

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15TH DAY OF MAY 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; Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Robert Homan, Tony Campanello, Meg Wolgamood, Doug Miller.

Absent: Randy Hesser.

2. Regarding the approval of the minutes from the April 17, 2104, Board of Zoning Appeals meeting, Mrs. Wolgamood noted on Pg. 5 about mid-page, she made a motion for the tattoo parlor, Studio 7. She indicated she recalls #2 of the first motion as being part of the staff report but also recalls she eliminated the second sentence that read, "All appropriate permits related to public health must be obtained prior to the establishment of the tattoo business," because this Board does not have anything to do with the health issue. She also recalled that Mr. Campanello expressed agreement. She indicated she believed #2 needs to be struck.

A motion was made and seconded (*Wolgamood/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of April 2014 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Homan/Campanello*) that the legal advertisements, having been published on the 3rd day of May 2014 in the Goshen News and on the 4th day of May 2014 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

4. A motion was made and seconded (*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.

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

5. The application of *David J. Stahly, Trustee, David J. Stahly Living Trust & John I. Stahly Testamentary Trust (lessor) and ERS Telecom Properties (lessee)* for a Special Use for a wireless communications facility (Specifications F - #31.50) on property located on the West side of SR 19, 275 ft. North of CR 52; North side of CR 52, 845 ft. West of SR 19, common address of 71346 SR 19 in Locke Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #71346SR 19-140421-1*. Mrs. Wolgamood noted a correction in the Staff Analysis #1 as the zoning is R-1.

There were seven neighboring property owners notified of this request.

Jon Shultz, 1999 S. Valley View, St. Joseph, MI, 49085, was present representing this request. He explained that they are a local company, developing a lot of two-way radios for public safety and commercial uses. He went on to say they operate a trunking system that has both commercial and public entities such as schools, and they are throughout central and northern Indiana. It is a multi-use tower, and Verizon Wireless also wants to utilize this tower. He said several other customers have expressed interest in using the tower. When Mrs. Wolgamood inquired about the number of co-locators, Mr. Shultz stated that right away, there will be two, and the maximum would be five. He confirmed that this would be a 195 ft. tower with no lighting on the top. In looking at the diagrams, she asked if the platform that this will be constructed on will be cement. He explained that the tower itself, depending on the soils, will be an underground foundation with just piers sticking out of the ground so all that would be visible is the piers. Mrs. Wolgamood confirmed with Mr. Shultz that if the tower would later be removed, the piers would also be removed to two feet below-grade so it would look like it was never there.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan noted the large number of towers in the county, with most being placed in appropriate areas. He did wonder how many are being utilized for co-location, and if there are any nearby that are available. Mrs. Wolgamood said she was bothered by the fact that it is in an R-1 zone although the property itself is used for agricultural purposes. She inquired about the number of neighboring property owners that were notified as there are a number of residences nearby and a church. When looking at R-1 zones, she said cell towers are not usually thought of there.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Randy Hesser 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 Special Use for a wireless communications facility (Specifications F - #31.50) be approved with the following condition imposed:

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

The following commitment was imposed:

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

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

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

6. The application of **Daniel J. & Susan D. Yoder (buyer) and Paul T. Gess & Marilyn D. Gess (sellers)** for a Special Use for a commercial greenhouse in an A-1 district (Specifications F - #12) on property located on the West side of CR 31, .17 miles South of CR 36, common address of 64165 CR 31 in Elkhart Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #64165CR 31-140414-1*. Mrs. Wolgamood inquired further about the type of home workshop/business to the north, but Mr. Mabry stated he did not have that knowledge.

There were seven neighboring property owners notified of this request.

Daniel Yoder, 62420 Old CR 17, Goshen, was present on behalf of this request and indicated he resides about 5 ½ miles from this property. Regarding Mrs. Wolgamood's question about the home workshop to the north, Mr. Yoder reported it is a bakery. When she inquired about the length of time the bakery has been in operation, he said he believes it is pretty new and would guess about two years. He indicated they have talked to that neighbor who is in favor of this request. Mrs. Wolgamood noted the proposal for a sizeable business, a negative recommendation from staff, and Mr. Yoder's burden to convince the Board that the request should be approved.

In response, he said their plan is to place hydroponic lettuce houses on the property placed back far enough so they could place a home on the property in the future. He indicated their intention is to start with one greenhouse and adding additional houses later as the business grows. He mentioned there will be no storefront, and no sales on site. As the business is all wholesale, they will be making deliveries to retailers with his pickup truck and enclosed trailer. He added that if and when the five buildings would be built, they would have a water shed and enough room to place a pond toward the rear of the property if needed. Being that it is hydroponic, it will be a very clean site and operation. He added that there will not be any pots or dirt piles sitting around.

When Mr. Campanello asked if Mr. Yoder had spoken with any other neighbors, Mr. Yoder said he has not but the realtor representing the sellers has and is present to speak. Mrs. Wolgamood confirmed with Mr. Yoder that there will not be semi truck traffic to and/or from this site. When Mr. Campanello asked about any possible gases or smells on this property, Mr. Yoder indicated there would be no chemicals and no spraying. As everything is all natural, there will only be fertilizer mixed into the water used for irrigation. He reported another structure will be constructed to be used for processing the lettuce, packaging it for delivery, and a small cooler as they will be harvesting and planting every week. He reported this will be a year-round business.

Referring to the site plan, Mr. Campanello confirmed with Mr. Yoder that their plan is to keep at least an acre clear of the three acre tract for a future house with enough room for a septic. Mrs. Wolgamood noted the proposed septic for this operation. Mr. Yoder indicated there will be a small restroom and pointed out there will be no outside employees as this will be a family-run business. Mrs. Wolgamood noted the site plan provided to the Board members was a revised site plan and inquired if the staff report was based on the revised site plan. Mr. Mabry indicated it was based on the information that was included with the application. He stated there was not a "Revised" stamp on his copy. Mr. Yoder explained that on the revision, the driveway was flipped from the driveway being on the north side to the south side which made more sense due to the location of the buildings and gas and electric service. There was a brief discussion about the size of the tract which is three acres.

David Myers, 2809 Ferndale Rd, Elkhart, was present representing the sellers. Regarding the negative impact on neighboring property owners, he submitted paperwork including an aerial showing the nearby industrial park *[attached to file as Petitioner Exhibit #1]*. Additionally, he also submitted

supporting data showing three other locations of greenhouses on CR 36 and SR 13, with nearby residential property values indicated [attached to file as *Petitioner Exhibit #2*]. Mr. Myers stated he is not just trying to make a sale but believes the data. He also reported talking with Mr. Philip Bontrager, the adjoining neighbor to the south, whom he thought was going to be present today. Although initially concerned, Mr. Myers noted Mr. Bontrager decided if the greenhouses are placed towards the rear of the property as indicated on the site plan, this request could be better than having something else on the property and is not opposed to this request as long as the property is maintained.

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 this request for a Special Use for a commercial greenhouse in an A-1 district (Specifications F - #12) be approved based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance. A commercial greenhouse is allowed by Special Use Permit in the A-1 zoning district.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. This area is composed of homes on three-acre tracts but it also includes an industrial park to the south and west which is a manufacturing zone.
3. The Special Use will substantially serve the public convenience and welfare by making fresh vegetables available to the public year round.

The following condition is 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 revised site plan submitted dated 04/16/14 and as represented in the petitioner's presentation and application.

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

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

7. The application of ***Old Brethren Church*** for an amendment to an existing Special Use for a church to allow for the construction of an addition to the existing church on property located on the South side of CR 38, 1,500 ft. West of CR 9, common address of 26300 CR 38 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 #26300CR 38-140421-1*.

There were six neighboring property owners notified of this request.

Jeff Hilty, 64200 SR 19, Goshen, was present on behalf of this petition. He stated they would like to expand the foyer and remodel the restrooms. He noted they did just divide their district because it was getting too large so they are not expanding the sanctuary. They want to

take down the original part and square-up the building. Additionally, he reported the basement would also be enlarged.

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 an amendment to an existing Special Use for a church to allow for the construction of an addition to the existing church be approved with the following condition imposed:

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

The following commitment was imposed:

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

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

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

8. The application of *Jacob W. & Leah M. Crist* for a Special Use for warehousing and storing of construction equipment and inventory for a plumbing, heating and electrical contractor business in an A-1 district (Specifications F - #44) on property located on the West side of CR 13, 2,600 ft. South of CR 44, common address of 68489 CR 13 in Union Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #68489CR 13-140417-1*.

There were five neighboring property owners notified of this request.

Jacob Crist, 69489 CR 13, Nappanee, was present on behalf of this request. He explained they started the business in 2000 as father/son business. As it has grown a bit, they need a little more elbow room from their current location. With his father looking at retirement, he said this is a better location for him in the future. Out of respect, he indicated they have notified and talked to the neighbors in person, and he reported they are all in favor of this request. He noted two nearby shops/businesses and agricultural uses on both sides. Mr. Campanello confirmed with Mr. Crist that his business is currently operated at a different location. When Mr. Hesser inquired if the driveway is located on his property or in an easement, Mr. Crist said he has been working with the neighboring farmer on that issue. He further stated they have both been using it, and they believe the property line goes down the middle of the driveway.

Mrs. Wolgamood inquired about the use of the 30x40 storage barn, and Mr. Crist said they have been putting the business trailers in there during the winter in the past as a means to get them out of the way at their current location. She further asked if that storage building will be utilized when the business is moved to this location. He reported some of that storage building will be used for the business, and it may include some personal storage as well. She confirmed with Mr. Crist that nothing is being constructed with this request. Mr. Hesser

confirmed that there will be no outside storage. Mr. Crist explained it is not conducive to store the business supplies outside and the large items get delivered directly to the job sites. In one of the photographs of the subject property, Mrs. Wolgamood noted a couple of trailers and a large truck parked outside and asked if they are part of the business which Mr. Crist indicated yes. She further asked about the possibility of the truck being stored inside, and he reported the truck would be stored outside at this point. Regarding a sign for the business, after a brief discussion, Mr. Crist indicated if signage is needed for delivery trucks, it will be no more than four square feet.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** 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 a Special Use for warehousing and storing of construction equipment and inventory for a plumbing, heating and electrical contractor business 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 commitment was imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application with the following two exceptions: (a) the sign is to be 4 sq. ft. and (b) outside storage is allowed for two vehicles (currently one bucket truck) and two trailers.

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

Yes: Tony Campanello, Randy Hesser, Doug Miller.

No: Robert Homan, Meg Wolgamood.

9. The application of *Earthmovers Landfill, LLC, a Delaware Limited Liability Company* for an amendment to an existing Special Use for a landfill by adding 5.369 acres to the East side of the existing Special Use, and permitting the extraction of gravel, sand, or other raw materials on property located on the South side of CR 26, 2,500 ft. East of CR 7 in Concord Township, common address of 26488 CR 26 in Concord Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #26488CR 26-140421-1*.

There were eight neighboring property owners notified of this request.

Tamara Perkins of Weaver Boos Consultants, 4085 Meghan Beeler Court, South Bend, was present representing the petitioner. She submitted an information sheet pertaining to the request [attached to file as *Petitioner Exhibit #1*]. She noted the owner is requesting approval from the Board to allow the excavation and borrowing of soil for use at the landfill. Additionally, the soil that is borrowed will be used as daily and intermediate cover soils and access roads on the facility. Periodically, she reported the property will be used for temporary stockpiling and staging of

borrow soil during the capping and closure construction projects in the upcoming years at the landfill.

Hours of operation on the subject property will be from 7 a.m. to 5 p.m. with no work on Sundays. As requested in the staff report, Ms. Perkins stated the fence will be extended along the north portion, east side, and south side. She indicated the existing trees along those portions of the property will be left in place to provide additional buffer and screening from adjacent properties. Access from this property will be from the existing landfill with no access from the adjacent county roads. Ultimately, she reported the planned excavation will result in a storm water detention pond with the anticipated depth of approximately 25 feet. This will likely be joined with the existing pond to the north so they can have the same discharge outlet. This pond will provide additional storage capacity for managing the storm water run-off from the landfill.

The use of this property will also provide additional buffer from the landfill as well as protection from possible landfill migration of gas. She noted the planned activities will be carried out in accordance with the Elkhart County zoning requirements and in compliance with other applicable state and local regulations. Mr. Homan stated he is curious about the history of excavation in this area, particularly the existing pond and questioned the length of time it has been there and if there has been any impact on nearby well water. Ms. Perkins said she believes the existing pond has been there for quite awhile but does not know the exact number of years or depth of the pond. When he inquired if the landfill owns any of the south adjacent property, she stated they do not.

Regarding buffering, Mrs. Wolgamood questioned the type of additional buffering that will be used. Ms. Perkins clarified that she meant buffering by additional distance from the existing active landfill to adjacent properties. Mr. Hesser commented that he had the same question but noted that was answered for him by the fencing around it, the trees that will remain there, and the pond that will be a buffer between neighboring properties and the landfill activity itself in the future. Mrs. Wolgamood noted they are deciduous trees that will lose their leaves in the winter so that is not much of a buffer to her. Regarding temporary stockpiling, Mrs. Wolgamood questioned the length of time they are talking about. Ms. Perkins said the landfill is slated to close in less than 10 years so the stockpiling would be within that time frame as the landfill closure activities are completed. Mr. Homan stated he believed the Board issued a variance for a gravel extraction on the northeast corner of the landfill at CR 26 and CR 7. When he inquired if that soil is to be used for a different purpose and why there are two brand new extraction sites in the same location, Ms. Perkins explained that this parcel is not large enough for the entire capping and closure. She noted this is an easily accessible, short-haul distance with no county road access, and they will be stockpiling materials on this small parcel from the larger parcel with the previously approved variance.

Attorney James Byron, 228 W. High Street, Elkhart, was present representing Helen Stein of 4296 Reservation Avenue, New Albany, OH, in remonstrance to this request. He reported she owns the property at 60405 CR 9 South which is the adjoining property to the east, and her mother, Katherine Horin, and brother, Walter, reside there. Regarding some history of the landfill, he noted Condition #9 of the original permit in 1975 addressed vehicles using the landfill and the issue of debris. In November 1999, Earthmovers came before the Board with a request similar to this one, and Mr. Byron noted the landfill's attorney's comments about debris and Tom Wilson's comments as an employee of Earthmovers about odor. Attorney Byron

reported this environment (trash and odor) still remains while 40 years ago Earthmovers made promises that these conditions would be met. He noted in 1999 they came back and said either they cannot meet them or it would cost too much money to meet them.

In speaking with Planner Duane Burrow, Mr. Byron said Mr. Burrow mentioned issues with tracking on the roads as well, and it has only improved a little bit. In his opinion, Mr. Byron said the landfill is an eyesore and embarrassment to the community. He also noted additional concern about the possible environmental risk to the water in that area. When the original petition was done in 1975, Mr. Byron does not believe there was any discussion about environmental contamination. He noted in later petitions, they talked about leachate which he explained is defined as any liquid that in passing through matter extracts solutes, suspended solids, or any other component of the material through which it is passed. He went on to say that leachate is a widely used term in the environmental sciences where it has a specific meaning of a liquid that has dissolved or entrained environmentally harmful substances which may then enter the environment. It is most commonly used in the context of land-filling of putrescible or industrial waste. In the narrow environmental context leachate is therefore any liquid material that drains from land or stockpiled material and contains significantly elevated concentrations of undesirable material derived from the material that it has passed through. He pointed out that they admit that this exists and suggested it would be in the water nearby. He commented on the screening, saying it is a joke as some of the trees are missing and others are almost dead so there are huge gaps in what appears to have been a weak attempt at screening. He said they question whether the screening is effective and suggested that the subject property provides good screening and should be left to soften the visual effect the landfill has on the community.

Referring to the staff analysis and the staff's opinion that the request will not cause substantial and permanent injury to the appropriate use of neighboring property, Mr. Byron indicated he believes that what they really mean is that the landfill is so bad already, it is not going to get any worse. When Mr. Hesser asked about the current use of the property, Mr. Byron said it was a backyard to the residence to the east of it with some farming that occurs on the subject property. When Mr. Hesser inquired if the people Mr. Byron represents own the property, Mr. Byron stated that Ms. Stein's 97 year old mother and brother sold this property to Earthmovers in March of 2014. He explained that the mother and brother owned the fee simple of the life estate on the subject property, and Helen Stein owns the fee simple on the life estate on the east adjoining property. This request is not consistent with any part of the Elkhart County which is a nice bucolic area. Going back in history 40 years, Mr. Byron pointed out that the dump was controversial and now there is the benefit of 20/20 hindsight. He questioned if the original request would have been approved if they knew what would look like today. Also at the time of the original request, there was no talk about trash, odor, contamination, or leachate being issues. He noted one of the supporting arguments for the landfill was that Elkhart was a growing community, but believes the City of Elkhart has stopped growing and that the landfill is not something to be proud of. He feels that denying this request would be a slap on the wrist that is deserved because the landfill is not doing a good enough job of upholding the conditions of the original request.

Regarding the transaction, he noted that Ms. Stein does not believe her mother appreciated or understood what she was doing when the land was sold to Earthmovers for \$30,000 for the five acre parcel. He went on to say that they are going to be investigating

whether there are grounds for voiding this transaction. Attorney Byron reported there is a petition filed in Elkhart Superior Court #1 for guardianship that is set in June. He went on to say that to their knowledge, Mrs. Horin was not represented by an attorney during the sale, and is now in Beardsley House, just two months after the sale of the property. He filed a copy of a Folstein Mini Mental Exam *[attached to file as Remonstrator Exhibit #1]* completed on Mrs. Horin. Mr. Campanello questioned the relevancy of this information to the request. Mr. Hesser said he felt the mental health issue would be better dealt with in the Court proceeding. He went on to say that if the court proceeding changes the nature of that transfer, today's hearing is mute. Regarding relevance, Attorney Byron explained that the deed is in the file with Earthmovers as the owner, but they are questioning that ownership. Mr. Byron suggested the Board take a step to rectify the mistake that has been made that resulted in this unsightly condition in the community which he believes is a negative.

Cathy Braddock, 60341 CR 9 South, Elkhart, was also present in remonstrance. Her property adjoins the east portion of the property on the north side. She said enough is enough and added that she is not in favor of this request, the construction, the dirt, and the dust. When they capped off the landfill approximately two years ago, she said the dust and debris was horrendous. She reported regular contact with landfill employees over the years and this spring with issues over trash and the fence row at the corner of CR 9 and CR 26 that they own. She also reported issues with the landfill keeping the grass along with fence row mowed regularly. She noted her property taxes have just increased but she does not feel that her property is gaining any value because of the landfill. She stated she is totally against this request and wishes the neighbor would have contacted her about selling the property because she would have been very interested in it. She expressed feeling that the landfill has enough land and other resources that this five acre parcel is not important to their whole operation.

Mr. Homan asked about the buffering at the rear of her property. She stated the landfill planted evergreens there, and it helps to a certain extent. When the landfill was still owned by Himco and before the fence was put up along two sides of her property, the landfill planted trees along her property on her side of the fence. Since Earthmovers took over and they have since enclosed that property, they planted pine trees along CR 9, but it has never been taken care of or kept up. She reported the subject property has just basically been used as farmland rented out to a nearby farmer who plants crops there.

Also present in opposition to this request was Terry Stahly, 60416 CR 9, Elkhart. He reported that he lives two properties south of the Stein property and commented that Mrs. Horin would have never sold the property by herself. He said the neighbors had a verbal pact that if one owner sold their property, they would all sell their property at the same time. When Mr. Homan asked how long he has lived there, Mr. Stahly reported 48 years. He did say that none of his property adjoins the landfill.

John Bender, 60418 CR 9, was also present in remonstrance to the request. He stated he lives across the street and has a clear view of the subject property. Regarding the hours of operation presented being from 7 a.m. to 5 p.m., he mentioned last summer they worked until 6 or 7 p.m. and lights were still lit on the tower. He stated that the process of digging a hole, filling it full, and then not having enough dirt does not make sense to him and questioned why they need more dirt. He noted the heavy clay content in the soil at the landfill which is desirable because it has less ability to leach out and questioned the depth they would have to dig to be able

to extract sand and gravel. Regarding the water aquifer, he indicated he has seen one picture that showed it was traveling from the southeast to the northwest. With all of the digging that has gone on over the last decades, he questioned if anyone has investigated to see if this much intrusion into the earth has caused it to change directions. Regarding the fence row in question, he stated it is pathetic as some trees are dead and some are intertwined into the fence. He suggested that if they know blowing trash is a problem, they would improve the coverage to compensate for storms and questioned who the neighbors call to make sure the rules are being followed. He also expressed concern about the negative effect the landfill has on Elkhart County's reputation and questioned the number of times the landfill has gotten close to the end of the ten year time line, only to be extended. He also suggested that the landfill keep the mud and dirt cleaned off the roadway near the corner of CR 26 and CR 9 as they do near the main entrance to the landfill.

In response, Ms. Perkins noted they are not requesting permission for additional landfill space, and they are not adding to the landfill, they simply want to use the soil for daily and intermediate cover which also helps prevent and control the blowing litter. Regarding blowing litter, she reported during particularly windy periods, they do send out litter pickers. As she understands, over the last three months over \$20,000 has been spent in paper picking activities in an attempt to help keep the area picked up. Ms. Perkins said the landfill is responsive to complaints of the neighbors and pointed out the second remonstrator's comment that she is in contact with Kelly Smith of Earthmovers and other employees in the past. The subject property and request is for additional storm water management not additional landfill space. Regarding the comment about continuing to extend the ten year time line, she indicated that the life of the landfill has remained the same for several of these iterations of ten years but the solid waste quantities coming into the landfill fluctuate depending on their intake rates.

When Mr. Hesser inquired about the hours of operation, Kelly Smith, District Manager of Earthmovers, 26488 CR 26, Elkhart, indicated they do have operators that arrive at 6:30 a.m. to prepare the area where the dumping will take place for the day. Regarding the lights, she reported when it is dark at 6:30 a.m., they do have lights so their trucks can see. This does not occur in the summer months because it gets lighter earlier. Regarding the transaction of the property, Ms. Perkins said it is her understanding that Mr. Horin and his mother are the ones that approached Earthmovers offering to sell the property, and they did have an attorney present during the transaction of the property. There was some discussion about the ten year time line for the landfill closing which is a moving target depending on intake rates and the industrial and commercial activity which has been down in the last few years.

The public hearing was closed at this time.

Attorney Kolbus admonished the Board member to focus on the land use decision before them. Mr. Homan noted questions of the aquifer and the possible impact on adjacent homeowners' wells. Secondly, he stated he believes the buffer between neighboring properties is questionable and reported he would much rather see a visual separation such as a berm or evergreens. Pointing out that nearly all of the neighboring residential owners are present today, he noted that no one indicated any adverse effect in terms of water. Regarding trash and odors, as this is a landfill and these issues do happen, noting they do take efforts to attempt to pick off the trash, he expressed his concern about the environmental impact and the property value impact on this particular piece of ground. Mr. Homan surmised his question about the location

of the aquifer and the impact of digging a 25 ft. deep pond in that area would actually be for the County Engineer which they do not have an answer for at this time. Mrs. Wolgamood said she wonders if that pond is lined. Mr. Homan added that he would like a more definitive separation barrier between the residential property and the landfill.

Mrs. Wolgamood expressed agreement that those are some unanswered questions and mentioned possible tabling for some answers. She noted Mrs. Braddock's comment saying, "Enough is enough." The Board granted 50+ acres for extraction of sand and gravel and, in her opinion, 5.369 acres is not going to make or break Earthmovers. She stated she does not think they have been extremely good neighbors. Based on their history and the fact that it won't make or break the landfill, Mrs. Wolgamood said she cannot support this request. Mr. Campanello said he felt he could only support the request if they were not going to dig out of it. Mrs. Wolgamood stated the landfill just keep getting increasingly closer to the residences. Mr. Hesser indicated his only concern is the buffering but does not have a problem with the request. Mr. Miller said a 25 ft. deep hole will have an impact on the water aquifer at some point in time. Mr. Miller agreed that if it was just a stockpile area, it would have much less impact than expanding the pond.

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

Motion: Action: Denied, Moved by Robert Homan, Seconded by Meg Wolgamood that this request for an amendment to an existing Special Use for a landfill by adding 5.369 acres to the East side of the existing Special Use, and permitting the extraction of gravel, sand, or other raw materials be denied based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance. The extraction of sand and gravel is allowed by Special Use Permit in the A-1 zoning district.
2. The Special Use will cause substantial and permanent injury to the appropriate use of neighboring residential properties by bringing the impact of the landfill so near to the western lot lines of those residential properties.
3. The Special Use will not substantially serve the public convenience and welfare by providing cover material to the adjacent landfill which has already been granted to the property on the northeast corner of CR 9 and CR 26 by this Board.

Vote: Motion failed (**summary:** Yes = 2, No = 3).

Yes: Meg Wolgamood, Robert Homan.

No: Doug Miller, Randy Hesser, Tony Campanello.

After further consideration and deliberation:

Motion: Action: Approve, Moved by Randy Hesser, Seconded by Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that the request for an amendment to an existing Special Use for a landfill by adding 5.369 acres to the East side of the existing Special Use, and permitting the extraction of gravel, sand, or other raw materials be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The existing fencing must continue along the North, East and South property lines of the new borrow area.

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

Yes: Tony Campanello, Randy Hesser, Doug Miller.

No: Robert Homan, Meg Wolgamood.

10. The application of **Greg W. Cunningham** for an amendment to a Special Use for a home workshop/business to construct a 24 ft. x 30 ft. accessory storage building for 90 percent personal storage and 10 percent business storage on property located on the North side of CR 28, 1,191 ft. West of CR 101, common address of 29731 CR 28 in Baugo Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #29731CR 28-140417-1*.

There were five neighboring property owners notified of this request.

Greg Cunningham, 29731 CR 28, Elkhart, was present on behalf of this request. He stated he is the owner/resident of the property and the owner/operator of a very small heating and cooling home workshop/business. He said he has no need for outside storage as he does almost entirely residential furnace and air conditioner replacement, service, or addition. He further explained he only occasionally does a new house. When Mr. Homan inquired about the duration of the business, Mr. Cunningham stated he has been running his business for quite some time although in different forms. Mr. Cunningham said his expectation is that he keeps his small items like plumbing and electrical supplies on shelves, but he expressed regret in stating the specific amount of 10%. He feels limiting it to 10% seems a little extreme, and reported he has no retail sales or employees. He noted if he got a good price on equipment, it would be nice to be able to have more than 10% business storage. He noted the recommended approval, but would request it be approved with a more generous allowance for business storage such as up to 30%. When Mrs. Wolgamood inquired when the house was built, Mr. Cunningham said they never built the house that was originally approved due to divorce, but the accessory building was eventually converted to a home. He stated he began construction of the accessory building in 1990. She further asked about the size of the residence, he stated it is a two story with approximately 2,600 sq. ft. of finished living space and a garage on the east side of the lower level. He stated the upstairs contains the living area including two bedrooms and two bathrooms and the downstairs has three bedrooms, a bath, and the garage area.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus commented that the actual legal advertisement stated 10% business storage so that is all that can be approved today. Mr. Homan stated he satisfied with the residence issue.

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to a Special Use for a home workshop/business to construct a 24 ft. x 30 ft. accessory storage building for 90 percent personal storage and 10 percent business 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 site plan submitted and as represented in the petitioner's application.
2. The following commitments, previously imposed as conditions, apply:
 - a. No retail sales are allowed.
 - b. No outside storage is allowed.
 - c. No employees outside of the family living on the premises are allowed.
 - d. The proposed structure must be setback a minimum of 200 feet from the road.
 - e. The accessory structure must be no larger than 24 feet by 30 feet with a maximum of 10% of the floor area devoted to commercial storage.
 - f. No sign is allowed.

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

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

11. The application of **Ryan S. & Teresa K. Penner** for a Special Use for a commercial greenhouse in an A-1 district (Specifications F - #12), a 40 ft. Developmental Variance to allow said greenhouse to be 35 ft. from centerline of the right-of-way of CR 50 (Ordinance requires 75 ft.) and a 5 ft. Developmental Variance to allow said greenhouse to be 5 ft. from the North rear property line (Ordinance requires 10 ft.) on property located on the Northeast corner of CR 50 and CR 17, common address of 21969 CR 50 in Jackson Township, came on to be heard.

Mr. Mabry stated the case is being withdrawn as the Health Department has determined the greenhouse would require a new septic system, and there is not adequate room on the subject property for the greenhouse and the new septic. Withdrawal letter submitted *[attached to file as Staff Exhibit #1]*.

Motion: Action: Withdraw, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that the Board accept the petitioner's request to withdraw the request for a Special Use for a commercial greenhouse in an A-1 district (Specifications F - #12), a 40 ft. Developmental Variance to allow said greenhouse to be 35 ft. from centerline of the right-of-way of CR 50 (Ordinance requires 75 ft.) and a 5 ft. Developmental Variance to allow said greenhouse to be 5 ft. from the North rear property line (Ordinance requires 10 ft.).

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

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

****It should be noted that Randy Hesser steps down, and Lori Snyder steps in****

12. The application of *Wallbach LLC, an Indiana Limited Liability Company (lessor) and Chris Higgins (lessee)* for a Use Variance to allow for a wholesale nano brewery in a B-2 district on property located on the East side of Main Street (SR 13) and West side of State Street, 115 ft. South of Warren Street, being part of Lots 6, 7, 8, 9 and 10 of Middlebury (Original Town), common address of 106 S. Main Street in Middlebury Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #106SMAIN STREETS-140421-1*.

There were 33 neighboring property owners notified of this request.

Jennifer and Christopher Higgins, 56726 Wedgewood Court North, Elkhart, were present on behalf of this request. She stated their estimated beer production is 10-30 gallons per week and the primary production is for the neighboring restaurant in a wholesale agreement with the owners who are also present. When Mrs. Wolgamood inquired about the tasting room, with the smaller breweries coming about and changes in the licensing, Mr. Higgins reported a wholesale nano brewery can also have a tasting room to sell retail. He stated he can sell a full pint.

Mrs. Higgins submitted a petition in support of their request signed by neighbors *[attached to file as Petitioner Exhibit #1]* and a photo of the brew system *[attached to file as Petitioner Exhibit #2]*. She indicated the brew system is very small with ten gallons produced at a time. When Mr. Campanello asked if the maximum capacity is ten gallons, Mr. Higgins production could possibly be increased up to 30 gallons, but at this point, they are testing the market. Attorney Kolbus said that State liquor laws would command their maximum production amount. When Mr. Homan inquired if 30 gallons is the maximum for the equipment or the maximum production for a nano brewery license, Mr. Higgins stated it is the maximum for their equipment. Mrs. Wolgamood inquired about the difference between a nano brewery and a micro brewery. Mr. Higgins explained that nano is a term used to describe something that is 1,000 times smaller than the original. A micro brewery would be 5,000 barrels of beer or less, and Mr. Higgins said he is making 100 barrels at most a year. When she inquired further if he currently running a similar business, Mr. Higgins said he is currently just a home brewer since 2006 and wants to pursue it. Regarding the neighbors' signatures, Mrs. Wolgamood asked if they are residential or commercial properties, Mrs. Higgins reported they are the commercial properties, and the restaurant owners obtained the signatures. Regarding the photo of the brew system, Mrs. Wolgamood asked if it will produce 30 gallons, Mr. Higgins said that system will only make 10 gallons.

Mark Salee, Middlebury Town Manager, was present in support of this request. He stated the town has no objection and supports the Use Variance. He added that a number of the nearby businesses are looking forward to an operation such as this to bring in more business, tourism, and possibly later evening hours.

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 Use Variance to allow for a wholesale nano brewery in a B-2 district be approved with the following condition imposed:

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

The following commitment was imposed:

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

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

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

****It should be noted that Ms. Snyder steps down, and Mr. Hesser returns****

13. The application of *Steven R. Rodman (buyer) and Bradley S. & Jennifer L. Rodman (sellers)* for a Use Variance to allow for the construction of a residence on property not subdivided in accordance with the Subdivision Control Ordinance and a 3 to 1 depth to width ratio Developmental Variance on property located on the West side of CR 27, 312 ft. South of CR 42, common address of CR 27 in Jackson Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 27-140421-1*.

There were 27 neighboring property owners notified of this request.

Brad Rodman, 18016 CR 142, and Steve Rodman, 68123 CR 23, New Paris, were present on behalf of this request. Mr. Brad Rodman stated he got a 3 to 1 variance last year because he had very little road frontage to build his house. There are three parcels which he indicated on the aerial photo. He said they plan to re-parcel the property so there will be two parcels. Further, he said his brother wants to construct a house on the smaller tract of land out by the road that is really useless otherwise. When Mrs. Wolgamood asked how much road frontage Steven will have, he reported 125 ft. once it is all one parcel with 1.79 acres. Mr. Hesser noted the second sentence in staff finding #3, and questioned who made the three acre lots. Brad Rodman gave some history of the property, and Mr. Hesser noted it is self-created.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser said he always has a problem with making a finding that a property has a hardship because of a peculiar condition when that condition was self-created, but he noted that was his only concern. Mr. Campanello pointed out that the hardship was not created by these owners. Mrs. Wolgamood noted the Board granted permission for Bradley to construct a house on the former gravel pit. Mr. Miller pointed out properties to the north are narrower in width than this parcel. Mr. Homan noted the deed work that will have to be done, but indicated it would become consistent with the uses around it.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood that this request for a Use Variance to allow for the construction of a residence on property not subdivided in accordance with the Subdivision Control Ordinance be approved in accordance

with the Staff Analysis as amended by the Board based on the following Findings and Conclusions:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community. In the A-1 zoning district, 20,000 square feet is the minimum lot area required to build a single-family dwelling.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner. Surrounding land use is residential in all directions and the City of Goshen is to the north.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property. This long, narrow lot has little value for any other use.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan. The Plan seeks to protect and encourage residential development.

The following condition was imposed:

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

The following commitment was imposed:

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

The motion further reflects the request for a 3 to 1 depth to width ratio Developmental Variance be approved in accordance with the Staff Analysis 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 and as represented in the petitioner's application.

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

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

14. The application of *Warren L. Logan & Joan E. Logan* for a Use Variance to allow for the construction of an accessory structure without a residence and for a 30 ft. Developmental Variance to allow for the construction of an accessory structure 20 ft. from centerline of the right-of-way (Ordinance requires 50 ft.) on property located on the Northwest corner of North-South alley and an East-West alley 194 ft. West of East County Line Road, 705 ft. North of CR 4, being Lots 1 & 2 of Roderick's 2nd Add. To Fruit Grove, common address of East 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 #00EAST COUNTY LINE ROAD-140416-1*.

There were 20 neighboring property owners notified of this request.

Warren and Joan Logan, 51833 East County Line Road, Middlebury, were present on behalf of this petition. He said they want to put a garage up behind their house in front of the

chicken house which will eventually be demolished. Presently, he noted he has his personal storage in the existing chicken barn, and he needs storage space. He indicated they wanted to bring in about two feet of fill dirt to put a building where the chicken barn is but the expense is too great. The proposed location is higher than the chicken coop so this is the easiest and least expensive option. Mrs. Wolgamood inquired if all of the properties to the north have garages without primary structures which Mr. Logan indicated is correct.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser believes they have addressed why they don't move it back farther. Mr. Miller noted it is on a private alley, and in theory, he said it will not be as close as Ron Davidhizer's across the street based on their testimony.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the 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 construction of an 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 and as represented in the petitioner's application.

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

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the request for a 30 ft. Developmental Variance to allow for the construction of an accessory structure 20 ft. from centerline of the right-of-way (Ordinance requires 50 ft.) be approved, based on the following Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare. The proposed structure will not block views of vehicles traveling the alley.
2. Approval of the request will not cause substantial adverse affect on the neighboring property. The subject property is accessed via alley to the rear of the subject property and its neighbors.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

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

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

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

16. As a staff item, Mr. Mabry mentioned a seminar being held for planning, zoning, platting, and permitting on May 21, 2014, for anyone who is interested.

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

Respectfully submitted,

Deborah Britton, Recording Secretary

Doug Miller, Chairman

Tony Campanello, Secretary