

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18TH DAY OF DECEMBER 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 Chairperson, Randy Hesser. Staff members present were: Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Liz Gunden, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

2. A motion was made and seconded (*Campanello/Wolgamood*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of November 2014 be approved as read including the amended pages 14 and 15 which were provided. The motion was carried with a unanimous roll call vote.

3. 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.

4. Prior to the public hearings, Mr. Hesser thanked Mrs. Wolgamood for 10 years of service on the Board of Zoning Appeals as this is her last meeting.

5. The application of *Tubra, LLC* for a Special Use for a wireless communication facility (Specifications F - #31.50) on property located on the East side of Blakesley Parkway (CR 29), 2,171 ft. North of SR 120, being Lot 1 of Bristol Park for Industry Phase 3 DPUD-M-1, common address of 2123 Blakesley Parkway in Washington Township, zoned DPUD-M-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #2123BLAKESLEYPARKWAY-141121-1*.

There were 12 neighboring property owners notified of this request.

Gene Crusie of Maplenet Wireless, 4561 Pinecreek Road, Elkhart, was present on behalf of this petition. He indicated that Reschcor, Inc., formerly Mega Plastics, is building a new location here which is an extension of the Commerce Drive development. He went on to say that in the last couple of years, they have been approached by a number of businesses to provide broadband in this area. This new Reschcor location will tie together with their Elkhart location. He indicated they looked around for other towers, and there is one other tower nearby which is owned by Verizon. He reported this tower will connect directly back to the fiber optic network on CR 17 so it will give all of the businesses on Commerce Drive access to that. Mr. Crusie said Forest River has already agreed to connect as well. Additionally, he noted that the tower is tucked away where it is not very visible and pointed out the location on the aerial photo. He went on to say that the building will block the view of the tower from CR 29. He noted they have been in contact with railroad representatives, and there are no problems with proximity to the railroad.

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** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a wireless communication 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 (dated November 21, 2014) 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, Roger Miller, Randy Hesser.

6. The application of *Daina & Austin Heflin (buyers) and Gilbert Paul Nichols (deceased) and Kathleen Sue Nichols (seller)* for a Special Use for a privately owned recreation building (event venue) (Specifications F - #20) on property located on the North side of CR 36, 486 ft. East of CR 15, common address of 22889 CR 36 in Harrison Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #22889CR 36-141124-1*.

There were 14 neighboring property owners notified of this request.

Daina and Austin Heflin, 58221 Westleaf Manor Boulevard, Elkhart, were present representing this petition. Mrs. Heflin explained they currently have an offer on the property contingent upon the approval of the Special Use permit. Using a power point that was submitted with the application, she said they would like to share the beautiful property with many other people on their special day, creating a classic wedding atmosphere in a beautiful country setting. She also noted it would bring additional business to Goshen with their list of preferred vendors. Noting site plans that were previously submitted, she pointed out the existing barn and potting shed to be used for photographs only and two proposed structures for events as they do not want to harm any of the existing structures or change their intended uses. She reported that they plan to live in existing residence as their family home. She noted their current careers and personal qualities that will help them run this business. She went on to say that they plan to hire the necessary people to assist them in areas where they do not have as much knowledge.

Understanding that this request may affect their neighbors and as they desire to be good neighbors themselves, she stated they have a plan to protect neighbors and propose vinyl fence around the perimeter of the property to keep sound, light, and people from filtering out. Also, two parking attendants will be on patrol during the entire event to make sure there are no wanderers on the property or in the parking area and to ensure that no substances are being brought in from the parking lot. She went on to say that any time alcohol is being provided for an event, there will be additional venue-provided security which will ensure that the Heflins will

maintain control at all times. For events providing entertainment such as a DJ or band, the speakers will face southeast to minimize the amount of sound that will travel towards the neighbors. She noted there is a tree line and structures on the property that will help absorb some of the noise. Mrs. Heflin reported events are planned to mainly be scheduled on Fridays and Saturdays with a closing time of midnight. She reported the increase in traffic due to their venue would not be during common high volume traffic periods, and the County Road can hold the capacity.

She reported quite a bit of neighbor support as indicated on the petition included in the submitted application. She noted one of the neighbors, Jackie Hackney, previously signed the petition in support but has since decided he wished to have his name removed from the petition. She stated he is present today to speak but he asked that she notify the Board that he wished his name removed. She noted Mr. & Mrs. Brubaker are present in support but did not get the opportunity to sign the petition.

In an effort to maintain control over events at their location, Mrs. Heflin stated they plan to limit the catering to five vendors chosen by them so they can keep as much control as possible so they can insure that their visitors and health laws are abided by. Looking at the next 50 years and this being a long-term plan, she reported they will be using long-lasting materials such as vinyl fencing, stamped concrete in the barns, and composite decking. Even though the up-front cost will obviously be more, it will benefit them significantly in the long-term. She noted she wants to create a business that she can share with her family. Besides the materials, barns, and the offer that they have explained is existing, she went on to say that they know there is a lot that goes into a business such as this and that they have a lot to learn. She noted they have reached out to outside sources such as Barry Pharis of Brads-Ko Engineering to lead them in the right direction, Don Schnoebelen who has already done soil samples for the septic and parking area, Stuart Meade who completed the design and taught them about field tiles and regulated drains.

When Mr. Hesser asked about the surface of the parking area, Mrs. Heflin indicated, at this point, they plan on gravel and noted they may need to spray for dust control. Mr. Miller asked about the possibility of any activities during the week or if they are limiting the events to Fridays and Saturdays. She responded that they are not planning to accommodate anything during the week but may possibly schedule events on Sundays in the morning or afternoon. Mr. Homan questioned the existing and proposed fencing shown on the site plan. Mrs. Heflin reported they are going to put a vinyl fence around the perimeter of the parking area.

Kathy Nichols, 22889 CR 36, the current homeowner of the property, stated the property has field fence all the way around the back area of the property which is approximately two acres. Mrs. Wolgamood noted there are two site plans – one existing and one proposed. When she stated she does not see fencing indicated on the proposed site plan, Mrs. Heflin referred her to the parking illustration, labeled “Pasture Parking Diagram,” which shows a privacy fence around three sides of the parking area which she indicated will be vinyl. The south side of the parking area will also be separated by a fence, but it will be a different style of fencing due to visibility from the event area. Mr. Miller noted the 125 parking spaces indicated on the parking diagram and questioned the maximum number of people for an event. Mrs. Heflin reported the number will be limited to 150-180 as indicated on the questionnaire. She went on to say that in most cases, they would only want to accommodate 150 because this type of wedding plan is usually for a more quaint-type of setting, and when attempting to accommodate 200-300 people,

it loses that atmosphere. She said she does not see that they would need more than 80 parking spaces at that point, but when she put together the diagram with the parking space size requirement, she came out with 125 spaces. She went on to say there is a good possibility that they would landscape in that area and eliminate some of the unnecessary spaces that they do not believe they will actually need.

When Mrs. Wolgamood asked her to elaborate on the “outside entertaining”, Mrs. Heflin said the entertainment will be in the barn area either on the small back deck which will attach the two barns or inside the proposed barn. Similar to most wedding receptions, it will either be a DJ or a band. She noted the entertainment will be regulated with prior knowledge of the company or group before the event as they want control of the situation in all of the facets of the business.

Referring to the questionnaire, Mrs. Wolgamood noted one proposed sign being single-faced, free standing 10’x12’ sign. Mrs. Heflin explained staff contacted her about a sign after the application was submitted. As they had not discussed a sign or researched signs at that point, she had no idea about the possible size. She stated while she wants to have a sign to identify the business, she does not want it to be an overwhelming size. She went on to say that she is sure it will not be as large as she previously indicated.

Mr. Miller questioned the existing drives on the site plan. Mrs. Heflin stated there are currently four entrances, and noted them on the aerial photo and described their uses. She noted the gravel drive on the west side of the property will be extended back to the parking area. Mrs. Wolgamood questioned the business directly to the south. Mrs. Heflin indicated it was an excavating company which she believes is still in business but is not as busy as it was previously.

Galen Brubaker, 22772 CR 36, was present in support of this request. He stated he and his wife own the east adjoining property and said they have no opposition to this request. He went on to say that they welcome the Heflins as neighbors and the event venue. Additionally, he said they have offered drainage crossing their property if needed.

Jim Flora, 63945 CR 15, was present in remonstrance. He indicated his home across CR 15 to the west on the aerial photo. He submitted a letter with signatures *[attached to file as Remonstrator’s Exhibit #1]*. He noted Jared’s Excavating, south of CR 36, which is no longer in business but the buildings remain. Due to some events held on the Jared’s Excavating property in the past, he noted the concerns of the neighborhood now are heavy traffic, noise from entertainment, crowds, trash along the roadway, and hot rod-type driving. Reading from the submitted letter, he also noted concern about late hours, horns, car alarms, headlights shining into windows, and concern about their residential investments. Having just met the Heflins this morning, he said he hopes they purchase the property but still does not wish to have this Special Use approved.

When Mr. Hesser asked the location that held these previous parties, Mr. Flora said it was the Jared’s Excavating property. Using the aerial photo, he pointed out a building on the property which he indicated is a very nice, clean barn made for the purpose of an event venue and never contained any equipment related to the business as far as he is aware. In the past, parties were held in that building, and the police were even called due to excessive noise and activity. He reported that the sound carries a lot in that area. When Mr. Miller questioned when those parties were being held, Mr. Flora indicated it was about two years ago.

Also present in remonstrance was Jackie Hackney of 63954 CR 15. He indicated his three properties are adjoining on the west and north sides of the subject property. Noting he has also met the Heflins, he said they are very nice people, and he hopes they come to the

neighborhood, but without the venue. Regarding headlights and car alarms, he reported he lives in a tri-level house with the bedrooms being on the back side closest to the subject property. He went on to say that the northern part of the subject property slopes to the north so he is concerned about run-off from the proposed structures and parking lot. When Mr. Campanello questioned if the northern property is a rental, Mr. Hackney indicated yes.

Bob Leinback, 64013 CR 15, was present also in remonstrance. He noted his only opposition would be late night traffic. He also indicated he would not want any firework displays on the subject property.

Addressing the audience, Mrs. Wolgamood asked for a show of hands in favor of this request. There was seven hands raised, and of those, three indicated they were neighbors to the subject property.

In response, Mrs. Heflin said they have spoken with all of their neighbors about their plans instead of having them just receive the Neighboring Property Owners letters in the mail. She went on to say they are true to all of the neighbors' concerns which are valid, and they understand them. She again noted the previously mentioned preferred vendors for services utilized on the property to assure control over the entire situation and acknowledged awareness of the previous issues with a neighbor.

Regarding the concern about paper plates and cups making trash in neighboring yards, Mrs. Heflin reported her plan for a "classy" wedding venue with china, metal silverware, and glass wine goblets to be used in lieu of disposable items. She also noted that real candles and cigarettes will not be allowed because of the fire hazard and expressed there are safety measures and precautions that they are taking for their safety as well as the neighbors' because this will also be their home. Mrs. Heflin said they want all the neighbors to know that they respect them, the property, and their family. Additionally, she noted that fireworks will not be allowed as part of their plan for a classy establishment. While she noted they cannot make guarantees about the noise, people, and car alarms, she stated she can guarantee that they will have staff assisting with parking, maintaining people and the volume, and doing everything they can do to control the environment including making an announcement at the end of every event to leave quietly and slowly when existing.

The public hearing was closed at this time.

If granted, Mr. Miller asked Attorney Kolbus if the Special Use is for the property or for the owners, which Mr. Kolbus indicated is for the property. Additionally, he noted the Board can set a time limit if so desired. Mr. Hesser noted the approval can be limited to "owner/occupant," but not to specific individuals and suggested that be an added commitment.

Regarding the sign, Mrs. Wolgamood asked staff what is permitted. Mr. Mabry indicated the sign size would be based on the width of the property and whether the sign is lit or unlit. Attorney Kolbus noted if granted, restrictions can be set for sign size smaller than allowed by the ordinance if desired. When Mr. Hesser questioned Mrs. Heflin about her preference for lighted or unlighted, she indicated she would rather have a smaller lit sign as opposed to larger and unlit. Mr. Miller noted signage would be important for purposes of identifying the location. It was mentioned 4'x6' would be a very nice size for monument sign. Mr. Campanello noted this would not be a good location for a digital sign, and Mrs. Heflin agreed. Attorney Kolbus mentioned they might consider the lighting being turned off at end of evening if approved.

If inclined to grant the request, Mr. Kolbus suggested considering placement of either a time limit or for the owner/occupant of the property and clarify the location of the music. He also suggested identifying the site plans and pasture parking diagram because all three show different items and areas of the property. Mr. Miller also noted concern about drainage in the parking area. Mr. Mabry noted the ground would be less pervious even with gravel but indicated MS4 would be reviewing the project during the building permit process. It was also noted that the Health Department would cover any sewage issues/approval.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a privately owned recreation building (event venue) (Specifications F - #20) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated November 24, 2014) which includes two drawings and the pasture parking diagram and as represented in the petitioner's application and testimony.
2. Approved for owner/occupant of the residence on site.
3. Sign to be limited to no more than 24 square feet with external lighting only, no internal lighting.
4. Approved for a period of two years with renewal before the Board.

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

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

7. The application of *Matthew G. & McVilla K. Wayker* for a Special Use for a child care home in an R-1 district (Specifications F - #23.10) on property located on the Northwest corner of CR 13 (Middleton Run Road) and Bel Ridge Drive, 373 ft. North of Wedgewood, being Lot 21 of Kindig Nursery 2nd Sub, common address of 56679 CR 13 in Concord Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #56679 CR 13*.

There were 34 neighboring property owners notified of this request.

McVilla Wayker, 56679 CR 13, was present on behalf of this petition. She stated she is retired from years of providing child and foster care for children in her home, and has been asked by people to provide day care for their children. She reported she and her husband reside on this property with two children. When Mr. Hesser asked if she required licensing, she stated she is in the process of obtaining her license. He further questioned if the license limits the number of children she can have, and she stated she can have up to 11 with two adults. She went on to say the limit is placed by ratio. When Mrs. Wolgamood questioned the number of adults required for five children, Mrs. Wayker reported one. She also stated that her children are not included in that ratio. Mr. Hesser questioned the ages of children she will be allowed to have, and she

reported that she can have from birth to 11 years old. When Mr. Campanello asked if the licensing contains special conditions for the property such as fencing, Mrs. Wayker stated that Child Care Alliance already completed an inspection of the home which passed. At this time, she is just awaiting the license. Mrs. Wolgamood confirmed that the swimming pool is entirely fenced separately from the fenced play area.

Dana Cass, 56752 Summit Park Drive, was present as the President of the Summit Ridge Neighborhood Association. He reported many of the neighbors have discussed this proposal and are in opposition due to the fact that it would be a violation of the subdivision covenants. Mr. Campanello confirmed that the covenants say that a home business is not allowed. He further questioned it stating specifically a day care, and Mr. Cass said it states that no home businesses are to be run out of a residence that is part of the Summit Ridge neighborhood. Mrs. Wolgamood questioned if he was aware of previous permission granted in 2001 by Mrs. Wayker. He reported the neighborhood association was in opposition to the request at that time as well. When Mr. Campanello questioned whether Mr. Cass is aware of any other home businesses in the subdivision, Mr. Cass said there are none that he is aware of.

Mr. Homan noted that the Staff Report indicates this property is in the Kindig Nursery 2nd Subdivision, and if that is correct, he would presume it is not in the Summit Ridge Subdivision. Mr. Cass indicated that is correct, but the entrance of Summit Ridge runs parallel to the subject property. Mr. Hesser further questioned that this property would not be subject to their covenants, which Mr. Cass agreed it is not and went on to point out the subdivision entrance sign on the aerial.

In response, Mrs. Wayker stated Mr. Cass is a stranger to her. She did report her neighbors know her and are in support of her request. When Mr. Campanello asked the length of her residency on the subject property, she reported she has lived there since 1999.

The public hearing was closed at this time.

Mr. Campanello noted two day care centers previously approved in the nearby Pinecrest Subdivision, and the Board has allowed them previously. Mr. Hesser pointed out if this were in the Summit Ridge Subdivision, the Homeowner's Association could still pursue this subject to covenants even if the Board granted permission. He further noted, the subject property is not in that subdivision, and it was previously approved for a day care. Additionally, he reported it is not an offensive use especially if the Board limited the approval to five children. Attorney Kolbus indicated the Board has previously set the limit as allowed by the State. There was additional discussion and question among the Board about placing a limit on the number of children. Seeing that Mrs. Wayker wanted to speak, Mr. Homan asked her for clarification. She added that the State allows an extra four school-aged children in addition to the maximum during breaks from school such as summer vacation. Mr. Miller indicated Child Services is the authority that comes in and places the limit on the number of children based on the number of employees and is also run by the State. Having dealt with that, he said it is pretty strict. Referring to the questionnaire, Mr. Hesser inquired about an additional employee. Mrs. Wayker reported she already has one employee, in addition to herself, lined up. She also stated she will be assigned a caseworker who will supervise her day care and keep documentation.

Mrs. Wolgamood stated one of her major concerns is the traffic increase coming and going from the property on that very busy county road for 5 vs. 11 children. She wondered if that was a concern back in 2001 when the approval was limited to five. She also noted the nice

turnaround driveway. Mr. Hesser stated the higher number does not concern him, and Mr. Miller indicated the same. Mr. Miller went on to say he would be more concerned with having to deal with the state regulations. Mrs. Wolgamood pointed out that the state is not concerned with neighboring property owners and vehicular traffic which is part of what the Board should be looking at. Mr. Mabry noted in Commitment #8, the staff's intent was to say one "outside" employee. As it just says "one employee," he stated it could lead one to believe they just meant the petitioner, but the intent was one outside employee. Attorney Kolbus noted Commitment #9 is suggested by the staff as a one year renewal which will allow for additional comments regarding traffic and any possible issues at that time if the Board allows more than five.

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

Motion:, Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a child care home in an R-1 district (Specifications F - #23.10) 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 (dated November 21, 2014) and as represented in the petitioner's application.
2. Approved for the occupant of the residence on-site to operate the child care home.
3. The fenced in play area must be maintained.
4. State license and permits must be obtained.
5. Days and hours of operation are 5:30 AM to 5:30 PM, Monday through Friday.
6. The number of children is limited to the State of Indiana allowed number of 11, including the petitioner's children.
7. No sign is permitted.
8. No more than one outside employee may work on-site at a time.
9. Approved for a period of one year with renewal before the BZA.

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

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

No: Meg Wolgamood.

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

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #16084CR 20-141112-1*.

There were 13 neighboring property owners notified of this request.

Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. Ninth St., Goshen, was presenting representing the petitioners who are present as well. He said he understands there was some initial concern that Mr. and Mrs. Burns would actually live on-site and assured the Board

that they have and do live in the building on the subject property. He explained that last year while commuting and attending grad school in Ohio on a full scholarship, Ms. Aragona was involved in a serious traffic accident. As a result, she lost her scholarship due to her absence from school while recovering, and has relocated here and works with Mr. Burns in the business full-time now while she reapplies for scholarships. During this recovery period, Mr. Burns significantly increased the business, and they now own a business in Fort Wayne in addition to the Goshen business. As they have expanded their operation, Mr. Pharis said they spend time at both locations, traveling frequently between them, but this is their home. He submitted photos of the interior of their home inside the structure on the subject property *[attached to file as Petitioner Exhibit #1]*.

Mr. Hesser questioned where on the property they set up the inflatables for cleaning after each event. Explaining the process, Mr. Pharis said the product is moved from the subject property onto the site of the venue. Some customers want an employee of the company on-site with the inflatable during the event. After the event, he said the equipment is removed and brought back to the subject property the same evening, typically between 9-11 p.m. The next morning outside on the property, they inflate, clean, deflate, and store them. Regarding the schedule, he stated events are usually held on Friday nights, Saturdays, and Sunday afternoons with an occasional weekday event at a school or church. Most of the time events are held in the early afternoon or early evening with the season being primarily spring through fall. Although, they can operate indoors in the winter and occasionally are requested to do so.

Last year, he reported they had two trailers for hauling but have added two this year. He identified one of the new trailers as a rock climbing wall trailer and an additional covered trailer to their total of four which is the reason for the request to store two units on the west side of their building as shown in the photo. He submitted photos of the outside storage *[attached to file as Petitioner Exhibit #2]*. If permitted, Mr. Pharis said two units would be store outside on the west side during the season spring through fall. He noted staff recommended approval of this owner occupied business and storage on this site but have requested the Board not permit the outside storage. While they hope for approval, he noted they will have to make other arrangements if not approved.

When Mr. Campanello inquired about the distance between the property line and the building, Mr. Pharis reported it is 60 ft. to west side property line. He further inquired about installing a privacy fence to provide screening for the outside storage. Mr. Pharis indicated there is currently a fence on the east side but not on the west side. He went on to say that the petitioners would not have a problem with putting up a privacy fence. When Mr. Hesser asked if the trailers would fit in the barn, Mr. Pharis said the original two trailers are inside but the two newer trailers would sit outside during operational season. For winter, he said they can probably get all four inside, but it is a real challenge during the operational season.

Requesting clarification, Mrs. Wolgamood said she has been out to the subject property and reported that you can tell that someone lives in the house/building. She questioned whether there is a house on the neighboring lot to the west. Mr. Pharis reported there is an empty five acre lot adjoining the subject property, but the second lot to the west has a residence. He also made mention of the adjoining properties to the east and south of the subject property.

In remonstrance, Laquitta Claussen, 58573 CR 31, Goshen, was present. She noted in past meetings, whether intentionally or not, the BZA has been misinformed. She said it was previously reported that there are no restrictive covenants for the subject property which is

incorrect. She submitted a copy of recorded restrictive covenants and copies of minutes from previous hearings with highlighted portions *[attached to file as Remonstrator Exhibit #1]*. When Mrs. Wolgamood asked if Mrs. Claussen's property is included in the 100 acres named in the covenants, Mrs. Claussen indicated yes. Referring to highlighted areas in minutes, she noted in the first hearing for this accessory building, Mrs. Wolgamood was concerned about the size of the accessory storage. She said the picture that was originally submitted showed a house with an attached garage which is not at all similar to the pole barn they constructed, and looking at the minutes, suggested it was also unclear to the Board. She claimed that the Neelys who previously resided in the nearest residence west of the subject property were approached by Mr. Boyce who asked about borrowing electricity to begin running the business out of the building without requesting a Special Use permit. Referring to the second set of minutes from the 11/21/13 BZA meeting, she again noted discrepancies and misrepresentations. Mr. Campanello inquired if she got a copy of the covenants at the closing for her property, and she said yes.

She reported that each time a hearing is scheduled, they remove their outside storage a week prior to the meeting. She stated the rock wall was sitting outside for two months prior to any meeting or any type of approval. She noted at the last meeting Mr. Pharis indicated there was enough room in the building for trailer storage, and immediately after the meeting, she stated there were two trailers outside. She reported a dunk tank sat outside for eight months. She said that they load and unload several times on the weekend between 11 p.m. and 1 a.m. With the storage building built directly behind her house, her dogs hear the comings and goings from the Burns' property and bark at the back door. Mr. Miller noted it is 140 ft. behind her house. She stated whenever she goes to her sliding glass door in her backyard, she can see their pole barn and whatever they have going on. When Mr. Miller questioned if there is any fencing, Mrs. Claussen reported the Burns have a split rail fence between the two properties. She went on to say that she has a fenced area to keep her dogs in her yard.

On one occasion, she said there was an inflatable movie screen on the subject property at 11 p.m. shooting out the south end of their building from a camera inside the barn to the screen which was directly outside of her bedroom window. Regarding employees, she noted they only ever asked for three outside employees and questioned the number of employees since the business has increased. Mrs. Claussen reported that Avery's mother and sister, by their own admission, also work for the company which makes a total of five. Additionally, she questioned when the larger nice house was going to be built since Mrs. Burns is no longer in school. She expressed concern about the look of the outside storage.

When Mr. Hesser questioned if staff has been contacted when items are being stored out, Mrs. Claussen reported she has spoken with Mr. Mabry several times, and he has made note of it.

Ryan Stack, 16174 CR 20, was present in remonstrance. He reported he owns the property two lots west of subject property, and closed on the purchase of it 35 days ago. He stated he did know and understood there were commercial buildings on the subject property and the Claussen property when he purchased his home. He noted it is a residential area and said he was provided with a copy of the restrictive covenants at the time of closing so he understands the boundaries of what should and should not be done on this property. Since he has lived in his residence, he reported either the rock wall or van have been parked outside. At a minimum, if outside storage is allowed, he said he would like some type of fence or visual distraction between his property and theirs. He stated he does not have an issue as long as neighbors keep their

property clean and tidy. He questioned if there was some type of condition placed on the number of vehicles allowed to be parked there. Additionally, he inquired about the size of the vehicles.

In response to remonstrations, Mr. Pharis said, with respect to remonstrations, he noted that he did not represent the petitioners at the March 21, 2013, hearing but instead Mel Boyce did. He went on to say that he did not represent them until the November 21, 2013, hearing. He stated he represented Odebrecht and Smith who were the owners of the original 100 acres that were surveyed and divided into the 4+ acre parcels. He recalled Commissioner Mike Yoder was at that meeting and spoke on behalf of the request to break down the larger parcel into these larger parcels. He said he knew they had created covenants and restrictions. At that meeting, Mr. Pharis said that he indicated he did not have a copy of those covenants but was aware the Odebrecht sat down with the Burns and knew exactly what they were going to do and was comfortable with that.

Regarding the movie screen, he reported it was used one night during a party for their employees and families with a cookout as a reward. The screen is not part of their business, but was something they rented for the occasion. Regarding Mr. Stack's comments, he reiterated that they have stated they are willing to put up fencing or green space as decided upon by the Board. He noted the petitioners have three vehicles for their personal use which they just happen to park outside. He went on to say that the van may be used in the business, but it is their personal vehicle.

He went on to say that he does not believe he, Avery, or Sam Burns have misled the Board at all. Once the petitioners understood that what they are doing was not presented at the March 2013 hearing, the petitioners got involved with Mr. Pharis immediately who in turn got involved with staff to make sure they presented exactly what was being done on the subject property. He noted the positive staff recommendation. If constructing a fence on the west side of the property to hide the rock wall trailer and additional box trailer, Mr. Campanello questioned the height needed to screen those items. Mr. Pharis suggested arborvitae. Mr. Campanello suggested possibly a berm with fencing on top of it because the van would be approximately 8 ft. tall and suggested the rock wall may be 12 ft. tall. If approved, Mr. Pharis confirmed that it would be his client's decision to either add the screening or not store outside. Mr. Miller questioned a possible addition to the building to store the additional trailers. In terms of aesthetics, Mr. Pharis said he believed a mound and some plantings and or a mound and a fence would be more attractive than an addition to the building but noted it remains an option.

Mr. Homan noted this request has only been approved for a year and the business has grown substantially. He questioned possible future growth of business. Mr. Pharis reported that the product will be kept in Ft. Wayne for the business and market down there. He noted some of the product here in Goshen may be used in Ft. Wayne for a particular instance, but they store the product that they purchased down there and their intention is to keep that business in Ft. Wayne. He went on to say that they are in the process of hiring and training employees to be operators of that operation. He believes that the petitioners do not want to expand the business in Goshen beyond the present size. They want to expand with the business in Ft. Wayne, and he thinks if they go another direction, they would buy, rent, lease, or build another building in another location. He said their long term plan is still to build a home when Avery graduates from college. Currently, he said Avery is trying to get back into the scholarship program so they can afford for her to finish college. Mr. Pharis said their plan remains the same, to build a home

behind the existing building and use the living space inside the storage building for visiting family. He reiterated that they are only asking to be able to store the two units outside, and to have multiple employees at this location is not part of their plan. Mr. Homan noted the questionnaire states they currently have permission to store one trailer outside and request to be allowed to store up to four trailers outside at any given time. Mr. Pharis indicated he believes that is worded as such for returning equipment late at night to leave the trailers outside until they can be cleaned up and put away. He went on to say that he believes two is what they want to be able to permanently store outside.

Mr. Miller questioned a mention of pine trees being planted. Mr. Pharis explained they are going to plant pine trees along the east side in the spring of 2015 between their property and the Claussen residence.

Mr. Campanello questioned the contents of the covenants. Although Mr. Pharis said he has never read them, he said when he sat down with Smith & Odebrecht, they told him exactly what they wanted which was 4 to 20 acre parcels where people could have nice homes, homes, barns, animals, and small businesses. He said he believes the Claussens were the first to buy who built their home and put up a building for a business on their property. Mr. Hesser reiterated that the ruling of the Board does not adversely affect the enforceability of those covenants. Mr. Miller noted the one covenant that is pointed out deals with livestock and poultry. Mr. Pharis pointed out that there have been multiple complaints by the Claussens to staff which have been reviewed, investigated, and staff is still recommending approval with conditions.

The public hearing was closed at this time.

Mrs. Wolgamood noted Mr. Pharis mentioned the possibility of an addition. She questioned staff if the petitioners would have to come back to the Board for a developmental variance if they choose to go that route. Mr. Mabry noted under the new ordinance, effective February 2, 2015, accessory square footage can be up to 200% of the primary square footage without needing a variance. In this case, it would include the expansion of a Special Use, so in his mind, the request would require re-approval to add onto the Special Use building.

For clarification, Mrs. Wolgamood questioned that staff would recommend a permanent approval of a Special Use with no renewal provided there is no outside storage. Mr. Mabry went on to say that the recommendation did not include approving the additional outside storage but it included no need for a one year renewal as was previously approved. Mr. Campanello noted that they may be denied if they return to the Board to add on to the existing building. As it would be an amendment to the Special Use, Mr. Mabry confirmed that was correct. When Mr. Campanello mentioned the covenants, Mr. Hesser said regardless of the Board's decision, the covenants are still enforceable. After a quick look, Mr. Hesser said he did not see anything in the covenants that pertained to this. He noted he disagrees with staff on making this request permanent and thinks it should be brought back for renewal as it is in a state of flux and is not at a permanent status at this time.

Mrs. Wolgamood recalled Mr. Pharis saying that they have some place else for storage as an option. She said her bottom line is that she cannot support outside storage (trailer parking). There was some discussion about the temporary outside storage of the inflatables for cleaning. She said her decision has more to do with the property owner to the west having to view the subject property all the time, whether it is outside storage, fencing, a berm, or plantings.

Mr. Miller noted the previous permission given to store one outside vehicle which Mr. Homan confirmed is in the minutes from November 2013. Mr. Miller questioned that the Board would now take that away. Mrs. Wolgamood stated if it was okay before then it remains okay, but now they have requested additional trailers stored outside. If this request is denied, Mr. Campanello questioned a time line for them to find alternate storage. Mrs. Wolgamood suggested 30 days because they already have a place in Ft. Wayne. If approved, Mrs. Wolgamood indicated she feels the request should come back for renewal before the Board.

As it is apparent that there is going to be a fight between these two neighbors, Mr. Homan said he somewhat discounts that. He noted the prior approval of the business for one year with the one trailer stored outside and his previous comments that without the outside storage, it would be a home workshop/business. He expressed still feeling the same way, but will not fight the one trailer outside. However, with the obvious expansion of the business, he said he would not see a good reason to expand the outside storage or allow any more than has already been done. He also suggested renewal of the request in a couple of years to see what the business is doing or has done. Mr. Miller expressed agreement.

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

Motion: Action: Approve, **Moved by** Roger Miller, **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 renewal of an existing Special Use for warehousing and storing in an A-1 zone (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 (dated November 12, 2014), and as represented in the Special Use application and in the petitioner's testimony.
2. Approved for the owner/occupant of the residence on the Real Estate.
3. Approved for a period of one year with renewal before the Elkhart County Advisory Board of Zoning Appeals.
4. Approved for the outside storage of one trailer only to be parked on the west side of the building designated as the "garage/house" on the site plan.
5. The petitioner is given 90 days to relocate all other trailers.
6. A privacy fence to be installed along the west side of the subject Real Estate extending 20 ft. north and 20 ft. south of the building designated as the "garage/house" on the site plan.

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

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

No: Tony Campanello.

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

9. The application of *Fairfield Multi School Bldg Corp* for an amendment to an existing Special Use for an elementary school in an A-1 district (Specifications F - #38) to allow for an addition for classrooms and an addition for a vestibule on property located on the East side of CR 31, 1,600 ft. South of CR 44, common address of 68350 CR 31 in Benton Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #68350CR 31-141124-1*.

There were 10 neighboring property owners notified of this request.

Andy Bearman of Commonwealth Engineers, 9604 Coldwater Road, Ft. Wayne, was present representing the school on behalf of this request. He noted that the architect was also present. He summed up the project by stating they are taking out an existing playground that does not need to be replaced and constructing a building addition that will include two kindergarten classrooms and some minor interior renovations along with that.

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** Roger Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for an elementary school in an A-1 district (Specifications F - #38) to allow for an addition for classrooms and an addition for a vestibule 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 (dated November 24, 2014) and as represented in the petitioner's application.

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

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

10. The application of *Fairfield Community Schools* for an amendment to an existing Special Use for a school (Specifications F - #38) to allow for the construction of a transportation maintenance building on property located on the Northeast corner of CR 31 and US 33, common address of 67240 CR 31 in Benton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #67240CR 31-141124-1*.

There were 21 neighboring property owners notified of this request.

Andy Bearman of Commonwealth Engineers, 9604 Coldwater Road, Ft. Wayne, was present again representing the petitioner. Using the aerial photo, he noted the proposed building and layout for construction of a maintenance building. Mrs. Wolgamood inquired if vehicles are ever parked to the north of the proposed maintenance area in the grassy area. To the best of his knowledge, he said there are no plans to do so. He also noted that will actually be a drainage swale on the north side so they are not preparing it for parking any vehicles at any time.

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** Roger Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a school (Specifications F - #38) to allow for the construction of a transportation maintenance building 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 (dated November 24, 2014) and as represented in the petitioner's application.

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

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

11. The application of *Fairfield Community Schools (Millersburg Elementary)* for an amendment to an existing Special Use for a school (Specifications F - #38) to allow for the construction of additions for classrooms on property located on the North side of East Main Street and South side of Elm Street, 600 ft. East of Jefferson Street, being Lots 3 & 4 of Ells Add, common address of 203 E. Main Street in Clinton Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #203 E. MAIN STREET-141124-1*.

There were 60 neighboring property owners notified of this request.

Again, Andy Bearman of Commonwealth Engineering 9604 Coldwater Road, Ft. Wayne, was present representing Fairfield Community Schools. He explained in this project there are four building additions for a kindergarten room, locker room, shop/home economics, and enclosing an outdoor learning area including some renovations in that area. He also noted a parking addition and a change in the configuration of parking/traffic to make it safer for students entering and exiting the school. When Mr. Campanello asked if any busses currently park in the proposed bus parking, Mr. Bearman indicated no. Mr. Campanello noted the close proximity to the two residences to the west. Mr. Bearman stated they tried to split right down the property line with that, too.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation: **Motion: Action:** Approve, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a school

(Specifications F - #38) to allow for the construction of additions for classrooms 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 (dated November 24, 2014) and as represented in the petitioner's application.

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

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

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

12. The application of *Sonshine Day Care Ministry, Inc.* for a Special Use for a child care center in an R-4 district (Specifications F - #23) and for a Developmental Variance for 0 onsite parking spaces where 12 are required on property located on the North side of East Main Street, 300 ft. East of Jefferson Street, being Lots 1 & 2 of Ells Add, common address of 125 E. Main Street in Clinton Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #125EMAIN STREET-141118-2*.

There were 27 neighboring property owners notified of this request.

Larry Shroyer, 2012 Bashor Road, Goshen, and Eric Brown, 67060 CR 37, Millersburg, were present on behalf of this request. When Mrs. Wolgamood asked if they had an issue with the recommendation to table the request, they said they do not. When Mr. Campanello asked about approval by the Town of Millersburg, Mrs. Wolgamood indicated it will go from the Plan Commission to the Town Council with a recommendation. Mr. Shroyer reported that the Millersburg Town Council is backing this request.

There were no remonstrators present.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a child care center in an R-4 district (Specifications F - #23) and for a Developmental Variance for 0 onsite parking spaces where 12 are required be tabled until the February 19, 2015, Board of Zoning Appeals meeting awaiting the outcome of the pending rezoning request.

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

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

13. The application of *James N. Welker & Janis M. Mabie* for a Use Variance to allow for existing accessory buildings on property without a primary structure (residence) on property located on the North side of SR 4, 1,700 ft. West of CR 127, common address of 17311 SR 4 in Elkhart Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #17311SR 4-141124-1*.

There were 10 neighboring property owners notified of this request.

James Welker, 19129 CR 40, Goshen, was present along with Janice Mabie on behalf of this request. He said they are asking permission to use the barn for their own person use for their own gardening and picking up apples as there is an apple orchard in the back. At some later date, he said they may want to build a home there. Because of the location of their field system, he stated they were unable to build an accessory storage building at their current residence so they purchased this property approximately two months ago. When Mr. Homan asked if they reside anywhere near this property, Mr. Welker reported they live in Waterford at the corner of SR 15 and CR 40.

When Mrs. Wolgamood inquired about amperage of electricity, Mr. Welker indicated 100 amps. Mr. Homan confirmed with Mr. Welker that there will be no business use of this property. When Mr. Campanello questioned no power being on the property currently, Mr. Welker explained there is power to the property and a meter but the power was shut off in 2012. Mr. Homan noted an existing curb cut. The petitioner questioned if they would need to appear before the Board again if they decide to build a residence on the property. Just cursory, Mr. Mabry said it appears that the parcel is a buildable lot for a residence. While the building permit process would need to be followed, he stated he does not foresee a special approval that would require a hearing such as this. Mr. Hesser asked when the house was demolished, and the petitioners are unsure.

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** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for existing accessory buildings on property without a primary structure (residence) 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 (dated November 24, 2014) 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, Roger Miller, Randy Hesser.

14. The application of *Maria L. Rutland* for a Use Variance to allow for the placement of an accessory structure and an existing accessory structure without a residence, for a 2 ft. Developmental Variance to place a shed 3 ft. from North property line (Ordinance requires 5 ft.), and for a 25 ft. Developmental Variance to allow for the placement of a shed 25 ft. from centerline of an alley (Ordinance requires 50 ft.) on property located on the West side of East

County Line Road, 2,229 ft. South of Indiana Toll Road, being Lot 14 of Fruit Grove Resort, common address of 51757 E. County Line Road in York Township, zoned R-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #51757ECountyLineRd-141124-1*. He amended Finding #4 under the Use Variance to say that it does "NOT" interfere substantially with the Elkhart County Comprehensive Plan.

There were 15 neighboring property owners notified of this request.

Maria Rutland, 51757 East County Line Road, was present on behalf of this request. She explains that she plans to move the 8'x10' shed across the alley and replace it with 12'x28' shed, not a 12'x38' accessory structure as indicated in the staff report. She indicated the structure would be used for storage and a home office. She noted her neighbor, Sonny Miller is a contractor and will assist her with the placement of the structures.

When Mr. Hesser questioned if it cannot be combined into one parcel because of the alley, Mr. Mabry noted an Affidavit in Aid of Title was provided (included in packet) that has to do with the alley. While he said he is not exactly sure what it accomplishes, he believes that was something that was standing in the way of accomplishing that. He noted staff has worked at length with Ms. Rutland looking at options and apparently combining them was not an available option. He believes this request was her only option. Mr. Hesser further questioned the lack of a condition or commitment that parcels not be sold separately. Mr. Mabry indicated staff did not make that recommendation which Attorney Kolbus indicated the Board has done in the past. When Mr. Hesser inquired if her intention was to keep these parcels together, Ms. Rutland stated as long as she lives there, she will keep parcels together. After being told that she had the right-of-way of the alley and purchased the property, she found out that the title company had deceived her in doing their homework. She went on to say that the title for the alley was owned by a deceased person so she spent over a year trying to get that piece of property so she could legally be parking in her driveway. She stated she does own all of that and indicated the previous owner of the property in the rear is also present.

When Mr. Hesser inquired if the alley is still used, Ms. Rutland reported the alley is used by everyone but is technically public access from the south but starting with her property to the north is privately owned. She indicated most of those residences have driveways onto East County Line Road. She went on to say that it is not a high use area, and technically utilities are under the alley. When Mr. Hesser questioned the type of buildings on other properties west of the alley, Ms. Rutland indicated they are all accessory buildings.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood noted the Board granted a similar request just to the south. Although he did not realize previously that all of those structures west of the alley are accessory buildings, he noted everything in the area is like this. Mr. Homan noted the alley is strange and almost like an easement, although in this case it is private property. When Mr. Campanello asked Ms. Rutland if she had any issues with the timeline of one year to complete construction, she stated she did not.

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 amended Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the placement of an accessory structure and an existing accessory structure without a residence 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 (dated November 24, 2014) and as represented in the petitioner's application.

The motion also included that the request for a 2 ft. Developmental Variance to place a shed 3 ft. from North property line (Ordinance requires 5 ft.) be approved with the following conditions imposed:

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

In accordance with the staff report, the 25 ft. Developmental Variance to allow for the placement of a shed 25 ft. from centerline of an alley (Ordinance requires 50 ft.) is not needed.

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

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

15. The application of *Marion E. & Mary Bontrager* 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 SR 4, ½ mile East of CR 35, common address of 13763 SR 4 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 #13763SR 4-141015-1*.

No one was present in favor or against this request.

The public hearing was closed at this time.

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

Motion: Dismiss, **Action:** Approve, **Moved by** Meg Wolgamood, **Seconded by** Randy Hesser that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of horses on a tract of land containing less than three acres (Specifications F - #1) be dismissed.

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

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

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

17. The first staff item was the 2015 Agreement for legal services for Attorney Kolbus presented by Mr. Mabry.

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan that the Board accept the 2015 Agreement for Legal Service for Attorney Kolbus.

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

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

18. The last staff item was a Zoning Ordinance update by Mr. Mabry. Mr. Miller noted it would be helpful to have the new changes highlighted in the staff reports.

19. The meeting was adjourned at 11:43 am.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary