

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19TH DAY OF SEPTEMBER 2013 AT 8:30 A.M.
MEETING ROOM - DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

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

Roll Call.

Present: Robert Homan, Doug Miller, Tony Campanello, Lori Snyder, Randy Hesser.

Absent: Meg Wolgamood.

2. A motion was made and seconded (*Miller/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 15th day of August 2013 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Homan/Miller*) that the legal advertisements, having been published on the 7th day of September 2013 in the Goshen News and on the 8th day of September 2013 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

4. A motion was made and seconded (*Homan/Campanello*) that the Board accepts the Zoning Ordinance and Staff Report materials as evidence into the record and the motion was carried with a unanimous roll call vote.

5. The application of **Kenneth S. & Sarah L. Norris** for a Special Use for a privately owned recreation business for wedding venues and similar special events (Specifications F - #20) on property located on the North side of CR 50, 1,800 ft. West of CR 13, common address of 24335 CR 50 in Union Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #24335CR 50-130819-1*.

There were 13 neighboring property owners notified of this request.

Sarah Norris, 7910 Jarrah Road, Plymouth, was present on behalf of this request. She indicated they are proposing to open Norris Estate for weddings, receptions, corporate events, and other special occasions. When Mr. Hesser asked if this is their residence, she indicated it is not. When he inquired further, Mrs. Norris said there is no residence, and no one has ever lived on the property. She added that the building he is referring to is at the north end of the drive, and it is just a barn that was basically a "man shack". Due to the dark copies of the site plan, Mr. Homan inquired about the buildings on the south portion of the property. She said there is a small garage used for storage, a small goat barn with a small pasture, and a horse barn. When he asked if any of these buildings were intended to be used for the events, she indicated they are not. She added that the main building at the north of the property is used for the venue. Mr. Campanello noted that the petition states they have had conversations with neighbors about this request. Mrs. Norris said everyone is aware of it as they have discussed it face-to-face with

them, and they have been very supportive. She further indicated they informed them of the hours of operation when someone does lease the property will be from 10:00 a.m. until 11:00 p.m. so it doesn't go excessively into the night. They plan on having staff there to manage it so things do wrap up being as there are residential properties around them. When Mr. Campanello asked how many events have been held there already, Mrs. Norris indicated there have not been any at this time. He noted that the neighbors aren't really aware yet of what they are getting into by saying yes. She did report having an open house there on August 4, 2013, which she apologized to the Board as they did not realize they were infringing on any zoning issues and were not willfully acting out against it. She said they had a good number of their neighbors and the community that did show up for the open house, and they were great with it. They had a tent set up and the property is large enough that it is not even visible due to trees, hedges, and rolling areas. When Mr. Campanello suggested the possibility of constructing a barn or structure to hold events inside, she indicated no as they are going to be seasonal from May until the end of October. Mrs. Norris indicated the property is 36 acres when Ms. Snyder inquired.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan noted it is a beautiful piece of property and appears to be low impact. Mr. Campanello said this type of facility is needed around here.

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 a privately owned recreation business for wedding venues and similar special events (Specifications F - #20) 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, Lori Snyder, Randy Hesser.

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

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #58512Old CR 17-130816-1*.

There were 33 neighboring property owners notified of this request.

Enos Yoder, 57594 Heritage Way, Goshen, was present on behalf of DJ Construction representing the church but is also a member of the church. He noted additional church members

also present today are Phil Neff, former County Commissioner and church member; Don Hoffman, long-time member but also represents the Cemetery Association; and Ken Booth, Chairman of the Board of Deacons. Mr. Yoder noted they are also available to answer questions the Board might have. He reiterated that they had previously submitted a request in May 2013 to update the Special Use from the 2011 hearing. He further indicated in the process of talking with to the neighbors, some new information became available which ended up being a “game changer” which is why they decided to table the request at that point and study the situation further. Using the aerial, he indicated property that the church owns all around one parcel. In the process of talking to that neighbor, he informed the Board that they reached an agreement to procure that property which made a lot of sense for how they want to develop the site.

He noted one of the changes they are talking about from 2011, is to rework parking to the south, and they had an eastern parking lot approved which they want to reconfigure a bit. He said it is basically just some tweaking with the way they are doing the parking lot. He indicated they have completed research and have a new site design based on some studies of how traffic flows safely into and out of the campus. He noted they have talked with Jason Kauffman and have an erosion control plan underway with Jones Petrie Rafinski. So before any work would be done, a new erosion control plan would be put in place. He further stated they met with Jeff Taylor of the Elkhart County Highway Department and discussed a site plan, the present drives, and the need for possible future drives. He said it was Mr. Taylor’s recommendation that they include some wording that this property would maintain three drives. He indicated the primary reason being the one to the north is a shared drive that needs to remain with the cemetery. He said it serves the church a little but really is not very useful in the church flow. Basically, they are left with two drives that they plan to keep intact for this design. He noted if they move the drives in the future, they are aware they will have to meet all county standards. Mr. Yoder said he has personally met with Ron Brooks, who owns the southern property, and has a stand of arborvitaes that are fairly mature but a few of them have died. He reported they have reached an agreement to place a buffer there and relocate some pine trees for Mr. Brooks. Mr. Yoder stated they sent out invitations for an open house at the church to 30 adjacent neighbors, not just the ones with property adjacent but also on the other side of Old CR 17. The only neighbor that showed up was Ron Brooks, and they have had a good discussion with him. They also believe Mr. Brooks is the only property owner that is really affected by what they are talking about as well.

From this standpoint, Mr. Yoder said they think they are offering site improvements for neighborhood and as well as for the church, and they believe it meets all of the tests that the staff has put to this request.

Regarding the newly purchased property, Mr. Campanello asked if the Highway Department is also allowing the church to use that driveway as an entrance and exit because a curb cut already exists. Mr. Yoder said they do not intend to keep it as an entrance long term but would probably keep it during a construction phase as a construction entrance because it would keep the heavy equipment from coming over the asphalt. Their goal would be to maintain it merely for the construction phase. If it stays, he noted it has to be brought up to county standards, and that is really not part of what they are intending to do at this phase. Mr. Campanello inquired if the long term plan for the extra parking is due to growth in the church, and Mr. Yoder indicated yes. He further inquired if the extra parking was for the baseball

diamonds, which Mr. Yoder indicated no. Mr. Yoder went on to say that although they do not show on the aerial photo, the baseball diamonds are further developed. He noted the diamonds are doing a great job with some amateur kids and are for working with some kids to develop their skill set. He said you might see a dozen cars throughout an evening at the diamonds, but it is just basically some parents and girlfriends keeping in touch with what is going on. It is not really a high traffic environment and is just really for the church's use.

Regarding the east parking lot expansion, Mr. Hesser asked Mr. Yoder to indicate on the aerial where a new building is being built and one is being relocated. Referring to the site plan they submitted, he said they had on the previous Special Use plan a new relocated storage area. He said they have tweaked that a little bit and there will be a day that they may need to relocate the pavilion. So the thought was that the pavilion should probably be in the proximity of the area of the ball fields as well. He said the actual final configuration maybe change when they get the designs done. They thought they would mention at this point that the pavilion does not need to move in this phase but while they are at it, they might make provisions to get the pavilion moved as well. He noted stuck in the middle of the property would be a cluster of a storage building and maybe a future pavilion. Mr. Hesser asked and Mr. Yoder clarified that the current long term site plan is stamped as received August 30, 2013.

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 an amendment to an existing Special Use for a church to allow for additional parking, to include additional property, and to re-locate a storage building and pavilion (Specifications F - #48) be approved with the following condition imposed:

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

The following commitment was 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, Lori Snyder, Randy Hesser.

7. The application of *Eugene & Susan Hochstetler* for a Special Use to allow for an agricultural use (keeping of horses) in an R-2 district (Specifications F - #1) on property located on the North side of CR 4, 4,100 ft. East of SR 13, common address of 10361 CR 4 in York Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #10361CR 4-130819-1*.

There were eight neighboring property owners notified of this request.

Present on behalf of this request was Eugene Hochstetler, 10361 CR 4. He indicated they would like to build a barn with a side lean-to for horses and personal storage of buggies and a

tractor. When Mr. Miller inquired about the lean-to, Mr. Hochstetler stated it will be 10 ft. and on the west(back) side. Mr. Miller confirmed with Mr. Mabry that the required side setback is five feet.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use to allow for an agricultural use (keeping of horses) in an R-2 district (Specifications F - #1) be approved with the following condition imposed:

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

The following conditions were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for a maximum of two horses.

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

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

8. 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. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #28867Old US 33-130819-1*. He noted additional physical improvements as several former manufacturing building on the property as well as some parking area and loading facilities.

There were nine neighboring property owners notified of this request.

Anthony Coleman, 516 S. Main St, Apt 305, Elkhart, was present on behalf of this request. He said what they would like to do in this entire complex is not only have a ballroom but also offer an overall community center in the neighborhood. Looking at other developments of this nature, a community center would actually add to the overall revenue in this area. He pointed out approximately ten years ago, The Sports Center did the same thing in an agricultural development, and it brought income and business in Elkhart County. He noted this property was a paint shop but has been closed for the past four years. He said they have removed all of the hazardous materials, and the septic were pumped and drained last week so there is no potential harm or damage to potential visitors. When Mr. Hesser inquired if the facilities had been inspected by an environmental firm, Mr. Coleman indicated that had not occurred to date. Mr. Homan asked if that property is on city water and sewer services. Mr. Coleman indicated yes. Mr. Homan noted previous contamination issues with the nearby rail yard.

When Ms. Snyder asked where the funding is coming from for the project, Mr. Coleman indicated so far he has been using his finances, but added that they are looking into grants. He went on to explain that the idea for this project was born from the recent murders in Elkhart County, the drop-out rates, and low ISTEP test scores. He said they want to open up an avenue with the funding and grant money to be able to offer the youth of Elkhart County an alternative to the situation. He noted when they walk the adjoining neighborhoods around this property, there have been a lot of break-ins throughout the neighborhood. A few residents feel if they had something else to do, maybe the kids would not be breaking into the houses. Ms. Snyder inquired then if this would be geared for just the residential area around the property which Mr. Coleman explained the program would be a city-wide youth center.

Mr. Miller noted the site plan looks like there are a lot of ambitious aspirations and asked if the work is to be completed in phases over a period of time. Mr. Coleman said the work will probably be completed in five different phases simply because of funding. He explained the old manufacturing building will not be open at this time because they need to go inside and take down a structure that was constructed inside of it. Using the aerial photo, he indicated they want to focus their attention on the northeast building at this time which has well water. He noted the west building will not be used until next spring when they are able to secure funding to open up the youth center, the game room, and ballroom area. He reported the first building to be renovated would contain a computer lab, mentoring, tutoring, and on-the-job training.

Mr. Homan inquired about city support for the project. Mr. Coleman said he has support from Elkhart Community Schools and two Elkhart City council members, Tonda Hines and Rod Roberson. He went on to say that he did not want to go all the way in spreading the word about his plans before this request was approved because he didn't want to have to backtrack and mar his personal integrity. Referring back to city sewer and water services, Mr. Homan noted that Mr. Coleman indicated two of the buildings have well and septic systems. Although he said he does not know the exact plume area of the contamination from the rail yard, Mr. Homan said he knows it moves north. He asked if the water had been checked or if it will be checked for safety of consumption as that is a public safety concern. Mr. Coleman reported the Health Department visited the site the previous week and determined because of the location of the septic, they could not put a restroom in one of the buildings. After draining the septic, he said the Health Department informed him that they did not see anything wrong with the well water. He reported they would not put water in one of the buildings because prior to this, there was a sprinkler system in it. He also said the water has already been shut off in that building and since they cannot put restrooms in it anyway, he does not believe they will be using city water services. When Mr. Hesser questioned if there were existing restrooms, Mr. Coleman said there are three restrooms in the main two buildings they want to start with. Mr. Campanello said he was pretty sure they have access to city water at that property.

Regarding transportation, Ms. Snyder questioned if Mr. Coleman had spoken with the schools in terms of the kids from the city and asked how the kids are going to get out there to that area. He responded by saying that right now they have three volunteers who are Elkhart Community Schools bus drivers who will donate their time to transport kids before and after school. He also noted Elkhart pushed back their start time to 9:00 a.m. Mr. Coleman did acknowledge that these issues are major concerns when you talk about the health and welfare of these youth when you have parents going to work at 5:00 a.m. and 6:00 a.m. He is concerned

about the care of the children between those hours so they are able to have a safe location away from the normal hum drum of life inside this facility. It is safe and there is nothing that they can really get into outside of this facility to properly prepare them for the school day. When Mr. Hesser inquired if this location is in the Elkhart school district, Mr. Coleman reported it is actually in the Jimtown school district.

There were no remonstrators present.

The public hearing was closed at this time.

At first blush, Mr. Miller indicated he understands staff's position with respect to the denial. He thinks it is not a bad concept but there are a lot of loose ends in terms of public safety and what the Board would be on the hook for that it cannot be approved today. He also noted he is not saying that if it comes back that they would guarantee approval. He said he would be in favor of tabling this petition today to see if the concerns can be worked out. Ms. Snyder and Mr. Campanello expressed agreement. Mr. Homan indicated he thinks they need to list specific concerns for Mr. Coleman to resolve. Mr. Miller pointed out they have nothing in writing regarding whether it is been checked out environmentally, and that is a big issue. He also said they have no certification that the water supply or septic are valid. He continued by saying that they do not know from a building code standpoint that the buildings can do what Mr. Coleman wants to do there and thinks there needs to be documentation to support that. Ms. Snyder mentioned the number of kids that can be in that amount of space. Regarding fire safety, Mr. Miller mentioned having a Fire Marshal look at it. Addressing the petitioner and his mention of fire suppression in one of the buildings that is shut off right now, Mr. Homan asked if the two main buildings have it. Mr. Coleman said that they do. Mr. Homan suggested the fire protection should be inspected for serviceability. Ms. Snyder inquired if Mr. Coleman was purchasing this property on land contract, which Mr. Coleman indicated was correct. She further asked how long he has been involved in the land contact. He said the official transfer of sales went in on September 1, 2013. She questioned if the owner has any environmental information or written documentation for Mr. Coleman and suggested he inquire about it to save some money. Additionally, Mr. Campanello suggested it might save Mr. Coleman from getting himself into a piece of property that he cannot get out of.

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

Motion: Action: Table, **Moved by** Doug Miller, **Seconded by** Tony Campanello that this request for a Special Use for a youth and adult recreational center (Specifications F - #20) be tabled until the November 21, 2013, Advisory Board of Zoning Appeals meeting to allow petitioner time to work with staff to address all existing issues.

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

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

9. The application of *Matthew L. Miller* for a Special Use for a home workshop/business for construction business (Specifications F - #45) and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the East side of CR 33, 1,150 ft. South of US 33, common address of 68548 CR 33 in Benton Township, zoned A-1, came on to be heard.

In the absence of the petitioner and any public comment as there is no public present, Mr. Homan referred back to last month's minutes, testimony presented by the petitioner and remonstrators, as well as accepting the revised staff analysis and recommendation. He reiterated that the petitioner is a contractor who states that he can run his business from his home. Mr. Miller has decided to move towards a home workshop/business. He noted there are a number of red flags including the trash issue. Mr. Miller bought the house in foreclosure, and it was trashy then. He is theoretically trying to clean it up, but he has lived there four years, and it is still not cleaned up. Neighbors are concerned about a burn pit and trash blowing into adjacent farm fields from the property which is a serious concern. Mr. Homan also pointed out that even Mr. Miller stated he wasn't sure he could get all of his equipment into a building even the originally proposed building which was in excess of the square footage of his residence on site. Mr. Miller did submit a proposal in the last month to staff for a larger building with a layout of where his construction equipment would be stored. Mr. Homan expressed that he is not sure this petitioner, under any circumstance, is going to be able to manage his Special Use in a way that is going to be in conformity with the definition of a home workshop. He expressed that he wants to see some evidence and some actual practical management of the property of the Special Use before he is going to feel very comfortable with this. He noted he does like the staff's conclusions both with regard to the home workshop and the Developmental Variance which would be denied. He pointed out that Mr. Miller can still construct a building up to 2,200 sq. ft.

It should be noted that Matthew Miller arrived at this time.

Mr. Mabry presented the Revised Staff Report/Staff Analysis, which is attached for review as *Case #68548CR 33-130624-1*. A copy of the Revised Staff Report was submitted at this time *[attached to file as Staff Exhibit #1]*. He noted at the end of item 2b, there should be the word "and" because all three items apply. They are not optional to pick and choose.

Matt Miller, 68548 CR 33, was present on behalf of this request. Regarding the pile that Mr. Mabry mentioned, he said he just got it removed. He explained he could not do anything for awhile as he had a broken leg and broken arm. He reported he bought another dump trailer so he has two trailers to remove any debris he gets from a job. As far as getting a dumpster, he reported he can still do that. As far as the building, he stated to build something smaller would not make much sense for him because it would not do what he needs so he wouldn't be gaining much. Mr. Homan inquired about the number of employees, which Mr. Miller reported is two.

Regarding the complaint that was received which Mr. Miller feels is obviously from the property owner to the south, he said he thought that neighbor would be present today. He reported that neighbor would rather he remove both of the older buildings and build a new one which is why Mr. Miller changed it. He pointed out it would make his neighbors happier and would actually be better for him, too, because it would create more room in the front for him. He went on to say that he is afraid if he tries to go much smaller, then everything won't fit inside and he'll have the same issue. On the amended questionnaire, Mr. Homan noted that he moved from a 3,600 sq. ft. building to a 4,500 sq. ft. building. Mr. Miller explained he was originally planning on leaving the second building, on the right, and just redoing it. He noted in his new plan, the building would be turned. He indicated he thinks the actual addition was about 100 ft. less than that building would have been, the one he was taking down, so the actual square

footage would have been less of an increase than had he left that building there and built the original which is why he did that. He said he is just afraid if he tries to go much smaller than that, pretty soon not everything is going to fit inside, and he will have the same issue.

Mr. Homan mentioned there have been some complaints about the burn pile regarding the size of it and just the fact that it's there. He noted conversations with the County and Mr. Miller's previous mention of a dumpster in terms of cleaning up the property. While Mr. Homan said he understands he might need a dumpster to get things out, he asked Mr. Miller if a dumpster is something he sees as a permanent necessity for the building. Mr. Miller said he actually removed it already as it was removed last Saturday. He submitted photos *[attached to file as Petitioner's Exhibit #1]* of the location where the burn pile was previously located. He said he has no intention of having another pile. He indicated he did not realize any of his neighbors had a problem because the neighbor to the south used to put stuff on Mr. Miller's burn pile.

Regarding the conditions recommended by staff and included in their report, Mr. Homan asked Mr. Miller if he believes he can conform to them which Mr. Miller indicated yes. Mr. Miller reiterated that he bought the property at the Sheriff's sale and wants to improve the rest of the property and has full intentions of redoing everything in that place. But he has to be able to do his business or it will not make any sense. He wants to redo the house, landscaping, grass, etc., in the next year or two. He did not have the funds to do it when he first bought the property, but he does now. He said it didn't make any sense to him to put a lot of money into the rest of the property but still have the old accessory buildings. He thinks all of his neighbors would be happy to see him improve the property. When Mr. Hesser asked if he is living on the property now, Mr. Miller said yes as it is just an older farm house. Mr. Campanello questioned how long it will take him to complete the building, and Mr. Miller stated he could finish it in approximately 30-45 days. He did mention that he was thinking of possibly waiting until spring to concrete it. He added that the guy who does his concrete is pretty backed up and believes it would be two months before he could get to Mr. Miller's project. Mr. Campanello further asked if this will be a pole structure which Mr. Miller said yes.

To recap, Mr. Hesser said the request has been changed to add significantly to the proposed square footage that he is going to be building. But last time when this was discussed, there was a question raised about whether or not the proposed building would be sufficient to get everything inside. He inquired if Mr. Miller could operate this with a smaller building, and noted the application now indicates a 60/40 split for business/personal use for the structure. Mr. Miller reported the reason for changing it so the long side would face the front is so he can get it and out easily. With the building the other way, with the driveway in the front, he said he would be trying to get everything through two garage doors. If there is equipment in the back, things would have to be moved in order to get items in and out. He believes with the other one, he could do a much better job, and it would also pretty much eliminate putting stuff behind the building. With the building being built in the long direction, he would not even be able to get out around and behind the building. Regarding building a smaller structure, he said he probably could but he would rather build big and not have to come back in a couple of years to request an addition.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello mentioned he was surprised no one else was present for the hearing. When he inquired if this petition was re-advertised, Mr. Mabry said this was not because when it was tabled at the previous, today's date was given so anyone present would have been aware of it. Mr. Homan indicated his only concern with that is the change in the square footage of the request of the building not being advertised. Attorney Kolbus pointed out that square footage of structures is not advertised anymore, just that they want to exceed the square footage of the primary because of issues where the Board or petitioner have adjusted it at the meeting. In the past, Mr. Campanello inquired if this would be setting a precedent bigger than the Board has ever done before. Mr. Homan said this request is the chicken before the egg because he questions whether the petitioner will actually perform within the guidelines of a Special Use under any circumstance is a question he has and the other is at what point does a business go beyond the scope of home workshop/business. He pointed out that there are rules such as two employees which is within a home workshop. If he can keep it within a building of whatever size, that is within home workshop. On the other hand, they are going to have a lot of traffic going in and out with all of these trucks, trailers, and materials, it is going to be a pretty busy site if he has a going concerned business. He mentioned impact on the property and impact on neighboring properties. He questioned where they draw the line, and said they have always struggled with that. To him, this is one that isn't really a slam dunk of fitting into the definition of home workshop from an impact standpoint. Mr. Homan mentioned he was stating his concerns when Mr. Miller walked in to the hearing that there have been photos, testimony, and some comments about the state of disrepair of the property. He noted Mr. Miller had said his intention is to improve that but the fact is that he has been there four years, and the property still looks rough. He noted the complaints from the neighbor about visual impact, trash, and trash crossing the boundary of the property which is a concern.

He also noted Mr. Miller's testimony that he would try to get the equipment in the building but maybe it would all fit and maybe it wouldn't. He pointed out Mr. Miller is buying trailers and selling trailers, and he is not sure Mr. Miller is going to be able to control the size of the business. Sitting here, Mr. Homan said he would like to see some performance before the approval of anything. He said he thinks the staff's recommendation for a one year approval for a review can get them to that point so they can take a look at how he runs his business. It makes sense to him given the testimony and evidence that has been presented so far. He said he thinks the home workshop/business should be approved. But the question in his mind is the building. If they allow the smaller building with the 60% business and 40% personal storage, then if Mr. Miller came back after a year for a review, and the Board saw that he is running things right and taking care of things, Mr. Campanello asked if it would be allowable that Mr. Miller come back and ask for that extra. Mr. Homan said it would be. He indicated he was just throwing out a thought, and he is not saying that he is supporting anything other than denying the Developmental Variance. But regardless, the one year look-back, Mr. Homan thinks it is going to take Mr. Miller more than 90 days to put a building up and have it functioning. He added that he believes Mr. Miller is going to use most of his year getting the building up and stocking the building. He still comes back to the fact that he would like to actually see if Mr. Miller can perform within the guidelines of a home workshop and added that he is not sure that a year is long enough. He suggested possibly a review in two years to actually make the improvements to the property, operate the business, and then unless there is a valid compliant, look at it. Mr.

Campanello suggested that means the building would not go up and he still would have his equipment outside. Mr. Homan said Mr. Miller can put a building up, but it is going to be a small building. It sounds to him like Mr. Miller will not be able to get all of his stuff in it which is the problem. Mr. Hesser pointed out if Mr. Miller does not get his stuff inside, then he is not going to be a home workshop because he will have outside storage. Mr. Kolbus added that would be setting him up to fail. Mr. Homan suggested the possibility of storing equipment at another location, but he does not believe that is something that Mr. Miller wants to do.

Addressing Mr. Miller, Mr. Homan noted he bought a trailer, and it seems to him like Mr. Miller has a lot of equipment. From prior testimony, Mr. Homan said it seems he is buying more and selling more. He asked Mr. Miller if he is pretty well set with his equipment. Mr. Miller commented about when the aerial photos were possibly taken, stated he has gotten rid of a couple of items in the photo such as the RV, and noted he cleaned the front up quite a bit just recently. He said he does want the place to look better but reported the two buildings are an eyesore they way they are. As far as him improving the property and cleaning up, he said he is not sure how he is supposed to be able to do that without a new building. He stated his full intention of putting the building up is to get everything inside. Referring to his drawing of the layout of the proposed building, Mr. Homan said there is a truck, five trailers, and some personal storage. Mr. Miller noted some trailers that he does not use and one is for sale at this time. He said he has not bought any more. He said he bought the second dump trailer specifically as part of this as he wanted to be able to haul things to the landfill if he needed. Mr. Homan repeated his question about the pieces of equipment being shown on the site plan as five trailers (a goose neck, 24 ft. pull behind, 18 ft. utility, 13 ft. dump, and 12 ft. box trailer) being the same number of trailers he owns today. Mr. Miller said that is correct. Mr. Homan confirmed that Mr. Miller is trying to sell one now, so he might be down to four trailers in the future. Mr. Homan inquired about the Ford truck whether it was a pick-up or large delivery truck, and Mr. Miller said he has a Ford and a Dodge for his main vehicles and the other one is a back-up. When Mr. Homan asked if they were pick-ups for personal use going back and forth to jobs which Mr. Miller indicated was correct. Mr. Homan noted they would not have to be inside the building, but they could be.

Mr. Campanello suggested the possibility of approving the home workshop and require a fenced or screened area to hold the equipment for a certain period of time, monitor the business, and then come back for a Developmental Variance. Mr. Homan said that would get into the yard/storage issue instead of a home workshop if it goes that route. Mr. Mabry said they have had petitions come back as a Use Variance when outside storage is involved. Mr. Hesser questioned Mr. Miller about the large building on the adjacent property to the south and its use. Mr. Miller indicated it is basically the same thing as the one he wants to build. Mr. Hesser asked if it is a large garage-type building which Mr. Miller confirmed. He further explained that the neighbor lives on the lake in Syracuse so there is not a lot of room at his residence. When Mr. Hesser suggested the neighbor's use of the building was not agricultural, Mr. Miller agreed. When Mr. Campanello asked if there is a house on that property, Mr. Miller said there is not.

Regarding the Developmental Variance, Mr. Hesser noted it is a large one being roughly twice the size of the house. He said he thinks between today and the last hearing, operating the business at the level it is, with two employees, he does not have a problem at this point today saying it is incidental. The home is the primary use so that part of the home workshop definition

is appropriate. But also the home workshop is going to require inside storage of everything, so it needs to be something this big or close to it. In light of the building to the south, Mr. Hesser said he would not have a problem approving it. A concern of his is that the trash and some other issues are there or have been there in the past. The Board is very reluctant to go ahead and approve a building, then the building is constructed, it is given a two year Special Use, and they are going to balk and say to tear down the building or that the building cannot be used there. He said if this is approved, Mr. Miller needs to understand that this has got to be run right, and there cannot be trash. If it is not run right, he is going to spend all this money and then two years from now the Board is going to say the building cannot be used for a construction business any more. He noted that is the risk, and Mr. Miller will need to understand it.

Mr. Homan mentioned there have been two proposals presented by the petition for two different square footages. In terms of the Developmental Variance, if the Board were going to approve it specifically, he asked if it made a difference which building. He said he thinks Mr. Miller can get all of the stuff into a 3,600 sq. ft. relating to the business alone. He further questioned if it makes any difference to the Board if there is an extra 1,000 ft. of building space. The fact that there is that big building to the south of it and if this would get everything in the building with nothing stored outside, Mr. Hesser said aesthetically he would rather have that. Thinking back, Ms. Snyder said she is surprised that none of the other neighbors seem to have an issue with it at all other than the neighbor to the south that already has just a storage unit. Taking into account, Mr. Miller has been out of commission with his medical issues and making an effort to try to clean it up, and any time someone constructs a building, they never actually make it big enough, Mr. Snyder questioned if 1,000 ft. is going to make that much difference to anyone else in the area. She also thinks the clean-up is a concern so that would have to be tied in, but if it were the dream result where he had the one building and everything was cleaned up and inside, it will increase the property value of the whole area and will make everyone else happy.

Although he does not have a problem with the extra 1,000 ft. size, Mr. Campanello expressed concern about getting the building completed. He wants a commitment for a completion time. Generally speaking in this scenario if he was approved for the Developmental Variance and he built the building, Mr. Homan questioned how much time he would normally have to complete the project. Mr. Mabry said he would have 90 days to get the Improvement Location Permit/building permit, and then the building permit good for one year from the date of issue. Mr. Homan further asked if they were to approve the Developmental Variance and Mr. Miller was to construct a building, could the Board define that time or if Mr. Miller is guaranteed that time by the ordinance rules. Attorney Kolbus said because Mr. Miller is asking the Board to change the rules for him for a Developmental Variance, it is his opinion that the Board can add a condition to shorten that time period. Mr. Hesser reiterated Mr. Campanello's point that Mr. Miller cannot really conform as a home workshop until he gets the building completed and gets his equipment inside. Mr. Hesser noted he does not want to place conditions that are destined to fail. When Mr. Campanello asked Mr. Miller if he can construct the building and have it completed, Mr. Miller said yes and stated he wants it completed as soon as possible himself because he does not want his equipment outside. He reported he has built these buildings for a living and said he could probably have it built in 30 days except for the concrete.

Mr. Homan confirmed that Mr. Miller is taking down the two buildings, and his request is to build the 4,500 sq. ft. orient north to south which Mr. Miller said is correct. Since the concrete

floor seems to be an issue, Mr. Homan said if they put a time limit on having the building totally complete including concrete floor and drive, he questioned if six months was agreeable to Mr. Campanello and Mr. Miller. Both were in agreement. Mr. Hesser suggested it could be completed sooner if the weather permits. Mr. Campanello questioned if a better site plan is needed, but Mr. Homan said he feels the drawing they have is a good one as it shows eave height, gable roof, location of doors and windows, square footage, and diagram of equipment placement.

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 Revised Staff Analysis dated 9/16/13 as the Findings and Conclusions of the Board, and based upon these, this request for a Special Use for a home workshop/business for construction business (Specifications F - #45) be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. Prior to issuance of a Building Permit for the proposed structure, the petitioner must:
 - a. Remove all trash from the subject property and provide receipts from a landfill demonstrating disposal of the trash;
 - b. Provide proof that he has a contract with a solid waste service for the subject property; and
 - c. Receive a satisfactory investigation from the Code Enforcement and Environmental Health departments regarding the presence of outdoor trash on the subject property.

The following commitments were imposed:

1. Approved in accordance with the site plan dated September 3, 2013 and as presented by the petitioner's application and testimony.
2. Approved for a period of two years 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, Lori Snyder, Randy Hesser.

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Tony Campanello 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 approved for the construction of a 4,500 sq. ft. building as represented on the site plan dated September 3, 2013, and based on the representations today with 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. The proposed location of the building does not impact these big picture items.
2. Approval of the request will not cause substantial adverse affect on the neighboring property. This is an agricultural area with buildings substantially similar to it in the area.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property as the petitioner could not operate the home workshop/business without the building.

The following condition was imposed:

1. The 4,500 sq. ft. accessory building including structure, floor, and appropriate driveway to be completed within a period of six months from today (March 26, 2014).

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

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

No: Doug Miller.

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

****It should be noted that Randy Hesser steps down at this time.****

11. The first staff item for *Osolo Elementary School – 90-55-SU* – for a major/minor change to an existing Special Use for a sign was presented by Brian Mabry. He indicated Todd Wise of Bandit Signs is requesting the ability to have a 4'x6' sign on the property which he noted is shown on the aerial photo attached to the memo. The sign is located at the corner of the property at the intersection of CR 11 and CR 6 with a 50 foot setback from the right-of-way line. The sign is advertisement for the Boys and Girls Club that takes place at the school, and Mr. Wise requested this be considered a minor change. Considering the overall site plan, use, and impact on the intersection for safety issues, Mr. Homan said he doesn't see it as anything but a minor change. Mr. Campanello and Mr. Miller agreed.

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 consider the addition of a sign to the Osolo Elementary School location would have minimal impact in terms of use of the property and that the Board approve same as a Minor change to the existing Special Use.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Lori Snyder.

Absent: Randy Hesser.

****It should be noted that Mr. Hesser returns.****

12. The next staff item was for *James L. Hartman – 23987US 33-100222-1* – for a major/minor change to a Use Variance was also presented by Brian Mabry. He reported in 2010 there was a Use Variance granted for a tattoo parlor in an R-4 zoning district on a property that located on US 33 which is no longer in business. Stacy Coblentz has requested to be able to establish a dog grooming business in that location. Mr. Mabry stated he provided a summary of how those uses are handled in the Zoning Ordinance on the first page of the memo previously provided. He reported tattoo parlors are Special Uses only in B-3 with some separation requirements. He added that kennels, which encompass dog grooming facilities such as this, are allowed in a wider range of districts but still are not allowed in an R-4 district. Giving some rationale for bringing this request as potentially a minor change to the Board, he noted you could look at it as going from a more intense and sometimes thought of as a potentially problematic use to something that is thought of as more permissibly allowed in other zoning districts. He pointed

out attached reference letters that Ms. Coblenz included in her submittal and also the original staff report for the approval of the tattoo parlor, aerial photos, minutes, and result letter from the previous hearing. Mr. Campanello indicated it is a better use, but he questioned the need for a public hearing. Mr. Hesser and Mr. Homan agreed that a public hearing should be held.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the request for a change in the Use Variance for a tattoo parlor in an R-4 zoning district to a Kennel be considered a Major change.

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

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

13. The last staff item regarding pay for Board members was presented by Chris Godlewski. As follow-up to an email he sent yesterday, he reiterated how he would like to coordinate pay for Board members. With Mrs. Wolgamood’s absence, he suggested they consider this and continue discussion at next month’s meeting as a staff item. Then the discussion will be translated into the Rules of Procedure. He reported they just went through the Plan Commission Rules of Procedure and revamped all of them. He indicated this will also be completed later this year for the BZA. Mr. Campanello indicated he felt Mr. Godlewski’s idea is a good use of tax-payer money, and it should help the budget in the future. Mr. Godlewski added that it comes down to the fact that they cannot double-pay.

14. The meeting was adjourned at 10:18 a.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary