

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21ST DAY OF AUGUST 2014 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 Vice Chairperson, Meg Wolgamood. 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, Tony Campanello, Meg Wolgamood, Lori Snyder.

Absent: Randy Hesser, Doug Miller.

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 July 2014 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Campanello/Homan*) that the legal advertisements, having been published on the 9th day of August 2014 in the Goshen News and on the 11th day of August 2014 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

****It should be noted Mr. Hesser arrives at this time.****

4. A motion was made and seconded (*Campanello/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 **Perry L. & Carolyn W. Miller** for a 3 to 1 depth to width ratio Developmental Variance and a 40 ft. lot width Developmental Variance to allow for the existing residence, existing accessory and agricultural building, and to allow for the construction of an agricultural/personal storage building on property located on the East side of CR 37, 1,290 ft. North of CR 34, common address of 62780 CR 37 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 #62780CR 37-140721-1*.

There were six neighboring property owners notified of this request.

Barry Pharis, Brads-Ko Engineering & Surveying, 1009 S. Ninth, Goshen, was present representing the petitioners with Perry Miller also present. He indicated Brads-Ko represented the Millers in finalizing this Detailed Planned Unit Development which houses their wholesale business, Hopeful Harvest Farm. At that time, he said the residence was left basically intact and 40 feet of frontage remained after leaving room for a septic on the front parcel. The business has about three acres, and the balance of the property is approximately 10 acres. He said the platting of the DPUD created the current situation even though the owners remain the same. He noted if the entire frontage was included, there would be no need for these requests. The request comes

from a desire by the Millers to build a proposed barn for hay and farm equipment storage with available space for church services. He pointed out that the staff recommended a subdivision of the property as part of the approval and considering the expense, requested that they are not required to complete a minor subdivision as both parcels are the same owner.

Mrs. Wolgamood questioned if the proposed building will have anything to do with the distribution business which Mr. Pharis stated it would not.

Regarding the subdivision requirement, Mr. Mabry indicated that would be an administrative subdivision which is done at the counter and does not require the expense of having a surveyor complete the drawing. Mr. Pharis said they were advised that an Administrative Subdivision could only be completed for a new residence. He also noted additional involvement with Health, Highway, and Soil & Water which is time consuming at best. Ms. Snyder asked about restroom facilities in the proposed barn, and Mr. Pharis indicated restroom facilities are not in the plans as they are in the house which is located nearby.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus commented that if the Board is going to require the subdivision, they can specify Administrative in the motion to make it clear. Mrs. Wolgamood then questioned if the Board has the right to waive any kind of subdivision. Mr. Mabry said the Board does not have jurisdiction over the Subdivision Control Ordinance. Additionally, he stated that condition does not need to be included because it is not within the Board's realm to excuse someone anyway. As Mr. Pharis represented, Attorney Kolbus asked if administrative is limited to new residential. Mr. Mabry said administrative are also completed for properties with existing structures. When Ms. Snyder inquired about any additional costs involved in an Administrative Subdivision, Mr. Pharis indicated it would be several thousand dollars. Mrs. Wolgamood noted the Board does not look at cost as it is not a land-use issue. When Mr. Homan commented about the subdivision issue in the recommendation, Mr. Kolbus indicated staff is recommending condition #1 be removed. Mrs. Wolgamood indicated she does not have any issue with excluding it.

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

Motion: Action: Approve, **Moved by** Lori Snyder, **Seconded by** Tony Campanello that 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 3 to 1 depth to width ratio Developmental Variance and a 40 ft. lot width Developmental Variance to allow for the existing residence, existing accessory and agricultural building and to allow for the construction of an agricultural/personal storage building be approved with the following condition 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, Tony Campanello, Meg Wolgamood, Randy Hesser, Lori Snyder.

6. The application of *Lynn D. & Linda K. Helmuth* for a Developmental Variance to allow for a kennel on property less than three acres located on the West side of SR 13, 990 ft. North of

CR 24, common address of 59285 SR 13 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 #59285SR 13-140714-2*.

There were four neighboring property owners notified of this request.

Lynn Helmuth, 59285 SR 13, Middlebury, was present on behalf of this request. He indicated he wants the kennel as extra income. He said he would raise black lab puppies with four females and one male. He indicated he would contain them with a five ft. fence and plans to have a 10'x17' structure to house them in.

Including puppies, Mrs. Wolgamood asked about the total number of dogs he would have. He noted the maximum total number would be 37. She went on to inquire if the 10'x17' structure will be ample room which he indicated yes. Further, she asked if he would be kenneling other people's dogs. Mr. Helmuth indicated he would not, and it is solely for his purposes. When she inquired about a sign and additional driveway, he stated he would not have a sign or install an additional drive. He reported this would be a strictly wholesale business, and one person would pick up all of the puppies. When she asked if the business is currently in operation on site, he stated it is not; and he has not done this type of business previously.

Mr. Campanello commented that it seems to be a lot of animals at one time in a smaller area. Mr. Helmuth noted that it is not likely that they will all have puppies at the same time, and the puppies will leave at six weeks of age.

Mr. Campanello asked about the issue of waste. Mr. Helmuth said he did not believe there would be much as he will wash it down every evening which should take care of a lot of it. He also mentioned he would probably haul it onto his pasture field.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood noted the three acre requirement is a fairly recent change to the ordinance which she thinks is for a very good reason so she would support the staff recommendation. Expressing agreement, Mr. Homan added that he thinks the change in the ordinance was to reduce some of the bartering this Board has for someone to operate a kennel. He said the ordinance for a kennel now is clear-cut and seems to work so he is not one to vary from it. Additionally, he noted it was developed over many years of controversy on the board.

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

Motion: Action: Deny, **Moved by** Lori Snyder, **Seconded by** Robert Homan that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Developmental Variance to allow for a kennel on property less than three acres be denied.

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

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

7. The application of *Jennifer A. Hilliard* for a Developmental Variance to allow for the construction of a detached garage 35 ft. from centerline of the right-of-way of Ideal Beach Road (Ordinance requires 50 ft.) on property located on the North side of Ideal Beach Road, 170 ft. East of Ideal Beach Road Curve, 586 ft. North of Heaton Vista, being Lots 10 & 11 of Ideal

Beach, common address of 52256-2 Ideal Beach Rd. 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 #52256-2Ideal BeachRd-140717-1*.

There were three neighboring property owners notified of this request.

Jennifer Hilliard Souter, 52256-2 Ideal Beach Road, was present on behalf of this petition. She submitted photos *[attached to file as Petitioner Exhibit #1]* and explained the views in the photos. She noted that her house is closer to the road than the proposed garage will be. The proposed garage will be 35 ft. from centerline, and the house is approximately 15 ft. She reported there are only five homes on the dead-end street, so it is not a busy road. She also indicated a vehicle will still be able to park outside on the slab behind the garage.

There were no remonstrators present.

The public hearing was closed at this time.

Regarding the staff report and recommendation for denial, Mrs. Wolgamood said she was under the assumption that the building was going to be placed over the slab which is not the case.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan that this request for a Developmental Variance to allow for the construction of a detached garage 35 ft. from centerline of the right-of-way of Ideal Beach Road (Ordinance requires 50 ft.) be approved based on the following Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare because the detached garage will be 35 ft. from the centerline giving vehicles adequate area to pull out and to see the on-coming vehicles.
2. Approval of the request will not cause substantial adverse affect on the neighboring property because, as represented by the petitioner and the photographs submitted, her house is 15 ft. from the property line and would obstruct view versus this garage.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The following condition was imposed:

1. 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 as presented by the petitioner, 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, Tony Campanello, Meg Wolgamood, Randy Hesser, Lori Snyder.

8. The application of *Kyle Swartz (buyer) and Jean VanSkyhock (seller)* for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence on property located on the East side of CR 27, 1,280 ft. South of CR 108, in Washington Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 27-140721-1*.

There were two neighboring property owners notified of this request.

Blake Doriot, B. Doriot & Associates, P.O. Box 465, New Paris, was present representing both parties. Also present was Kyle Swartz, the purchaser and grandson of the sellers who were present as well. Mr. Doriot had Mr. Swartz submit a signed petition in support of the request [*attached to file as Petitioner Exhibit #1*] while he explained that Mr. Swartz would like to build a home near his grandparents. Originally, he noted Mr. Swartz only wanted a 50 ft. entrance but because that would require two variances, they readjusted the proposed parcel so there is 100 ft. of frontage. Noting the X's on a large aerial photo (included in file), Mr. Doriot stated they indicate affirmative signatures on Mr. Swartz's petition which includes every person contiguous and across the street who Mr. Swartz either spoke with personally face-to-face or on the telephone. Mr. Swartz living next to his grandparents will also allow the VanSkyhocks to remain on their property longer because of the assistance that Mr. Swartz and his family can provide. Mr. Doriot also noted future plans for Mr. Swartz to purchase the woods.

Kyle Schwartz, 301 W. Vistula Street, Bristol was present on behalf of this request. As he is a paramedic, he wants to live close to his grandparents as his grandfather has had some health issues in the past few years. He indicated this lot formation was chosen to keep the majority of the agricultural farm land in use as income for grandparents and reported the family has owned the property since the 1940's. He reiterated his future plan to purchase roughly nine acres including the woods from his grandparents. He reported he also showed his copy of the BZA staff report and recommendations to his neighbors if they were interested in reviewing it.

Jean VanSkyhock, 16654 CR 108, Bristol, was present as the seller of the property and grandmother of Mr. Swartz. She expressed that she is totally in favor of this petition and indicated her three grandchildren have all indicated they would like to continue ownership of the property.

There were no remonstrators present.

Mr. Doriot indicated he believes this request upholds the morals and is not going to affect the property values. By configuring the lot this way, he stated they are reducing the impact to the agricultural ground in keeping more agricultural land in production.

The public hearing was closed at this time.

Ms. Snyder noted the continued farming answered her question about placement. Mr. Hesser stated he agrees with #3 of the staff findings as he feels you could move the bulk of building area down toward the road and not need a variance. Mr. Homan noted the history of "flag" lots before the Board but with compelling arguments in this case, said he would support the request in this case. Additionally, he stated he understands why it is plotted this way, and the roots are a factor to an extent. Mr. Campanello questioned if the other Board members would describe the lot in the first petition as a "flag lot" which Mr. Hesser said he would and Mrs. Wolgamood indicated she would somewhat. Further, Mr. Campanello noted that lot was approved at one time for a business for a DPUD with less than 100 ft. of frontage.

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 3 to 1 depth to width ratio Developmental Variance to allow for the

construction of a residence be approved based on the following Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare provided a septic system can be installed in the wooded area and public utilities are available 900 ft. back from the road.
2. Approval of the request will not cause substantial adverse affect on the neighboring property. The property that has been excluded from this particular lot will be kept in farm production which is a plus.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

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 represented in the petitioner's application.

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

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

No: Randy Hesser.

9. The application of *Powell & Edna J. Gagich* for a renewal of an existing Special Use for warehousing and storing of concrete forms, vehicles, and miscellaneous concrete supplies in an A-1 district (Specifications F - #44) on property located on the West side of CR 35, 2,080 ft. North of SR 120, common address of 52625 CR 35 in York Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #52625CR 35-140721-1*.

There were six neighboring property owners notified of this request.

Richard Rogers, P.O. Box 1142, Middlebury, was present representing petitioner, Powell Gagich, who was also present and reported his address as 52625 CR 35, Bristol. Mr. Rogers noted that the photos of the property are not the most appealing as far as the site and stated the business has diminished even more than it was two years ago with Mr. Gagich having serious heart issues and surgery this past year. He noted Mr. Gagich feels he and the business are on the road to recovery and an additional two years will be sufficient as far as the use of the property is concerned with removal of unsightly equipment and forms.

When Mr. Campanello inquired if they are doing any business out of there presently, Mr. Gagich indicated a small amount. He went on to say that he lost all of his help when he had the heart surgery and is trying to hire some employees for the small amount of work he has now. Mr. Rogers also noted throughout this process and the downturn of the economy, they fought with Bank of America for approximately 18 months to get Mr. Gagich's loan modified which was finally successfully completed about six months ago and should help him out from a financial standpoint. When Mrs. Wolgamood asked how long he has been operating the business

on this site, Mr. Gagich stated he has been at the current location with his residence for three years and prior to that was at a different location.

There were no remonstrators present.

Mr. Hesser pointed out there is no time limit in the recommendations. If the Board is going to impose a time limit, Attorney Kolbus noted it would have to be in the commitment section of the motion.

The public hearing was closed at this time.

Mrs. Wolgamood noted the property is unsightly, and suggested a time limit if approved. Additionally, she said she understands the request and pointed out that other similar requests have been extended. Mr. Hesser pointed out that there were no remonstrators.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Lori Snyder 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 renewal of an existing Special Use for warehousing and storing of concrete forms, vehicles, and miscellaneous concrete supplies in an A-1 district (Specifications F - #44) be approved with the following condition imposed:

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

The following commitments were imposed:

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

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

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

10. The application of *Ernest J. & Ada M. Yoder* for a Special Use to allow for an agricultural use (keeping of two horses in an existing structure and storage of hay in an existing structure) on property containing less than three acres (Specifications F - #1) located on the East side of CR 37, 300 ft. North of CR 20, common address of 58954 CR 37 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 #58954CR 37-140718-1*.

There were eight neighboring property owners notified of this request.

David Bontrager, Jr., 59811 CR 37, Middlebury, was present representing petitioner. He noted the horses are presently on the property and are the main source of transportation.

Mrs. Wolgamood confirmed that the property is one acre and asked about other horses in the immediate area. Using the aerial photo, Mr. Bontrager pointed out those properties having horses. He noted only one northeast lot and two northwest lots do not have horses.

There was some discussion regarding #25 of the questionnaire and a building on the site plan marked as "proposed". Mr. Bontrager pointed out a building on skids in the aerial photo where the horses are currently housed. He suggested the building may have been placed there without a permit within the last year before Mr. Yoder realized that he needed a Special Use, and

Mr. Yoder was noting that they need to obtain one to bring the property into compliance. Mr. Bontrager stated that Mr. Yoder is not adding a building from what is shown on the site plan although they did discuss a possible family room addition to the house next summer.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan noted the small lot, but the neighbors are in the same boat. Mrs. Wolgamood agreed that the lot is very small and other neighboring lots are larger, but there are a lot of other horses in the immediate area. She noted it is a residential area but considering the number of farm animals nearby, she does not have an issue with two horses.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Randy Hesser that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use to allow for an agricultural use (keeping of two horses in an existing structure and storage of hay in an existing structure) on property containing less than three acres (Specifications F - #1) be approved with the following condition imposed:

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

The following commitments were imposed:

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

The motion also included a note that the Board is not approving any accessory space where a variance may be required.

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

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

11. The application of *Sunnyside Mennonite Church Trustees of* for an amendment to the site plan of an existing Special Use for a church (Specifications F - #48) on property located on the Southwest corner of Sunnyside and CR 13, being Lots 4, 5, 7, 8, & 19-34 of Waterman Place, common address of 23786 Sunnyside Ave. in Concord Township, zoned R-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #23786SunnysideAve-140721-1*.

There were 35 neighboring property owners notified of this request.

Brian Steffen of Premier Signs, 400 N. Main Street, Goshen, was present on behalf of this petition. He noted the old signs will be replaced with two new non-lit signs which will be more oriented to the driveways to better direct ingress and egress traffic, and pointed out the proposed locations on the aerial photo. When Mr. Hesser questioned if they were LED electronic message boards, Mr. Steffen confirmed that they are not. Mr. Homan noted that it appears the setbacks are within the Ordinance which Mr. Mabry confirmed.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to the site plan of an existing Special Use for a church (Specifications F - #48) be approved with the following condition imposed:

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

The following commitment was 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, Tony Campanello, Meg Wolgamood, Randy Hesser, Lori Snyder.

12. The application of *STCR Real Estate, LLC* for a Special Use for a wireless communications facility (Specifications F - #31.50) on property located on the East side of SR 13, 620 ft. North of SR 120, common address of 52886 SR 13 in York Township, zoned B-3 PUD, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #52886SR 13-140717-2*.

There were 13 neighboring property owners notified of this request.

Joe Catona, CFO of Evergreen RV, 10758 CR 2, Middlebury; and Gene Crusie of Maplenet Wireless, 4561 Pinecreek Road, Elkhart, were both present on behalf of this petition. Mr. Crusie reminded the Board of a previous petition at Evergreen's other location north which they withdrew because they found a relay tower. He noted this is a separate project and this location is surrounded by trees and in a hole so there is no other way to get to it.

Mr. Catona noted this is a tower that will provide communications between three facilities; one approximately three miles north of this building and the other is approximately two miles north and a mile west. Mr. Crusie added that they need a line of sight and every owner who has ever owned this property has had the same problem. There are no tele-communication services up there at all.

When Mrs. Wolgamood inquired if the building is currently vacant and the intended use, Mr. Catona said this facility will house Customer Service and Warranty personnel for Evergreen RV.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation: **Motion: Action:** Approve, **Moved by** Robert Homan, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a wireless communications facility (Specifications F - #31.50) be approved with the following condition imposed:

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

The following commitment was imposed:

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

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

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

13. The application of *Lavern D. & Linda M. Lambright* for a Special Use for an agricultural use for the keeping of horses on a tract of land containing less than three acres (Specifications F - #1) on property located on the North side of CR 22, 161 ft. East of CR 35, common address of CR 22 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 #000CR 22-140721-1*.

There were 10 neighboring property owners notified of this request.

Lavern Lambright, 13983 CR 22, Middlebury, was present on behalf of this petition. He explained the parcels were purchased at two different times with the residence having a mortgage. He indicated that the other parcel does not so they cannot be combined without refinancing the whole property which is not cost effective. He reported the total property is more than three acres. He went on to say that the second parcel was purchased so he would have more than three acres to keep the horses there.

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 Special Use for an agricultural use for the keeping of horses on a tract of land containing less than three acres (Specifications F - #1) be approved with the following condition imposed:

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

The following commitments were imposed:

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

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

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

14. The application of *Gilbert N. Schrock & Edith Schrock* for a Special Use for a home workshop/business to allow sales of shrimp grown onsite (Specifications F - #45) on property

located on the East side of CR 19, 1,150 ft. North of CR 50, common address of 70244 CR 19 in Jackson Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #70244CR 19-140716-1*.

There were three neighboring property owners notified of this request.

Gilbert Schrock, 70244 CR 19, New Paris, was present on behalf of this request. He stated his purpose is to raise shrimp for income which will support one family once it is established. He expressed feeling there is a market as 90% of the shrimp consumed in the U.S. is imported. Mr. Schrock reported there is no smell involved. He indicated he is working with a woman, Carlina Brown from Fowler, Indiana, who has been commercially viable in the shrimp business for five years and will provide coaching to them in getting the business going.

When Mr. Hesser questioned waste, Mr. Schrock explained the system of cleaning and the little waste there is goes out onto the ground and not into the septic. He reported they are salt-water shrimp, and they keep the water as it gets better with age. When Mr. Homan asked how old shrimp can get, Mr. Schrock indicated they can get a year old but then they are big. He went on to say that 90 days is a 20 count shrimp which is 20 shrimp per pound. Mr. Homan asked if they are kept in large tanks or aquariums, and Mr. Schrock reported they are in 42" above-ground swimming pools with a 36" water level. He noted that according to Ms. Brown, it takes a year to get the water where it should be as far as good bacteria.

When Mrs. Wolgamood inquired about retail sales and if a person could walk into the business to purchase shrimp, Mr. Schrock said yes and reported they will sell live shrimp bagged inside another bag with ice which is the way that Ms. Brown does it and has had success. Mrs. Wolgamood further asked if he plans to sell to grocery stores or similar businesses, Mr. Schrock indicated not that this point. He said they may also sell wholesale to a guy who will come pick shrimp up in his truck with tanks who will in turn sell them to other buyers. When Mrs. Wolgamood asked if there is enough of a market for this type of business, Mr. Schrock indicated Ms. Brown cannot keep enough shrimp for the demand. When she inquired about outside employees, he indicated it will just be family members. When she questioned a sign, Mr. Schrock said that Ms. Brown has told him not to advertise. It was noted that the questionnaire indicated there would be no sign. Mr. Hesser pointed out if the Board is silent, a home workshop is allowed a 4 sq. ft. sign. When questioned further, Mr. Schrock indicated he does not want to say that he will not have a sign if he does not have to. When Mr. Hesser questioned other Board members as to any objections if Mr. Schrock is allowed a 4 ft. sign, there were no comments. Mr. Hesser noted Mr. Schrock is not precluded from having the standard home workshop sign.

There were no remonstrators present.

Regarding the proposed building, Mrs. Wolgamood asked about a possible use of it if the business would happen to not succeed. Mr. Schrock indicated there are a lot of opportunities available, and he believes he could figure something out. He also noted he has raised mule calves and chickens in the past.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon

these, further moved that this request for a Special Use for a home workshop/business to allow sales of shrimp grown onsite (Specifications F - #45) be approved with the following condition imposed:

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

The following 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, Tony Campanello, Meg Wolgamood, Randy Hesser, Lori Snyder.

15. The application of *Glen Frye & Joyce Frye* for a Special Use for a home workshop/business for metalwork and fabrication (Specifications F - #45) and a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the West side of SR 13, 1,450 ft. North of CR 10, common address of 54225 SR 13 in York Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #54225SR 13-140721-1*. Regarding the DPUD to the south and west, Mrs. Wolgamood asked Mr. Mabry if that is for residential purposes only. He said it visually looks to be a DPUD A-1 so he has pretty high confidence that is what the approval is for although he did not look at the file.

There were seven neighboring property owners notified of this request.

Glen Frye, 54225 SR 13, Middlebury, was present on behalf of this request and stated he would like to have home workshop as a second job and the hours would be from 2-5 p.m. after his regular full-time day job. Although the main reason for the building is for the workshop, he said he does some steel-fab which would be a little bit of welding, but it is mostly as a hobby. He noted he doesn't believe he could justify putting a shop in an industrial building. Regarding the storage, he reported he wants to remove various storage structures to clean up the property and make it more presentable. He went on to say that the barn will stay but all storage will be moved into the proposed building with no outside storage. Regarding impact on neighboring property, he does not believe his petition will affect his neighbors and noted he talked to them.

Referring to the questionnaire and semi-truck deliveries which Mr. Frye noted as weekly, Mr. Hesser asked if a semi can pull in and turn around on the property. Mr. Frye pointed out a turnaround area on the property on the aerial photo so there would be no backing onto SR 13. Noting he currently has a welder in a smaller building, he indicated it is mostly a hobby and not much will change. Additionally, he noted he will move the same welder to the proposed building. When Ms. Snyder asked about retail, Mr. Frye stated he does not wish to have retail sales. Referring to #22 of the questionnaire, Mr. Homan noted one of the standards of a home workshop/business is no outside storage. He asked Mr. Frye if he believes he can get all storage inside a building of this size, and Mr. Frye indicated that he does believe he can. Mr. Homan noted outside storage would make Mr. Frye in violation.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello noted that no remonstrators were present. Ms. Snyder asked Mr. Frye about the amount of noise. If everything is inside the building, Mr. Frye said there will be no noise. He added if he has the forklift outside while using it, there would be the sound of a motor running. When Mr. Homan questioned the 25 ft. building height, Mr. Frye said upon further consideration, he does not believe the building will be that tall and mentioned a 20 ft. eave height. After a brief discussion with a contractor, it was decided he should get approved for the variance before they discussed the project in more detail. Mr. Campanello said if it is 20 ft. eave height, it should be around 22 ft. total. Mrs. Wolgamood inquired about the time frame for removal of the buildings. Mr. Frye indicated his contractor told him he cannot do anything until October at least but said he would have buildings removed within a couple of weeks of completion of the building. When she suggested the end of the year as a deadline, Mr. Frye agreed.

Mr. Hesser noted his surprise at the staff report as it seems to fit pretty well with previous home workshops before the Board. Mrs. Wolgamood noted the area is pretty residential. Mr. Mabry said the main crux of the recommendation came from the surrounding platted residential subdivisions adjacent and across from the property. He further observed that there were no remonstrators.

There was a brief discussion about conditions and/or commitments that should be added to the motion.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for a Special Use for a home workshop/business for metalwork and fabrication (Specifications F - #45) and a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved 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 in accordance with the site plan submitted and as represented, with respect to the site plan and the usage, in the petitioner's application and testimony.
2. Turn-around on site for semis with no backing onto SR 13.
3. No retail sales on site.
4. Other storage buildings and containers to be removed within three months of completion of the new building.

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

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

No: Meg Wolgamood.

16. The application of *Manuel Perez (buyer) and Gordy, Inc. (seller)* for a Special Use for a church (Specifications F - #48) and for a 70 ft. Developmental Variance to allow an existing structure 50 ft. from centerline of Toledo Road (US 20) (Ordinance requires 120 ft.) on property located on the South side of Toledo Road (US 20), 300 ft. West of Silver Crest Drive, common address of 1725 Toledo Road in Concord Township, zoned B-3 & R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #1725ToledoRD-140721-1*. He noted the petitioner produced another drawing that might address some of these issues but stated he would leave that to the petitioner to explain. When Mrs. Wolgamood asked Mr. Mabry if he had previously seen the drawing, he said he looked at it and it seemed to be a drainage plan with some irrigation shown on it. When Mr. Hesser asked if it answered all of the questions that staff had, Mr. Mabry said it did not answer questions related to parking, access, and some of the other questions. He stated staff would still recommend tabling this request.

There were 18 neighboring property owners notified of this request.

Manuel Perez, 328 W. Dinehart Avenue, Elkhart, was present on behalf of this request with an interpreter named Rosalinda. When Mr. Hesser asked about proceeding today or tabling the matter, Mr. Perez indicated he would like to proceed today. He said he would like to purchase the property for a church because it is a very suitable location for them as it is convenient to Elkhart and Goshen. He noted they have a big church community to serve and would like to operate a food bank and clothing collection for the needy. Also, he said they would like to add a daycare to the church and teach English Second Language. He went on to say that the use of this building is for nothing personal, and it is all to help the community and offer any assistance to the police and fire that they can provide.

When Mr. Hesser asked about the size of the congregation, Mr. Perez indicated active members are 150 but the total is 200. He added that they hope to enlarge the congregation. Mr. Campanello inquired about the church's current location which is 831 Marion Street in Elkhart and is a shared location with another group. Regarding the previous Special Use for the property for a landscaping business, Mr. Campanello asked if the petitioner would be utilizing any of those approved uses. Mr. Perez said they want to put in a playground for the children attending church or the daycare. He added that nothing will be for any type of commercial use.

Gordon Clark of Gordy, Inc., 21609 SR 120, Elkhart, was present as the seller of the property. He reported there are three (two being walk-ins) coolers in the existing building now which would aid them in the food pantry. Using the aerial photo of the property, he said the petitioners are planning on utilizing the administration area in the same existing building that houses the coolers and pointed out the proposed location for the sanctuary. He noted there is city sewer running in front of the property but it is not hooked up at this time. He also indicated that storm water from the subdivision comes down to this property but there are storm drains all over the facility currently. He reported a 40 ft. easement on east side of the property running all the way to the back so they have access to the other property. He said he believes they would have plenty of room on the property for overflow parking where the greenhouses were formally located but collapsed from the snow. He reported the good greenhouses were all sold in an auction and have been removed. He also indicated on the aerial a building that has a double

truck dock at the end of it which would be ideal if the church were receiving food or donations because it is already set up for that.

When Mr. Hesser asked Mr. Perez about a revised site plan, he said he does not have it with him.

Dawn Leas, 56318 Silvercrest Drive, was present because she and some neighbors have concerns about this petition. When she questioned the amount of property being sold to the church, Attorney Kolbus indicated it is the highlighted area on the aerial photo. She questioned where they would have parking for 150 people. Mr. Hesser said he believes the site plan needs to show where the building will be located and parking spaces. Mr. Clark said one of the church members had a site plan the other day that showed parking spaces which he saw. To his view, Mr. Hesser said it is clear, and since neighbors have concerns, that the site plan before them does not show detail regarding buildings and parking.

The public hearing remained open.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that in accordance with the Staff Analysis this request for a Special Use for a church (Specifications F - #48) and for a 70 ft. Developmental Variance to allow an existing structure 50 ft. from centerline of Toledo Road (US 20) (Ordinance requires 120 ft.) be tabled indefinitely to provide additional information including parking and access, drainage, building locations, sewage, lot coverage, use of the residence, landscaping, and erosion control plans with neighboring property owners to be re-notified.

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

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

17. The application of *Andrew R. & Lorinda K. Miller* for a Special Use for a home workshop/business to build cabinets and furniture (Specifications F - #45), for a 16 sq. ft. Developmental Variance to allow for the placement of a sign 20 sq. ft. per side (Ordinance allows maximum 4 sq. ft. per side), for a 2 ft. Developmental Variance for said sign to be 6 ft. in height (Ordinance allows maximum 4 ft. in height), and for a 15 ft. Developmental Variance for said sign to be 40 ft. from centerline of the right-of-way (Ordinance requires 55 ft.) on property located on the North side of CR 54, 1,700 ft. East of CR 11, common address of 24675 CR 54 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 #24675CR 54-140718-1*. He noted a correction on the Staff Report under Petition should read "for a 16 sq. ft. Developmental Variance to allow for the placement of a sign 20 sq. ft. per side (Ordinance allows 4 sq. ft. per side)," not 40 sq. ft. per side.

There were four neighboring property owners notified of this request.

Andrew Miller, 24675 CR 54, was present on behalf of this petition. He reported after he got the staff recommendation, he left a message for Mr. Mabry about the denial. He said he wanted a slightly larger sized sign so he just threw out a number. He questioned if he could get a smaller sign approved and suggested 8 or 10 sq ft. When Mr. Hesser questioned that Mr. Miller did not think that four square feet would be large enough, Mr. Miller said he would like it slightly larger such as 2'x3' for better visibility and mentioned he would also like it closer to the

road for the same purpose. When Mrs. Wolgamood questioned if that was for deliveries, Mr. Miller reported deliveries and customers. He went on to say that there is a catering business down the road, and customers from that business stop at his place.

When Mr. Campanello asked if trucks turn around on the property, Mr. Miller stated trucks usually park in the road to load and unload. Mr. Campanello pointed out that creates a problem for the Board as they like trucks to pull onto the property, turn around, and pull out. Mr. Miller stated that turning around on the property is not a problem but making the turn into the driveway is difficult because of a phone jack located in the corner of the drive. When Mr. Campanello questioned the possibility of reconfiguring the entrance to allow that to occur, Mr. Miller thought it was a possibility. Mr. Miller reported a semi comes very seldom, possibly once or twice per year. When questioned by Mr. Campanello about the number of customers on site, Mr. Miller reported it is not a high volume, one to five per week. Mrs. Wolgamood confirmed that no new construction is proposed with this request. Regarding the Developmental Variance, Mr. Campanello asked if a 2'6" x 4 ft. sign would be okay with Mr. Miller if the Board was to approve it, and Mr. Miller said that would not be a problem.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser noted that he does not have a problem with the home workshop/business portion but he views the Developmental Variance as an "either/or" situation. He can understand if Mr. Miller is limited to a 4 sq. ft. sign having it closer to the road or if it is larger than he is less inclined to put it closer to the road. When Mrs. Wolgamood inquired about the standard setback for a sign, Mr. Mabry indicated a sign that small can be at the property line for a home workshop/business. Mr. Miller confirmed that he could place a sign at the right-of-way.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Lori Snyder that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business to build cabinets and furniture (Specifications F - #45) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Turn-around on site for semis and no backing onto CR 54.

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

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

Based on the petitioner's agreement that a 4 sq. ft. sign is part of a home workshop/business and said sign can be placed at the property line, Mr. Campanello made the following motion:

Motion: Action: Deny, **Moved by** Tony Campanello, **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 16 sq. ft. Developmental Variance to allow for the placement of a sign 20 sq. ft. per side (Ordinance allows maximum 4 sq. ft. per side), for a 2 ft. Developmental Variance for said sign to be 6 ft. in height (Ordinance allows maximum 4 ft. in height), and for a 15 ft. Developmental Variance for said sign to be 40 ft. from centerline of the right-of-way (Ordinance requires 55 ft.) be denied.

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

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

18. The application of **Brian J. & Jamie L. Breniser** for a Use Variance to allow for the construction of a second dwelling on a parcel on property located on the South side of CR 20, 1,200 ft. West of CR 43, common address of 11200 CR 20 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 #11200CR 20-140714-1*.

There were nine neighboring property owners notified of this request.

Brian Breniser, 11200 CR 20, Middlebury, was present on behalf of this request. He stated he did not know he was in violation of anything by having a second residence on the property. He reported the structure was built in 1999 for which he obtained a permit, being Permit No. 19994241. Mrs. Wolgamood pointed out that it was for an agricultural building for a tractor. He said he had some trouble getting things accomplished at that time. He stated his purpose was to build a structure to live in temporarily until he built a house, which he did, but was not able to accomplish that by trying to speak with staff sensibly about it so he did it on his own, finished it off, and lived there for two years. He went on to say as time has passed, people have come and gone as residents of the structure. He indicated his wife's parents lived in it for four years, and it has helped people out as they go along through life. He said he completed the construction himself, and it was done to code. He noted the electrical box was inspected before he built walls. He reported he used steel studs, drywall, dropped ceiling, doors, windows including egress windows, and everything is in compliance with code.

As far as the neighborhood being all single family dwellings, he said that is not a true statement. Mr. Breniser said he pulled records off of the EGIS website for several properties that have the same type of situation he has. On his road, he reported four properties that are the same with one having a trailer, one a duplex, one being a two family dwelling; and all are within a quarter mile of his residence. He submitted those records *[attached to file as Petitioner Exhibit #1]*. He reported that he spoke with his neighbors adjoining his property and across the road to see if they had complaints or objections. He went on to say that the structure cannot be seen from the road.

Regarding the structure being completed as a residence, he said when he completed it, the purpose was for him until he built a residence on site. Mentioning a Log Cabin Act in the State of Indiana which says a person can complete construction themselves without hiring a contractor. In his opinion, he said he feels he did not do anything wrong because he built it himself. Concerning having two residences on one parcel, he said he did not know that rule existed and would like to get the issue resolved so he is in compliance. While Mr. Campanello attempted to obtain clarity on the course of events as explained by Mr. Breniser, Mrs. Wolgamood noted a building permit was issued in 2002 for a single family residence knowing that there was an existing agricultural building on site. She went on to point out that Mr. Breniser did not remove

anything from the original structure to make it back into an agricultural building and has rented it out since that time. Therefore, there have been two residences on a single piece of property for that amount of time without proper permits. When Mr. Homan questioned how this request came up, Mrs. Wolgamood reported there was a complaint filed by the County Assessor's Office. To his own admittance, she pointed out that Mr. Breniser knew he was converting an agricultural building into a residence without a permit. Of the records that Mr. Breniser submitted, Mrs. Wolgamood said the mobile home probably has a Special Use permit for the mobile home which is a normal circumstance because it is considered a temporary residence. Regarding a double dwelling or duplex, she explained that is a permitted use in an A-1 zone. When he argued they were similar properties, she went on to say that "like" properties do not mean mobile homes or double dwellings as he has two single family residences on site. If they were attached, it would be considered a double dwelling or a duplex.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser expressed agreement with Staff Findings #3 and #4, but not necessarily with #1 and #2. When Mr. Homan asked if anyone was currently living in house, Mr. Breniser stated no. Mrs. Wolgamood inquired if he talked with staff about subdividing the property and having two properties with each one having a single family residence on site, Mr. Breniser indicated no one mentioned that and stated he does not have a problem with that process. When Mr. Campanello questioned the ease of that process, Mrs. Wolgamood reported it would be going through the subdivision regulations and going through the Plat Committee process. But just looking at the property and knowing it is 5.5 acres, she noted she can see that it would most likely require some variances such as 3 to 1 or lot width. She indicated she would like Mr. Breniser to explore those options and that possibility before the Board makes a decision. If that all transpired, Mr. Hesser noted this request would be mute.

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

Motion: Action: Table, Moved by Tony Campanello, Seconded by Meg Wolgamood that this request for a Use Variance to allow for the construction of a second dwelling on a parcel be tabled indefinitely to allow petitioner to work with staff about the possibility of subdividing the property.

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

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

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

Mrs. Wolgamood informed the audience that there will be four members present for the remainder of the meeting.

19. The application of ***Cornerstone Mennonite Church, Inc (buyer) and Kenneth L. Martin Trust (seller)*** for an amendment to an existing Special Use for a church to allow the establishment of a cemetery (Specifications F - #6) on property located on the South side of CR 44, ½ mile East of CR 11, 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 #000CR 44-140623-1*. The public hearing remained open at the previous hearing.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners. He noted no remonstrators were present today or at the last hearing as this was tabled from last month to this month. Regarding the Staff Report, he noted cemeteries are permitted in an A-1 zone, and it is a pretty quiet use. In Finding #3, he noted the question about water table and reported he can find nothing in the law that says anything about water tables as it compares to, controls, or involves cemeteries. When Mr. Hesser if there is any licensing or permitting at the State level, Mr. Sloat said he could not find any. Looking at that last item, Mr. Hesser said he does not believe that is an issue for the Board to address. Mrs. Wolgamood indicated there are a lot of Indiana Code regulations for cemeteries but nothing about water table.

Mr. Sloat said the National Cemetery Administration is part of the U.S. Department of Veterans' Affairs so he submitted paperwork from the VA *[attached to file as Petitioner Exhibit #1]*. Mr. Hesser said his recollection from the previous hearing is that there were favorable comments about the idea of a cemetery but water table was the issue. Mr. Sloat said they are more than willing to address anything that they need to but he cannot find anything that seems to be an issue. Regarding Petitioner Exhibit #1, Mr. Sloat noted the highlighted portion stating the water table should be the depth of the burial site. He noted the National Cemetery Association has to do with the burial of veterans in cemeteries like Arlington National Cemetery. He went on to say that there are 131 such cemeteries in the country, but this is not one of those. This proposed cemetery is for a church of possibly 40-50 families with maybe four burials in a bad year.

As part of his research, Mr. Sloat stated he contacted a local funeral director who has been in the business for 30+ years and he had never heard anything about the issue of water in cemeteries. Mr. Sloat indicated the funeral director said there is possibly one cemetery in the Middlebury area that may once in awhile get water in a grave after it is dug that has to be pumped out. He explained it is not something that they like, but that is the way it is. Mr. Sloat inquired further with the funeral director about the issue of water, possible chemicals used during the embalming process, and possible ground contamination. Mr. Hesser commented that he thought vaults had to be completely sealed now, but Mr. Sloat said no. He went on to say that the funeral direction told him that half of the graves in Union Center Cemetery do not even have a vault and are simply buried wooden caskets. The funeral director said the only reason a vault is used is to maintain the shape of the grave. Regarding embalming fluids, where in the past arsenic was used, now they use a weak solution of formaldehyde. Ms. Snyder asked if Mr. Sloat told him the situation about this request. Mr. Sloat stated the funeral director had no response.

Mr. Sloat stated the land slopes off to the East and any water will run off into woods. Referring to topography maps, he noted the elevation in the cemetery area is 882 ft. and drops 10 ft. by natural terrain. He pointed out an existing farm drain tile as indicated in the power point noting the tile is 10 ft. deep near the open ditch. According to the funeral director, Mr. Sloat indicated there is approximately two feet of cover over graves with the grave being about six feet deep. He went on to say they are proposing to put a perimeter drain around the cemetery area at the six foot level and drain into the existing 10 ft. deep tile with some lateral tile run in between if needed to keep the cemetery bone dry. Mr. Sloat indicated the tile contractor is present today who verified to Mr. Sloat again prior to this meeting that he installed the tile system and the depth of the tile can be measured with GPS guidance devices to verify it is truly that deep. When

Mrs. Wolgamood confirmed that they will put in a perimeter tile, Mr. Sloat said yes. Mr. Sloat provided a copy of the power point presentation used during the hearing (included in file).

When Mrs. Wolgamood asked for a show of hands in support, four members of the audience raised their hand. She then asked for a show of hands in remonstrance, and there were none.

The public hearing was closed at this time.

When Mr. Hesser asked if staff had any response to Mr. Sloat's presentation, Mr. Mabry indicated no. Mr. Hesser indicated he was surprised there is no regulation about this and seems to be something that should be dealt with.

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

Motion: Action: Approve, **Moved by** Lori Snyder, **Seconded by** Randy Hesser that this request for an amendment to an existing Special Use for a church to allow the establishment of a cemetery (Specifications F - #6) be approved based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance. A cemetery is allowed by Special Use Permit in the A-1 zoning district.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. No residential properties are currently adjacent to this proposed low-nuisance use. In addition, the 100-foot setback required for properties abutting a cemetery (which was discussed at the previous BZA public hearing) only applies to properties abutting cemeteries that were established before 1939.
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 in accordance with the site plan submitted and as represented in the petitioner's application.
2. A perimeter drain must be installed.

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

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

20. The application of *Jaime Diaz De Leon* for a 8 ft. Developmental Variance to allow for an existing accessory building 2 ft. from the East rear property line (Ordinance requires 10 ft.) and for a 3 ft. Developmental Variance to allow for said accessory building 2 ft. from the South side property line (Ordinance requires 5 ft.) on property located on the East side of Santa Anita St., 178 ft. North of Byrd Ave., being Lot 189 and South 10 ft. of Lot 188 of Riverdale, common address of 57980 Santa Anita St. in Concord Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #57980Santa AnitaSt-140623-1*. Since the writing of the Revised Staff Report, he said a solution has been determined by the Building Commissioner as acceptable by the building code and the Health Department which is to place the building on wood pylons as a foundation. With

the new information from the Building Commissioner, Mr. Mabry verbally amended the Revised Staff Report as follows:

1. Approval of the request will not be injurious to public health, safety, morals, or general welfare. The structure has been proposed to overcome the problems it had with the Building Code and the Environmental Health Department.
2. Approval of the request will not cause substantial adverse affect on the neighboring property. This petition has notable support from surrounding property owners.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property. Due to the narrowness of the lot, this Variance is appropriate.

He noted staff recommendation would be for approval with the standard condition imposed and standard commitment with an additional commitment that the structure be placed on wood pylons in compliance with building code.

Jaime Diaz De Leon, 57980 Santa Anita Street, was present on behalf of this petition. He submitted a site plan and diagram *[attached to file as Petitioner Exhibit #1]*. Mr. De Leon stated he will place the shed on wood pylons as instructed by the Building Commissioner.

Fran Wise, 23970 Byrd Avenue, was present in support of this request. She reported Mr. De Leon recently moved into the neighborhood, and the house was previously abandoned and vandalized. She stated he has totally redone everything, and it looks very nice which the neighbors are thankful for.

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** Lori Snyder, **Seconded by** Randy Hesser 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 8 ft. Developmental Variance to allow for an existing accessory building 2 ft. from the East rear property line (Ordinance requires 10 ft.) and for a 3 ft. Developmental Variance to allow for said accessory building 2 ft. from the South side property line (Ordinance requires 5 ft.) be approved with the following condition:

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

The following commitments were imposed:

1. Approved in accordance with the revised site plan submitted 08/21/14 and as represented in the petitioner's application.
2. Structure to be placed on wood pylons in compliance with Building Code.

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

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

21. The application of *Church of God in Christ Mennonite, Northern Indiana Congregation, Inc.* for an amendment to an existing Special Use for a church (Specifications F - #48) to add a cemetery on property located on the East side of CR 113, 1,115 ft. North of

Stonegate, common address of 60536 CR 113 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 #60536CR 113-140620-1*.

There was no one present on behalf of the church, and there was no one in support or remonstrance present.

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

Motion: Action: Table, **Moved by** Robert Homan, **Seconded by** Randy Hesser that in accordance with the Staff Analysis this request for an amendment to an existing Special Use for a church (Specifications F - #48) to add a cemetery be tabled until the September 18, 2014, Advisory Board of Zoning Appeals meeting to allow petitioner to continue to work on providing staff with the additional requested information.

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

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

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

After Attorney Kolbus gave procedural information to the audience, Mrs. Wolgamood informed the audience that with three Board members present and voting, any vote is required to be unanimous decision.

22. The application of ***James Gordan Conklin, Jr. & Christine A. Conklin*** for an Appeal from the zoning administrator's decision on property located on the North side of Heaton Vista, 550 ft. South of 3rd Street, 700 ft. East of CR 113, North of CR 6, being Lot 30 of Heaton Park, common address of 23019 Heaton Vista in Osolo Township, zoned R-2, came on to be heard.

Mr. Mabry presented the Staff Report, which is attached for review as *Case #23019HeatonVista-140627-1*.

There were four neighboring property owners notified of this petition.

Andrew Hicks of Warrick & Boyn, 121 W. Franklin Street, Suite 400, Elkhart, was present representing the petitioners. He talked about the difference between an animal ordinance issue and zoning issue. With this implication, he also noted many residents in Elkhart County who have managed colonies. He said he believed it is probably in the Board's discretion to determine if a full Board should be present for this issue due to the far-reaching implications.

Giving his arguments, he said part of what got them to this point was inconsistent rulings from the BZA that made it difficult for the petitioners to even know what they were doing. Referring to the petition and application that they filed with exhibits attached, he gave some background history of the case. When the complaint letter was first received by the Conklins, he reported they were not involved with the Elkhart County Feral Cat Coalition but just putting out food and water for feral cats. The letter indicated the Conklins were being investigated for having a kennel or keeping over four cats and stated that keeping over four cats in a residential zoning district is a violation of the Elkhart County Zoning Ordinance. Referring to Exhibit C, at the time they received the second letter from the Code Enforcement Division, the Conklins had become enrolled as managed colony caretakers with the Elkhart County Feral Cat Coalition

which is a non-profit organization that assists in managing the feral cat problem in this county. In addition to food and water, he said they also spay and neuter cats and return them to the wild which is a tool to help control the wild animal population. When the last version of the Elkhart County Animal Ordinance was written, he stated that feral cat colony management was written into it and states if a person follows the directions of a managed colony, it is not considered a violation of the animal ordinance. In the April 10th letter, Mr. Hicks pointed out it stated all but five cats had to be removed from the property and noted that was two different statements from the Planning Department. Referring to Exhibit D which was an email discussion where a third different position was stated by the department, he read beginning on the top of the second page where their activity is an “unlisted use”. In a May 30, 2014, letter the Conklins were informed they were operating a kennel and the basis is that they are placing food and water out for the cats and employing TNR(trap, neuter, return) methodology. He noted when they were considered a kennel in the previous November, the TNR was employed. Much is what led to the Administrative Appeal is the need to figure out a decision and know what is being talked about. Referring to Exhibit F in regard to pet grooming, he pointed out the essential characteristic of a kennel was keeping animals overnight in considering the differences between a kennel and a pet grooming business. In talking about keeping, storing, and containing animals as part of a kennel, he said they are not allowed to come and go freely (on their own).

With the Conklins putting out food and water, he said their contention is that this is not a “use” under the Zoning Ordinance but an Animal Ordinance issue. He used an example of a person walking out onto their property to fly a kite as not using the property under the Zoning Ordinance but as a regular person, not subject to regulation. He read the definition of “use” under the Zoning Ordinance and said the Conklins have no buildings housing feral cats, no cages or pens, and no permanent structures on the property that relate to housing feral cats. The Conklins put out food and water, and a third party, the Feral Cat Coalition, came in, caught animals, spayed/neutered them, tagged their ears, and returned them back. By saying that putting food and water out is a “use”, he said opens the door to an absurd result. He went on to say that feeding birds could lead to the interpretation that it is now a regulated land use but common sense tells that feeding birds does not make you an aviary. To deem it as a use gives an incredible amount of power under the Zoning Ordinance to the Zoning Department to regulate what people are doing on their property.

Secondly, he stated this is not a kennel and referred back to a prior interpretation from the County but also read the definition of a kennel from the Zoning Ordinance. He argued that feral cats are not household, domestic animals. He believes the Zoning Ordinance interpretation ignores the full grasp of the Indiana Code but also the Elkhart County Animal Ordinance of which he submitted a copy *[attached to file as Petitioner Exhibit #1]*. He noted it was written with the help of the Planning Department and several other county officials to allow managed feral cat colonies. Referring to page 3, he noted the ordinance defines a feral cat and domestic cat as different. He believes the same definition should apply in the Zoning Ordinance as well for consistent enforcement of the ordinances throughout the county. He explained domestic is different from household because if you do not have an animal that is capable of being in a house, then it leads to a situation where any domesticated animal could be a kennel, for example domesticated chickens or goats. So when the definition is written, “household” is intentional in that definition because of the need to separate farming from household pets. In this case, feral cats are not

animals being “kept” under the Zoning Ordinance as they come and go as they please, and there is no ownership, possession, and control. He said Indiana Law says that animals are not an individual’s property until they have been reduced to captivity. This is not only an issue that they cannot be kept but it also leads to the issue that it is not the Conklins’ job to get rid of the feral cats because they do not have a legal duty to enforce it. With that said, he also indicated that means that the Humane Society could capture as many feral cats as they want because they do not belong to anyone. The law is that these cats do not belong to anyone because they are not in captivity, and the Conklins are not exercising ownership, possession, or control. Regarding the feral cat problem in this county and in the United States, he said that the Conklins decided to be part of the solution. They are currently following the terms of the Animals Ordinance and the Zoning Department has determined that feeding feral cats in compliance with the Animal Ordinance violates the Zoning Ordinance. He said this is not a zoning issue but a land-use issue.

Attorney Kolbus informed the Board that he was not the County Attorney who wrote the Animal Control Ordinance so he does not have any background information on it.

Kristine Conklin, 23019 Heaton Vista, was present on behalf of this petition. She reported she and her husband have been feeding feral cats since 1995. She explained they put food and water out for the seven or eight cats, but the cats come and go as they choose. Further she said they do not hold or pet them, and the cats do not enter their house. She corrected the report, saying they do not take the cats to the vet. In the winter, they place Styrofoam shelters containing straw outside for them. She indicated before November 5, 2013, they had never received a complaint, and they have been doing this for approximately 20 years. When Mrs. Wolgamood asked if they have been doing this for 20 years at this particular location, Mrs. Conklin indicated yes. After they received notice of the complaint in November of 2013, they contacted the Feral Cat Coalition for assistance. They registered all of the cats with the coalition, had 11 cats spayed/neutered, paying \$42 per cat, and since that time, they have had three more cats done. She stated they are enrolled with the Feral Cat Coalition as a managed colony caretaker, meeting those requirements. She went on to talk about their love for the cats and a feral cat’s life expectancy due to their rough, outdoor life.

Mr. Homan stated he would like to hear someone speak on behalf of the Feral Cat Coalition to confirm that the coalition is involved with this property, has trapped cats, spayed/neutered them, and returned them to the property. He also noted an interest in learning why they follow that procedure.

Chris Braylick, 53290 CR 1, Elkhart, was present speaking on behalf of the Feral Cat Coalition as the President. She stated if the Board votes in favor to uphold the Zoning Administrator’s decision on this issue, it will administer their TNR program in Elkhart County ineffective. To make the Board better aware of what they might be giving up in this county, she explained that most feral cats are not and never will become domesticated. After years of government agencies attempting to control the feral cat overpopulation by many different means which do not work, TNR is the only proven method. She reported volunteers have worked very hard in setting up a legitimate TNR program in Elkhart County where caretakers are registered and agree to follow the criteria. Colony data is recorded and colonies are monitored. In just three years since the program has been established, Ms. Braylick reported they have approximately 300 registered colonies and have spayed, neutered, and vaccinated over 1,000 cats. She noted positive comments from the public where they have concentrated their TNR

efforts. She also reported that hoarding situations and nuisance calls have been lowered, and they can help curb those issues. She named some of their TNR partners involved in the program who believe in what they are doing and are supporters. She noted that TNR is the new upcoming acceptable way of controlling the outdoor cat overpopulation and named some other Indiana city and county programs. She also noted a new Indiana law this year which addresses feral cats in mobile home park communities and stated the coalition would like to target mobile home parks in Elkhart County.

Regarding cats being returned to the property, she said they take calls from the public who are feeding outdoor cats, help trap them, get them spayed/neutered/vaccinated (rabies and distemper), and put them back where they came from. She went on to explain they put them back because they have no place to take thousands of cats when they trap them. If taken to the shelter, a truly feral cat is not adoptable so it will be euthanized and over 80% of people believe that is the wrong thing to do and would rather take care of them as well as they are able. Another reason they return the cats is because more cats will move in, and there is a perpetuating cycle that never ends. When Mr. Homan asked if the population stabilizes through this program, Ms. Braylick said it does. In running the program for three years, she said they have seen them reduce up to 50% within one to two years. With the caretakers' registration, colony data, and monitoring the colonies, they watch for any sick or injured animals. If any new animals move into the area, the caretakers agree to get those cats "fixed" also.

Mr. Mabry presented a summary of the Staff Report/Staff Analysis. He reiterated the Zoning Ordinance definition of a kennel. He said he believes the number was previously four and that was the source of the inaccuracy that was seen in one of the Conklin's letters and apologized for any confusion that may have been caused. Overall, he stated the staff report counters the arguments made in the petitioner's letter. He noted evidence of a number of cats being kept on the property that exceed the definition of a kennel, that the owner's actions do constitute land use, that the property owner's land use is a kennel, that cats (feral or domesticated) are not wild animals, and that there has been consistency in the interpretations that have been given to the property owners. He then went into more detail of each of those points of evidence. With a kennel being defined as a land use, he believes what is taking place on the property is a land use in the form of a kennel. He argued that if the actions of a property owner meet the definition of a kennel under the Zoning Ordinance, then by operation of the Zoning Ordinance, the land is being used as a kennel. Regarding the claim that the property owners are not operating a kennel, he believes it is established that a land use is taking place along with the single family use of the property. Regarding the petitioner's argument that the definition of a kennel requires domestication and the cats are not "kept" on the property, he stated the animals included in the Zoning Ordinance are dogs, cats, and other household domestic animals. He read a definition of a cat as being domesticated and a feral cat is not a different species than a domesticated cat as they are both *Felis Catus*. He went on to say then that cats, whether feral or otherwise, in the Zoning Department's view are domesticated and not wild animals.

Regarding the claim that the property owners do not keep the cats but just feed them, Mr. Mabry said there were shelters set up for the animals during the coldest weather. He noted a photo from November 2013 shows those shelters. Regarding the operation of a kennel, he said some of these actions whether exclusively by the property owners or by the property owners in conjunction with the Elkhart County Feral Cat Coalition, constitutes sufficient exercise of care

and control of the cats so they are considered “kept” on the property and would meet the definition of a kennel in the county’s Zoning Ordinance. On the issue of cats not being wild animals, he said that contention is based on the premise that feral cats are wild cats, but said domestic cats, regardless of breed, whether stray or housebroken, are all of the same species and in the Zoning Department’s mind, are not wild. He noted a part in the Staff Report that considers other definitions of wild animals from other various documents such as the Indiana statute which provides the definition of wild animals as an animal whose species usually lives in the wild or is not domesticated. He stated the *Felis Catus*, the species of domesticated or feral cats, do not usually live in the wild as a species. He added that *Felis Catus* as a species is domesticated. He reported a general rule in interpretation of Zoning Ordinances that if a term is not defined in the Zoning Ordinance, the dictionary definition is relied upon. He read the definition of “wild” from Merriam-Webster’s dictionary as living in nature without human control or care. The Zoning Department’s contention would be that there is human control and care to a degree for the feral cats.

In the Staff Report, he said there is a section on consistency of the letter ruling. Regarding the petitioners’ statement that the letter ruling of May 30, 2014, being inconsistent with prior written interpretations about pet grooming, he explained the written interpretation from January 17, 2014, noted that the primary characteristic of a kennel is the “keeping of animals overnight either indoors or outdoors”. He went on to say that the written interpretation does not say or suggest that is the only characteristic of a kennel or that kennels must necessarily have that characteristic. A use such is being conducted on the subject property may have other characteristics of that usage that are sufficient to consider it that type of use. He said the primary characteristic of the written interpretation was to distinguish between a pet grooming use and a kennel operation. Part of what that written interpretation says is that the real distinguishing characteristic was whether the animals were kept inside versus outside. He referred to the last sentence of the written interpretation and noted if the proposed use included outdoor areas to keep the animals during the day and never overnight, the interpretation still provided that it would be considered a kennel.

Mr. Homan noted this case was originally generated as a result of a complaint which he assumes is from someone in the geographical area. Noting the room full of people who have strong opinions, he noted the challenge of speaking out in remonstrance. When he asked if anyone was present in remonstrance, no one responded

Anne Reel, 54256 CR 5, Elkhart, was present as the Director of the Elkhart County Humane Society. Regarding the Animal Ordinance and its creation in addressing this issue, she said back when it was created, the Director of Zoning was on the committee and indicated no issue relevant to the process because feral cats were being considered wild cats. Because they have grown up in the wild, they have become wild animals. In the Humane Society, she said they saw 3,100 stray cats come into the shelter in 2010. Since the Feral Cat Coalition has been in operation that number dropped to 1,900 cats in 2013 so there is a significant impact from spaying/neutering these animals. She noted members of the coalition are not hoarders but folks who want to humanely address the problem that has been created by people throwing cats out and help it. She suggested if a person would ever put a feral cat in their house, they would understand why they are not really domestic. She said the animal ordinance was a strategic movement on the part of this county which Zoning was involved with from the start, and the

problem will continue to grow unless action is taken. She indicated members of the coalition agree to follow specific guidelines that they must adhere to. She said the cats are free roaming animals, and noted cat houses are similar to bird houses.

Chris Braylick of the Feral Cat Coalition, circulated a petition in support which she submitted *[attached to file as Petitioner exhibit #2]*.

Addressing the audience, Mrs. Wolgamood asked for a show of hands in support of the petition and approximately 60+ hands were raised.

Asking for a show of hands in support of the Administrator's decision, there were none raised.

Deb Snell, Vice President of the Feral Cat Coalition, 25973 Northland Crossing Drive, was also present on behalf of the petitioners. She noted this decision may greatly impact their small non-profit organization. She believes whole-heartedly in what they do. Although she knows the Board sees it as a land use issue, she stated that Gandhi said, "The greatness of a nation can be judged by the way its animals are treated," which is what the caretakers are trying to do by treating the animals with compassion. Noting the issue is a result of irresponsible cat owners losing or abandoning their unsprayed/unneutered animals, she said if this community will support the efforts of the TNR, the community and cats both benefit. TNR is the only method of population control that works. With TNR, the population of outdoor feral cats will be reduced but still allow them the opportunity to live their lives without being harassed. The Conklins and hundreds of other caretakers in this county are taking a responsible position, which is often at their own expense to help humanely reduce the overpopulation issue. She questioned the county having enough resources to round up the cats and put them down. She advised the Board to not take any false comfort that these cats will be turned in to the shelter and somehow find loving homes because there are hundreds of adoptable cats in every shelter in this county. She expressed that the Elkhart County Feral Cat Coalition is this county's best friend on this issue and suggested county officials seek out the experience and help that this organization can provide.

Alice Poseley, 24741 Ne-Ce-Dah Drive, Elkhart, was present in support of this petition. She noted her greatest concern after listening today was the fact that there was an Animal Ordinance in place that everyone was following, the Zoning Board was a part of that decision, and now two years later, the Zoning Board taking a different position. She was concerned that the Zoning staff can make decisions after the Planning staff has already filed an ordinance which is disturbing to her. In response, Attorney Kolbus stated that this Board was not involved in writing that ordinance. He further explained that the Animal Control Ordinance written by the previous Zoning Administrator. She went on to say that she is disturbed because there is a precedent in place, the ordinance is in place, and now there is a change in the concept of what the Animal Ordinance was all about which affects all of the efforts that the Humane Society has made, that the TNR group has made, and that the caregivers have given. She noted the direction has been changed which affects a lot of people's lives which is also a concern to her.

Regarding one of Mr. Mabry's three options given which was to file for a Special Use permit, noting the expense involved, Attorney Hicks asked members of the audience for a show of hands of managed colony caretakers. Approximately 20 people raised their hand. He then asked how many of those would have gone through the process if they knew they had to apply for a Special Use to do it, and three people raised their hands. He noted some of the response

may be biased in his favor but stated that his point is that it would have an effect. In response, he noted there is a citing in the brief to a wild animal definition in Indiana Code, which he pointed out refers to the Department of Natural Resources. In terms of the number of cats, he questioned how the number of cats on the property is determined because they are wild cats that come and go as they please. In the morning, he suggested there might be three cats when food is put out, there may not be any cats a few hours later, and more may show up in the afternoon when wet food is put out. He went on to say that this raises an enforcement problem issue to interpret this as keeping cats.

As a BZA member, Mr. Homan noted concern because this is not a black and white issue. He said it seems to him that one of the purposes of the Zoning Ordinance is to preserve and protect property value and general welfare and use of land. He noted that one of the issues he was very interested in is the effect of TNR was in terms of controlling colonies. He went on to note that if this person was out in the country on a nine acre farm and they had nine cats, no one would notice. But this is in a small compacted residential area. He noted a letter received in support from Jennifer German who is a colony caretaker with 53 cats. He noted that the number of cats is an unknown and questioned the effect that 50 cats would have on neighboring property owners at this property and do they have rights if they descent from the decision of the homeowner to keep a large colony of cats. He noted this is not written in the Animal Control Ordinance or the county Ordinance. He went on to say that to ask for the Board to make a decision that goes beyond this particular request, is not realistic. Although Mr. Hicks noted he cannot answer the theory of government, he did say that for this system to work, these people cannot be domesticating the cats. As feral animals, these cats do not belong even to the caretaker of a colony so if it is a large number, it is incumbent upon the county or their animal control division to capture the cats that are out of control. He also noted that a person does not have a right to say that cannot be done because those animals do not belong to anyone, even as a managed colony caretaker.

Also in response, Chris Braylick said Mr. Homan's concern is a common one. She pointed out that people who feed outdoor cats who do not get them "fixed," do end up with a large number of cats which is the problem. She noted the coalition is to stop that from happening and not let it get to that point. She indicated that an area such as the Conklins would never support that many cats on the property. She went on to say it would get saturated, and the cats will wander a find a new home. She explained that their organization does site visits before they ever support that property. If they deem that a person is keeping numerous cats inside or out, and it is beyond their control, she stated at that point, animal control still has the right to step in and do what needs to be done. Ms. Snyder asked about a limit of number of cats to this property. When the coalition does the initial site visit, information is recorded and they know how many cats the person is feeding. She said the Conklins' property has a wooded area, which is where the cats would rather live as they are wild and do not want human contact. She noted the cats are there for the food because of the scarcity of food. She went on to say that the coalition has seen and visited colonies that have 20 cats, but if they step in and help get them altered, through attrition, the number will decrease in one to two years by approximately 50%. She noted the coalition is a method of control.

Additional response was received from Ms. Reel who noted that cats are very territorial. She reported that a feral cat can have a 100 mile radius of territory so if you trap them and

attempt to place them someplace else, they will come back. In support of what Ms. Braylick was saying in terms of numbers, she said that once there is a colony established, the cats keep other cats away because it is their territory. Referring to Mr. Homan's earlier questions about why return to the cats to the same area, she said they do it because that is their territory and they will go back there anyway. She said the cats themselves take care of the problem eventually after they are altered which helps to naturally cause a reduction in the area. Stating she was originally a feral cat colony caretaker, she reported she had 20+ cats over a seven year period with woods and a river nearby, and indicated she is now down to two cats through natural attrition. She reiterated that getting them spayed and neutered stops that issue.

Thinking of impact on property and in her position at the shelter, Mr. Homan asked if they receive complaints from adjacent neighbors about the cats. Ms. Reel indicated they do get those calls, and they inform people if cats are a nuisance on their property, they have the right to trap them and bring them to the shelter. Many times when cats are trapped and brought in like that, she reported they are not the feral cats that the colony managers are taking care of. On the occasion that a feral cat is brought in to the shelter, which they confirm by its marked ear, they contact the Feral Cat Coalition and are able to return it to the colony. She reiterated the substantial reduction in the number in two years, and this is a humane way to bring the numbers down.

When Mrs. Wolgamood asked about the size of Ms. Reel's property, she reported it is 1¼ acres with houses on both sides. Mrs. Wolgamood further inquired about any care Ms. Reel had taken to address any concerns of neighbors regarding the cats, Ms. Reel said she did not have any issues as the cats would spend a lot of their time in the woods. On a positive note, she mentioned that the neighbors commented on seeing a reduction in the number of chipmunks and mice.

The public hearing was closed at this time.

Noting arguments on both sides, Mr. Homan mentioned care vs. confinement in terms of a kennel. He commented that there is no confinement. Regarding care in the staff's support of their position that talked about the petitioner feeding the cats and providing minimal shelter, although veterinary care was not mentioned, he stated that there is obviously care. He indicated much of the discussion seemed to revolve around the definition between wild and domestic which he feels is almost in the eye of the beholder as there seem to be many definitions. In the ordinance, a kennel says specifically dog, cats, household domestic animals, but he personally interprets the comments by staff in terms of domestication, but noted there is nothing household about these cats. He does not believe this has anything in common with a household domesticated dog or cat.

If the petitioner was going to go for a Use Variance for a kennel, Ms. Snyder questioned why the Board would not approve it to allow the kennel. Attorney Kolbus said that a kennel has a certain connotation to the neighbors. Because of the zoning, a kennel would be a Use Variance which Mr. Homan noted would be a terribly difficult high bar to reach based on the Board's past decisions. Mrs. Wolgamood stated that this is an extremely difficult petition but commended the Feral Cat Coalition for their attempt to address an issue and would never want to take that away from them. She noted her major concerns are that this is a very small lot with houses all around in a subdivision. Noting cats are territorial, she acknowledged that cats on this property are also sure to be going next door or two doors down, and this issue stems from a complaint. She also

commended staff for making a decision. She expressed continuing concern about the neighbors. A petition for a Special Use would have been easier, but is not an option in this case. She mentioned the decision is harder with only three Board members being present because there must be a unanimous decision in this case. She does not know if the answer is to make the petitioners apply for a Use Variance, but pointed out that it would give neighboring property owners a chance to express their opinions. Mr. Kolbus noted that is going beyond the decision today which is the ordinance interpretation. When notification was questioned, it was determined that it was published in the newspaper and adjacent property owners received notice which is different than in the case of a Use Variance where neighboring property owners within 300 feet would be notified. Ms. Snyder noted there were no remonstrators present. She noted the strong showing of support that the TNR program works as shown by the decrease in number of feral cats at the shelter.

Mr. Homan noted Section 5 of the Animal Control Ordinance and stated he feels the writers were mindful of the very question of the question here, the impact on land use. In looking at this, he said there is obvious care given to these animals but he does not feel they fit the definition of the kind of animal being talked about in a kennel. He said he comes back to the fact that they are domesticated cats but in no way household animals and believes they are outside the Ordinance.

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Lori Snyder that this request for an Appeal be granted and Zoning Administrator's decision overturned based on the reasoning that feral cats exist outside the definition of a household domesticated animal in the Zoning Ordinance definition of a kennel.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Robert Homan, Lori Snyder, Meg Wolgamood.

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

24. The first staff item was for Osolo Township Fire Department – 79-174-SU –was presented by Brian Mabry. He said they are requesting a new free-standing communications tower to replace an existing roof-mounted one that is in disrepair. He noted the site plan showing the current and proposed locations. As a staff person, he indicated normally this would seem to him to be a major change but the fact that the fire department owns the property next door (to the east) seemed to make this more reasonable to be a minor change request. Mr. Hesser made note of the property line to the north being less than 100 ft. which is in the policy but outside of the Zoning Ordinance requirements. Mr. Mabry noted there would be a structural setback based on the Zoning Ordinance but this would meet that. When Mr. Homan inquired about the height of the existing tower, Mr. Mabry reported it is 60 ft. from the top of the tower to the ground level. When Mrs. Wolgamood questioned the location of the tower, Mr. Campanello suggested it would be near their existing communications equipment and lines. With the residential area to the north across Buddy Street, Mr. Hesser indicated he feels they are entitled to notification.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan that the request be considered a major change.

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

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

No: Tony Campanello.

25. The staff item of Steven Rodman – CR27-140421-1 – was presented by Mr. Mabry as a request to extend the 90 day Improvement Location Permit deadline based on a Use Variance and Developmental Variance in May of 2014. He stated Mr. Rodman is requesting until June 1, 2015, to take out the ILP due to a delay in sale of their existing property and not wanting to complete the project over the winter months.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Lori Snyder that the request be considered a minor change.

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

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

No: Tony Campanello.

26. Additional items discussed by staff were involving personnel changes. Chris Godlewski reported Doug Miller's last meeting will be in October. Mr. Godlewski also stated he will be absent for the next 12 meetings due to a class he is taking. He went on to say that he will still be involved in the staff discussion of the petitions but will not be present for the meetings.

Mr. Mabry also briefly explained some of the changes in the new Zoning Ordinance which should eliminate the need for some of the Special Use permits. Also, standards that exist have been moved from the definitions into the regular portion of the Zoning Ordinance. Mrs. Wolgamood noted the last time she looked, the definitions were not attached to the copy on the website. Mr. Mabry said they are now as that was part of Module 4. He noted the consolidated draft which is all four modules put together with all of the feedback and edits worked into it. Mr. Campanello mentioned Ideal Beach where the house is currently closer than the proposed garage will be, and asked if staff will be able to deal with similar issues and make some decisions without coming before the board with the new Zoning Ordinance. Mr. Mabry said that exists to an extent in that someone can encroach up to 10% into a required setback and obtain Administrative approval. For a specific lake situation, he said right now there is nothing like that and suggested if there were possibly a Lake Zoning District that built in flexibility as far as relating to the smaller lot sizes or narrowness of them, it could be a subsequent project to add to the adopted ordinance. He noted there are some things that have to be presented to the Board as something staff does not have the authority to just allow. Copies will be provided to Board members today.

The four planned Zoning Ordinance Update open houses were discussed and their purpose. Board members requested copies of that schedule.

26. The meeting was adjourned at 3:35 pm.

Respectfully submitted,

Deborah Britton, Recording Secretary

Doug Miller, Chairman

Tony Campanello, Secretary