

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19TH DAY OF JUNE 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, Doug Miller. Staff members present were: Chris Godlewski, Plan Director; Mark Kanney, Planner; Duane Burrow, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Robert Homan, Doug Miller, Tony Campanello.

Absent: Meg Wolgamood, Randy Hesser, Lori Snyder.

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 15th day of May 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 7th day of June 2014 in the Goshen News and The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

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



5. The application of *Cornerstone Mennonite Church, Inc. (buyer) and Kenneth L. Martin Trust (seller)* for a Special Use for a church (Specifications F - #48) 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. Kenney presented the Staff Report/Staff Analysis, which is attached for review as *Case #000CR 44-140519-1*.

There were six neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners. He also noted several members of the church were present to answer any questions that he is unable to answer. Using the aerial, pointing to the parcel on the north side of road at the left edge of aerial, he noted a previous approval for a youth facility that was built by this same organization. As the church has continued to grow in number of members, he said they would now like to build a church across the road. He noted the site plan included in the packet, and the facility will seat approximately 230 people and have approximately 60 parking spaces. He indicated typical hours on Sundays and some events during the week as necessary for church activities.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use 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 = 3).

Yes: Robert Homan, Tony Campanello, Doug Miller.



6. The application of **Board of Trustees of the Old Order Mennonite School of Elkhart County** for an amendment to an existing Special Use for a school (Specifications F - #38) to allow for the construction of an addition on property located on the West side of CR 13, 995 ft. North of SR 119, common address of 65265 County Road in Harrison Township, zoned A-1, came on to be heard. 

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #65265County Road13-140519-1*.

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

There were four neighboring property owners notified of this request. 

Everett Martin, 26333 CR 40, was present representing this petition. He said they would like to build another classroom onto the school as the existing classroom is getting pretty crowded. He also noted they would like to split the grade levels into two groups. He reported the neighbor, whose property is shown on the aerial, send their children to the school.

Loren Sloat, 63083 CR 7, Goshen, was present in support of this request. He stated he lives a few miles from this school. When he asked members of the audience for a show of hands in support of this request, approximately six hands went up.

There were no remonstrators present. 

The public hearing was closed at this time. 

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a school (Specifications F - #38) to allow for the construction of an addition be approved with the following condition imposed:

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

The following commitment was imposed:

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

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

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



*****It should be noted that Lori Snyder arrives at this time.*****

7. The application of **Nicholas M. Moreland** for a Special Use for an agricultural use for the keeping of chickens in an R-2 district (Specifications F - #1) on property located on the East side of Burr Street, 85 ft. South of Pennsylvania Avenue, being Lot 28 of T J Jones Add., common address of 56322 Burr Street in Baugo Township, came on to be heard. 

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #56322BurrSt-140519-1*.

There were 29 neighboring property owners notified of this request. 

Nicholas Moreland, 56322 Burr Street, Elkhart, was present on behalf of this petition. He said his only concern is that he was hoping to keep all five chickens that he presently has. He reported he has a signed petition by neighbors saying this is not affecting them in any way. When Mr. Campanello questioned other Board members if they would have a problem with five chickens, there were no objections.

There were no remonstrators present. 

The public hearing was closed at this time. 

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** 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 chickens in an R-2 district (Specifications F - #1) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. A maximum of five chickens are allowed with no roosters permitted.
3. All chickens must be penned or housed at all times.
4. The chicken run must be relocated so that it is no closer to the south side property line than the existing residential structure on site and so that it is a minimum of 10 feet from the north side property line.

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

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



8. The application of **Robertson Chomphanuvong and Soukanh Keovilayvong** for an amendment to an existing Special Use for a church (Specifications F - #48) to allow for construction of a worship building on property located on the North side of US 20, 500 ft. West of CR 27, common address of 17341 US Highway 20 in Jefferson Township, zoned A-1, came on to be heard. 

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #17341Us Highway20-140519-1*. He submitted a letter of remonstrance *[attached to file as Staff Exhibit #1]*.

There were six neighboring property owners notified of this request.

Bounseum Sengsommaly, 1302 Harvest Drive, Goshen, was present on behalf of the petition and is the President of the Board for the temple. Mr. Campanello noted that staff is asking for at least 38 parking spaces, and the site plan shows 26 spaces. He questioned if they have room for the addition of more parking spaces. Mr. Sengsommaly indicated there is approximately 60 ft. between the new building and the existing parking lot. When Mr. Campanello further questioned about where additional parking would go, Mr. Sengsommaly indicated it would be behind the existing building. Mr. Hesser also asked about the extra parking for additional attendees during special events throughout the year. Using the aerial, Mr. Sengsommaly indicated overflow parking on the east side of the existing building. Additionally, he stated many carpool to worship. 

Shawn Church, 23592 CR 4, Elkhart, was present in favor of this request. He reported he and his wife are members of the church. To clarify, he said the parking will be extended along the west side property line toward the new building. He also noted overflow parking previously has been in the same area. 

Lynn Kauffman, 56841 CR 27, Goshen, was present as he is a next door neighbor. While he said he is not against the addition of a building, he stated the parking needs to be addressed. He said at times, there has been parking all around the existing building when they have a special event with too many cars to count. He also questioned how this might affect his property which is located directly behind the subject parcel with his access off of CR 27. He expressed concern about future growth as the bigger building will attract a larger crowd. He said with that many people backed in, it is unsafe. When Mr. Campanello inquired about the frequency, Mr. Kauffman said there is a large crowd once a month. Noting the church down the street that is a big red box, he also requested it be built so it blends in with the country side. Lastly, he noted with the US 20 expansion, some of the subject property will be taken by the state. 

In response, Mr. Church said the parking lot will be expanded towards the new building with parking close to it for the elderly. He indicated there is plenty of room to add to the parking lot which he said is approximately 50 yards, and the septic field is right behind existing building. He did report the new building will probably be a brighter color such as yellow or orange so it will stand out quite a bit. However, he noted the building will sit back and be blocked by a tree line and 6 ft. privacy fence on the rear property line, and the rest is open field. Mr. Miller questioned the timeline for construction which Mr. Church said is for completion within the year. When Attorney Kolbus pointed out that the Board can consider a timeframe for the additional parking being built, Mr. Church said they would rather add the parking after construction of the new building. Mr. Campanello suggested a revised site plan showing the additional parking

spaces as required. Mr. Hesser agrees that if the Board adopts the staff recommendations, there will have to be a revised site plan showing the additional parking.

Mr. Hesser noted several of the original conditions were deleted and asked staff about why original conditions #9 and 10 were omitted from this request. Mr. Kanney said the setback on the road is 120 ft. so that is a given. Regarding only one residence on site, he indicated a major use has been established on the property, and two uses are not generally allowed on a site. Houses cannot continue to be built where there is a church situation.

The public hearing was closed at this time. 

Noting churches are generally approved, Mr. Homan said if the Board is inclined to approve today, it should be contingent on revised site plan submitted and approved by staff. Attorney Kolbus indicated commitment #1 would be modified to, revised site plan to be submitted showing the required 38 parking spaces. Mr. Miller said he felt the additional parking should be built with the construction of the new building or prior to occupancy of building. 

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

Motion: Action: Approve, **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 an amendment to an existing Special Use for a church (Specifications F - #48) to allow for construction of a worship 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 commitments were imposed:

1. Approved in accordance with the amended site plan to be submitted to the staff showing the required 38 spaces and as represented in the petitioner's application.
2. The hours of operation shall not be more than 8:00 a.m. to 6:00 p.m., seven days per week.
3. Exterior signage shall be limited to one double-faced, non-illuminated sign fronting on US 20 to be constructed in accordance with sign regulations contained in the Zoning Ordinance.
4. No offensive noise is to be emitted from the place of worship that would constitute a private nuisance to any neighbor.
5. There shall be no outside loud speakers used in connection with the place of worship.
6. Off-street parking shall be provided on a gravel surface of adequate size to serve at least 38 vehicles. The dimensions of each parking space shall be 9 ft. x 20 ft. Parking is to be completed prior to occupancy of the new worship building.
7. The new worship building shall be served by a private sanitary sewer system as may be approved by the Elkhart County Health Department and shall be shown on an amended site plan for review by the Staff.
8. Backing out of vehicles onto the highway is prohibited.
9. A tent may be utilized twice during the summer for a maximum of one week duration at a time.

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

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



9. The application of *Investments 21, LLC* for an amendment to an existing Special Use for an athletic park in an A-1 district (Specifications F - #44) on property located on the South side of CR 38, 991 ft. West of CR 43, common address of 11188 CR 38 in Clinton Township, came on to be heard. 

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #11188CR 38-140519-1*.

There were six neighboring property owners notified of this request. 

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, was present on behalf of this petition. He submitted petitions with signatures in support of this request *[attached to file Petitioner Exhibit #1]* from area residents, Board members of the park, players and youth from the park above the age of 18. He reported Darren Miller, the owner, and several of the Board members were also present. The definition of youth for this park is, "after eighth grade until married". After a meeting with the park Board, Mr. Doriot indicated he failed to include two items in the original request. Therefore, they would like to amend the request to include the addition of Saturday hours from 8 am until 8 pm and three all-night tournaments per year but would settle for two. Having one all-night tournament now, he noted it is one of their major fundraisers as teams travel from Illinois, Michigan, Pennsylvania, and Ohio for these paid and sanctioned tournaments.

Using a power point presentation, he showed the property prior to and since the development of the youth park. He also noted proposed changes to the parcel. He reiterated that there are no outdoor speakers. When Mr. Hesser inquired about an object shown on the site plan, Mr. Doriot indicated it is a hoop building where equipment is stored. He also reported there are a couple of hoops inside where basketball is sometimes played. He also pointed out the concession stand and buggy parking on a mounted large aerial photo (included in file). He showed a video from the nearest neighbor into the park along with some footage of some of the activities at the park. He pointed out the lighting which is pointed down onto the fields.

Noting he was there early in the evening, he said he has been out to the park on five or six occasions and has never heard one curse word and has never been around a group of better behaved young people. He said alcohol, when found, is taken away and dumped, and the authorities are called if necessary. The Sheriff's Department was given permission by the previous owner, Leroy Chupp, to enter the property at any time. He noted Capt. Culp is present from the Sheriff's Department, and Darren Miller, the current owner who is present, will agree to sign a new agreement that will give the Sheriff's Department to have free access any time. Mr. Doriot stated he does not know of any trips out to the park by the Sheriff's Department after receiving a call. He noted there has been discussion in the Board that sometimes when the youth leave, they speed from the property which is an issue they are addressing with the youth. He stated that the park is about giving youth a place to rid themselves of extra energies and guys showing off to girls. But in this environment they are monitored to an extent, and it is a good place for a community.

Noting closest neighbors to the park, he pointed out that those houses are 1,200 ft. to the Southeast (Isaac Kulp residence), 840 ft. to the East (Tri-County Land Trustee Corp.), 1,200 ft. to the Northeast (Gary Troyer residence), 1,700 ft. to the North (Leroy Chupp residence), 1,580 ft. to the West (Charles Rink residence), and 2,520 ft. to the Northwest (Ben Whirlledge

residence). Mr. Hesser noted a remonstrance letter from Mrs. Whirledge. Mr. Doriot went on to point out the wooded area to the South and a growing tree line along the subject property's west property line which is not tall enough yet. 

William Beck, 30948 Woods N Water, Elkhart, was present on behalf of this petition. He said he has been affiliated with this park for approximately four years and has been affiliated with softball approximately 32 years. He reported running the softball program for the City of Elkhart Park Department for two years in 2010 and 2011. He said he no longer works for the City of Elkhart but still supports their softball program. After 30 years of playing and umpiring, he said he wanted to be part of this park. After umpiring a number of tournaments a few years ago, he reported when they asked him about it, he jumped at opportunity for some league play there. Although it is 28 miles from his house in downtown Elkhart, he said he goes there because it is a wonderful place to play, work, and officiate. The environment is what it is supposed to be which is kids having fun. He said he does not hear any backtalk or any type of confrontational attitudes. He reported it is well-mannered, well-intentioned kids who just go out to have fun whether it is playing volleyball or softball. Because of this, he said he has chosen to strictly limit his slow pitch umpiring to this park. To have lights on at night five nights a week, he does not think is necessarily a huge request, and he noted they do the same thing in the City of Elkhart with 10:30 p.m. weekdays with unlimited play on Friday and Saturday nights. He doesn't understand why a place like this would have any kind of a problem with the issue of lights. He noted young children and parents come to watch as well as young adults who are not playing. He said it is a beautiful environment that should be preserved and encouraged.

 Leroy Miller, 29965 CR 16 West, Elkhart, was also present in support of this petition. He indicated that he is a fellow umpire at this park for approximately five years. He added that this is his 39th year of umpiring, and he also umpires in Elkhart. He said he is honored to be able to umpire at Rock Run Youth Park. He expressed agreement with Mr. Beck that he is really shocked that the lighting issue has been a problem especially this time of year until fall when it is daylight until 10 pm. He said in the five years that he has been there, he has never seen alcohol even one time out in public there. He said he has never had any issues with the players or complaints. He noted the mild mannered people participating. He hopes this request will be approved, and the park will continue as it is a great meeting place. 

Also present in support was Darren Miller, owner of Investments 21, P.O. Box 12, Shipshewana. He stated he owns the property but does not receive any money from it. He explained that he wanted to do this to give back to the community. He feels teenagers are going to be busy doing something whether it is positive or negative, and this is a great model for them. They can go there play ball and parents come out so they are building relationships with their children. He said he supports this because it is a great model. 

Howard Helmuth, 11665 W 500 S, Millersburg, was also present in support of this request. He reported he lives approximately two miles from park, and has four sons and one daughter who participated on teams. In the evenings when he could see the lights on at the park and knew his children were over there, he said he found it comforting knowing where his children were. During the summers of 2011 and 2012, he said his wife did the daily cleaning and after the tournaments. Regarding the rumors of alcohol and partying, he claimed there was no evidence of that. He went on to say that occasionally his wife found an empty alcohol container

between the road and the park, but otherwise, there was no sign of that. He strongly encouraged the Board to approve the request. 

Marie Whirlledge, 11551 CR 38, Millersburg, was present in remonstrance. At Mr. Campanello's request, she pointed out her property on the aerial photo. She submitted a map and a letter [attached to file as Remonstrator's Exhibits #1 and #2]. Referring to the copy of the map, she pointed out their land location which is a farm that has been in the family for 90 years. She also noted south of the park there is an 88 acre trust which belonged to her late brother, and of which she is a co-trustee. Therefore, they have two large areas of land on either side of the park. As she is not comfortable with public speaking, she noted she would have preferred to have spoken to the owners or Board members of the park on a private basis, but they have not made any contact with them before this petition was submitted.

She reported they talked with many of the neighbors who live right next to the park and of those; none are in favor of this request. She said the local Amish community is not in support of this park, and it has caused much harsh division between both the families and churches. Those opposed, that they spoke to, are not in attendance today and are not willing to write letters or sign petitions because they do not want to cause greater division. She explained that many feel youth come to the park instead of spending time with family and attending ice cream socials on Friday nights, and they want to be gone from home five or six nights per week.

She noted issues with medical concerns when injuries occur at the park. As the Amish church is self-insured, when injuries occur at the park, church members who do not support the park are obligated to pay for the medical care for those who are injured. When the park was built in 2004, she said they knew nothing about it in advance and while they have tried to be tolerant, their concerns have escalated over the years. She said this is the first time she has been aware of a meeting beforehand and has publicly spoken in remonstrance. She expressed concern about retaliation and noted vandalism to their mailbox and eggs thrown at their property.

She noted concerns not addressed in her letter as the increase in lighting at the park and lights shining directly into neighboring homes. With no trees or buildings in line between them and the park, their bedroom window is illuminated by these lights. Secondly, she noted the noise because when the park is open, they hear nearly constant screaming, yelling, and cheering. Their previously quiet evenings are now interrupted by noise. Additionally, she expressed concern about increased traffic, of all types, to the park. She said the motorized vehicles are noisy with acceleration and frequently squealing tires and passing by their house at high rates of speed including fish tailing and tearing up the gravel road surface. She noted that neighbors have observed drag racing. These traffic issues are potentially dangerous as well as bothersome. She also reported litter and trash along the road and in the yard although they have no proof that it is a result of ballpark.

Regarding safety, Mrs. Whirlledge questioned the type of safeguards in place for treatment of emergencies that occur at the park until medical help arrives. She questioned how emergency personnel would locate the park since there is no mailbox, address sign at the road, or a visible sign from the road that states "youth park". With the traffic coming and going from the park being added to an already busy road, the chance of collision and serious injury is greatly increased. Hours of operation are of major concern to her and she said she was not aware of the 9 a.m. to 5 p.m., two to three nights a week stipulation that has been in effect since 2004. She went on to say that she kept log last year of when park was open and how late lights were on.

Typically, she said the park is open four to five nights a week with lights on as late as 10-11 p.m. at times. She noted the park is often used on Saturdays. These hours kept and days of use have been in violation of the existing and original Special Use permit for several years. She assumed someone else was monitoring the use. She feels the request to increase the hours until 10:30 p.m. is unacceptable and inconsiderate to all of the neighbors. Pointing out that Amish do not have air conditioning, leave their windows open overnight, and go to bed at 9 or 10 p.m., she said they would have the noise in addition to the lights. As it is dark at 10:30 p.m., it is not as safe for bicycles and buggies to be on the road due to decreased visibility. She also feels increasing the number of days is not acceptable. She reported the Saturday issues have been in violation the entire time and just now finally being addressed. The construction of a new building is not supported by community. She expressed feeling that the existing problems will continue and will be year-round instead of five to six months out of the year. When living in a rural agricultural area, there might be five nights per year that neighbors can see and hear the lights of their tractors and farm equipment in use after 9 p.m. which is to be expected and occurs when land is zoned A-1. But to see lights and hear noise five nights per week from a use that is not agricultural, she feels is unacceptable. She questioned if Board members would want the light, noise, and nuisance in their neighborhoods affecting their daily lives and the resale value of their homes.

In addition, Ben Whirlledge, 11551 CR 38, was present in remonstrance. He posed additional questions to the Board. As the original permit was granted to Mr. Leroy Chupp as owner and proprietor on site, he noted the current documents state Investments 21, LLC and questioned if the original permit carries over to the new owners and how is that addressed by BZA. He pointed out the original permit was for the park to be on 6-8 acres of Mr. Chupp's 75 acre farm which has mostly been sold off in small plots. Pointing out that the new petition states that the park is 19 acres, he asked where this change is addressed or allowed by the BZA. Regarding the conditions naming restrictions, he noted many violations and the Saturday issue is just now being addressed today. He further pointed out that the permit says deviation may result in rescinding the approval or permit. He questioned how many violations of conditions it will take to warrant this consequence and how many violations will continue to go on without consequence. As usually ball parks of this nature are located in towns, municipalities, or other parts where they are more highly governed, regulated, and policed. From experience, he said that he knows by the time the police arrive, the issue has stopped or disappeared. He reported they have experienced individuals that have stopped and urinated in their yard. He requested the Board's consideration of the neighbors who are drastically affected by this quite radical exception to an A-1 zone.

Mrs. Whirlledge added that Leroy Chupp is listed as the proprietor on-site. Noting the on-site being very important, she reported the security alarms have gone off in the middle of the night and continue to sound for long periods of time multiple times since Mr. Chupp and his family have moved in. To her knowledge, none of the Board members or the owner lives within sight or sound of the park. 

In response, Mr. Doriot pointed to the neighbors on the aerial who have signed petitions in favor of this request, and they are the closest neighbors. He noted that a recreational park is an allowed use in an A-1 zone with a Special Use. The Plan Commission and the Commissioners set that ordinance up and thought it would be a good thing as long as it was

governed by a board. Although he stated he does not know about the eggs or vandalism, he pointed out that CR 38 is one of the busiest county roads in Elkhart County, and it is the only road that goes all the way across the county without stopping. It is used by factories and haulers, and he believes the traffic will increase due to CR 17. Although some trash could probably be attributed to the park, the park traffic is 100-200 versus 3,000-5,000 vehicles per day, and he does not believe the park is the big issue. Elkhart County is no longer an agricultural county as designated by the U.S. Department of Agriculture. He also pointed out that John Deere and International Case have moved out because Elkhart County no longer meets the criteria of an urban county with a population of more than 200,000 people. He also feels uses will expand outward.

Regarding a sign at the entrance, he noted they would be more than happy to put up an entrance sign that says Rock Run Youth Park with the address for emergencies and police. He noted that emergency personnel is called when an injury occurs which would be similar to a farm or work injury. Regarding bikes and buggies at night, he indicated they are a fact of life anywhere in Elkhart County but noted lights on buggies are getting better, and they are better lit.



Noah Bontrager, 62800 CR 43, Goshen, was present in support of the request as one of the original investors. He noted he would have been happy to discuss issues with the Whirlledges, but he was not aware of where the complaint originated so he was unable to do so. He reported they have first aid kits on site and people trained in CPR, first aid, and first response. During football season, he stated they generally have the EMS there on stand-by. He stated injuries have occurred, but they have not had any problems handling the medical emergencies. Presently, he stated there is a mailbox out by the road, but agreed that they would be happy to place sign there if that is a concern. He reported they have commercial insurance, and the players sign waivers to try to protect themselves from a lawsuit which has not been an issue. Regarding some of the other issues, he said as many success stories as they have, it seems like the bad ones get the press. He acknowledged they do have problems that they try to address and deal with. He expressed a willingness to work with complainants as they do not want to be a bad neighbor. Mr. Bontrager indicated Leroy's son-in-law is present and lives close to the concession buildings. He reported the security system is unhooked at this time because there was an issue with the alarm sounding to signal low power, and NIPSCO is in the process of running electrical lines to the property now to eliminate this issue and noise from a generator running. When Mr. Homan questioned who responds when the alarm goes off, Mr. Bontrager indicated Gary usually shuts it off. He also indicated the neighbor directly across the road, where Leroy used to live, said he is willing to shut off the alarm if there is an issue.

Mr. Doriot said he was sure the park board will work on problems with the kids leaving the property. He feels this is a good, viable thing for the community. He noted they are working with the Sheriff's Department who will have access, and he is sure the Sheriff will extend offer to the Millersburg Marshall to patrol. Of the two amendments made today, Mr. Doriot suggested the all- nights be set at two instead of three.

The public hearing was closed at this time. 

When Mr. Hesser questioned legal counsel if the amendments made today are permitted, Mr. Kolbus indicated they are because it was not specified in the advertisement. With respect to

the #5 commitment, after some discussion, Mr. Kolbus stated in his opinion, it should be removed as they are not necessary to the daily operation of the park from a land-use standpoint.

Regarding the Saturday hours from 8 a.m. to 8 p.m., Mr. Hesser indicated it is even more of an expansion. He noted remonstrators have expressed legitimate concerns, but there are also a lot of names on the petitions that seem to support this. Although there are many names on petitions, Ms. Snyder also noted on behalf of the Whirledges, she is feeling time should not go any later than it already is. In thinking about little league parks and how they are run, Mr. Homan said people don't leave by a particular time so he doesn't believe lights will be out at 10:30 p.m. and everyone will be gone. While he has sympathy for the remonstrators' requests, in terms of land use, the ordinance extends this as a valid use. He noted he is somewhat concerned about the impact on the neighborhood. With the building, the park could run 12 months of the year so it is a substantial improvement. When Mr. Homan asked if the building was previously approved in 2007 as proposed today, Mr. Doriot stated the previous approval was for the exact state-approved plans. 

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Doug Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for an athletic park 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 revised site plan dated 5/28/14, and as represented in the petitioner's application.
2. Hours of operation are Monday through Friday, 5:30 p.m. to 10:30 p.m., Saturday 8:00 a.m. to 8:00 p.m., and with twice per calendar year all-night tournaments from 5:30 p.m. to 12:00 noon the next day.
3. All lighting on site shall be directed to the inside of the field and away from any residences. Lights must be turned off at 10:30 p.m., except as allowed by item #2.
4. No outside speakers are allowed.

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

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



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

10. The application of **Joanne K. Yoder & Jonathan R. Yoder** for a Special Use for the keeping of horses as a part of a privately owned and operated amusement center (Specifications F - #30) on property located on the North side of CR 6, 3,200 ft. West of CR 21, common address of 20117 CR 6 in Washington Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #20117CR 6-140422-1*.

There were 12 neighboring property owners notified of this request. 

Joanne Yoder, 20117 CR 6, Bristol, was present on behalf of this request. She reported she has been running a horse boarding facility for over 22 years. Regarding consistency with the Zoning Ordinance, she noted they need the land to provide an appropriate environment for the livestock. In reference to not interfering with neighboring property, she stated that this is the first complaint in over 20 years. They completed fencing around the east neighbor's property to keep horses from infringing on it. Even during high volume times, she reported sound is minimal, and day-to-day operations have little if any impact on surrounding neighbors. The Special Use will serve the public convenience and welfare by providing equine-related recreational and educational opportunities to the residents of Elkhart County and surrounding counties. They have provided training and financial support to numerous groups in the county. Their facility is available for birthday parties and other events, and they offer a place for owners to board and enjoy their horses. She noted they have informally mentored many youth that have come through their doors, and they strive to be welcoming to those whose lives cross their paths and to be good neighbors. Lastly, she stated she has been in the community for nearly 30 years.

Referring to the site drawing noting property 1 and 2, Mr. Homan said he presumed the Special Use applies to all of the land which Ms. Yoder indicated was correct. It was also confirmed that there is no expansion but simply operation as it exists today and coming into compliance with County Ordinance. He noted the Board did receive several letters in support. With the large audience present, he asked for a show of hands in support of this request, and 20-30 hands were raised. 

Dave Stout, 20035 CR 6, was present in remonstrance to this request. He stated he is the adjoining neighbor to the East, and they just built their residence and moved into it in February 2014. He said they do not oppose the horse farm, and they love to look at the horses. Their question and concerns are the confrontations that have occurred along their adjoining fence line. He reported he has a gun range which he has set up as safely as he possibly can on his property, and they like to shoot guns which he indicated is limited to daylight hours for possibly an hour at a time in duration. He stated he has had clients of the equine facility come to the fence and be confrontational and yell curse words, and Ms. Yoder has asked them not to shoot. He noted he is dealing with more than just Ms. Yoder as indicated by the amount of supporters present. They need to live in a community and as neighbors. He said some of the other neighbors also have concerns as he has talked to them. Mr. Stout said he thought he had placed his house back far enough that he would be away from Ms. Yoder's activities. As the house was being built and once they bought the property, he stated he talked to her because he did not want to be financially responsible for the horses and riders on his property if something should happen. As a result, he reported Ms. Yoder ran a 15 ft. easement down her property which he indicated is fine with him. He suggested she post a sign for riders and persons who do not live there to not speak with them because it is not acceptable to be confronted when he is on his own property and doing his own thing. When Mr. Homan inquired, Mr. Stout pointed out his residence on the aerial. He stated police officers have been out six or seven times since February on complaints about his shooting, and they have looked at his range and said he can continue. He suggested if horse riders could ride down center of the farm and alleviate the problem at the fence, it would help tremendously. 

In response, Ms. Yoder said they finished the fencing on the east property line so riders do not get on his property. She indicated the history of the dispute between the two neighbors is longer and a little more disrupting than Mr. Stout explained. Last fall, she reported there were huge explosions out on the property from Tannerite being exploded. She had riders ½ mile away in the woods, the ground shook, and those horses bolted. She said their windows even rattled. She believes they have resolved the issue of the explosion. She said she has asked Mr. Stout to work with her on scheduling some of the shooting as he has very high caliber weapons and he is not far from where she conducts business. It has been a disturbance for them and the boarders as well as the borders not feeling safe. Initially, some clients were telling her that they would have to board elsewhere because they did not feel safe with the kind of shooting Mr. Stout was doing. She noted there was an incident where Mr. Stout was shooting while a six year old was having a lesson. The pony and child became upset, and they had to stop the lesson. As a result, she said the father did confront Mr. Stout, and he was very angry at the safety of his daughter in peril. As she recalls, the police have been out approximately four times and have talked to both parties as they are aware of the tenuous situation.

The public hearing was closed at this time. 

Mr. Homan stated Elkhart County does not have any significant regulation in terms of outdoor shooting, and it has nothing to do with land use in this case as far as running the business of boarding horses. Attorney Kolbus indicated the issue raised by the remonstrator, other than the trespassing, which has been addressed, is a private matter between the two parties. It is not a land use issue for the Board to be concerned with. Except for the fact that there is a service provided of training how to handle, use, and keep horses, Mr. Homan pointed out this is about as agricultural as it gets short of being a straight agricultural farm. He noted the business has a lot of support and the explanation of customary practices seem to be pretty well delineated on the questionnaire. 

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, and the petitioner's application and testimony today, further moved that this request for a Special Use for the keeping of horses as a part of a privately owned and operated amusement center (Specifications F - #30) be approved with the following condition imposed:

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

The following commitment was imposed:

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

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

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



11. The application of **Michael L. Closson** for an amendment to an existing Use Variance for a lawn service business to allow additional employees, increase days and hours of operation, and

allow outside storage on property located on the Southwest corner of CR 31 and CR 20, common address of 58573 CR 31 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #58573CR 31-140512-1*.

There were 12 neighboring property owners notified of this request. 

Laquitta Closson, 58573 CR 31, Goshen, was present representing this request. She reported she and her husband have had a lawn service business for 12 years, and have been at this property since 2008. She submitted two letters from neighbors *[attached to file as Petitioner Exhibit #1]*. As far as responding to the hours of operation from sun up to sun down and in speaking with Mr. Mabry about this, she stated their primary business is mowing grass and when it rains, the employees are out later than usual because of trying to catch up. She stated their business has grown exponentially over the last five years which has led to the need for more employees. Until this spring, she reported they never had anything sitting outside. The building has always been large enough, and she has to have more employees because she has more fertilization of lawns. The 50x60 pole building is completely full with four trucks and trailers, and she does not have room for the other truck and trailer inside which they have requested be able to sit outside. Regarding employees parking on the pad, she indicated keys would have to be left in the employees' vehicles, which they would not want to do, because of the need to be moved around during the day to get trucks and trailers in and out of building. She has no problem with employees parking inside the building, and three or four could be parked in the stall where their trucks and trailers come out of so they could move their own vehicles when they come back. She would really like the other vehicles, usually four or five at the most because several of the guys ride together, parked in between the building and CR 20 because she does not like it to look messy. Leaving stuff out on the pad does not look clean, and she would rather not have anything sitting out in the open. She said they have discussed putting up a tall privacy fence between the pole building and CR 20 at some point that would enclose the parking area. She explained that it would match the building and go from the back property line to the front of the building, and they could close the gate so no one would see the truck and trailer sitting out. As they do not advertise, she said they want their property to look nice in the event that customers drive by. They will see a good example of their work and property that is not messy with stuff sitting outside. Regarding backing out onto CR 20, she said that is not safe, and they do not do it.

Mr. Homan noted that she said their business has grown exponentially and stated there is a point at which it either keeps growing or they have reached their limit. He asked if they are at their limit at this time. Regarding taking on new customers, Mrs. Closson said they are pretty much at their volume, and she does not want any more employees than they currently have because they do not have enough room for any more at their current location. If there is a need, she stated they have discussed adding another stall to the end of the building which would be in between the current building and CR 20 for additional storage. But at this point, she is not looking to have any more employees. When Attorney Kolbus said he did not believe she answered the question regarding Sundays, she said occasionally on Sundays they power wash trucks and trailers for one of their commercial accounts. In that case, an employee would come on Sunday morning to get the power washer and generally it is not a full day, but she would like Monday through Sunday for days of operation. Mr. Homan asked about changes that may not have been advertised correctly, and Mr. Kolbus noted the advertisement was to increase days and

hours of operation so it is permissible to consider that since it was for general days and hours. When Mr. Campanello asked if Mrs. Closson agreed to the commitments listed, she said that she does with the exception of the parking. 

Linda Mayberry, 58034 Crystal Springs Drive, Goshen, was present in support of this request. She reported she owns property to the south of the subject property which she purchased as an investment with the intention of building a home there in the future. She stated that she drives past the subject property 6-8 times per day to care for her two donkeys and a horse. Additionally, she reported they raise hay on the property and have an agricultural barn for the animals. As they sometimes have trouble getting to their property, they have been given permission on different occasions from the Clossons to park on a common driveway that is on the Clossons' property. She said she has never seen the Closson property looking a mess. She stated she has decided not to build on the property because of the warehouse that was built on the property behind the Clossons. She reported the Clossons would be great neighbors and their property resembles something you would see in a magazine. 

Avery Aragona Burns, 16084 CR 20, Goshen, was present in opposition to this request. She noted copies previously provided to the Board documenting the Clossons consistent breaches of the regulations established when the original Special Use permit was granted. She said she wished to voice her concern for the clear lack of regard that the Clossons have for the guidelines that they were required to follow. Her request today, she said is that the Clossons be held to initial terms and conditions of their Special Use permit. She feels the Clossons have shown a clear lack of respect for the Board by intentionally choosing not to act in compliance with their ruling.

When the non-compliance was addressed by Mr. Mabry, she said Mrs. Closson assured him that they would come into compliance by the beginning of June 2014, and they never did. She reported they still have had at least six employees working on their property daily, moving vehicles in and out which she feels is an attempt to conceal their non-compliance. She reported the Clossons have shown a lack of courtesy and concern for the safety of their neighbors as well as for others in the community. She stated it is not unusual for their employees to back their commercial vehicles in off of CR 20. She went on to say they typically line up, sometimes blocking the Burns' driveway, and back their crews in. This inhibits the flow of traffic on CR 20, creating the potential for accidents and inconveniencing others in the community.

Regarding the future, she said they are concerned about the Clossons being granted the freedom to have two employees when Mrs. Burns said they have seen up to 15 employees at times on the property. She questioned at what point this will stop. Although they support successful businesses, she suggested the possibility that a commercial location might be better suited for their needs as Mrs. Closson made clear they have completely outgrown their auxiliary building. In addition, she noted they are parking numerous cars between the building and CR 20 which are within the Burns' view and they are oftentimes jammed in there which does not seem safe. She stated it seems they have outgrown a residential area for their business given that they could not come into compliance during the month that they promised Mr. Mabry that they would.

When Mrs. Snyder inquired where the Burns property is location, Mrs. Burns indicated her property is the west adjoining parcel to the subject property. Mr. Campanello pointed out if the Use Variance is granted, their complaint becomes a mute point. Mr. Kolbus commented that

if the request is denied, the evidence would be as to enforcement on the old petition. Mrs. Burns noted understanding but indicated they wanted to show that the Clossons did not come into compliance after promising Mr. Mabry they would, and they have not been in compliance the entire time. She went on to say that they are concerned about how the future as they do continue to grow, and they have clearly outgrown their space which is becoming a problem.

Mr. Camp suggested that staff has not done a very good job of enforcing the terms of the Special Use. Mrs. Burns reported she has been in constant contact with Mr. Mabry, and he assured her that staff was taking care of it. She said she has compiled numerous pictures of the breaches, and it is clear the Clossons have a lack of respect.

When Mr. Homan asked how long they have owned or lived on the property next door, Mrs. Burns stated they moved in around September of 2013 after purchasing the property in 2012. When Mr. Homan questioned prior knowledge of the Special Use which was granted in 2008, she stated she can only say the breaches have been occurring since they have purchased the property. 

Wilbur Yoder, 58610 CR 31, Goshen, was also present in remonstrance. He stated he has never met the Clossons so there is no personal relationship. He stated he lives across the street from the southern part of the Closson property and has lived there for 15 years. He noted the area around it has developed rapidly over the last seven years with many new homes going up. He reported CR 31 and CR 20 are not very wide roads with enough room for just two cars to pass each other. Although he has not noticed much going on at the petitioner's property as far as anything detrimental, he is concerned that they are asking to enlarge the business. He said he thinks if they have another building on the property or if equipment is stored outside, the property will not be as appealing and will devalue the surrounding properties. 

In response, Mrs. Closson said there is no other way to get the trucks and trailers onto the property except to back them in. She stated when they were originally granted their Special Use permit, it was not an issue with anyone. She noted they do not back out onto CR 20, but they do back in. Additionally, she said they do not have a large enough pad, they cannot exit the building from the back, and there is no other direction to go. As far as outside storage, Mrs. Closson said one of the remonstrators, with the pole barn behind them, leaves a truck and trailer outside on a regular basis so she would not think that would be an issue for them since it is not an issue for the neighbor's Special Use permit. Regarding having 15 employees or variations, she said there have been times when they have had more than nine people there. She noted on Saturdays, she has extra people sometimes that come in to prune bushes, but it is not on a regular basis. Most generally, she said the guys will go pick them up at a different location but again, this is not an everyday occurrence. She said they are not trying to hide anything or trying to get anything past the County or the Board. She explained their business has grown, and they are in full swing. Regarding the complaint, she said they take care of their property, there is not trash, and there are no hazards. She claimed the Burns' driveway has never been blocked. She said the only property owner who would have a valid complaint would be Paula & Dave Kercher because their driveway is directly North of the Clossons, but they have never complained. When Mr. Campanello inquired about the possibility of a turnaround on the property, Mrs. Closson said they have sprinkler systems on the three acres, and they would have to move the irrigation system from wherever they decided to add a turnaround. She noted the expense would be significant and not something they could do at this time financially.

Mr. Homan pointed out he was still not clear on the number of employees. He noted the staff's recommendation is for approval for up to six full-time and two part-time other than Mr. and Mrs. Clossons, which she stated is accurate. She said in years past, they have had more than that on-site. If approved, Attorney Kolbus asked if they can maintain it to eight employees. She said she can make sure that no more than the eight additional employees come to the property. Mr. Homan reiterated that they will have eight employees with six full-time and two part-time but no additional employees because the agreement would be for eight people. On Fridays, she said employees will show up to get paid or sometimes the guys mow their grass. Mr. Homan stressed that it is the total number of employees period, not just the number that can be on the property at one time or not. Mr. Kolbus noted Mr. Homan is speaking about if the request is approved in an attempt to resolve all of the issues. Mr. Homan reported that backing in off of CR 20 is a real concern for him.

The public hearing was closed at this time. 

Regarding the Staff Report, Mr. Homan asked the staff about the point if and when a business similar to this becomes too big and becomes a commercial enterprise which is more appropriate in a commercial space. Mr. Kanney acknowledged discussion about that a number of times over the years. He mentioned Board members telling people that they want their businesses to succeed which is great but the petitioners need to realize that when they succeed, they will need to move on. He does not know that there is a definitive point. When Mr. Homan asked staff about the reason for the commitment to no parking between the building and CR 20, Mr. Kanney noted the safety and visibility issues. Mr. Campanello noted backing in and pulling out happens all the time with these types of businesses or delivery businesses, and most people back out of their driveway onto the street. He said he does not have a problem with the backing in, but care needs to be taken. Additionally, he noted CR 20 is narrow but agricultural vehicles travel down narrow county roads all the time. He stated this is a business which is almost too big for this property, but is not there yet. However, they will either have to grow and move to a commercial building or stay the size they are at this location.

Mr. Miller stated he is pro-growth and pro-business, but he is concerned about public safety. As stopping traffic to back that number of vehicles in bothers him, he said he can support a commitment for no backing in. Mr. Homan noted lawn maintenance trailers are good-sized with a lot of equipment, and this area is evolving into more residential with less agricultural space so there are a lot of homes there. When Mr. Campanello asked the number of trailers, Mrs. Closson stated there are a total of five with two being 10'x12' enclosed trailers used for fertilizing, a 16 ft. trailer that will be sitting outside with a truck, a 22' trailer that is attached to a one ton dump truck, and a 24' trailer that is attached to a one ton dump truck. Although she noted she can see the concern with them backing in, she said they have never had an incident of anyone having to slam on the brakes. She reported their return times are staggered, and if there is traffic, they sit in the road with their turn signal on, waive vehicles around until traffic has moved past, and back in. When Ms. Snyder inquired about their start time for the day, Mrs. Closson said 7:30 a.m. is when all trucks and trailers pull out. Mr. Campanello suggested requiring a commitment to do some type of widening or some way of them turning around. Mr. Miller noted this is a commercial enterprise so if they are committing to grow their business, they need to commitment to not being able to back in or out onto the road.

Mr. Homan noted staff has a concern with parking between the accessory building and CR 20 from a public safety standpoint which is part of the Board's responsibility, and he agrees with that. He also feels backing in or out onto a county road is a problem, and he would like to see that addressed if the Board is going to approve this request whether it is a turnaround or space in the back to turn around. He went on to say there is not a provision at this point to do so, and he does not know how to resolve the issue right now. Although he does not want to drag it out, he suggested the possibility that this request should be tabled until there is a plan by the petitioner that shows how they are going to turn around trailers and trucks, or the Board could make it up on the fly, or they could not address it at all. If they are going to address the issue and similar to wording in previous cases, Attorney Kolbus suggested wording in commitment #7 be changed to backing in or out is prohibited, petitioner to provide turnaround on site, and provide revised site plan to the staff as one option in lieu of tabling the request. He went on to say, if staff has an issue with the revised site plan, they can bring it back to the Board. Regarding parking between the building and CR 20, Mr. Campanello said if they are not in the right-of-way, they should be allowed to park there. Mr. Homan then questioned the type of parking there such as parallel to the building, as the Board also does not know what the parking would look like on the site plan.

Mr. Burrow mentioned the required setback of 15 ft. on all commercial property so the site plan would have to show parking 15 ft. back from the right-of-way unless a variance is granted so the parking as shown on the current site plan is in violation of the present ordinance. He also noted the required design for a parking space is 9x20. With the one way parking, he noted at least 12x24 for the aisle would be required as well. 

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Doug Miller, that the Board adopt the 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 Use Variance for a lawn service business to allow additional employees, increase days and hours of operation, and allow outside storage 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 revised site plan to be submitted to the staff and as represented in the petitioner's application except as modified by these commitments.
2. The existing vehicle parking located between the 50x 60 accessory structure and CR 20 must be removed and relocated to the east side of the accessory structure on the area designated as "cement" on the site plan. Expansion of the cement area is permitted to accommodate the necessary parking and vehicle storage, along with any additional paved surface needed to permit vehicle movement and to prevent backing onto CR 20. Vehicle parking is prohibited between the accessory structure and CR 20.
3. The proposed trailer and tractor parking must be located to the east side of the accessory structure on the area designated as "cement" on the site plan. Expansion of the cement area is permitted to accommodate the necessary parking and vehicle storage, along with

any additional paved surface needed to permit vehicle movement and to prevent backing onto CR 20. Trailer and tractor parking is prohibited between the accessory structure and CR 20.

4. The business is limited to six full-time outside employees and two part-time outside employees.
5. The hours of operation are Monday through Sunday, sun up to sun down.
6. No grass clippings or debris may be stored or placed on the property.
7. Backing out or backing in of vehicles onto CR 20 is prohibited. Petitioner to provide turnaround on site with revised site plan to be submitted to staff for approval within 60 days.
8. All equipment and supplies, not including commercial vehicles, shall be stored within the accessory building.

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

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



*****It should be noted that Mr. Hesser returns at this time*****

12. The application of **Ronald J. Sheets & Patricia J. Sheets** for a Use Variance to allow for the construction of a second dwelling on a parcel or lot on property located on the South side of CR 32, 2,900 ft. East of CR 7, common address of 26408 CR 32 in Harrison Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #26408CR 32-140516-1*.

There were eight neighboring property owners notified of this request. 

Brian Hollowell of Schrock Homes, 2523 Messick Drive, Goshen, was present representing the petitioner. He explained this approval would allow the owner to remain on the property and not have to relocate during construction of this new home. Construction of the new house would begin in next three to four weeks or as soon as they are able to obtain the permits. After they receive the Certificate of Occupancy, he said 30 days is not unreasonable to have the original residence removed. He added that the timeline seems achievable. 

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 amended by the Board, as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel or lot be approved with the following conditions imposed:

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

- 2. The petitioner is required to return to the Board of Zoning Appeals if occupancy of the new residence and demolition of the existing residence has not been accomplished by October 31, 2015.

The following commitments were imposed:

- 1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
- 2. The existing residence must be demolished within 30 days of the issuance of the Certificate of Occupancy for the new residence.

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

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



13. The application of **David W. Chupp & Corinna Chupp** for a Use Variance to allow for the construction of a second dwelling on a parcel or lot on property located on the South side of CR 146, 900 ft. East of West County Line Road, common address of 30868 CR 146 in Locke Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #30868CR 146-140516-1*.

There were 15 neighboring property owners notified of this request. 

David Chupp, 30868 CR 146, Nappanee, was present on behalf of this request. He explained they are demolishing a larger house and moving into the smaller house until they can build a new house in the same location as the previous larger house. He said the Health Department will require them to demolish the septic system for the smaller house, but he would like to have time to find buyer for the smaller house to be relocated or to use it as a storage building.

Mr. Homan noted they would need to render the house unusable which Mr. Chupp said they would be doing by removing the septic.

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 amended by the Board, as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel or lot be approved with the following conditions imposed:

- 1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
- 2. The petitioner is required to return to the Board of Zoning Appeals if occupancy of the new residence and demolition of the existing residences has not been accomplished by June 30, 2015.

The following commitments were imposed:

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

2. The existing residences must be demolished, removed, or converted into a non-residential use within 60 days of the issuance of the Certificate of Occupancy for the new residence.

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

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



14. The application of **Nelson J. Nisley** for a Special Use for an agricultural use for the keeping of two horses on a tract of land containing less than 3 acres in an A-1 district (Specifications F - #1) on property located on the Northeast corner of CR 133 and CR 30, common address of 61941 CR 133 in Clinton Township, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #61941CR 133-140516-1*.

There were six neighboring property owners notified of this request. 

Marlon Bontrager of Marlon's Construction, 59700 CR 43, Middlebury, was present representing the petitioner. He said the petitioner wants to be able to get the horses in out of the inclement weather.

There were no remonstrators present.

The public hearing was closed at this time. 

The Board examined said request, and after due consideration and deliberation: 
Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** 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 two horses on a tract of land containing less than 3 acres in an A-1 district (Specifications F - #1) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The number of horses is limited to two.

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

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



*****It should be noted that Tony Campanello steps down at this time*****

15. The application of **Noah Lace & Mara A. Strebs** for a 29 ft. Developmental Variance to allow for the construction of a residence 46 ft. from centerline of the right-of-way (Ordinance requires 75 ft.) and for a 5 ft. Developmental Variance to allow for said residence 5 ft. from the East side property line (Ordinance requires 10 ft.) on property located on the North side of CR 16, 1,000 ft. East of CR 1, being Lots 2 & 3 of Sunset Manor, common address of 29683 CR 16 in Baugo Township, zoned R-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #29683CR 16-140519-1*.

There were six neighboring property owners notified of this request. 

Cody Miller of Freedom Builders, 54824 CR 33, Middlebury, was present representing this request. After the original site plan was submitted and they received the recommendation for denial, he and the owner discussed and made changes. He submitted a new site plan *[attached to file as Petitioner Exhibit #1]*. He explained they have eliminated the third stall of the garage and moved it over 15 ft. off the side yard to comply with the side yard setback. They also straightened the house and put the house at the current setback where the existing house sits. Attorney Kolbus clarified that the proposal would eliminate the need for the 5 ft. side yard setback. When Mr. Hesser questioned the setback for the current house, Mr. Miller noted he had a survey showing setbacks and reported the current house is 7.1 ft. off the side yard. He said when they originally drew the site plan, they did not have this survey. Referring to a letter in support that was previously submitted by the neighbor nearest to the new construction, Mr. Miller submitted the original at this time *[attached to file as Petitioner Exhibit #2]*. On the new site plan, Mr. Doug Miller confirmed that the new construction will be 48.9ø from centerline of the ROW. He indicated that the old survey is to the property line. Cody said they were attempting to keep the new structure at the same setback from the property line to the front of the current house. Doug Miller noted the current structure sets 63.8ø off the centerline and this is proposed to be 48.9ø so the new structure is basically 15 ft. closer to the road. When Doug Miller inquired if they have room to move it back, Cody said they will move it back as much as they can but it drops off straight down to the river. He went on to say it will have a walk-out basement with enough room for a patio and raised deck off the back of the house. He also stated if it helps, they can angle it to gain as much as they can. Doug also noted that it appears the neighbor to the East is closer, but the road runs on an angle so it is difficult to tell. Doug confirmed with Cody that the original house is on two lots but it is one legal description now. With further discussion to clarify about the setbacks, Doug noted on the proposed site plan, the maximum asphalt distance they could get on the short side is just shy of 50 ft. By eliminating the third stall of the garage, Cody reported they had much more flexibility to make the 10 ft. setback. When Doug asked for staff comments on the revised site plan, staff noted concern would be parking in the driveway and out of the ROW as it would be pretty tight. Mr. Kanney also noted this particular right-of-way is wide. If the plan allows for a turnaround, Cody said they will put one in, but it will hinge on the septic. If they can make it work, he stated they would prefer to have a turnaround on the property. He acknowledged that they will need to get a survey before pulling the building permit. If they determine from the survey that they can move the house back, they certainly will. 

Matt Faubion, 29730 CR 16, Elkhart, was present in support of this request. He stated he owns the vacant property on the west side of the subject property but lives on the opposite side of the street. As he does not have a survey for that parcel, he is unclear where the property lines are located and would not know if the petitioner is encroaching on his property. He said he was curious to know if the petitioner would be having a survey done and the location of the west side property line. He expressed a willingness to work with the petitioner if a variance is needed on the west side property line. As he lives there, Mr. Hesser asked if visibility is a problem around that curve. Mr. Faubion noted the driveway will be close to the intersection of Connecticut Avenue and CR 16 which might be more dangerous; therefore, he suggested a turnaround. 

Nancy Wentz, 29661 CR 16, was also present in support of this petition. She reported she owns the two properties directly east of the subject property. She believes the current

residence is closer to the property line now than the new house will be, and she does not have a problem with the residence being closer to the road as long as there isn't any obstruction between the house and the road. The second house east of the subject property sits lower so any bushes, trees, or anything in the way creates a problem. Having the ability to turn around on the property, she said would be real important as well as room for the septic system. She reported she hopes the request is approved, and he is able to build a nice new house.

There were no remonstrators present.

The public hearing was closed at this time. 

Doug Miller noted that Cody has demonstrated that he can get house off the property line, and they are willing to sacrifice the third stall garage. He pointed out that staff reported they are close to getting the one parking space out of the right-of-way. He suggested adding a condition that there be no backing in or out on CR 16 with a revised site plan to be submitted. 

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Randy Hesser that this request for a 29 ft. Developmental Variance to allow for the construction of a residence 46 ft. from centerline of the right-of-way (Ordinance requires 75 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.
2. Approval of the request will not cause substantial adverse affect on the neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property. The subject property has constraints related to floodplains, septic system requirements and changes associated with CR 16 becoming a major thoroughfare.

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 for the construction of a residence 48' from centerline of the right-of-way in accordance with the revised site plan submitted (Petitioner Exhibit #1) dated June 19, 2014, and as represented in the petitioner's application.
2. No backing in from CR 16 or backing out onto CR 16.

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

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

The 5 ft. Developmental Variance was no longer needed based on the revised site plan.

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

17. The only staff item was Mr. Godlewski reported that Duane Burrow will be retiring in August 2014.

18. The meeting was adjourned at 12:23 pm.

Respectfully submitted,

Deborah Britton, Recording Secretary

Doug Miller, Chairman

Tony Campanello, Secretary