

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21ST DAY OF NOVEMBER 2013 AT 8:30 A.M.
MEETING ROOM - DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.
Present: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

2. A motion was made and seconded (*Homan/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of October 2013 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Campanello*) that the legal advertisements, having been published on the 9th day of November 2013 in the Goshen News and on the 10th day of November 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 (*Miller/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. The application of **Harry Mishler & Amelia Mishler** for a Special Use for a home workshop/business for a general store (Specifications – F #45) and for a Developmental Variance for a sign to exceed 4 sq. ft. per side on property located on the West side of SR 13, 1,280 ft. North of CR 40, common address of 65730 SR 13 in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #65730SR 13-130923-1*. He noted two corrections in the Staff Analysis under item #1 where the word “retail” should replace “manufacturing” and “a commercially” should replace “an industrially” in that paragraph.

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, was present on behalf of this request. He submitted the following exhibits: a copy of the Elkhart County Land Use Plan [attached to file as *Petitioner Exhibit #1*], a copy of AmishCounty.org 2013 travel guide and maps [attached to file as *Petitioner Exhibit #2*], a road map of Elkhart County [attached to file as *Petitioner Exhibit #3*], a photo of Forest River at night [attached to file as *Petitioner Exhibit #4*], and a packet of color photos [attached to file as *Petitioner Exhibit #5*]. Also present were Jonathan and Maryann Mishler with their four children. He noted Glen Showalter, a neighbor, was also present in the audience. Regarding some of the findings by the staff, Mr. Doriot noted he does not really agree the area is mostly rural while referring to a large aerial photo. He also said that may not matter. He pointed out if the aerial view is broadened, Forest River is less than ¼ mile away from their residence. He stated that the Mishlers want to put in a general store with dented cans and other goods to serve the neighbors and as a way to raise their family. He read a letter written by Maryann Mishler [attached to file as

Petitioner Exhibit #6] in lieu of her speaking. She noted they would like to work at home as a family and felt it would be a blessing to the community as there is no place within 8-10 miles to buy any type of food merchandise. She also indicated she and her husband both have previous experience with running a business of this nature and want to make it their full-time livelihood. They also wish to raise their children to learn the business. She noted this will reduce long distance buggy traffic and will not have any negative or adverse affect on the adjoining properties as the structures will fit the local building types. Mrs. Mishler indicated strict application of the Zoning Ordinance will cause a hardship by not allowing the family to have a home workshop if it could not be located at this site. At this time, Mr. Doriot submitted a signed petition of neighbors in support of this request with a site plan attached [*attached to file as Petitioner Exhibit #7*] and used his large aerial photo (included in file) to indicate properties of persons who signed the petition. Also part of the exhibit is a letter from Harry and Amelia Mishler, owners of the property at 65730 SR 13, giving their consent for Jonathan and Maryann Mishler to construct a building for the home workshop/business.

Referring to a photo in the Amish Tourism magazine [*Pet. Ex. #2*], Mr. Doriot noted the store will have a similar look to Dutch Country and will fit in. Regarding Mrs. Mishler's comment about it being a long distance, Mr. Doriot said in that part of the county, you have a travel a distance to get anything. He pointed out that vehicles travel at 60 MPH but buggies travel at 10 MPH, and the closest grocery store is six miles away. He reported it will be a clean operation with less signage than at Dutch County. They want to put up a gable end sign and suggested something like, "*Mishler's General Store, established in 2013*". He noted it will not have flashing lights.

From conversation with Jonathan, Mr. Doriot said they want to amend the site plan to reduce the building by 20 ft. east and west. He also indicated the Mishlers would like to reduce the days and hours of operation to five days a week so they can be closed one weekday. He suggested possibly Wednesday or Thursday. Mrs. Wolgamood clarified that the building size being requested is now 80' x 100' which Mr. Doriot indicated will still be 50/50 for storage and store.

Referring to the photos [*Pet. Ex. #5*], he indicated the house, the site, and noted they commit to combining the two parcels which they are in the process of doing anyway. He indicated the second photo is looking from the Mishler's house, and the third photo is a 60' or 80' x 600' hog barn to the north. Further east is a typical rural farm shown on Page 4, and Page 5 is a view looking south which shows the Millersburg water tower and Forest River and recreational vehicles are visible in the distance. Mr. Miller inquired what direction most of the traffic travels from to get to Forest River.

Jonathan Mishler, 65730 SR 13, was also present on behalf of this request. In response to Mr. Miller's question, he said he does not know if traffic would come more from the south and Millersburg up, but he would guess most traffic going to the factory would come from the north.

Mr. Doriot continued with the photos and indicated Pages 6 and 7 are pictures to the south showing the Joiner property who is in favor of the request. Page 8 is a photo of a sign at a corner on CR 38 just $\frac{3}{4}$ mile north. Page 9 is Forest River which is just over a $\frac{1}{4}$ mile south taken from SR 13, and Pages 10 and 11 show some of their inventory. Page 12 is a view of the Mishlers' neighbor to the north. Pages 13, 14, and 15 are more photos of signs, all within $\frac{3}{4}$ mile of this site. Referring to *Petitioner Exhibit #4*, he indicated this is a photo of the view south of

Forest River at night and suggested staff needs to look into their lighting plan as it does not appear they are following it. In showing these photos, he said he wanted to show that this location is not out in the middle of nowhere. He said this is about a family wanting to raise their family in a way that they can watch their children grow. Referring to the county Land Use Plan [Pet. Ex. #1], he read the circled statement on the back side. Referring to the stakeholders and the future of Elkhart County, Mr. Doriot pointed out Mr. & Mrs. Mishler as the stakeholders and their children as the future. Although the Board is not supposed to look at cultural or religious background, he pointed out that the AmishCounty.org literature [Pet. Ex. #2] has a photo of an Amish buggy on the front cover and there is also one shown on the back of the Land Use Plan [Pet. Ex. #1]. He stated that the Amish people are trying to hold onto their culture. He also noted the Mishlers left and came back to their culture because they thought it a better way, and this is how they want to raise their children.

In terms of operation of the store, Mr. Homan asked about the possibility of butchering and meat processing. Mr. Doriot indicated no and said they are planning on selling canned goods, dry good, and neighbors have requested a cooler for dairy products. He added that they are not considering cold meats at this time.

Glen Showalter, 68509 US 33, Goshen, was present in support of this request. He said he was raised north and a little east of Millersburg and ended up east of Benton with his wife and two boys. He said they formed Showalter Farms in 1982. In conjunction with this building, he reported that Millersburg can't get a Cracker Barrel restaurant, Texas Roadhouse restaurant, or even a Dollar Store, and said Millersburg is lucky to keep a restaurant going. He believes this store would serve the Amish community because they have to travel a long distance to a grocery store. If the trailer factories have a shut down, he said you see a lot more buggies going to Walmart or any other close location because they are not able to hire drivers.

Mr. Hesser questioned a current gas station/restaurant/store south of this location. Mr. Doriot reported it is not a restaurant but a gas station that does sell high-priced milk.

There were no remonstrators present.

Regarding the signage request, Mr. Homan said he was not clear on the specifics. Mr. Doriot said they are requesting two signs with one out by the road which he pointed out on the site plan. He also indicated a gable end sign. When Mr. Homan asked about the size of the signs, after brief discussion, Mr. Mishler said they haven't decided on sign size at this time. Mr. Campanello asked Mr. Doriot if this store will be similar to the dented can store on SR 119. Mr. Doriot said it will be quite a bit like that but they will have some other general store items such as a gas lantern. He also noted it will be not unlike the bike store that was redone on CR 16 which also has some general goods. In relationship with the size of the sign on the gable end, Mr. Campanello noted it will all be determined with the pitch of the roof. Mr. Doriot said the sign will be tactfully and conservatively done. He added that they will be more than happy to meet with staff to see what they say.

Regarding the three full-time employees listed in the application, Mrs. Wolgamood asked Mr. Doriot if these were all family members. He explained they have an option for two outside employees, but they do not see that happening right away as it will be Jonathan and his wife with the possibility of one neighbor. He went on to say that they have been back and forth about what type of request this would be between a Variance and a Special Use. Mrs. Wolgamood clarified that they are looking at a Special Use for a home workshop. She expressed she was still

confused by the number of full-time employees on the application. Mr. Mishler explained the employees will be himself, his wife, and one outside full-time. When Mr. Miller asked Mr. Doriot if it is safe to say that most of the traffic going into Millersburg from the north is going to go past this establishment anyway, Mr. Doriot indicated yes as they are headed to Forest River. He also indicated most of that same traffic is not going to stop on their way home. This request is geared for the neighborhood.

When Mrs. Wolgamood asked staff if this will require State approval, Mr. Mabry indicated Mr. Williams, Building Commissioner, happened to be present at the last meeting when that question came up regarding a home workshop/business, and Mr. Williams believed that State approval would be required. Mr. Doriot said they understand that and have talked to the builder about State approval issues.

The public hearing was closed at this time.

During the Board's examination of the request, the size of the building and the number of employees did not seem to be a concern. However, there was concern expressed about the unknown specifications of the proposed sign, although Mr. Miller did feel that placing the sign on the building gable is the least offensive.

The opinion that the proposed use is beyond the scope of a home workshop/business and should be a DPUD was also discussed. Mr. Doriot indicated he could not have the documents ready by the filing deadline for the January Plan Commission meeting. He indicated that it would take approximately four and a half months to complete the process, which would delay them until sometime in April.

The fact that a parcel of this request is being purchased on land contract was also a concern expressed by the board. The petitioner was asked if they are willing to commit that the two parcels be combined into one and Mr. Doriot replied yes. He then clarified that the Mishlers (Jonathan) are not the owners, they are purchasing the property on land contract.

If approved, Mrs. Wolgamood felt that there should be state approval for a commercial curb cut. The petitioner was also asked about deliveries of merchandise and Jonathan Mishler said there are two semi deliveries a month; once every two weeks. When asked if there will be provisions for semis to turn around on the property, he replied yes.

After due consideration and deliberation:

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Doug Miller that this request for a Special Use for a home workshop/business for a general store (Specifications – F #45) be approved based on the representations in the petition and the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance as home workshops are allowed as approved by the Board of Zoning Appeals.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will substantially serve the public convenience and welfare by providing goods to the area and a livelihood for the owner / occupant.

The following conditions were 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 structure represented in the testimony today and in the application would be built in accordance with county and state standards including approved State Highway curb cut approval.
3. No construction would begin until the two parcels are legally joined as one.
4. Petitioner to provide a copy of executed land contract purchase by the occupants prior to the issuance of a building permit.

The following commitments were imposed:

1. Semi and truck traffic will have to turn around on site and not back onto or off of the adjoining state highway.
2. Approved in accordance with the site plan as amended today with the building size being reduced to 80'x100'. A new site plan to be submitted to staff that would not only indicate the new size of the building, but also more detail committing to a turnaround area for semis.
3. Approved in accordance with the definition of a home workshop/business.
 - a. No more than two outside employees.
 - b. One sign no more than four sq. ft. per side.
4. Hours of operation as presented in the application.

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

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

Motion: Action: Table, **Moved by** Robert Homan, **Seconded by** Doug Miller that the request for a Developmental Variance for a sign to exceed 4 sq. ft. per side be tabled until the December 19, 2013, Advisory Board of Zoning Appeals meeting to present a specific sign plan.

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

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

6. The application of *Nathan Johnson (buyer) and Stephen C. Johnson 2003 Revocable Trust (seller)* for a 1,631 sq. ft. lot coverage Developmental Variance to allow for the construction of a residence, pool, and deck (Ordinance allows 5,827 sq. ft. maximum) and a 25 ft. Developmental Variance to allow for the construction of a pool and deck 5 ft. from the rear property line (Plat requires 30 ft.) on property located on the West side of Susquehanna Road, North of SR 120, being Lots 4 & 5 of Riverlan Isles Sub., common address of 54367 Susquehanna Road in Concord Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Revised Staff Report/Staff Analysis, which is attached for review as *Case #54367SUSQUEHANNA ROAD-131021-1*. He submitted site plan at this time [attached to file as Staff Exhibit #1].

There were six neighboring property owners notified of this request.

Nathan Johnson, 21324 Willow View, Bristol, was present on behalf of this request. When Mr. Homan asked if this property currently has a seawall, Mr. Johnson reported that it does. He further explained that his father owns the house to the north and also bought this property, put the seawall in, and cleared it. Mr. Johnson said he will be purchasing the property

from his father. When Mr. Hesser inquired if there is a structure on the property currently, Mr. Johnson indicated it is vacant. Mr. Homan noted the proposed deck area and stairway will be pretty close to the river edge, and questioned if Mr. Johnson filed with the Army Corps of Engineers or IDEM for any of the construction. Mr. Johnson reported they completed a soil analysis and will have helo pilings along all of the decking and housing so that everything is very secure in case of any flooding. He said the lot itself is actually larger than the plotted lot, so they actually come in under the 25% when all of the grass area is included. Mrs. Wolgamood inquired about the mention of the privately owned sewer. Mr. Johnson stated he believed when the Fenechs built on the large lot just north and east of this lot, they were not allowed to put in a septic. So they essentially paid to have a private line put in the whole neighborhood. He went on to say he believes it is a low pressure system which is owned by the neighborhood with just one connection to the city line. He noted with the way this sewer works, the more connections, the better it works as it is constantly flowing. When Mrs. Wolgamood inquired, Mr. Johnson reported they do have city water.

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** Doug Miller that the Board adopt the Revised Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 1,631 sq. ft. lot coverage Developmental Variance to allow for the construction of a residence, pool, and deck (Ordinance allows 5,827 sq. ft. maximum) and for a 25 ft. Developmental Variance to allow for the construction of a pool and deck 5 ft. from the rear property line (Plat requires 30 ft.) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The petitioner must comply with all flood plain regulations or construction requirements.

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

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

7. The application of *Carolyn S. Kauble* for a 20 ft. Developmental Variance to allow for the construction of a garage 30 ft. from centerline of the right-of-way (Ordinance requires 50 ft.) on property located on the Southwest side of Lake Shore Drive, at West end of Acorn Lane, 704 ft. South of CR 4, being Lot 6 of Hasting's Heaton Lake Sub., common address of 22918 Lake Shore Dr. in Osolo Township, zoned R-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #22918Lake ShoreDr-131016-1*.

There were three neighboring property owners notified of this request.

Laura Cauthen, 27424 Lamplighter Lane, Elkhart, was present speaking on behalf of her mother and this request. Regarding negative visual impact, she explained it is a lakeside cottage community with narrow lots, and multiple properties have structures close to the road. She also noted the large right-of-way on this property. She felt the Board should consider while this request is five feet from the right-of-way, the right-of-way is 15 ft. to the road, making 21 ft. from the proposed structure before you get to the road. Other structures on the south lakeside of the road are much closer. In evidence to be submitted, she explained that of 16 homes immediately in line with Ms. Kauble's, eight of those already have structures closer to the road than the Ordinance allows whether by variance or other circumstances. In addition to neighboring property letters sent by the Planning Department with no response, Mrs. Cauthen reported Ms. Kauble canvassed the neighborhood with a handwritten petition and spoke with neighbors. As a result of that, she will also be submitting two letters in support of this request. Submitted at this time were three exhibits: Petitioner Exhibit #1 – two letters in support, Petitioner Exhibit #2 - aerial photo with the eight properties highlighted, and Petitioner Exhibit #3 – photos *[attached to file]*. Mr. Miller expressed knowledge of city sewer in that area but asked if the property was on a private well. Mrs. Cauthen stated yes. Regarding Item #2 in the Staff Analysis that the proposed location will block the view for the driveway accesses, she referred to Exhibit #2 which shows that many of the neighbors are already close to the road. She also noted the two immediate adjacent neighbors' garages are at the far ends of their parcels away from this property which gives them a better sight distance from the pictures actually submitted by staff. With permission from the neighbors, Mrs. Cauthen said she physically went into their driveway and took measurements and photos which she submitted at this time *[attached to file as Petitioner Exhibit #4 and #5]*. She noted the utility pole in the photo, and the distance it sets back from the road. She stated the proposed structure is much closer to her dwelling, being 11 ft. further back. She pointed out the neighbor can clearly see the road.

Mr. Hesser expressed concern about lot lines and whether the request was properly advertised. Mrs. Cauthen stated the lines are off quite a bit on the aerial photo and the request involves only one parcel.

Regarding hardship, Mrs. Cauthen indicated there is a boat house/shed on property but they want to be able to provide her mother with a safe way to get in and out of the house. The proposed garage is only 16 ft. wide which is a single car width and the 20 ft. depth to allow her to pull in and have room for the snow blower and lawn mower. She added they feel this proposed garage will add to curb appeal and the actual look of the neighborhood. Based on the site plan, Mr. Miller noted there is an existing driveway there currently with a second curb cut to the west. He asked if they are still proposing the original driveway stay for parking. She said it is all gravel there now but she indicated the proposed garage has two entrances or doors. Because of the 16 ft. width, they would put another door at the front end of the garage to be able to get the items in and out without having to move the car. She also noted it would allow some parking on her property and off of the street. Additionally, Mrs. Cauthen said they are willing to revise the two driveways if needed for approval. Mr. Campanello pointed out that the entire 50 ft. frontage is a curb cut because it is all gravel, which Mrs. Wolgamood added, is not unlike a lot of other lake properties.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello that this request for a 20 ft. Developmental Variance to allow for the construction of a garage 30 ft. from centerline of the right-of-way (Ordinance requires 50 ft.) be approved based on the testimony, submitted site plan, and 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 as this is a lake area and conditions vary greatly around a lake from a standard residential community.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property. Past development on these very narrow lots left very little for accessory structures.

The following conditions were 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 presented by the petitioner's application and testimony.

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

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

8. The application of *Juvenal Moreno* for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the North side of North Park Avenue, 1,635 ft. East of CR 9, being Lots 174, 173, and the West 16 ft. of 172, common address of 25681 North Park Ave. in Osolo Township, zoned R-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #25681North ParkAve-131018-1*.

There were seven neighboring property owners notified of this request.

Rodolfo Moreno, 709 E. Bristol, Elkhart, was present speaking on behalf of Juvenal Moreno and this request. As Juvenal recently bought adjoining property, Rodolfo explained Juvenal would like to build the accessory structure on the recently purchased parcel, and if necessary, combine the parcels together. There was a brief discussion with Attorney Kolbus, Board members, and the petitioner to determine the best approach to modify this request.

There were no remonstrators present.

The public hearing was left open.

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

Motion: Action: Table, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that this request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be tabled until the

December 19, 2013, Elkhart County Advisory Board of Zoning Appeals meeting to allow the petitioner to work with staff to revise the site plan and application.

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

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

9. The application of **Brian A. & Regina M. Willard** for a Special Use for an agri-business to allow for the sale of seeds (Specifications F - #56) on property located on the South side of CR 42, 350 ft. East of CR 37 South, common address of 12944 CR 42 in Benton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #12944CR 42-131011-1*. He submitted a letter of support from Eric and Tracy Brown [attached to file as Staff Exhibit #1].

There were seven neighboring property owners notified of this request.

Bill Davis of Davis & Roose, 116 E. Clinton St, Goshen, was present on behalf of the Willards. He noted Mr. Willard is also present. When Mr. Hesser inquired what kind of seeds and who they would be selling them to, Mr. Davis indicated corn and soy seeds, and they are selling to large farming businesses. He submitted a signed petition by neighbors in support of the business as Petitioner Exhibit #1 and a highlighted map as Petitioner Exhibit #2 [attached to file]. He said the Willards agree with the Staff Report except for the proposed conditions. Referring to the petition (Pet. Ex. #1), he pointed out basically everyone surrounding this property signed the petition including the property owners to the west of the property, Eric and Tracy Brown. Referring to the map (Pet. Ex. #2), he indicated the properties highlighted in yellow are shown by the Auditor's Office as property owners with the other two properties, shown in pink, as being owned by Amish buyers. Referring to the site plan, Mr. Davis noted that Mr. Willard has already expanded driveway area for semi turnaround. He indicated he is not sure that the Board of Zoning Appeals can place a condition on what can be done on a public highway as it is already prohibited by statute to stop or stand in a public highway. He did say they could be required to have semi turnaround on the property. Mr. Hesser pointed out that the site plan shows pine trees along the west side. Mr. Davis confirmed that is correct, but said Mr. Willard will provide explanation about the trees planted there. He went on to say that the trees don't grow on west side. He reported the trees on the east side are taller and were planted one and a half years later. When Mr. Hesser inquired about where the seeds are being stored, Mr. Davis reported they are stored in the existing barn. Mr. Davis said Mr. Willard suggested in season, there would be possibly one semi per week to make deliveries. Mr. Willard would use his pick-up truck and tender to deliver seed to farm or field, or farmers may come to pick up seed with their own vehicles. Mr. Davis said the only change from what is currently existing would be the erection of a sign, and the request is for lighted sign per staff's recommendation in the event they would ever want their sign lit.

Brian Willard, 12944 CR 42, was present on behalf of this request as the property owner. He submitted a set of photos [attached to file as Petitioner Exhibit #3]. He indicated the first photo is from the southwest from CR 37, looking across his neighbor's property to his property. He also noted in this photo, some of the small trees that have grown on the west side of the property are shown in this photo. Additionally, he reported from this photo, the pine trees that are clear to the east side of the property that are considerably taller are also visible. Looking at the site plan and the

request along with the fact that there is no outside storage as the items will be put in the barn, Mr. Hesser said from his perspective, screening is not an issue. Referring to the questionnaire #23, Mrs. Wolgamood noted it says a semi would be on-site during regular hours of operation and not overnight. She inquired if Mr. Willard owned or planned to own and park a semi on the property. Mr. Willard stated he does not. He further explained that generally when semi trucks make deliveries to him, they are usually there first thing in the morning and 15-20 minutes later they are out the driveway and gone. He said the only equipment he would have on site is a seed tender unit which is a large wagon on three axles that he uses to deliver the seed. Currently, he indicated it is parked outside, but noted there is plenty of room inside the building for it. Referring to the sign, Mrs. Wolgamood asked why sign needs to be lighted. Mr. Willard explained it does not have to be lit but there are signs available to Pioneer sales reps which are lighted. He further said he does not plan on having an LED sign but suggested the possibility of a spot light on a small sign. He stated his primary reason for it would be with daylight savings time and trucks arriving early, it would allow them to see when approaching the drive.

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** Doug Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agri-business to allow for the sale of seeds (Specifications F - #56) be approved with the following conditions:

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. Unloading and turnaround of semis must take place on site.

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

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

10. The application of *Waste Management of Indiana, LLC, a Delaware Limited Liability Company, AKA Earthmovers Landfill, LLC* for a Special Use to allow for the extraction (excavation) of gravel, sand or other raw materials in an A-1 district (Specifications F - #10) on property located on the Northeast corner of CR 9 and CR 26, common address of CR 9 in Concord Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #OCR 9-131021-1*. He submitted one letter from Jon and Mary Grove in remonstrance [attached to file as Staff Exhibit #1]. In the recommended commitments, he noted a typo in #7 of the commitments, the word "lawm" should be "laws". When Mr. Campanello asked if any permanent buildings could be constructed without coming to the Board, Mr. Mabry noted that as he recalls, they do not anticipating any building. Attorney Kolbus said if approved in accordance with the site plan, they would have to come back to request a change or a building.

There were 20 neighboring property owners notified of this request.

Tammy Perkins of Weaver Boos Consultants, 4085 Meghan Beeler Court, South Bend, was present on behalf of Waste Management. She submitted a document outlining the request *[attached to file as Petitioner Exhibit #1]*. According to the application, Mr. Hesser questioned that they are limiting their extraction to dirt which she indicated was correct, and further stated they will not be mining gravel or sand. He suggested a different law that applies with extraction of minerals. Attorney Kolbus stated it is not effective in this case. For clarification, Mr. Hesser confirmed with Ms. Perkins that there will be no building on this site. She noted there will only be a staging area for equipment during operations. She indicated Weaver Boos has been working with Earthmovers Landfill on the proposed project. She noted the location of the 65.4 acre property which is zoned A-1 and currently vacant. The owner has made this request to allow excavation and borrowing of soil for use at the nearby landfill. She went on to explain that the soil will be used for landfill operations such as daily cover, access roads, and for landfill capping projects that will be performed as the landfill closure process continues. She said Earthmovers are anticipating that they will need all of the soil available on this property when Mr. Hesser suggested the possibility of soil being made available to outside businesses. Further, she reported the soil excavation and hauling activities will not be performed on a daily basis but periodically to obtain adequate stock piles of cover soil and also during capping operations. These activities may range from several days at a time to several weeks at a time. Additionally, she noted when work is taking place on the property, the hours of operation will be between 7:00 a.m. and 5 p.m. Monday through Saturday with no work being done on Sunday. The property owner has proposed the use of screening berms as a buffer along the northern and western portions of the property which she pointed out on a large aerial photo on easel (included in file) showing a pond. She noted the total of 2,300 linear feet of berm. The proposed berms will be constructed to six feet in height with evergreens and grass vegetation on them with two trees planted for every 50 ft. of berm. She noted the proposed entrance on CR 9 and the haul route planned is across an existing agricultural field and south across CR 26 onto the Earthmovers Landfill property which she indicated on the second large aerial on easel (included in file). She reported the applicant has communicated with the County Landfill operator who indicated they will allow this haul route to go across the farm field. Ultimately, she reported the planned excavation will result in a large pond consisting of approximately 30 acres (also shown on aerial), and it will range from 15-25 feet in depth.

Noting the gate on the site plan, Mr. Campanello asked about fence all the way around which Ms. Perkins said is not anticipated, just a gate at the access road. Regarding utilization of the property owned by the county, Mrs. Wolgamood asked about the existing driveway with access to CR 26 being the one they would use. After clarifying some confusion, Ms. Perkins said yes and noted they would only put in a new curb cut on CR 9. She further explained the purpose of cutting across CR 9 and the farm field with the existing driveway permit across CR 26 to get to the landfill is to keep truck equipment off of the county roads. This route would be a very short distance on the county road in lieu of travelling up and down CR 9. Mr. Hesser inquired if this is an issue since it is not on the parcel included in the request. Mr. Kolbus said no as it is basically a roadway, and they are still committing to not use county roads to access other than to cut across. Ms. Perkins also pointed out the south boundary of the pond was shifted a little bit to the north in order to accommodate the existing Buck Eye pipe line right-of-way

which is approximately 120 ft. north of the site plan previously submitted. Noting what he thought was a maintenance building on the site plan, Mr. Homan asked about equipment being left on the property during activity and inactivity. Ms. Perkins said when there is not activity taking place on the property, the equipment will be kept at landfill. She explained there is not intended to be a storage building for it, but simply a gravel pad to stage equipment should a contractor be on site working for capping projects.

Tim Howard, 60760 Creekstone Drive, Goshen, was present to state his concerns about the request. He stated he owns the adjacent property to the northeast which he purchased approximately 12 years ago. When he purchased the property, his wife called the county to inquire about the duration of landfill, and they were told it was somewhere between 10-12 years at that time. Today, 12 years later, an issue is being addressed where they are talking about the 65 acre parcel and a 20 year permit to take dirt to continue to work on this landfill. He indicated his first question would be what happened to the 10 or 12 year original permit for the landfill. He said the land owners in this area have had to deal with a large penalty for being close to it. He said CR 26 on a rainy day is like a dirt road, and you cannot keep a car clean. He also stated that on a windy day, particularly for those to the east, properties get inundated with flying trash and debris from the landfill. He also noted the odor, although not constant, is a nuisance. He feels the neighbors have paid their dues. If this request is a 20 year extension, he stated he is absolutely opposed to it as the neighbors don't deserve that. If the landfill is out of land to be able to continue to operate, he feels that is too bad. As he understands from the application, dirt is needed from elsewhere in order to continue because the landfill is out of dirt on the approved property. By saying yes to this application, his concern is that they will be extending the time frame for something that should be closing now. He did say this is based on the information they received when they originally purchased the property as he has no knowledge of any permits or extensions that may have been granted since that time. He said he is not saying without qualification that he is opposed to the request, but he is opposed if it is a 20 year extension. He believes it needs to be a great deal less time and feels they need to get out of this location. After reading through the application, he said he is concerned because he did not see anything that states emphatically that this project will be a lake. He questioned the water source and expressed his fear that it will end up being a piece of land with a big, deep hole. He noted there is a wetland in the southeast corner of this property, and from what he can recall, it goes dry every year which furthers his concern that it could end up a giant 30 acre hole in this agricultural field which would not enhance anyone's property. If the Board chooses to approve this request, he would challenge them to make sure there is a way to fill it. He said he could envision a day, hopefully in no more than five years, if they truly can dig this hole and fill it with water, it is a lake, and they, in fact, would donate it to the county, it would be an asset for everyone. However, if it is 20 years in the making and more mud on the roads, it would be a genuine nuisance for the county. When Mr. Hesser asked Mr. Howard to expand on his mention of odor, Mr. Howard mentioned the landfill odor. Mr. Hesser said the landfill has nothing to do with this property. Mr. Howard said it does in that they are the same owner, and the owner is going to use this request to perpetuate the existence of the property that produces the odor. He expressed there are reasons to be optimistic that this could be a good thing for the county. He challenged the term, "may donate" to the public as he would suggest that is pretty weak language and requested the Board not approve this request unless they know for sure it will be a lake and only

approve a shorter duration. He suggested if the landfill is out of dirt to continue, it should be closed.

Lee Adams, 59528 CR 9, was present in remonstrance to this request. He stated he lives at the corner of CR 24 and CR 9 and his concern is transportation of material because CR 26 is a mess. He wondered how CR 9 will look if this is approved. He noted there is a lot of traffic on CR 9, and because of the jail, CR 26 is now travelled heavily. He agreed with Mr. Howard's statement that the neighborhood has suffered a lot over the last few years due to the landfill which was supposed to be a 10 year project. He said he believes the landfill exceeds the height that the State allows. He noted concern about a future request for an extended landfill on this property. He suggested the water table varies greatly in that area. He recommended they consider the property west and south of the landfill for future expansion as it would make more sense because transportation wouldn't be an issue. He expressed concern that his property value will continue to diminish. He did give the landfill credit for a very thorough well testing program. He questioned how the future of the hole could affect neighboring properties.

Jon Grove, 59644 CR 9, was present in opposition to this request. He stated he lives at the property directly northwest of the proposed parcel and wrote the letter that was previously submitted. He said he echoes the previous comments of neighbors. He said his major concern is his loss of property value that will be evident because of an excavation site right next door. He reported researching on line and found dozens of articles and surveys from professionals that have similar situations of excavation sites going into neighborhoods and property values decreasing by anywhere from 25 to 60% because of that. He said he doesn't believe there is any guarantee that at the end of their use, another excavation company might purchase it for the intent of extracting gravel or going even deeper than this proposal. He pointed out the future is unknown, and they do not have any guarantee of what that property is going to be when they are done.

In response, Ms. Perkins indicated the life of the landfill has been expanded because oftentimes waste intake rates fluctuate. Therefore, the air space that has been permitted for that landfill has not been consumed by the intake rates. When Mr. Hesser asked the anticipated expiration of it, she reported at this time, it is approximately 10 years. She added that there are no other cells being built at the landfill as it is completely built out right now. They are just utilizing the air space that is already permitted at the landfill at the current waste intake rates. Regarding the issue that was raised about if in fact this will be a water-filled cavity or just a hole, she said there is currently a low area in the middle of it. She reported there are also areas around it with low lying areas where water comes through. When Mr. Hesser inquired about any studies or testing of the soil to indicate whether it will hold water. She indicated they have done some borings and reported the material is good, solid clay so it will likely hold water. She said she would anticipate primarily the water that will be in there coming from storm water run-off. Pointing out the pond on the aerial next to the landfill, Mr. Campanello asked if it is supplied by underground water coming up, and if they are anticipating the proposed location will be the same thing or if it is just run-off. Ms. Perkins said she does not believe it is fed from below but is just run-off from the surrounding landfill area. In turn, if the proposed pond is going to be filled with run-off, Mr. Campanello asked if this digging will affect anyone's wells in this area. She said she would not expect it to. Additionally, Mr. Campanello asked if they had completed any tests or studies for impact on water pressure to the wells on surrounding properties. She reported they

have not. She indicated the depth of the excavation pit is 25 ft. maximum. She stated the borings that they did recently did not indicate there were anything other than a few couple inch perched seams of sand, and everything else was good clay. Mr. Hesser pointed out that one of the proposed commitments concerns lighting and asked if they anticipate any lighting being on the premises which Ms. Perkins stated no.

When Mr. Campanello asked if the capping off will help with odor, Ms. Perkins said yes as there will be a five ft. thick soil cap plus a geo-membrane that closes the landfill. Mr. Campanello confirmed that the only dirt and mud on CR 9 will be at the crossing site which Ms. Perkins indicated was correct. He further questioned what they are going to do to keep it clean. She stated during dirt and hauling operations, they would anticipate an individual standing at the crossing to keep traffic safe as well as daily sweeping and continuously keeping the road cleaned up as the trucks are hauling material across.

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** Doug Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use to allow for the extraction (excavation) of gravel, sand or other raw materials in an A-1 district (Specifications F - #10) be approved with the following conditions imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan and truck route plan submitted and as represented in the petitioner's application.
2. Hours of operation are 7 AM to 5 PM, Monday through Saturday.
3. The duration of the Special Use Permit is 10 years.
4. Exterior lighting, if any, is restricted to dusk to dawn security lights.
5. Exterior loud speakers are prohibited.
6. The operation of the business must be conducted in compliance with all federal laws, rules and regulations administered by the United States Bureau of Mines.
7. The interior access road to and from CR 9 must be dust controlled with an application of commercial dust control product at least twice per year.
8. Off-site discharge of water generated by the mining operation is prohibited.
9. The excavation area must be graded in such a manner to prevent the collection of stagnant water.
10. Upon closure of the mining operation all ponds created by the operation must be banked and sloped leading to the water's edge with the slope no greater than 3 to 1 and seeded with perennial grasses at the time of grading.
11. Extraction is limited to dirt and does not include gravel or sand mining.
12. Visual screening, mounds, and trees must be planted and in place prior to commencement of the excavation operation and shall be maintained at all times to the north and west (The petitioner may use some of the excavating material to build the berm).

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

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

No: Meg Wolgamood.

11. The application of *Clinton Christian School Association, Inc.* for an amendment to an existing Special Use for a school (Specifications F - #38) to modify site plan for two additions, a future third addition, and to expand Special Use to include third parcel (-004) for reconfiguration of parking on property located on the West side of CR 35, 1,000 ft. South of SR 4, common address of 61763 CR 35 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 #61763CR 35-131021-1*.

There were 18 neighboring property owners notified of this request.

Paul Hochstetler of Freedom Builders, 54824 CR 33, Middlebury, was present on behalf of this request. He said they are proposing two additions with one to be completed this year and one as a future addition. As the school has gradually grown over the last few years, the space for classrooms has become too small so the first proposal is to add several classrooms. He stated that the long term plan would be to add some offices for administrative use. He explained that the addition will be behind the main front building so it won't block any views or causing any sight restrictions. When Mr. Hesser questioned why this was not done in August along with the amendment for the electronic sign, Mr. Hochstetler said that was his mistake as he didn't realize the site plan had to be revised. He also indicated he wasn't aware of the sign issue and petition.

Martin McCrindle, 1803 Reliance Road, Goshen, was present in support of this request. He said he has a special interest in this particular project, this program, and this school. He said his wife attended school there in the 50's, and it has been a progressing and improving educational environment with Christian values and good up-bringing. He also noted his two grandchildren go to school there, and it is tight quarters. He said the school keeps growing and certainly deserve expansion capabilities.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a school (Specifications F - #38) to modify site plan for two additions, a future third addition, and to expand Special Use to include third parcel (-004) for reconfiguration of parking be approved with the following condition imposed:

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

The following commitment was imposed:

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

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

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

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

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #14849FalconLn-131021-1*. He submitted the original signed petition in remonstrance of the proposal and a copy of the neighborhood covenants at this time *[attached to file as Staff Exhibit #1]*.

There were 19 neighboring property owners notified of this request.

Cynthia Hawkins, 14849 Falcon Lane, was present on behalf of this request. She noted the purpose and intent of the Zoning Ordinance is to maintain the purpose and intent of the area which is a residential area that consists of families with children of all ages. She stated it is the perfect place for child care to happen. Just like the other families in the neighborhood, they will have children that will be on a schedule of eating, sleeping, and playing.

The rules and regulations set by the State of Indiana for a licensed family day care will be followed which includes a fenced outside play area behind the home. She indicated the fencing will be similar to fencing used by others in the neighborhood as well as meeting the State's requirements for child care. Landscaping will also be changed and maintained for the safety of the children as well as general appearance sake. She noted the value of her property and that of the neighbors is important. She indicated arrangements for drop off and pick up of children will be set as policy that will be agreed to by parents enrolling their children. They will pull into her drive and walk or carry their child into and out of the home. Unloading children from the street will be prohibited. She said the increase in traffic will be negligible, and parents will not likely arrive at the same time.

The need for local child care is great in the area, particularly those seeking licensed homes rather than unlicensed or large centers. She reported her location is central between Goshen, Syracuse, New Paris, and Millersburg. She said there are 13 licensed day care centers in Goshen, but only five are family homes with 12 or less children. She noted Syracuse has five licensed day cares with two of them being family homes. There is only one licensed day care in Millersburg which is a ministry center. New Paris does not have any licensed day cares. She suggested considering the number of children who enter kindergarten each year and multiply that by five, there are a lot of preschool aged children, many of whom need quality child care. Ministry and child care centers are able to care for many children at once, but the environment is very different from the environment of a home. For families seeking the type of nurturing environment that she will provide with the oversight of the State, Mrs. Hawkins said they have very few options. She said she will be serving the community in this way.

When Mr. Hesser asked about covenants for the neighborhood, she said she does not have a copy of them. She said her understanding is that it would be similar to a residential area which is why she is making the request. He further inquired about other businesses or home workshops in the subdivision. Mrs. Hawkins said although she is not sure of all involved, but she stated there have been swimming lessons, piano lessons, tutoring, and some massage-types of things. She added that as far as she knows, none of those have actually gone through any kind of permit process.

When Mr. Campanello asked for a show of hands in the audience in favor of this request, there were two hands. He also asked about people present in remonstrance which one person indicated.

Joel Hawkins, 214 W. Lawrence Street, Middlebury, was present in support of this request. He indicated he is the son of the petitioner, and as a mortgage officer, he is present to provide additional information. Noting the main concern from neighbors about property value, he reached out to a number of his contacts, both appraisers and realtors, who suggest they do not anticipate the day care having any negative influence. He said they plan to share that information with residents as that was their concern. He noted as a child, his mother babysat for him, and he believes this request would be a definite blessing to the community.

Michael Kurtz, 67354 Kensington Drive, Goshen, was present in support of this request. He said he just happened to be present today, but noted he has children that could benefit from a licensed daycare in that area. He noted it is a growing area with a lot of people moving into the area. He said the need is there. When Mrs. Wolgamood inquired, Mr. Kurtz said he does not live in that subdivision, but his children attend school in that township.

Angela Hunley, 484 Brookside Manor, Goshen, was present in support of this request. She said she is the daughter of the petitioner and will be one of the employees of the day care. She said when she was growing up, her mother babysat a group of kids. She noted it was not run like a facility but like home where they got to do fun things like bake and learn at the same time. She added that she has friends with young children who are also interested in a day care in that area where they work and live. She also said kids coming home from school in the Fairfield school district can be dropped off at this home, and parents would not need to be home or transport them to a babysitter.

Martin McCrindle, 1803 Reliance Road, Goshen, was present speaking on behalf of his son and daughter-in-law, Scott and Teri McCrindle, 14821 Falcon Lane. He said their house is adjacent to the Hawkins on the east side. He submitted a letter from his son *[attached to file as Remonstrator Exhibit #1]*, which he read. He added that it is not that his son and wife are against children, but his son did contact a realtor who said he could expect anywhere from a \$20,000 to \$30,000 reduction in appraised value of his home being beside child care. Mr. McCrindle noted the concerns about the noise and extended liability to adjacent property owners. Additional concerns he expressed were regarding the number of people, number of kids, and the hours from 7:00 a.m. to 8:00 p.m. He suggested tabling the request to look into the covenants and other legal ramifications.

When Mr. Hesser asked if covenants are in fact in place and if they were considered by staff, Mr. Mabry stated it was not considered by staff because of when it was received. He said without any context, these appear to be deed restrictions. Mr. Hesser asked if anyone in the room questioned whether these are in place as restrictions for the subdivision. Mr. Campanello said he would have trouble voting for approval if the covenants are recorded.

If the request is tabled, Mr. Hawkins asked if they would have the ability to provide additional information at the next hearing. Mr. Kolbus said it would be tabled solely for the issue of the covenants. When Mr. Hesser questioned the number of children, Mrs. Hawkins said the license would restrict it to a maximum of 12 based on the ratios. By herself, she could have up to 10, depending on the age. To him, Mr. Hesser said this is about as minimal a use as you can get. He stated a child care facility is not going to be an adverse affect or in any way harm

the neighborhood or property values. He believes the request could be fine. But if the restrictive covenants are in place and they could be enforced by neighborhood, the Board needs to consider them if properly recorded.

The public hearing was closed at this time.

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

Motion: Action: Table, **Moved by** Tony Campanello, **Seconded by** Doug Miller that this request for a Special Use for child care home in an A-1 district (Specifications F - #23.10) be tabled until the December 19, 2013, Advisory Board of Zoning Appeals meeting to allow staff to research issue of recorded covenants.

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

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

13. The application of *David A. Schutz (lessee) and Fern E. Fruchey (deceased) c/o John Fruchey (lessor)* for a Special Use for an agricultural use for the keeping of 20 chickens (hens) on a tract of land containing three acres or less (Specifications F - #1) on property located on the East side of CR 15, 794 ft. North of US 20, being pt. of Lot 10 of Fern Dells, common address of 56414 CR 15 in Concord Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #56414CR 15-131021-1*.

There were 16 neighboring property owners notified of this request.

Dave Schutz, 56414 CR 15, was present on behalf of this request. He said his daughter has an illness, a type of colitis, and her doctor recommends that she eat organic foods. They raise the chickens for the eggs and the meat. He said she also participates in 4-H and shows the chickens. He mentioned talking with most of his neighbors who have no complaints. He noted other agricultural animals in the area. Mrs. Wolgamood noted the complaint received listing at least 14 roosters and chickens and four ducks. Mr. Schutz said he had five roosters and four ducks right after he moved in. He also noted the chicken coop was in a temporary location at that time because the property was overgrown. He reported he relocated the chicken coop back beside the garage. He said the ducks and roosters are gone, and he has 20 hens. When Mr. Campanello inquired about the number of eggs that 20 hens produce, Mr. Schutz reported 3-5 eggs per day now because of the weather change. Mr. Hesser confirmed the size of the coop is 12'x6' with a 12'x6' fenced in area as well. Mr. Schutz noted the pen is completely enclosed.

John Fruchey, 10272 Douglas Road, Osceola, was present in support of this request as the owner of property. He said he was raised there, and it was always agricultural. When they leased the property out, he said he and his siblings wanted to sell it but they wanted to find a good family. He reported they think they have found a good family who wants to make a home there. He said Mr. Schutz has cleaned out the wooded area of the property to make it a nicer home. He also stated Mr. Schutz is very thoughtful with the placement of items on the property. He indicated he believes the chicken coop is approximately 40 ft. away from the property line.

Tom Christophel, 56441 CR 15, was present in support of this request. He said his property is to the south and catty-corner to the property in question. Regarding Mr. Fruchey's comment that the area has a very distinct agricultural nature to it, Mr. Christophel said he is the guy with the cows and has a barn out back. He also reported the neighbor to the south of him has

horses and noted there are other chickens in the area. He believes it would enhance the nature of the neighborhood. He stated Mr. Schutz has done a lot to improve the property. While he said Mrs. Fruchey was a good neighbor, she was quite elderly and the property was getting quite overgrown.

Speaking in remonstrance to this request was Jackie Riebel, 56428 CR 15, Elkhart. She said she has an easement adjacent to the south side of this property, and they share a driveway. She reported the police have been called several times over the situation next door, dealing with the chickens, roosters, ducks, because of the constant crowing of the roosters. She said the property is very narrow being only 75 ft wide. She submitted a packet of photos of the property *[attached to file as Remonstrator Exhibit #1]*. She said there are way too many chickens, and they are noisy and stink. She feels if he wants to have a farm, he needs to go somewhere with more acreage. She indicated the horses across the street are on three acres, and the Cristofels have 2-3 acres. She reported Sherry Moore and John Fruchey are co-executors of this estate. Ms. Riebel did report the roosters have been removed and the chicken coop has been moved back. But the noise and smell are still there. When Mr. Campanello asked if she ever smells odors from the cows or horses, Mrs. Riebel said she does not. She noted those neighbors take good care of their animals that are on the back of their properties with no people immediately next door. She said these chickens are outside her back door and the neighbors' to the other side of them. She also submitted a letter in remonstrance from her husband *[attached to file as Remonstrator Exhibit #2]*. She said Mr. Schutz has not improved the property at all. She complained of trash, barrels, and buildings that are right on the property lines. She noted a building that looks like an outhouse that is literally inches from the back fence. When Mr. Campanello asked if those buildings were always there, she reported that Mr. Schutz moved that building in. Regarding the property line to the north of the property, she said the fence and the house have been there for quite some time and are not even five feet from the property line.

Regarding the smell, Mr. Schutz said he is out there every day and does not smell anything. When Mrs. Wolgamood inquired about the chicken waste, he reported he tills it into a garden for fertilizer. He noted he has only been on the property since the middle of September. Mr. Hesser further inquired if the garden is on that same property which Mr. Schutz indicated yes although he does not have enough area cleared yet for a garden. Mr. Schutz said the chicken coop faces the neighbor to the north, and he has talked to that neighbor (the Kellys) who had no objection.

The public hearing was closed at this time.

Mrs. Wolgamood noted Mr. Schutz he has gotten rid of everything except the 20 chickens (hens). She said that staff is recommending five. Given the reason that he wants them which is for his daughter, she pointed out it is not like he has a huge chicken coop full of chickens and doesn't know that she would object to 10. If talking about eating them as well as eggs, Mr. Hesser said five is not a feasible number. Mr. Campanello suggested 15. Mr. Homan pointed out that it is only a third of an acre. Mrs. Wolgamood indicated that it is an agricultural zone, and the ones across the street are in a residential zone. Noting that Mr. Schutz bought the property and is cleaning it up, Mr. Hesser suggested a time limit to review this request to see if it is being kept up. He thinks if it is being properly taken care of and maintained, 20 chickens would be fine. He added that he feels there were enough concerns raised that warrant a review.

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 agricultural use for the keeping of 20 chickens (hens) on a tract of land containing three acres or less (Specifications F - #1) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. A maximum of 15 chickens/hens are allowed with no roosters permitted.
3. All chickens must be penned or housed at all times.
4. Remove five extra chickens by January 1, 2014.
5. Approved for a period of one year with renewal before the Board of Zoning Appeals.

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

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

14. The application of *Avery L. Aragona & Sam Burns* for a Special Use for warehousing and storing in an A-1 zone (Specifications F - #44) on property located on the South side of CR 20, 400 ft. West of CR 31, common address of 16084 CR 20 in Jefferson Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #16084CR 20-131021-1*. Noting that it looks like there is an accessory building on site, Mrs. Wolgamood asked if there is a residence on the property. Mr. Mabry said what was approved and what is there is a residence within the building that utilizes a smaller amount of square footage in the rear of the building than the amount of storage space. She confirmed that a building permit was issued for the residence and the storage building. Further, Mr. Hesser asked if the house and garage on the site plan are actually one building which Mr. Mabry indicated is correct.

There were 13 neighboring property owners notified of this request.

Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. Ninth, Goshen, was present representing Avery & Sam Burns who are the petitioners and owners. He also noted they are both present. He indicated on the drawing, they have located the house. He further explained the driveway comes in from CR 20, and pointed out the approximate location of the house on the aerial. He explained that in the March hearing, they thought they were committing to personal storage, and that personal storage met their needs and the County requirements. Being represented by the builder at that hearing, they thought the main issue was that the storage space exceeded the residential space inside the building. He said in that hearing, they said the Burnses were going to run their business out of it. The complaint, Code Enforcement visit, and the neighbor's concern actually led the Burnses to Mr. Pharis. He went on to say that their explanation to him led him to believe that the Burnses were in compliance with personal storage. Mr. Pharis said he asked them to talk to staff and let staff advise them of what they should do

and what they should file for. He pointed out the final determination was warehousing/storing and the rationale was one of his trailers has a sign on it and normally that trailer is stored outside the building. The sign on the trailer represents outside storage according to the Ordinance. Staff really had no choice but to say that the Burnses needed to file for warehousing. According to the dictionary, the definition of warehousing is a place for storage of merchandise or commodities. In his mind, Mr. Pharis said he sees warehousing as a big building with semis coming and going, unloading product, people being there, all kinds of storage going on, trucks coming in and taking it out for end users and retail sites, and a real hubbub of activity. He said that is not the situation in this case, and the request is much different.

He went on to say that Sam and Avery own an inflatable business which consists of them providing inflatable castles, boats, space ships, and other devices that are used at children's parties, churches, and fundraisers. He explained the process is that the deflated inflatables are stored in the building. They come to the building, and the deflated product is loaded onto a trailer and taken to a site. Sam then inflates it, secures it, and when the function is completed, he deflates it, returns it, and stores it in the building. The primary activity for these functions is Friday, Saturday, and Sunday. Mr. Pharis noted he hopes the Board can see when Mr. Pharis thought storage of personal items was approved that the Burnses were in compliance with these inflatables. When the Burnses said they were going to run a business from this home, to them that meant having phone lines to answer, computers for billing, scheduling, and bookkeeping purposes. He pointed out that it is not like clients come to the Burnses. He also noted a couple of friends work part-time with them to help Sam load/unload and set up/break down the devices. When Mr. Hesser asked if the inflatables were all stored inside the building and not in trailer, Mr. Pharis said nothing is stored at the site right now, and no one lives at this site right now. He went on to explain that they lost their lease on some storage space so they moved the storage into this building which triggered a complaint. He said they are not living in it now because they want to get this issue all resolved. They found storage space for the inflatables. When Mr. Hesser inquired if there is room in the garage for the trailer to be stored inside, Mr. Pharis indicated yes. In response, Mr. Hesser questioned the reason for this request if they stored the trailer inside. Attorney Kolbus noted that the petitioner's application says they want to store the trailer outside. Additionally, Mr. Pharis said there would be times when the inflatables would be outside of the building to be aired up, cleaned, deflated, and put back inside. They realize the neighbors have some concerns and are seeking means of buffering the east side property line with either screening, fencing, or plantings. Brads-Ko has flagged the property corners and has set points on line so that absolutely nothing that they do will go on to the neighbor's property nor will they encroach. He noted he was involved with Mr. Odebrecht and Mr. Smith when this tract of land was developed into 13 parcels with the smallest being four acres and the largest being over 21 acres. He said the whole idea was that people could by acreage, build their residence, and support their other interests whether it be animals or other kinds of businesses. The idea was large tracts segregated from subdivisions. He noted the staff's analysis that there will be permanent injury incurred to the neighbors. Mr. Pharis said the Burnses selected this site because when they drove around looking at property, they saw this property, the residence next door with a pole barn, thought this neighbor was operating a business there, and this would not be an issue. If this were a true warehousing operation, he said he would agree that there are a lot of empty buildings in Elkhart County that they could probably rent for that purpose. As he

doesn't see this as warehousing but storage of personal items, he stated that they just happen to have a business there. The business simply means that they have a computer and telephones that they answer to schedule, do their billings, and do their bookkeeping. Mr. Pharis said he still sees this as personal storage. Regarding permanent injury to neighboring properties, they believed neighbors were operating a business from their property.

When Mrs. Wolgamood pointed out that the Burnses do not live on this site, Mr. Pharis said they plan to live there. She further questioned when the Burnses will reside there. Mr. Pharis said they will live there when they get approval to move their belongings into the building on site. He further explained they had started to move things in, the complaint was filed, Code Enforcement came out, and within 48 hours they had everything moved out. They found space to store their items, and they are just waiting for approval to do this so Sam can live there and run the business. Avery will live there on weekends when she is home from school on the weekends as she is a college student in Ohio on a full scholarship. Mrs. Wolgamood confirmed that the trailer that is stored outside is a 6'x10' trailer.

Laquita Closson, 58573 CR 31, was present in opposition to this request. She said she lives on the adjoining property to the east. She displayed a photo to the Board that was not submitted, showing the petitioner's Jazzy Jumper trailer on the property in the Fall of 2012 before they ever started doing anything to the property. She said she completely disagrees with Mr. Pharis's definition of warehousing. She said two months prior to her complaint, the Burnses had already moved all of their equipment in. She feels the process Mr. Pharis described that the Burnses follow is the definition of running a business. She went on to say that keeping your property stored inside the building is not personal property as the Burnses don't sit outside and jump around in their jumpers, but it is something that they use to create income. She claimed the Burnses put the building up and before they even started the living quarters, they were running in and out on the weekends for their business with two trailers. She also noted a dunk tank was sitting outside on the property, and there were also two work vehicles parked outside. She pointed out on the photo, directly behind her property where the pines trees are located, she looks out her back sliding door at the Burnses pole barn. She noted she completely understands that the placement was to accommodate their septic and well, but she complained about having to look out at four ft. tall grass and work equipment sitting outside that does not fit inside the building. She suggested the petitioners lied at the previous hearing about the intentions for the use of the building. She said she and her husband have a lawn service business, but one would not know that there was anything on the property because they follow the rules. She went on to say they applied for a Special Use permit to make sure they would not end up in this situation, and they did everything in the proper order. She said everything they have done to their property is meant to improve the property value of others around them. She noted there are other pole barns around them, although they are agricultural, and the other neighbors take care of their things and keep it nice. She noted concern about their property value if they should choose to sell their property. She said this isn't just about having a business on the property, but they have done nothing to improve the property value for anybody. She said the manner in which the petitioners applied, everybody thought there was going to be a house with an attached garage. She said she would have been at the first meeting and never would have stood by when they were really putting up a pole barn. She noted a person wants to better themselves by having their own business, she acknowledged they have done it and spent the last 16 years developing and

creating a business that has made them a wonderful living. She said she doesn't hold that against anyone. But if someone is going to put up a building and not going to take care of it, she feels that person does not deserve the right to have any additional special privilege. Mrs. Closson noted the neighborhood has restrictions, and the Burnses made it look like they fit in with the amount of the living space, and the Board approved the pole barn for accessory square footage to exceed the living space. But she said it looks messy and is in no way aesthetically pleasing to anyone around them. Mrs. Wolgamood stated that many of Mrs. Closson's points are not anything this Board can do anything about, but the Board can look at the fact that they want to put a business there. Lastly, Mrs. Closson stated she felt that the petitioners completely lied at the previous hearing and felt that should be taken into consideration.

In response, Mr. Campanello asked Mr. Pharis the number of acres in this parcel which he responded is 4.71 acres. Mr. Campanello further inquired if they would have to do anything special if the Burnses wanted to possibly put up a hog barn in this A-1 zone. Mr. Pharis said if they are over four acres and wanted to put in a duck or chicken barn, that would be legal. Starting with the original filing, Mr. Pharis noted the petitioners were listed as Andy Odebrecht and Larry Smith who are the sellers of these tracts and Avery and Sam Burns were listed as part of the petitioners. To say that this violates any covenants, which there are none or recorded restrictions on this property, he said that Mr. Odebrecht and Mr. Smith's intention was to create large tracts that young families could buy and use just like the neighbors are doing as they run their business there. Mr. Pharis said that when he asked the Burnses to come back to staff, he wanted them to make clear that they are going to operate a business. He pointed out that a residence has been built inside the building, and they plan on living in it. They plan on doing this in such a way that they can afford by paying cash, and the living quarters aren't ready for them to move into. He said their long term objective is to build a nice residence in the back. Assuming they approve this request, Mr. Hesser asked Attorney Kolbus if the Board can limit the Special Use to owner/occupant. Mr. Kolbus answered yes. Mr. Hesser confirmed that would require the Burnses to live there. Mr. Hesser stated he would like Mr. Pharis to address the issue raised by the remonstrator of equipment not being stored in the building. Mr. Pharis reported there will not be outside storage of anything other than the trailer with the business logo on it. If necessary, he said they will put the trailer inside. He said they want to store the inflatables, live there, and ultimately build another larger, much nicer home once Mrs. Burns has graduated from college, and they are both living in the residence. He said the petitioner's commitment is that they are going to store the inflatables with no other business there, and they want to live there, work there, and build another home there.

The public hearing was closed at this time.

Mr. Hesser suggested making a commitment for owner/occupant. If there is a concern with the use of it, he suggested a time period for review although he is not sure that is necessary. It was noted the petition is always subject to a complaint. Attorney Kolbus pointed out that, as represented, the trailer is outside and the inflatables will be outside for cleaning so the Board is aware that will occur. Referring to the previous hearing in March, Mrs. Wolgamood recalled the Board had questions about how the building was looking, where exactly the house was, and was it really a house with an attached garage. She remembered a lot of discussion about it. She said their builder made representation at that time, and they are not living there and were granted personal storage which is not what they are doing. Regarding warehousing and storing, she said

that means inside and to her that doesn't mean trailers or inflatables outside for any reason. She does not think they have made a good enough case for her to say yes to the request.

Mr. Campanello said he felt they came back with Mr. Pharis to clean this up and get everything straightened out. He noted Mr. Pharis's testimony changed his mind from denial to approval. He thinks the Board should take into consideration the fact that they are going to put limitations on it with conditions and commitments if approved. Mr. Miller said he felt the request is low impact as far as the coming and going. He does not know how much it increases traffic if they would live there as far as coming and going. He noted when he hears testimony about how many times people come and go, he compares it to having four kids with them in and out of the driveway possibly 20 times a day so he likes to temper that and especially on a tract like this. He noted he agrees with Mr. Hesser that if they are going to have inflatables, at some point they are going to be outside to be cleaned which he does not really struggle with because they will not be a permanent fixture. He noted the Board can say it can't be permanent, and he feels it is low impact and would be in favor. Mr. Homan questioned when the Burnses would be occupants and asked Mr. Pharis to answer. He responded by saying there is a mortgage on the building, and it is to close any time now. He said their plan is to move out of their mother-in-law's home and into the new house at this location. If approved, they plan to move the inflatables in when their lease expires on the rental space they currently have. Mr. Pharis suggested the closing might be in the next week, two, or three, depending on the finance companies settling everything. Mr. Homan said he feels it is very close to a home workshop/business to him. Mr. Hesser said it is the same standard and went on to say that he doesn't have an objection to what has been presented. He noted he is a little concerned with Mrs. Wolgamood's comments because he really does not like the two step tactic. He said the previous hearing doesn't stick out in his mind. Mrs. Wolgamood said she remembers the site plan and the rendition of the building which she does not believe looked like what it looks like today. Mr. Hesser added that he doesn't have a problem with what they are proposing today.

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 Special Use for warehousing and storing in an A-1 zone (Specifications F - #44) be approved as presented by the petitioner based on the following Findings and Conclusions of the Board:

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

The following condition was imposed:

1. 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 as presented by the petitioner and in accordance with the site plan submitted.
2. Approved for the owner/occupant of the residence.
3. Approved for a period of one year with renewal before the Board of Zoning Appeals.

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

Yes: Doug Miller, Tony Campanello, Randy Hesser.

No: Robert Homan, Meg Wolgamood.

*****It should be noted that Alternate Board member, Lori Snyder, replaced Board member Doug Miller for the remainder of the meeting.*****

15. The application of ***Steven A. & Waneta Lea Borkholder*** for an amendment to an existing Special Use for a home workshop/business for a woodworking business to make furniture (Specifications F - #45) to allow for the construction of an addition to the woodworking facility and for a Developmental Variance to allow 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 101, 2,400 ft. South of CR 56, common address of 72990 CR 101 in Locke Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #72990CR 101-131021-1*. When Mr. Hesser asked if the Board needed to take a vote as to whether they consider this significantly different, Attorney Kolbus said the petition has already been filed as a new application, so the Board proceeds on it as a new application.

There were two neighboring property owners notified of this request.

Steve Borkholder, 72990 CR 101, Nappanee, was present on behalf of this request. He indicated they met with staff for assistance on this new proposal. He noted they took the driveway out and will have a rear entry and use the existing driveway which he pointed out on the aerial. He said the other change is that there were two parcels on two separate deeds, and now they are combined on one deed for a total of 12.9 acres. He stated he needs more room, and pointed out that they have been in business for numerous years and have worked hard for their home business. He reported he did buy a dove tailing machine, and he doesn't even have room to set it up at this point so they are buying in all of their drawer boxes. He wants to build his own drawer boxes as he used to but ran out of room. When Mr. Homan asked about a truck turnaround, Mr. Borkholder said most trucks are straight trucks and they back into the driveway and drive out. He noted he has had a few semi trucks that stopped on the road. Mr. Homan inquired about space some place for a truck to turn around on the property and asked if he can make space for a truck turnaround on the property. Mr. Borkholder said there would be space to back around to get a truck turned around. He said they bring their trailer in and turn it around with just a circle although it is tight. Mr. Homan added that backing in off a County highway is not allowed. Mr. Borkholder said he doesn't see the truck traffic increasing at all from this request. Mrs. Wolgamood believed she had read somewhere that Mr. Borkholder is going to flip things. Mr. Borkholder said the new building will become production and the warehousing and storing will be in existing building. She asked if the dust collector will move, which he indicated yes and said it will move back to the new addition. She noted that move is not shown on the site plan. She further inquired if he got a foundation permit. Mr. Borkholder explained that before

the last hearing, they were released to start the foundation because they were pushed for time. He added that they dug but didn't pour any cement.

Mr. Homan said he is concerned about the truck activity as a safety issue. He pointed out the Board can say no backing in as a condition and noted that Mr. Borkholder said sometimes trucks park out on the county road. Mr. Hesser said they have placed that particular condition many times. Mr. Camapenllo expressed he believes Mr. Borkholder has plenty of room for turning around on site. Mr. Homan noted some open area between the buildings there is some room. Mr. Borkholder said if that is an issue, he can make it bigger. When Mr. Homan asked Mr. Borkholder if he can comply with a condition/commitment of no backing in off of or unloading in the county road, Mr. Borkholder said he could.

There were no remonstrators present.

The public hearing was closed at this time.

If moving to approve, Mr. Hesser noted they should modify the terms to remove Mr. Borkholder's name from condition #1 from 2001. He added that he would support Mr. Homan's suggestion of no backing in. Mr. Mabry added that he should have carried over the conditions from 2001: except #3 where they are approved for a larger sign (30 inches x 48 inches) and #4 should say up to two employees.

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 an amendment to an existing Special Use for a home workshop/business for a woodworking business to make furniture (Specifications F - #45) to allow for the construction of an addition to the woodworking facility 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 testimony and application.
2. Approved for owner and operator of the woodworking business and occupant of the residence on site.
3. No outside storage.
4. One sign permitted no larger than 3' x 4' unlighted.
5. Maximum of two employees that reside outside of the residence on site.
6. If valid complaints are received by Code Enforcement, the permit shall be brought back to the Board of Zoning Appeals for reconsideration.
7. In the course of business, no backing in of any vehicle traffic from the County Road onto the property and no unloading of truck traffic on the County Road.

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

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

The motion further reflects that the Board moved to adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these approved the Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure with the following condition imposed:

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

*****It should be noted that Tony Campanello was not present for the remainder of the meeting*****

16. The application of ***Todd A. & Debra J. Hartman*** for a renewal of an existing Use Variance for an electrical contractor's service on property located on the East side of CR 11, 800 ft. South of CR 28, common address of 61162 CR 11 in Harrison Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #61162CR 11-131018-1*. He noted corrections to the staff findings in #1, #2, #5 should say "will NOT be", and "does NOT interfere"

There were 10 neighboring property owners notified of this request.

Todd Hartman, 61530 CR 3, Elkhart, was present on behalf of this request. He stated they lived in the home for five years but moved from the property. Mr. Mabry noted #2 of the recommended commitments might need to be adjusted if this request is approved. Mr. Hartman said the property has been leased for the past 10 years. He reported he goes by the property every day so the house and the property has stayed the same since they initially started their business. When Mr. Homan asked how far he lives from the property, Mr. Hartman indicated 3 ½ miles. Mr. Homan read over some of the commitments to be sure that Mr. Hartman is currently abiding by them and will continue to do so. Mr. Hartman said yes and indicated there is no sign which makes it a little difficult for delivery vans to find them. He noted delivery vans are the largest vehicles going to the property, and there is one or possibly two per day entering the building for deliveries.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan noted the biggest change is that it is not "owner/occupant" anymore but he doesn't know if that is a big deal since the permit is a Use Variance. Mrs. Wolgamood suggested striking the word "occupant".

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Meg Wolgamood that the Board adopt the amended Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a renewal of an existing Use Variance for an electrical contractor's service be approved with the following conditions imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The electrical contractor's business must be operated by the owner of the residence onsite.
3. Outside storage is prohibited.
4. A single unlighted sign no larger than four square feet per side is permitted.

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

Yes: Robert Homan, Meg Wolgamood, Lori Snyder, Randy Hesser.

17. The application of *AMMF Trustee Corporation, Trustee for Amish Mutual Mortgage Fund, an Indiana Land Trust* for a Use Variance to allow for a second dwelling on one zoning lot on property located on the West side of CR 13, 950 ft. North of CR 52, common address of 71351 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 #71351CR 13-131009-2*. He noted in the aerial photos the foundation work being done which was allowed to begin in advance of this approval at the risk of the petitioner in order to facilitate the weather. He pointed out Commitment #3 should be "conversion" instead of "demolition" and 2014 instead of 2013.

There were four neighboring property owners notified of this request.

Bert Miller of B & Sons Construction, 4085 W 1350 N, Milford, was present on behalf of this request. He explained the request for the second residence is so the homeowner can stay while the new home is being built. When Mr. Hesser asked if he can meet the March 31, 2014, deadline, Mr. Miller indicated yes.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for a second dwelling on one zoning lot 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 existing residence must be converted to personal storage within 30 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 conversion of the existing residence has not been accomplished by March 31, 2014.

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

Yes: Robert Homan, Meg Wolgamood, Lori Snyder, Randy Hesser.

18. The application of *Richard & Anita Miller* for a 3 to 1 depth to width ratio Developmental Variance to allow for the proposed creation of two 17.5 acre parcels each with 120 ft. road frontage on property located on the West side of CR 35, 2,000 ft. North of CR 126, common address of 59841 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 #59841CR 35-130923-1*. He noted in Condition #1, 90 days should be changed to 180 days as he talked to the petitioner after the publication of the Staff Report. At that time, the petitioner requested 180 days instead which Mr. Mabry indicated he feels is reasonable.

Ron Justice of Advanced Land Surveying, 17120 CR 46, New Paris, was present representing the Millers in this case. He explained they have 40 acres at this time, and they are trying to create two 17.5 buildable parcels which Mr. Miller would like to sell. As they also live on the 40 acres, the Millers are going to retain five acres with the home which would be a legal parcel with 420 ft. of road frontage for the house and buildings at this time. The only question he had is regarding the 180 days which is probably ample time. At this time they do not have a buyer, but they wanted to get the approval prior to listing them for sale. When this was done in the past, if a deed was filed for the property, he said they were good for a longer term which is what they had in mind when they started this process. Mr. Mabry recalled in talking with Mr. Justice, they had talked about getting a deed for the two parcels within a certain time period rather than the building permit if this were approved. When Mr. Hesser questioned further, Mr. Mabry said a deed was a way to assure that what was requested was actually completed. From experience on this Board, Mr. Hesser said when they have something like this with a certain time frame, if that becomes a problem and the person would come back to the Board, the Board is pretty generous about extending those deadlines as long as they believe the person is trying to achieve what they are required to do. When Mr. Hesser questioned going through the subdivision regulations process, Attorney Kolbus said the variance is first then it goes through the subdivision process. Mrs. Wolgamood indicated one of her concerns as Hearing Officer was the shared driveway. She added that she knows if that goes through the Plan Commission and is accepted as a subdivision, then they have to do cross-access easements and all of that. Mr. Hesser said he didn't realize that, and that changes his perception of this request a lot.

There were no remonstrators present.

With this approval, Ms. Snyder asked if they can go ahead and market it. Mr. Hesser noted they would run the risk. Mr. Kolbus added that they could still sell it for one lot until they subdivide it. But if subdivided, no one could build on it until it goes through the Plan Commission. When Mr. Homan inquired about the shared drive, Attorney Kolbus said that would be handled through the subdivision process.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, as amended by 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. Two 17.5-acre tracts far exceed the permitted density in the A-1 zoning district.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property. Without a 3 to 1 Developmental Variance, the 35-acre undeveloped parcel would not be entitled to a residential building permit;

and based upon these, further moved that this request for a 3 to 1 depth to width ratio Developmental Variance to allow for the proposed creation of two 17.5 acre parcels each with 120 ft. road frontage 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 180 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: Robert Homan, Meg Wolgamood, Lori Snyder, Randy Hesser.

19. The application of *G & H Enterprises, Inc. (land contract holder), and Anthony Coleman (land contract purchaser)* for a Special Use for a youth and adult recreational center (Specifications F - #20) on property located on the North side of Old US 33, South of LaRue Street at intersection, common address of 28867 Old US 33 in Baugo Township, zoned M-2, came on to be heard.

Mr. Hesser noted this item was first brought up in September 2013 with Mr. Homan, Ms. Snyder, and Mr. Hesser present for that hearing. Mrs. Wolgamood has read the minutes from that meeting.

Mr. Hesser made a motion with no objection to reopen the public hearing.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #28867OLD US 33-130819-1*. He submitted a copy of a water analysis [attached to file as Staff Exhibit #1] and a large site plan [attached to file as Staff Exhibit #2] received on November 20, 2013. He noted at the time the Staff Report was written, he hadn't heard anything back from the petitioner so the Revised Staff Report is basically the same findings as the original Staff Report with a denial recommendation. He noted the petitioner will be able to provide some comments and some additional material for consideration.

Jim Byron of Thorne & Grodnik, 228 W. High Street, Elkhart, was present representing G & H Enterprises which stands for Gisela & Harold Peter. His law firm, initially Bill Thorne who is now retired, has represented the Peters since they moved here from Minneapolis. He reported the property was purchased in 1980, and the Peters successfully operated that business making commercial paints for almost 30 years. When they got to retirement age, their son had a

similar business in St. Louis, they merged the corporations, and their son moved the business there. Since that time, 2010, this property has been vacant. It was a manufacturing facility and is zoned M-2. They are asking for a Special Use in that district so Anthony Coleman can develop the property into a youth and adult recreational area. Mr. Byron noted that Mr. Coleman is the first person to show any interest in the property. They have marketed the property using Schultz Realty and FM Stone, and they have priced the property to sell at \$185,000 without any interest. He noted Elkhart County Assessor valued the property at \$318,600. Mr. Byron pointed out that while the Peters had the business, they were very good stewards of the property throughout the 29 years they operated there and never had one citation or fine for any kind of a spill. They had some minor citations but nothing for a spill. When they bought the property, there were nine underground storage tanks there which were a concern. After they had been there for about ten years, paying the yearly fees for underground storage tanks, they had the tanks removed. When they did that, there was a breach of the system, and as a result of that, there was a release. He noted it was appropriately recorded, and it was remedied by spreading the dirt out to aerate and evaporate over time. He said they actually spread it out in an area west of the existing property and built an addition on top of the damaged soil, all with permission from IDEM. He noted he mentioned this to point out they took measures and it was their practice to be good stewards of the property. As the property is across from the rail yards where there have been contamination problems, the Peters were concerned about any contamination on their property. They installed test wells so they could monitor for water contamination. When Mr. Hesser asked if this is served by well and septic, Mr. Byron reported they have a well for drinking water but for fire protection, the Elkhart City water main was extended to the property. He noted the city water can also be used for drinking.

Referring to Finding #2 of the staff analysis and neighboring property, Mr. Byron, using an aerial Google map slide, pointed out the general area and noted the weird triangle shaped property. He noted La Rue Street is to the north and US 33 is to the south, and it is squeezed in between those roads. He agreed with staff that there are manufacturing facilities around there. But he pointed out El Paco Road (CR 3) and noted a couple hundred yards north of the property starts a very dense housing division. He noted on La Rue Street a quarter of a mile starts residential area with nice middle class homes east of the property. He noted a large field right across La Rue Street from this property that is totally vacant and a business building that Mr. Byron believes is vacant. While it is zoned manufacturing, there is a residential area nearby so he believes it is fair to say the property has more characteristics than just manufacturing. He noted this Special Use does appeal to people who live in the area and need to have a place for youth and adult recreation. They believe this property would be conducive to that. He showed a series of slides of the property which has been sitting vacant for approximately 3 ½ years. He pointed out it is existing and already there. As it is not being used, it creates a blighted atmosphere and in its present state is detrimental to the neighborhood.

Mr. Hesser asked Mr. Byron to address the plumbing issue because his recollection was that one or more of the buildings they are planning to use either didn't have useable water or toilets. Mr. Byron said Mr. Coleman will have to develop a good plumbing plan. He noted Mr. Coleman hasn't engaged anyone to do that because he is waiting for approval. For a more consumer-type use, Mr. Byron noted there will have to be some reworking of the plumbing. With many old factory buildings sitting empty and vacant in Elkhart, they are proposing to put

this building back to use. Regarding chemicals being stored in the building which gives rise to whether or not there should be any mitigation of that, Mr. Byron said there was documentation for everything that came into and went out of that building. He did note when it was purchased in 1980, it was an existing paint business. He noted a Phase I that was done in 2008. He said there were 30 employees that would typically work at this facility, and there were no epidemic health issues of any sort. Although Elkhart County has had some environmental disasters, El Paco never had any kind of an environmental catastrophe. They think the property is safe enough to use.

Doug Elliot of D & B Environmental Services, 401 Lincolnway West, Osceola, was present on behalf of this request. He said he has been affiliated with the facility in question since 2002, as he specialized in their regulatory compliance assistance from an air pollution standpoint. This was a major source under IDEM regulations, and they carried a major source permit which required on-going monthly monitoring of all chemical through-puts. D & B Environmental has also assisted them with their industrial waste disposal for a significant period of time. As previously indicated, he said the company was a good steward. As a coating manufacturing company, and by default, they used large volumes of chemicals. He said long-standing chemical facilities do tend to create area of concern over time. He said they are not aware of any significant environmental concerns that have occurred in the last decade at this site. In response to this petition for a change of use, they were requested to come in and pull some additional subsurface samples of two monitoring wells. He said they chose the monitoring wells which were on the down-graded side of the property which would indicate anything that would be sourced on the property moving off-site, and those results were provided. All samples were pulled on October 9, 2013, and they showed all below detection limits. Ms. Snyder asked if there was a recommendation out of that Phase I in 2008. He confirmed there was a Phase I conducted in 2008, and there is significant history with the site. But the ultimate conclusion was "No Further Action". Attorney Kolbus pointed out they went beyond those recommendations with the recent testing.

Thomas Moore, 1869 S. Stone Maple Lane, 33D, Elkhart, was present on behalf of this request. He stated he was employed at El Paco Coatings from 1998 until April 2009 as a Plant Manager. He said he was responsible for all of the paint activities in the plant as far as production, shipping, and receiving. He stated they conducted weekly inspections of the hazardous waste areas and flammable material areas as required by the State of Indiana. He said this was documented and recorded, and the logging of these inspections was noted and documented. He said they also conducted safety programs and training programs through D & B which is on record at D & B. He said they conducted weekly and monthly inspections to make sure there were no leaks, and the flammable tanks outside were checked daily for leaks. When Mr. Homan asked the total number of employees, Mr. Moore said when he started there were a total of 30 including the office and plant. Further, Mr. Homan inquired if the property is served by Elkhart City sewer. Mr. Moore reported there was a septic tank that was pumped periodically.

Randy Meert, 28999 Westwynd Drive, Elkhart, was present in favor of this request. He said he and his wife take walks in the area of this property and said they feel very safe there. Although he realizes it is on the edge of an industrial area, he said it has a very residential feel to it in terms of the location. In terms of the need for this type of a facility in this area, knowing

what is there and the opportunity for people to be involved, he feels it would be a great addition to the neighborhood.

Anthony Coleman, 516 S. Main Street, Apt. 305, was present on behalf of this request. In response to Mrs. Wolgamood's question regarding the Health Department, he said they had the septic pumped prior to the last hearing. Regarding the bathroom issue, he said Plant 1 has three bathrooms, including a shower stall. Although they will definitely be updated, he said they all work and can be used in their present condition. Regarding the main building they are going to use, he said they cannot put a bathroom there because the sump pump is all the way on the other side. He said the bathrooms are approximately 100 paces from the main building. Mr. Hesser questioned if there would be Health Department issues with respect to that permitting occupancy. Noting they consider public safety, with the property being on a well traveled highway, Mr. Homan noted concern about traffic flow and parking. He asked about the age range wondering if there would be teenagers with cars zipping in and out or an after school drop-off. For the indoor soccer field, Mr. Coleman indicated they have secured parking at Global Glass and the property on the east for off-time parking. If approved, he noted they are going to fill in both of the loading docks and put up safety rail along the north side of property to make sure the area is as safe as they can possibly make it. Mr. Homan questioned if the staff or kids will always be coming onto the property from La Rue Street. Mr. Coleman reported there is no access from US 33, and the only entrance onto the property is from La Rue Street.

When Ms. Snyder asked about days of operation, Mr. Hesser clarified it will be open seven days a week. Mr. Coleman mentioned in Elkhart County there is the Boys & Girls Club, the old YMCA conglomerate, and Lifeline but most of these places are not open long enough. When Mr. Hesser asked if they anticipate most of the users will be from the neighborhood, Mr. Coleman said the Jimtown community is going to be their hub, but they are anticipating reaching the entire community because they are going to have transportation into the city.

Mike Kurtz, 67354 Kensington, Goshen, was present in support of this request. He stated he has lived at the listed address for approximately four months but prior to that, he lived in the Baugo Township area. He said he was involved with the volunteer firemen and spent a lot of time in that area with individuals through that service. He said there is a definite need for kids in that area, and it is very heavily populated. He said there is a lot of need for those individuals to have a place to go before and after school. From what he has heard, he said it strikes a place in his heart. He thinks the safety process went into this as far as access off of La Rue Street, and the plans that they have there are something that deserve some good consideration.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said he questions the practicalities of it but that is not something the Board has to worry about as well as Health Department or environmental issues. As far as just the request for this use, he said he does not see a problem with it. Because of the practical considerations as to whether this can be pulled off, he said he would be very much inclined to put a time limit on it but has no objection to what they want to do. Although answered, Ms. Snyder noted her concern was environmental, but the tests came back okay. She pointed out Mr. Coleman is buying the property on land contract, so at some point there could be a stop-gap where he will have to have another Phase I because those are only good for every six months now but noted they have a good base line. She stated she agrees with the practicality of it and the

funding. Mr. Kolbus noted those issues are not land use. If approved, Mr. Hesser asked if there would be any other issues that staff would want the Board to address which Mr. Mabry indicated no. Mrs. Wolgamood mentioned parking but noted that would fall on staff in the permit process to determine if parking is adequate. Mr. Homan noted he is all for it but wondered about the details, safety issues, and the unknowns. He noted somebody has to look at it as it develops into the future. Mr. Hesser asked if Mr. Homan had questions he wanted answered or to see how it works which Mr. Homan answered that he wanted to see how it works. Mr. Hesser suggested the request could be continued to have staff work with it and come up with recommended conditions/restrictions. But he noted he does not want to do that if the Board is not going to lean toward approving it. He also suggested they could approve the request with a time limit of a year to be reviewed.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan that this request for a Special Use for a youth and adult recreational center (Specifications F - #20) be approved based on the Findings and Conclusions of the Board:

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

The following condition was imposed:

1. 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.
2. Approved for a period of one year with renewal before the Advisory Board of Zoning Appeals.

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

Yes: Robert Homan, Meg Wolgamood, Lori Snyder, Randy Hesser.

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

21. The first staff item was presented by Brian Mabry for Benton Mennonite Church, Inc. – 15350CR 44-130218-1, and they are requesting an Improvement Location Permit deadline extension. He reported it was approved in March of 2013 with 180 to obtain the ILP. As they are unable to meet that deadline which would have passed in mid September, they are requesting the deadline be extended to March 1, 2014, based on the need for fundraising and weather.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan that this request be considered a minor change.

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

Yes: Robert Homan, Meg Wolgamood, Lori Snyder, Randy Hesser.

22. Mr. Mabry also presented the second staff item for Robertson Chomphanuvong (owner) and Sourkahn Keovilayvong (co-owner) – 17341Us Highway20-100819-1. The request is for a 72'x86' building for religious practices to hold the services and current building used for the ceremony would be used a housing for the preacher. This is brought to the Board as a major/minor change for an amendment to the existing the Special Use permit for an addition to a place of worship. He submitted an aerial photo that shows an accessory building highlighted that would be removed, and the new building is proposed in the northwest corner *[attached to file as Staff Exhibit #1]*. He further stated the location of the new proposed building is larger than the accessory is in line with the north and west sides of the existing accessory building. Mr. Hesser said he would expect this would likely be approved, but he does not feel a building that large is a minor change. Mr. Homan noted he believed there were some remonstrators previously.

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 is determined to be a major change.

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

Yes: Robert Homan, Meg Wolgamood, Lori Snyder, Randy Hesser.

23. Zoning Ordinance update was presented by Chris Godlewski. He said he will send a copy of the changes made to the first half of the draft to be read at their leisure.

24. 2014 Planning calendar was presented by Duane Burrow. A motion was made and seconded (*Hesser/Snyder*) that the Board accept the calendar as recommended. The motion passed with a unanimous vote.

25. The meeting was adjourned at 2:09 pm.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary