has recommended approval and stated that he agrees with their conclusion with regard to the findings.

Mrs. Wolgamood asked if the solar panels will run the entire farm. Mr. Sloat replied that it may not be enough to run the entire farm but it should be enough to run the house. Mr. Sloat shared that the panels produce an impressive number of kilowatts. Mrs. Wolgamood inquired if there was a contract with NIPSCO to buy energy back.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello, that the Board 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 solar panel (Specifications F - #31.50) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The solar panel must be removed in the event it becomes inoperable.

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

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

15. The application of *Sujely Borjas and The Macrino Vazquez and Juana Vazquez Revocable Trust dated August 3, 2007* for an amendment to an existing Special Use for an agricultural use for the keeping of five horses, fifteen cattle, ten goats, and ten chickens in an R-2

district (Specifications F - #1) to allow racing and training of horses (Specifications F - #4.00) on property located on the West side of CR 11, 735 ft. South of State Line Road, common address of 50739 CR 11 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 #50739CR 11-130422-1*. It was then clarified that the staff's recommendation for denial is for the amendment to the existing Special Use as action on this would not change the ability to keep the 20 animals on the property.

There were 37 neighboring property owners notified of this request.

Surejy Barajas, 50739 C.R. 11, Elkhart, was present on behalf of this request. Petitioner stated that they have a small track where they train their race horses, competing at a professional level. She said that her husband operates the race track, which is the sole income to maintain their property. She noted that it is a large property and shared that they have been living in that area for seven years. In addition to competing and racing the race horses, they also allow other people to come to the property to train their race horses. They clock the horses and give them their times so that they can then go on to compete at the big tracks. Ms. Barajas stated that have no plans to commercialize, change anything or host any big event. She noted that the track is very small and is a relatively far distance from the neighboring property. She said that she spoke to both neighbors across the street who have no concerns with any of the noise or traffic. Ms. Barajas explained that when she has spectators come to the property they arrive by 3 or 4 p.m. and are out no later than 7 or 7:30 p.m. Periodically, if a spectator has interest in a horse, they act as brokers and sell horses to other associations or other owners that are involved in racing.

Mr. Hesser asked if the track is a straight-away. Ms. Barajas confirmed that the track is not circular. The petitioner said that she is aware there are a lot of concerns about the possibility of it being commercialized with lights and a PA system. She stated that have never had lights or a PA system. She went on to say that they have never had any issues in the past. She explained that there are two points of entry to the property, one by the barn and one by the gates. Ms. Barajas noted that there are rules on the property including no drinking when spectators come to see horses. They do not allow any type of gambling. She explained that they do have security guards on site if they are expecting a turn-out of 20-30 spectators. She noted that last year they had the Sheriff's Department on the property while they showcased the horses. Ms. Barajas said that she shares concern about the safety of the community and to that end, ensures that there is no inappropriate behavior taking place. She stated that she provides spectators with a list of rules when entering the property. If spectators violate any of the rules they are escorted out immediately. She stated that she has never had any issues, and goes on to say that it is very family oriented. She noted that they built a six foot fence on Corbin to ensure the privacy of the neighbor, although some neighbors were disheartened with the fence as they enjoyed seeing the horses. Mr. Campanello asked for clarification about the horses. She explained that they are quarter horses and their work is pretty quick. Mr. Hesser referred to complaint stating that there are organized races once a month with over 100 spectators. Ms. Barajas explained that they clock horses and in order to clock they need two or three horses. They then provide the owners with their times. She said there are never 100 spectators. She said it could vary between 40 and 50, usually consisting of families with parents and children. Mr. Homan asks about signage and advertisements. Ms. Barajas stated that there is no signage inviting the public to come to timing

events. She said that spectators at the event are based on the different horse associations. She explained that there is signage throughout the property with guideless to stay on the property in addition to guidelines about riding in the state of Indiana, as well as other legal terms. says signs with guidelines Mr. Hesser asked about concessions stands on the property. Ms. Barajas indicated that they do not sell concessions, but they do have a mobile toilet.

Pamela J. Singer, 24837 Corbin Drive, Elkhart, was present in favor of this request. She said that they moved into neighborhood two years ago. They sometimes hear music when the petitioner is having a cookout, though it is not any louder than the Conservation Club when they hold wedding receptions. She said the music is usually on a Saturday night, and ends at an appropriate time. She noted that the Barajas family is very nice and she has never had any problems. She doesn't fear for it hurting her home value, because the Barajas were already there when she bought her home.

Don Schultheis, 24873 Corbin Drive, was present in remonstrance to this request. He stated that he built a brand new house about 6 years ago. He said that several weeks ago from his back porch he counted 50+ vehicles, and numerous people. He went on to say that the noise is so bad on Saturday afternoons that they no longer feel able to sit outside, and they can frequently hear it in their house. He explained that there is one tree between their house and the petitioners, and no real barrier. He fears that his property value will go down. He is also concerned about traffic on CR 11. He noted that of the 18 homeowners that were eligible to sign a petition, 14 homes did sign. He went on to explain that he did not ask one neighbor, a relative of the petitioner, to sign the petition. He stated that he wants to maintain his property value. He stated that he does not have any concerns about the animals, however, he does not think that racing is appropriate for the area.

Don Bradshaw, 51093 Beech Drive, owns five acres right across the street from the property and has a pole building on that property. He stated that he is not opposed, however, he does have some concerns. He noted that it is residential to the north and south of the property. He noted that Hidden Lakes, located across the street has some acreage lots with some cattle. He stated that he has witnessed between 15-40 cars arriving at the property at different times over the last few years. He estimates he has seen 40 to 60 people lined up along the track to watch the races. Mr. Bradshaw expressed concern about the amount of traffic if the facility were to grow. He felt it was more of a commercial-type setting with the potential growth over the next few years. He believes the traffic could be a problem and noted that two children have been hit on nearby roads in the past few years. He went on to say that County Road 11 is a narrow road with a crown that tend to throw cars off. He stated that this operation could result in more trucks and more trailers hauling horses. Mr. Hesser asked Mr. Bradshaw to point out State Line Road on the map. Mr. Bradshaw noted his property in relation to the track. He stated that when he built his pole barn he considered putting a bathroom in. He had to go through the Health Department to get a permit and could not proceed without a written letter from AEP giving consent to put a field system on the easement. Due to the high tension lines there is a 170' easement, and no structures can situated on that easement. He assumed that the County would want something from AEP stating that they can have that gate on the easement. He believes that AEP would be concerned if there were 70 to 80 people under the high tension wires.

Bob Hamilton, 51001 Sailbait Court, was present in opposition to this request. He questioned if the petitioners obtained any permits or any licenses to operate a business. It was noted that they have a Special Use to keep horses, cattle, goats, chicken. Mr. Hamilton inquired about parking, wondering if they have specified parking or if overflow parking would park on County Road 11. Additionally, he expressed concern about gambling. Mr. Hesser stated that the petitioner said there would be no gambling. Mr. Hamilton asked about proposed Grand Stands and safety concerns. He noted that wild horses run down the race track. He wondered if people were going to be sitting in Grand Stands or if they would just stand alongside of the race track where they could get hurt.

Bob Evans, 51275 Aqua Drive, approximately 1/3 mile south of the property was present in opposition to the request. He stated that the neighborhood concern is that there is a race track in a residential area. He referenced an article in the newspaper that quoted the petitioners as saying they would operate two weekends a month, April through October and would be "open for business." He believes this infers that they are a business entity or operation and people will be coming in and out of the property. He noted that where the driveway exits to County Road 11 is obstructed by trees. He stated that he was coming up County Road 11 to go to State Line Road at a time when they were having races and there were a lot of vehicles and people there. He was forced to stop abruptly when someone attempting to pull out of the property obstructed part of the roadway in their attempt to obtain a clear line of vision. He went on to relay that two children had been killed over the years due to the high speed on County Road 11. He stated that if the petitioner is allowed to operate a race track, he wanted to know that things would be done the right way. He expressed appreciation that the petitioner hired the sheriff's department for an event, but noted that there have been quite a few events over the last 6-7 years. He is not opposed to the petitioners training their horses, However, he does support having a race track on the property. He believes the request should be denied to keep the traffic down and to guarantee the safety of children and the neighborhood.

Gary Groom, 51007 Beach Drive, was present in remonstrance to this request. He pointed out that there was a similar situation in another state, where a request was denied on the basis that horse racing, spectator viewing and grass parking are not customary agricultural activity. He noted that the property is zoned agriculture, surrounded by residential properties. He believes it will be developed if it ever gets sold again. He agrees with all the previous remonstrators, in the fact that it is a heavy traffic area that is already bad and will only get worse with any further spectators.

Mr. Hesser asked if they would need any Special Use to have the track if the property was zoned agricultural. Attorney Kolbus responded that once the public comes onto the property it becomes a Special Use. Brian Mabry clarified that as a public event, Special Use is across the board. He noted that this property is R-2, and it appears to be acceptable under the existing Special Use for the petitioner to train their own animals.

George Briarton, 25082 Aqua Drive, was present in opposition to this request. He stated that most of his questions and concerns have been mentioned. He voiced concern about the petitioner's statement that this is a "developing business." He is concerned about the amount of business the petitioner expects to develop. He states that in timing horses, they are bringing

horses in from the outside. He noted that the trailers are coming in by trailer and truck, drawing larger and larger crowds. He does not want to see that type of business developed in this area.

Ron Desimone, 24634 State Line Road, lives just north of the petitioner's property. He said that he is not opposed to allowing them to have animals. Although he believes that the horse racing is out of control. He states that there are more than 40-50 vehicles. He explained that while there is a tree line separating the property, he is able to view their property. , more than 40-50 vehicles, more than 40-50 people, tree line separates them, doesn't have a good view. He noted that while the track is straight, it does not incorporate a little turn. He said that they built a new house on the property. He stated that the former tenants of the property raised llamas, and never had llama races. He said that he never hears noise from the Sportsman's Club. He said that he held his son's graduation party last year in his pole building, and on that day cars were lined up all the way down the road, with loud music.

In rebuttal, the petitioner said that the business is not going to get any larger, noting that they don't have the property for the business to expand. She said that some of the individuals seen on the property are spectators, although sometimes it is family. She explained that she has a lot of cook-out. She stated that she has three entry points onto the property. She said she has not opened up the 3rd entry point but would be willing to do so, if entry points are a concern. She explained that she has by the gate, one after the gate and one by the barn. Has three entry points, only uses two. When she is expecting spectators, she hires paid security or the Sheriff's Department at every event. She said that she does not have any type of spectators or racing without having somebody on site. They enforce rules in addition to directing traffic, as safety is a concern for her. She lives on the property and is not interested in making this a commercial business. She stated that they do not have a sound system. She explained that sometimes people put on their own music. She feels that it's her right to be able to listen to music when she has family over, lowering the music after 8 or 9 p.m.

Mr. Homan asked about the purpose of the business. He wondered if it is entertainment by running horses or is the focus on brokering. The petitioner explained that it is a combination of both. The main purpose is to clock horses. On occasion, spectators come to watch and if they notice that a horse clocks well they may be interested in the horse. The petitioner is the middle-man in that case. She states that the main purpose is to clock horses. She explained that they own licenses at the different race tracks. By giving them their times those individuals know where they can go and how their horse performed. She acknowledged that the track does curve slightly but that is utilized to stop the horses. They only clock along the straight stretch. She noted that everything is fenced in, with no possibility of a horse getting loose. She said the entire property has different parcels for the different horses. She said they ensure that they have everything fenced around. She said if there are noise issues they can be mindful. She stated that they can also put in an additional gate. She said there is no use for this property if they are not doing anything with it. She stated that this is the sole income for their family, since she lost her job two weeks ago. If they are unable to continue, the property will go into foreclosure.

The public hearing was closed at this time.

Mr. Hesser said that it seems when the Special Use was previously approved, they gave them the benefit of treating it as agricultural property. As staff and the attorney have indicated, they can train their own animals. When they start bringing the public onto the property, the use

changes. It becomes a more intense commercial use. Mrs. Wolgamood voiced her agreement with Mr. Hesser's statements. Mr. Campanello asks how to stop a land owner from allowing a friend to bring their horse over on a trailer, which might result in neighbors complaining. Mr. Hesser said that a situation like that it is up to Code Enforcement to determine at what point it becomes commercial. Mr. Campanello stated that he does not want to vote against allowing a property owner to use their property and have friends over with horses to do what they want to do with it. Mr. Hesser notes that it is not a very good site plan. There are disputes between the number of cars and number of people. Even with the lesser number of people, having that number of people over twice a month is not consistent with the residential area.

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

Motion: Action: Denied **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for an agricultural use for the keeping of five horses, fifteen cattle, ten goats, and ten chickens in an R-2 district (Specifications F - #1) to allow racing and training of horses (Specifications F - #4.00) be denied.

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

Yes: Meg Wolgamood, Randy Hesser, Robert Homan.

No: Tony Campanello.

16. The application of *Manolo & Kathryn J. Dosal* for a Special Use for a home workshop/business for storage of masonry equipment (Specifications F - #45), for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure, and for a 5 ft. Developmental Variance to allow for the construction of an accessory structure with a height of 30 ft. (Ordinance allows 25 ft.) 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.

Mabry indicates request to table [attached to file as Staff Exhibit #1]. Possible request for outdoor storage/construction equipment.

Mrs. Wolgamood noted that there is a request to table the petition. She queried the audience to see if there was anyone wishing to speak before the board concerning this matter. There was one individual who indicated she was there to speak concerning this matter. Mrs. Wolgamood explained that the first tabling is normally allowed unless there are extenuating circumstances. She noted that the individual wishing to address the board about this petition has been in attendance at previous hearing regarding this matter. She explained that the next hearing would be the third Thursday in June and confirmed that the individual would be agreeable to returning at that time.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan, that this request for a Special Use for a home workshop/business for storage of masonry equipment (Specifications F - #45), for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure, and for a 5 ft. Developmental Variance to allow for the construction of an accessory structure with a height of

30 ft. (Ordinance allows 25 ft.), be tabled until the June 20, 2013, Board of Zoning Appeals meeting, with the revised application to be re-advertised and all neighboring property owners re-notified.

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

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

17. The application of *Larry J. & Mary A. Lehman* for a Special Use for an agricultural use for the keeping of horses on a tract of land containing three acres or less (Specifications F - #1) and for a 12 ft. Developmental Variance to allow for the construction of a storage building 63 ft. from centerline of the right-of-way of CR 13 (Ordinance requires 75 ft.) and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the East side of CR 13, 780 ft. North of South County Line Road, common address of 72898 CR 13 in Union Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #72898CR 13-130422-2*.

There were four neighboring property owners notified of this request.

David Raber, 645 12th Road, Bourbon, IN, was present representing the petitioner. Mr. Raber noted that a petition was previously denied. They have submitted a new proposal.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood asked staff why the staff report says two horses when paperwork says specifically "one" horse. Mr. Mabry indicated they could say one horse.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan, that this request for a Special Use for an agricultural use for the keeping of horses on a tract of land containing three acres or less (Specifications F - #1) be approved 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. Agricultural uses are allowed on two acres with a Special Use Permit, and in light of the approval of the 2000 permit issued by the Zoning Administrator for an addition to the building for buggy horses on a 2.1 acre parcel.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. This is a highly agricultural area where animals are common.
3. The Special Use will substantially serve the public convenience and welfare by providing transportation for the petitioner.

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. Approved for one horse.

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

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

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 12 ft. Developmental Variance to allow for the construction of a storage building 63 ft. from centerline of the right-of-way of CR 13 (Ordinance requires 75 ft.) and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

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

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

18. The application of **Brent E. & Ashley R. Reed** for a Use Variance to allow for the construction of a second dwelling on a single zoning lot and for a Special Use for a solar panel (Specifications F - #31.50) on property located on the North side of CR 48, 1,050 ft. East of SR 19, common address of 27615 CR 48 in Union Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #27615CR 48-130422-1*.

There were two neighboring property owners notified of this request.

Attorney Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners. He indicated that the buildings being discussed sit behind the buildings that George Reed owns. Brent Reed currently lives in the house in the back where his grandfather lived years ago. George Reed lives in the front. Brent needs a new house and would like to construct a new house and tear down the old house. Mr. Sloat expressed concern at the 30 day time frame to tear down the old house, due to the fact that they are farmers and need to plant corn and beans. He requested 180 days to remove the structure, noting that the petitioners also want the old house torn down. Mrs. Wolgamood asked when the permit would be taken out, if they receive approval to proceed. Mr. Sloat said that he was uncertain due to the demands of farming, although it is possible they would do it this summer.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser mentioned the time line. Mrs. Wolgamood pointed out that question #23 says one year after the issuance of occupancy permit for the new residence. She said she was uncertain why the staff said 30 days. She believes that #2 and #3 under the following conditions

imposed on the Use Variance are in conflict with each other. Mr. Hesser confirms with Mr. Sloat that 6 months is adequate.

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 Use Variance to allow for the construction of a second dwelling on a single zoning lot 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. The existing residence must be demolished within 180 days of the issuance of the Certificate of Occupancy for the new residence.
3. The petitioner is required to return to the Board of Zoning Appeals if occupancy of the new residence and demolition of the existing residence has not been accomplished by December 31, 2014.

The following commitment was imposed:

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

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

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

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 the request for a Special Use for a solar panel (Specifications F - #31.50) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The solar panel must be removed in the event it becomes inoperable.

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

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

19. The application of *Calvin S. Lambright* for an amendment to an existing Use Variance for a furniture store to allow for construction of a storage building on property located on the North side of CR 34, 1,300 ft. West of CR 45, common address of 10275 CR 34 in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #10275CR 34-130422-1*.

There were 11 neighboring property owners notified of this request.

Loren Sloat, 112 Heritage Parkway, Nappanee, was present representing the petitioners. Mr. Slot submitted a copy of the Power Point presentation [attached to file as Staff Exhibit #1.]

He stated that the petitioners have a business on C.R. 34 just across from Fish Lake. He noted that their current operation, Lakeside Furniture, referenced in the staff report, involves finishing and selling furniture, both retail and wholesale. He said that each week, three to five box trailer loads of wholesale furniture leave their operation. intended for vendors leave their operation. They also have one loaded box truck go out each month to a vendor retailer in Chicago. He explained that things haven't really changed since they began their business in 1995, except that they now realize they should have done something differently, as retail store space is being used as a warehouse. Once a month a customer from Chicago comes to pick up finished furniture. that is being stored in the retail store space. The truck backs up to the overhead door to load products, which typically takes four hours. Meanwhile any outside elements, such as wind, snow, rain or frigid temperatures, are impacting the store room. Mr. Sloat went on to explain that the solution to the problem is to have a separate building for inventory storage. He stated that they are not expanding, they are just trying to get a little more elbow room. The petitioner would like to erect a separate storage building. This would allow finished product to be taken out and stored someplace other than with retail store merchandise. A new building would be used strictly for storage. In rebuttal to the staff's recommendation of denial, Mr. Sloat stated that there is no proposed expansion. He disagreed that it would be more appropriate in a non-residential zoning district. He stated that it is a home workshop/business, noting that they previously received approval of a Use Variance. He believes they have not outgrown their original approval. He noted that in 1998 a request was denied for a 40x60 finishing building. However, 6-7 months later they received approval for an addition for finishing. Therefore, approval of this request will not be contrary to the request denied in 1998. He noted that what causes this property to be unique is that there was a Use Variance granted back in 1995 which probably should have been denied, and a Special Use approved instead. Mr. Sloat explained that he met with staff and asked how to proceed. Staff recommended amending the Use Variance already in place. He stated that the hardship is that the petitioners are not expanding. To that end, the petitioners put a condition on stating they will not have any more employees. They would rather have a separate storage building so they don't have to trip over themselves. Mr. Sloat noted that they generated a petition, which was signed by neighbors, everyone with property touching the petitioner's have signed. The neighbors have given their consent and do not believe it will have a detrimental or adverse effect on their property. He stated that they do not want to get rezoned to a DPUD, like the 15,000 sq. ft. woodshop down the road that has 15-20 employees. He does not believe that approval of this request would be contrary to the comprehensive plan. He believes that the approval of this request would result in a sense of community, and would aid in sustaining Elkhart County's economic energy cause for preserving rural features that fuel agriculture, tourism, creativity and other factors that give the community its unique breathing room. Mr. Sloat believes that the request is consistent with the comprehensive plan. He shared that the Elkhart County Visitor and Tourism Bureau promotes tourism, referencing information contained on the website that mentions the Heritage Trail, Amish furniture and an Amish furniture shop hidden on a "peaceful rural road." Mr. Sloat noted several conditions: No outside storage, no more than two outside employees, the need for a 40x60 storage building for finished product. Mrs. Wolgamood asked if the petitioner builds the furniture. Mr. Sloat stated that he has always had furniture brought in, which he finishes. Mr.

Hesser argues that the business has expanded in terms of space and volume. Mr. Campanello noted that expansion is a good thing.

Ben Shirk, 63341 CR 33, Goshen, listen for correct address. He stated that he has known the petitioner for 15 years. He said that the last time he was there, the door was open and it was raining, which resulted in water on the floor. He shared that his brother was here from Mississippi and took a dining room table home purchased from Lakeside Furniture. He pointed out that the property consists of 13+ acres.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello does not agree with staff's findings. Mr. Homan says it is awkward because it's a Use Variance but still running the same operation. Mr. Hesser points out the use has already been allowed. The issue of size becomes more of an issue when the request is for a home workshop, which is not what they are doing. Mr. Hesser notes that discussions pertaining to operations getting too big usually take place during home workshop discussions, not Use Variance discussions.

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

Motion: Action: Approve **Moved by** Tony Campanello, **Seconded by** Robert Homan, that this request for an amendment to an existing Use Variance for a furniture store to allow for construction of a storage building be approved based on the following Findings and Conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.
5. The Use Variance does not interfere substantially with the Elkhart County 2006 Comprehensive Plan.

The following commitments were imposed:

1. No outside storage.
2. No more than two outside employees.
3. Approved in accordance with the site plan submitted and as represented by the petitioner's application and presentation.

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

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

20. The application of *Shreve Family Revocable Living Trust (seller) and Ray E. & Karen R. Manley (buyers)* for a Use Variance to allow for the construction of an accessory structure at the same time as the construction of the primary structure (residence and attached garage) on property located on the East side of Park Side Drive, 950 ft. South of Autumnview Lane, South of Edgewood Blvd., 825 ft. East of CR 13, 500 ft. South of CR 24 being Lot 24 of Yellow Creek

Trails Phase 2, common address of 59778 Park Side 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 #59778PARK SIDE DRIVE-130422-1*.

There were 15 neighboring property owners notified of this request.

Ray Manley, 58327 Randy Drive, Goshen, was present on behalf of this request. He stated that his primary residence will be constructed by a contractor at the same time he is constructing the accessory structure, if his request is approved. Mr. Campanello asked why the petitioner was unable to wait until the rafters were in place on the primary residence before beginning construction of the accessory structure. Mr. Manley explained that building the accessory structure is his contribution to the 20% down payment required for his home loan. He stated that his military commitment requires him to travel one weekend per month. Additionally, he works a full time job and is only available to work evenings and weekends on the accessory structure. In order to meet the timeline for the residence to be done at the same time as the accessory is completed, he needs that extra month or two to ensure timely completion. Mr. Manley stated that he would like to take possession or final inspection on the accessory building prior to or at the same time as a C of O is issued on the residence. He explained that building a 2500 sq. ft. home is going to displace soil. The displaced soil will be placed where the accessory garage is going to go. Once the basement is backfilled, Mr. Manley would like to begin work on his accessory building, noting that if there was no existing plan for the home, there would be no plan for the accessory structure. Mrs. Wolgamood confirmed that the petitioner has a loan and a contractor. She asked about the start date for the contractor. Mr. Manley stated that May 30 is the pre-construction meeting. At that time they will come up with a final print which will be submitted to the bank. The bank will do an appraisal on the property, the residence, and the accessory building. The loan value will be based on that appraisal. Mr. Campanello noted that the petitioner is asking that he be allowed to begin construction once the footings and foundation of the home have been poured, instead of waiting for the framing and rafters to be in place. Mr. Manley estimated that it will take a month to get the framing and rafters in place once the foundation and footings have been poured. Mrs. Wolgamood confirmed that the building of the house was not contingent upon the sale of the petitioner's current home.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser pointed out they don't like to grant allowing accessory structures to be built first. However, based on the petitioner's representations he does not have a problem approving the request. He questioned if they want to add a deadline to complete the house. Mr. Campanello noted that the petitioner might not know when that would be because he would need to return with his prints to get a permit. Attorney Kolbus suggested that the petitioner may have an expected date to obtain his C of O. Mr. Manley replied that he has a 120 day guarantee date to move in once the contractor begins the structure, not the foundation. Attorney Kolbus recommends including the conditions of putting foundations in prior to beginning construction of the accessory building and having primary accessory completed on or before December 31 or January 1. Mr. Homan stated that he does not believe the residence and accessory foundations should be poured concurrently. Mr. Hesser said that the petitioner has represented that the

residence's foundation will be done prior to beginning work on the accessory structure. Mr. Campanello explained that the footers and basement walls will be poured prior to pouring the floor for the garage. Mr. Campanello recommended a condition of December 31st to allow for delays. Mr. Homan expressed confusion about the accessory building being part of the down payment. He asked if the lender is requiring a completion date for the accessory building. Mr. Manley explained that at the end of the residence and the accessory building being constructed the loan is a construction loan and they would like to refinance, and get a conventional loan.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Meg Wolgamood, that this request for a Use Variance to allow for the construction of an accessory structure at the same time as the construction of the primary structure (residence and attached garage) be approved based on the following Findings and Conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community. The proposed activity is of a minor scale and would not negatively impact these broad goals.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.
5. The Use Variance does not interfere substantially with the Elkhart County 2006 Comprehensive Plan.

The following conditions were imposed:

1. Construction of the accessory building is not to be started until the footing and foundation walls of the Primary structure (residence and attached garage) are in place and backfilled.
2. Certificate of Occupancy to be issued by December 31, 2013.

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

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

21. The application of *Margaret A. Penrod, Trustee of the Margaret A. Penrod Family Revocable Living Trust of August 12, 2002 407 Depot Street, Bristol, IN 46507* for a Use Variance to allow a residential use in an M-1 District on property located on the South side of Depot Street, 175 ft. East of Maple Street, common address of 407 Depot Street in Washington Township, zoned M-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #407DepotSt-130418-1*.

There were 15 neighboring property owners notified of this request.

Kevin Foy, 30590 Northshore Drive, Elkhart, a broker with Caldwell Banker, is present on behalf of the request. Mr. Foy stated that the property residence is under contract and the bank will not allow a loan on the property unless it can be rebuilt as a residence. He notes that this stipulation is the case with any house situated in a manufacturing zoned property. He notes that the house has been there since 1900 and does not believe that it has been injurious to health

or welfare. He explained that the surrounding property is all manufacturing and feels that the request to be rezoned would affect surrounding properties. He believes that if he were to try to sell this property as a residence, he would get substantially less if it were zoned as residential, due to the manufacturing on neighboring properties. He noted that the current buyer use the property as a residence. His bank loan officer is telling him that if he is not granted the variance they will not approve the loan. Mr. Foy has someone in his office who has indicated that they will make the loan if the variance is granted. He is seeking approval of the variance just to be rebuilt as a residence and the County would have strict control over that should it ever need to be rebuilt. He does not foresee the home being rebuilt larger if it were to ever burn down, due to the control the County could exercise on it. Mr. Campanello asked about the age of the neighboring homes. Mr. Foy replied that one home is 110 years old, another home is 90 years old and the commercial building to the east is considerably newer. Mrs. Wolgamood asked if the building to the east is a manufacturing building. Mr. Foy responded in the affirmative, stating that it is a commercial building with a commercial operation. Mr. Hesser asked when the property became zoned M-1. Mrs. Wolgamood said that it was the original zoning for the city of Bristol. Attorney Kolbus responded that it took place around 1960. Mr. Foy stated that he talked to the city of Bristol about the variance. The city indicated they would have no problem with the variance on their end. Mrs. Wolgamood asked if he had spoken to the Council members. Mr. Foy indicated that he spoke to whoever was in charge at the time. He spoke to whoever he called at Bristol house basically told him he needed to go through the county first to get the variance and then he needs to go to them. Mrs. Wolgamood told Mr. Foy that he did not need to go through Bristol. Mr. Hesser noted that the property backs up to railroad tracks. Mr. Foy said that he lives in line with Norfolk Southern five miles away on Northshore and he can hear the trains all night long slamming into each other. Mr. Campanello reiterates that they want approval so if the house ever burned down, they could rebuild the house. Mr. Foy notes that whoever is living there at the time could take the money and sell it off as an M-1 piece ground. The bank just wants to protect their assets since they are making the loan.

There were no remonstrators present.

The public hearing was closed at this time.

The only similar request Mr. Hesser remembers was a request that they granted. He noted that there could be more, but he could only remember the one that designated as a manufacturing area but it never really took off as a manufacturing area. He believes that particular situation was in northern Elkhart. Mrs. Wolgamood was not nearly as concerned about the residence as she was about the manufacturing because if they went for rezoning and were successful in getting rezoned R-1, the side yard setback in an M-1 zone is 50 feet. If it is abutting a residential district. So, that increases the setback any manufacturing building that wants to go in there. Whereas if grant a Use Variance that changes nothing for setbacks. Mrs. Wolgamood stated that if an M district adjoins an A or an R district within the block the side yard shall be at least 50 feet. If a block is included entirely in an M district, the side yard shall be at least 25'.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood, that this request for a Use Variance to allow a residential use in an M-1 District be approved based on the following Findings and Conclusions of the Board.

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

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

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

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

23. Crystal Springs School (20041642) was presented by Brian Mabry as a staff item. He stated he received a letter from Mervin Stoltzfus who is the contractor requesting to change the position of a shed. He noted the site plan which was approved in 2004 shows the storage shed/barn in one location with a 45 ft. setback and a 15 ft. setback. Mr. Mabry said Mr. Stoltzfus is requesting a minor amendment to have a 5 ft. setback from the side property line and a 10 ft. setback from the rear/west property line. Looking just at the minutes from the previous hearing, Mr. Hesser pointed out that the only issue that was brought up was how close it was to the property to the south so he believes this request needs a public hearing.

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

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

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

24. Zoning Ordinance Update: After a handout was distributed, Mr. Mabry stated The Policy Committee is finishing the Module 2 review, which involves the members from the community who are farmers, surveyors, builders, etc. The next step is to consolidate into one document Modules 1 and 2 which are the procedures and the standards that are part of Module 2. Strike-throughs and underlines should be removed, making it a little more readable. This consolidated document would be half of the complete ordinance draft. The next step will be to look at those first two modules together which are about 5 articles of the draft ordinance. He noted that the handout has some high points, including articles 4 and 5, covering accessory uses and structures, which the BZA might be most interested in. The draft addresses accessory blowing units, being allowed by rights subject to several standards. Those standards include the size of the property, the zoning district it's in, sharing of a single driveway with the main house, available parking,

and things of that nature, allowed by right, subject to limitations that are part of the zoning ordinance. A Use Variance is required to do this and can be hard to obtain if looking at hardships. The home occupation and homework shop business standards have been bumped up so that a home occupation would be allowed one outside employee. A larger scale home workshop business dealing with agriculture where there might be a big building that might require one extra outside employee to run, could be allowed three outside employees, although this is somewhat in flux.

Mr. Mabry noted that overall, in the Use Table, instead of lists of uses there is a Use Table that shows different uses and where they are allowed in what zoning districts. Overall, there are fewer across the board Special Uses. For example a church, instead of being across the board Special Use would be allowed by write-in to be districts, commercial districts. The M-2 district in the draft is more purely industrial so that a lot of the non-industrial uses have been netted out of that. Finally, R-4 is more of a mixed use district where residences are allowed, as well as allowing some non-residential uses subject to scale standards so that they're smaller footprints, have only limited parking in front of the buildings, and have a pitched roof so that more residential character ends up getting produced in our fork even though the use might be non-residential, such as an office or church or something of that nature. That's just for a few non-residential uses. Not all our non-residential uses are no suddenly going to be allowed in R-4. It's lower, less intense, office, church, medical clinic, etc., subject to those standards that make it more compatible with potentially a residential area.

Concerning solar panels, as a practice, we at the counter, allow by right, solar panels that are attached to a roof and are basically unobtrusive. Stand alone, free standing solar panels are still a Special Use and come before the Board. Concerning stand alone panels, there has been a thought recently that if the property is really large and is zoned agricultural to allow those to not be a Special Use. The draft doesn't reflect that right now but it is a thought that has come up while working on the draft. The first page has highlights, the second page is primarily questions for the Planning Commission to review and address the next meeting.

25. The meeting was adjourned at 1:05 pm.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary