

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18TH DAY OF SEPTEMBER 2014 AT 8:30 A.M.
MEETING ROOM - DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD

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: Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Liz Gunden, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

2. A motion was made and seconded (*Wolgamood/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21st day of August 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 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 Robert Homan steps down at this time.****

4. The application of *Thrash Properties LLC* for a 15 ft. Developmental Variance to allow for the construction of a paint shop facility 60 ft. from centerline of the right-of-way of LaRue Street (Ordinance requires 75 ft.), a 20 ft. Developmental Variance to allow for said facility 100 ft. from centerline of the right-of-way of Old US 33 (Ordinance requires 120 ft.), a 13 ft. Developmental Variance to allow for said facility 12 ft. from the East property line (Ordinance requires 25 ft.), and a 5 ft. Developmental Variance to allow for said facility 20 ft. from the West property line (Ordinance requires 25 ft.) on property located on the North side of Old US 33 and South side of LaRue Street, 800 ft. East of CR 3, being Lots 3 and part of 4 of Interurban Park, common address of 28827 Old US 33 in Baugo Township, zoned M-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #28827OLD US 33-140821-1*.

There were five neighboring property owners notified of this request.

Jesse Thrash, Thrash Properties, 28827 US 33, Elkhart, was present on behalf of this request. He submitted paperwork including a site plan containing the additional information requested by staff [attached to file as *Petitioner Exhibit #1*]. When Mrs. Wolgamood asked if staff had received this additional information prior to the hearing, he indicated they had not. Mr. Campanello confirmed that this is a copy of the construction site plan that will be submitted to the state. Mr. Thrash reported prior to the fire, his business was located there for over 20 years, and he has owned the property for 13-14 years.

Regarding the setback from the road, he noted Raines Auto Sales is very close to the road as is the youth center on the adjoining property (the former El Paco Paints). He suggested 50-75% of the businesses on US 33 are closer to the road than his proposed building will be. When Mr. Hesser inquired if the new building in same footprint as the previous building, Mr. Thrash said the proposed building is slightly larger and is a little more to the west with the offices on the

outside rather than inside the shop. He indicated he could turn the building if suggested by Board in order to obtain approval as his desire is to rebuild and continue his business. Mr. Hesser asked when the fire occurred, and Mr. Thrash reported it was April 9th or 10th of 2014.

When Mr. Campanello inquired about the number of employees and adequate parking, Mr. Thrash stated it varies from five to nine and said there is plenty of parking. He went on to say the parking lot size will remain the same. Mr. Thrash noted they previously had a façade sign which they intend to have again. Mr. Campanello noted it appears the septic problems were resolved with the Health Department. Mrs. Wolgamood inquired when he last had contact with Health Department. Being in construction himself, Mr. Campanello said Mr. Thrash has done everything the Health Department asked. When Mrs. Wolgamood questioned the Health issues further, Mr. Campanello pointed out that the petitioner will still have to obtain Health Department approval even with Board approval for the variances. There was some discussion about the hash lines and solid lines on the site plan submitted today. Mr. Thrash indicated the east and north sides of the proposed building are in the exact location of the previous building.

There were no remonstrators present.

When the Board requested staff's response to the additional information provided by the petitioner, Mr. Mabry said the highlighted areas do provide the requested information. He agreed that it would be subject to Health Department approval. He indicated he could suggest findings or the Board could determine their own. He noted he never likes to table requests if petitioners have provided the requested information and recommended taking action today. There was some discussion about possible findings, conditions, and commitments.

The public hearing was closed at this time.

Mr. Campanello expressed it is a good looking, much needed building to get him back into business. He noted there are many situations up and down US 33 of buildings being close to the road. He went on to say the proposed building is not that far out of original footprint even though the owner is not grandfathered in because the building burnt down. Mr. Miller noted the uniqueness of that US 33 corridor.

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that this request for a 15 ft. Developmental Variance to allow for the construction of a paint shop facility 60 ft. from centerline of the right-of-way of LaRue Street (Ordinance requires 75 ft.), a 20 ft. Developmental Variance to allow for said facility 100 ft. from centerline of the right-of-way of Old US 33 (Ordinance requires 120 ft.), a 13 ft. Developmental Variance to allow for said facility 12 ft. from the East property line (Ordinance requires 25 ft.), and a 5 ft. Developmental Variance to allow for said facility 20 ft. from the West property line (Ordinance requires 25 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. This is actually developed in character with the surrounding businesses.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property. Without these Variances, this business could not be rebuilt.

The following conditions were imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of issuances of the building permit (where required).
2. Approved in accordance with the site plan submitted dated 09/18/14 and as represented in the petitioner's application.

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

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

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

5. The application of *ECB Real Estate Holdings, LLC* for a 43 ft. lot width Developmental Variance to allow for the construction of a house with attached storage building (Ordinance requires 100 ft.) and for a 3 to 1 depth to width ratio Developmental Variance to allow for said construction on property located on the West side of CR 43, 1,300 ft. South of SR 120, in York Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #000CR 43-140826-1*. He submitted a signed petition [attached to file as Staff Exhibit #1].

There were five neighboring property owners notified of this request.

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, was present with Scott Jones, purchaser, and submitted a copy of a survey of the property [attached to file as Petitioner Exhibit #1]. Using a large photo (included in file), he showed the proposed building area, road frontage on CR 43, and the access easement which is in process of being recorded off of SR 120. He noted they have also been in discussion with I & M firming up a utility easement for utilities which includes gas to the property. If something goes wrong with the easement, Mr. Doriot noted the road frontage on CR 43 could be used if need be. He reported the original property was brought to the attention of Planning many years ago about a subdivision, but existing gravel pits did not lend itself to dense development. He indicated the property to the south will not be sold as it is used for deer hunting. The proposal is the best use for the property with a house built on it which will increase the taxes, and it will downsize the property to the west so the bank can sell it. Referring to the submitted petition, he said he likes the neighbors to be aware of the request and pointed out neighbors who signed the petition as indicated on the enlarged aerial photo. Additionally, he noted two of the neighbors in support are along the proposed driveway easement.

When Mr. Hesser questioned the prior 3 to 1 variances and the property on which they were granted, Mr. Doriot indicated he was not sure of the history. Mrs. Wolgamood stated she recalled that it was quite some time ago, and they granted more than one 3 to 1 although she could not recall exactly where. She pointed out that the Board is not concerned about the easement because the petitioner is only asking for a lot width on CR 43. Mr. Doriot noted he was only pointing out there is ancillary support for the property. When Mr. Hesser inquired about a specific plan for the house, Mr. Doriot stated Mr. Jones plans to build a shop house first and later build the permanent residence which may require a variance request before the Board for a temporary second dwelling.

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 43 ft. lot width Developmental Variance to allow for the construction of a house with attached storage building (Ordinance requires 100 ft.) and for a 3 to 1 depth to width ratio Developmental Variance to allow for said construction be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless a copy of a recorded deed is provided to the Board of Zoning Appeals staff within 90 calendar days from the date of the grant.
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.

6. The application of *Tri County Land Trustee Corp; Attn: Paul Schwartz* for an amendment to an existing Special Use for a commercial greenhouse to allow for the construction of an additional greenhouse in an A-1 district (Specifications F - #12) on property located on the East side of SR 13, 1,150 ft. North of CR 26, common address of 59800 SR 13 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #59800SR 13-140821-1*. He struck the word "proposed" in commitment 2d and indicated it should be "existing retail" building. When Mrs. Wolgamood questioned the retail sales because the questionnaire indicates no retail sales, Mr. Mabry said they want it to continue to apply to the property to have only the retail sales that are taking place in the existing retail building. It was noted that bedding plants and supplies are the only permitted sales.

There were 18 neighboring property owners notified of this request.

David Bontrager, Jr., 59811 CR 37, Middlebury, was present representing the petitioners and this petition. He noted the current activity will stay the same, and the proposed greenhouse will not be for public access as planting in the new greenhouse will be moved to other greenhouses to be sold.

When Mr. Hesser questioned the size of the sign, Mr. Bontrager said the sign will be staying the same as it has been. Mr. Hesser said it looks like it was limited to 4 sq ft previously. Referring to the indicated five to six semis per year, Mr. Hesser asked if they can turn around or drive through on property, which Mr. Bontrager confirmed is correct. Mrs. Wolgamood noted they have been in operation for 12 years.

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** 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 a commercial greenhouse to allow for the construction of an additional greenhouse in an A-1 district (Specifications F - #12) 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. All previously approved conditions to remain in effect and be recorded as commitments, specifically:
 - a. Approved for spring planting only.
 - b. Access to be from the petitioner's Real Estate, including both the north and south driveways.
 - c. Sales of bedding plants and supplies are the only items allowed for retail sales.
 - d. Retail sales to be inside the existing building.
 - e. Sign to be no larger than four square feet per side.

Note: 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 *Ervin E. Heatwole (buyer) and Darin J. & Beth Miller (sellers)* for a Special Use for an agri-business for a custom meat processing business (Specifications F - #56) on property located on the Northwest corner of CR 15 and US 6, common address of 72155 CR 15 in Union Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #72155CR 15-140821-1*.

There were six neighboring property owners notified of this request.

Ervin Heatwole, 72155 CR 15, was present representing this petition. He stated he currently works for his uncle who has no sons. As it is his uncle's desire to retire, Mr. Heatwole is taking over the business and relocating a couple of miles down the road. Mrs. Wolgamood inquired, and Mr. Heatwole indicated the business is not currently taking place at the proposed location. Regarding the house on the property, Mr. Heatwole stated Darin & Beth Miller reside there. When Mrs. Wolgamood asked for an explanation of the process of the business, Mr. Heatwole stated the business custom butchers cattle, hogs, sheep, and goats that are delivered to them, processed, and picked up. He suggested he might do some small retail sales of fresh products such as steaks, roasts, and hamburger.

Regarding waste, he stated that a rendering company picks it up two to three times per week. Prior to pick-up, the waste is stored in barrels inside the building. When Mrs. Wolgamood asked about slaughtering, Mr. Heatwole indicated the animals are brought in live, killed, skinned out, processed, frozen, and picked up. Referring to #11 of the questionnaire about noise, vibration, smoke, dust, or odor, she questioned that he indicated there could likely

be an odor. Mr. Heatwole said there would not be much as most of the odor is contained in the building, but suggested the possibility of a slight odor on a hot summer day. In those instances, Mrs. Wolgamood suggested the rendering company come more frequently which Mr. Heatwole stated was a possibility.

Concerning employees, he reported four part-time and six full-time employees with none residing at that location. When Mrs. Wolgamood inquired about semi traffic at the property, Mr. Heatwole indicated the frequency of once every four to six weeks. He reported the intention is a full circle drive all the way around the building. She questioned the distance from US 6 north to the proposed driveway, which he said he believes is possibly 160 ft. She further asked if he had talked to the County Highway Engineering Department about the required distance from US 6 yet, and he said no. When Mr. Hesser asked if the existing driveway on the site plan is the circle drive he mentioned, Mr. Heatwole said no and indicated the new drive is proposed around the proposed structure. The Board members had some discussion about the proposed signage, and Mrs. Wolgamood noted it is an Agri-business, not a home workshop/business. She pointed out staff did not indicate any problem with the setbacks for the proposed signs. Mrs. Wolgamood noted concerned about the driveway being far enough away from US 6. Mr. Homan confirmed that livestock is being unloaded directly into building. He also established that the petition included in the packet contains signatures of people in support of this request as the petition does not give an indication of what they are in favor of.

Addressing the audience, questioning the number of people present in opposition to this request, there was a show of approximately six hands.

Roger Disher, 71986 CR 11, Nappanee, was present in remonstrance. He reported his wife is part owner of the apartment building located on Southeast corner of the intersection. He expressed his concern is the safety issue as the curve is quite deceptive, and traffic has run off into the apartment yard numerous times to avoid accidents at the intersection. A second concern he indicated is water run-off from the subject property. With the apartment building nearby, he also noted unease about the possibility of an odor problem from the meat processing business and difficulty they may have renting the apartments if an odor problem exists.

Also present in remonstrance was Dennis Blosser, 72576 CR 13, adjoining property owner all around the subject property. He expressed concern about storm water running onto his farm land. When Mr. Campanello questioned the existing run-off pattern, Mr. Blosser noted the larger the building and more solid surface there is, more water run-off will occur. He reported 15 residential houses within a quarter mile of the property. Noting he does not see a retention area on the site plan, Mr. Campanello questioned if one is required. Mr. Mabry said for an Improvement Location Permit, they would need to show retention/detention or how it would be maintained on the property. When Mr. Homan questioned State approval being needed for the commercial building, Mr. Mabry confirmed a State release would be required. When Mr. Blosser questioned the exact location of the proposed building on the property, Mr. Campanello indicated it is 126 ft. from CR 15 and about 190 ft. from the centerline of US 6.

Ron Wedel, 23150 CR 54, was also present in remonstrance to this request. He reported he lives diagonally across the field from the subject property approximately 1/8 of a mile. He questioned the need for some type of residential or commercial sewer system. If so, he expressed concern about blood borne pathogens and disease in the system which normal bacteria will not dissolve. He questioned the affect on neighboring ground water as everyone around is

on wells. Mrs. Wolgamood noted the Environmental Health Department would be the best to answer those questions.

Because this is a unique Agri-business, Mr. Campanello questioned if the Health Department would give their approval if this request is approved by the BZA. Similar to the drainage portion, Mr. Mabry stated the Health Department would give their approval in the ILP process. Additionally, he reported that the Health Department gets the agenda items prior to the hearings, and no comments were received on this petition from them with any concerns they may have.

Orpha Marie Martin, 67864 CR 15, was present in support of this request. She said her father is currently the owner of the business and her cousin, Ervin, plans to take over the business and relocate it as their place is overloaded. She indicated she wants it approved so the business will continue and not be closed. Additionally, she noted she is helping with this new business and expressed their desire to make the business very inviting and professional.

Addressing some of the concerns mentioned, Mr. Heatwole reported there is a four inch tile that comes right onto the property that he can hook into for his hard surface water run-off. When questioned by Mrs. Wolgamood, Mr. Heatwole indicated he understands he will have to comply with state requirements for the water run-off to protect the surrounding area. Regarding waste water from the building, he said sanitary waste is run into a septic system, and the rest of the waste water is run into holding tank to be picked up. Mr. Heatwole stated that containing waste water and then pumping it out is standard for a meat processing facility. Regarding the safety aspect of traffic, he reported that he cannot see that there will be an extreme amount of excess traffic from the business. He expressed a willingness to comply with any requirements of the Highway Department for the curb but. Thinking of large vehicles to and from the property hauling livestock, Mr. Homan asked how many deliveries would be made each day. Mr. Heatwole stated currently they kill two days per week so he estimated five or six deliveries either in the evening prior or in the morning. When he questioned pick-up times from the rendering company, Mr. Heatwole indicated that company sets a schedule and they pick-up usually after the processing company kills the animals. He suggested every Tuesday evening and Friday evening they would pick up which is the current procedure. When Mr. Homan asked if the waste is off-site within 24 hours, Mr. Heatwole indicated yes.

The public hearing was closed at this time.

Mr. Homan expressed feeling this is an approved use within the ordinance but noted some concern about odor as the property catty-corner is someone's business also. He admonished Mr. Heatwole about being mindful of odor from the business which would be a valid complaint if there is odor. Being an Agri-business, Mr. Campanello pointed out that it could be hog farm with odor. He also pointed out that Mr. Heatwole will be required to follow State and County Health Department regulations. Additionally, he noted he goes to a custom butchering facility and does not smell any odor.

The Board examined said request, and after due consideration and deliberation: **Motion:** **Action:** Approve, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agri-business for a custom meat processing business (Specifications F - #56) 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 screening designated as "pine trees" on the site plan must consist of evergreen trees, a minimum of 3 ft. in height at installation, and planted closely enough to form a solid barrier within five years.

As a side note during her motion, Mrs. Wolgamood advised the petitioner to be very aware of any odor issues and address them immediately.

Note: 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 **Brian & Regina Willard** for a Special Use for warehousing and storing of seed in an A-1 district (Specifications F - #44) on property located on the South side of CR 42, 545 ft. East of CR 37, common address of CR 42 in Benton Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 42-140821-1*.

There were seven neighboring property owners notified of this request.

Bill Davis of Davis & Roose Attorneys, 116 E. Clinton Street, Goshen, was present representing the petitioners with Mr. Willard being present also. He noted the petitioner has spoken with the immediate neighbors surrounding the property, and no one voiced any objections to Mr. Willard. He pointed out the pine tree screening is present and thriving. He went on to say that the need for the request arises from resurgence in the economy and the preciousness of warehouse space at this time. Mr. Willard had been warehousing off site but warehouse prices have increased considerably, and this will make it easier for Mr. Willard to conduct business right there as he is serving people in the immediate neighborhood.

When Mr. Hesser questioned the existing business, Mr. Davis said it is an Agri-business for seed sales which will continue in the present location and the proposed location will just be a warehouse. He reported they have no issues with the required conditions or commitments except that he would like to suggest that unloading and turnaround of semis take place on site or on the site of the adjacent Agri-business. Mr. Mabry indicated staff would have no objection.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation: **Motion:** **Action:** Approve, **Moved by** Randy Hesser, **Seconded by** 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 warehousing and storing of seed in an A-1 district (Specifications F - #44) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Unloading and turnaround of semis must take place on the Real Estate or as shown on the second page of the site plan, which second page includes the adjacent Agri-business.
3. The existing screening designated as "pine trees" on the site plan must be maintained by the owner of the warehouse.

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

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

9. The application of *Lavern S. & Kathryn K. Whetstone* for a Special Use renewal for an existing kennel with indoor pens and outdoor runs in an A-1 district (Specifications F - #15.00 and 15. 10) and an amendment to the existing Special Use to remove the renewal requirement on property located on the South side of CR 22, 275 ft. West of CR 35, common address of 14304 CR 22 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #14304CR 22-140822-1*. Regarding the May 21, 2012 change to the Ordinance by the Commissioner's to allow kennels, Mrs. Wolgamood noted her understanding of this petition is that Mr. Whetstone only misses qualifying for a kennel by right by his fencing which is too close to the property line and the required setback of 50 ft. from any other property line which Mr. Mabry confirmed. Referring to #20 of the questionnaire and the petitioner's request to not need renewal unless the site plan changes, Mr. Hesser questioned if the site plan changes, they would have to come back to the Board. Mr. Mabry agreed that if it is determined to be a major change, it would need to be brought back as an amendment to the Special Use.

There were nine neighboring property owners notified of this request.

Lavern Whetstone, 14304 CR 22, Goshen, was present representing this request. He said he wants to renew his permit from three years ago and requests the required renewal be removed. When Mr. Homan questioned the intensity of the use and no need to construct a birthing building, Mr. Whetstone said the birthing is inside the existing barn shown on the site plan and indicated there is no change to the site plan.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood noted there were neighbors present before, but no complaints have been received.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use renewal for an existing kennel with indoor pens and outdoor runs in an A-1 district (Specifications F - #15.00 and 15. 10) and an

amendment to the existing Special Use to remove the renewal requirement be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for the owner/occupant of the residence on the Real Estate as the operator of the kennel.
3. The kennel operation is to operate in accordance with state and local laws.
4. The number of dogs is limited to 35 adult dogs.

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

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

10. The application of *Levi A. Stutzman, Trustee, and Debra E. Stutzman, Trustee of the Stutzman Family Revocable Living Trust of March 20, 2005 (1/2) and Ernest S. Schrock, Trustee, and Emma H. Schrock, Trustee of the Schrock Family Revocable Living Trust of April 11, 2005 (1/2)* for a Special Use for a home workshop/business for making crates for barn ventilation systems (Specifications F #45) on property located on the North side of CR 38, ½ mile East of CR 33, common address of 14513 CR 38 in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #14513CR 38-140821-1*.

There were 18 neighboring property owners notified of this request.

Attorney Steve Turner of Yoder Ainley Ulmer & Buckingham Law Office, was present representing the petitioners and this request. He noted they agree with the staff recommendation. He suggested that the petitioners were unaware they needed a Special Use permit. Mr. Turner stated he thought the petitioners were going to be present as well.

Attorney Turner reported this business operates from 5:00 a.m. to 1:00 p.m. on weekdays with two to three workers at peak hours. Of those workers, one resides on site. There would be no increased traffic with this proposal as the workers ride their bikes and a maximum of one vehicle would be parked on site at all times. In terms of traffic, he said one ¾ ton truck with a 20 ft. trailer comes per day to pick up crates. Additionally, he reported everything is contained inside the 60'x80' barn including noise and dust, and there are existing hedges and trees for screening with the location being 1,200 ft. off the road. According to the Stutzmans, he said in talking with their neighbors, no objections were voiced to them.

Referring to how product being picked up from the property, Mr. Homan inquired about lumber deliveries. To his knowledge, Mr. Turner reported lumber comes the same way. He went on to say there are no commercial-grade semis that would enter the driveway as it is quite long and not especially wide. When Mrs. Wolgamood asked about leftover wood scraps, Mr. Turner said as far as he knows, they are moved off-site at intervals as it builds up. Because of what they are building, he said he does not believe they have a lot of waste. Based on the way these crates are made, he reported they are able to modify them if supplies are getting low, to be

more efficient with the scraps. Mrs. Wolgamood asked if everything pertaining to the business will be kept inside the building, which Mr. Turner confirmed. Mr. Hesser inquired further if any of the supplies are being stored outside, and Mr. Turner said no. When Mr. Homan asked about a request for a sign, Mr. Turner said there is not one.

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** Doug Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for making crates for barn ventilation systems (Specifications F #45) be approved with the following condition imposed:

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

The following commitment was imposed:

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

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

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

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

11. The application of **Roland L. & Elizabeth Ann Martin** for an amendment to an existing Special Use for commercial greenhouses in an A-1 district, to allow for construction of two additional greenhouses (Specifications F - #12) on property located on the West side of CR 15, ½ mile South of CR 44, common address of 68417 CR 15 in Union Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #68417CR 15-140812-1*.

There were four neighboring property owners notified of this request.

Orpha Marie Martin, 67864 CR 15, was present on behalf of her parents and stated she is the manager of the greenhouses. She reported they were asked to grow more flowers for the quilt gardens this year so they are requesting to build two additional greenhouses although only one will be constructed at this time. On the aerial, she showed the location of the first proposed greenhouse and the pick-up route on the site. She stated there would be approximately five pick up times per year in close proximity for the quilt gardens and then they are done for the year.

Referring to Mr. Heatwole's Special Use for the custom meat processing agri-business which was approved earlier today, Ms. Martin indicated the Special Use for the meat processing on this subject property will be removed. Mrs. Wolgamood inquired further about the pick-up route for the trucks for the quilt garden flowers and setbacks being small. Ms. Martin said that the vehicles are small vans with shelves inside or a small trailer, nothing large. When Mrs. Wolgamood asked about the drive being on their property, Ms. Martin said it is actually not on

their property but belongs to the adjoining property. She said they were told they are allowed to use it, and they keep it up for him. She pointed out an additional drive they just put in. If for some reason the neighbor would change his mind about the drive, Ms. Snyder asked if they would have room to install another drive. Ms. Martin reported they could put a driveway near the butcher house if the need would arise. On the 2012 approval, Mr. Homan noted there is a five year renewal by staff which he presumes would reset the five year clock if approved today. Attorney Kolbus indicated that is correct.

There were no remonstrators present.

The public hearing was closed at this time.

Although Mr. Homan said the driveway issue is somewhat ambiguous as it belongs to a neighbor and not a family member, he noted the business has running for some time without any complaints or problems.

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 an existing Special Use for commercial greenhouses in an A-1 district, to allow for construction of two additional greenhouses (Specifications F - #12) 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. There shall be no outside storage of skids, used containers, etc. except to the rear of the buildings.
3. The permit is to be for the owner/occupant of the residence on the Real Estate as the operator of the commercial greenhouses for a period of five years with automatic renewal if no valid complaints are reported.
4. One 4 ft. x 4 ft. double-faced and unlighted sign permitted.
5. Two employees outside those who live in the residence on-site are permitted.
6. Hours of operation to be 8:00 a.m. to 6:00 p.m., Monday through Saturday and closed on Sunday.
7. Approved for the months of March through July.

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

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

No: Meg Wolgamood.

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

12. The application of *Merlyn M. & Ella Mae Martin* for a Special Use for an agri-business (Specifications F - #56) for farm tractor/implement repair on property located on the Southeast

corner of CR 38 and CR 9, common address of 25720 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 #25720CR 38-140822-1*.

There were 14 neighboring property owners notified of this request.

Merlyn Martin, 25720 CR 38, was present on behalf of this petition. He stated he lives on the subject property and does tractor repair for the area farmers in an existing shop building that he pointed out on the aerial. He reported the farmers bring their tractors or tractor parts in for repair which sometimes occurs the same day. As tractors have gotten larger, he would like more room as proposed by the 40'x64' addition. When Mr. Campanello questioned outside storage, Mr. Mabry said it is not prohibited as an agri-business. Mr. Hesser inquired about the length of time the existing business has been in operation, and Mr. Martin said it has been nine years at this location. When Mr. Campanello questioned repairs to other larger items, Mr. Martin stated once in awhile there is a combine or skid loader. Mr. Campanello further asked about large deliveries by semi. Mr. Martin said it happens once in awhile but there is room to turn around on the property where milk trucks turned around in the past. In the process of servicing equipment, Mr. Homan asked if they generate fluids and how they dispose of them. Mr. Martin said the fluids are disposed in a commercial oil burner that they heat with.

Paul H. Still, 25811 CR 38, was present in support of this request. He stated he lives across the road and approximately 480 ft. west of the subject property. Being probably the closest neighbor, he said the business has never created a problem for them.

There were no remonstrators present.

The public hearing was closed at this time.

If approved, Mrs. Wolgamood asked if the Board is looking for a renewal period as it is a first time approval. As the business has been in operation for nine years with no complaints, Mr. Campanello suggested no renewal period. She went on to say that, if this is approved, it would be granted with a pretty good sized addition. Mr. Mabry said almost always when there is a renewal requirement, it comes from the Board. In some cases, staff has recommended a renewal period, but they did not recommend one in this case. Mr. Homan pointed out that a valid complaint would bring it before the Board, and there were no remonstrators present. Mrs. Wolgamood suggested asking staff to review the petition at the end of a time limit and place a review report in the file. Mr. Homan said he would support a staff review in two years. Attorney Kolbus stated it would be a commitment if it takes place after the ILP is issued and building is constructed.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agri-business (Specifications F - #56) for farm tractor/implement repair 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. In September 2016, the Staff is to review the Real Estate for compliance with this Commitment and enter a report thereon into this file.

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

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

13. The application of *Tri County Land Trustee Corp/Marlin & Rosetta Miller* for an amendment to existing Special Uses from commercial greenhouse (Specifications F - #12) and home workshop/business for the sale of bird houses and supplies (Specifications F - #45) to a Special Use for a home workshop/business for making machining metal parts (Specifications F - #45) on property located on the West side of CR 33, 1,400 ft. South of CR 20, common address of 59279 CR 33 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #59279CR 33-140825-1*.

There were six neighboring property owners notified of this request.

Marlin Miller, 59279 CR 33, was present on behalf of this petition. He submitted a letter from Dana Bontrager, adjacent property owner [attached to file as *Petitioner Exhibit #1*]. He explained they never got to the point in their business of making bird houses and feeders. He reported they liquidated the greenhouse business in 2013 and removed that building from the property and sold everything that went with it. Their request now is for a home workshop/business to make machine parts inside the existing barn.

He reported he is employed and part shareholder at A & R Machine Shop which is around the corner ½ of a mile. Currently, they purchase these parts as they do not have the capability of making them. He noted his petition is based on the volume that they use at the machine shop as he wants to bring the making of parts in-house at his property. In the beginning, he said this business will be during the off hours of his regular working hours at the machine shop. In the future, his children will be helping out with the business so the work will transition to normal business hours. He said he does not anticipate any friction from any neighbors and noted there is an excavating business on adjoining property to the south which has traffic in and out. He indicated he will be transporting the parts from the property to the machine shop and is not looking to have vehicle traffic at his property. When Mr. Campanello questioned the size of the parts, Mr. Miller indicated approximately four inches long and 1 ½ inches in diameter. He went on to say he is looking to go back to a screw machine because he personally does not want a C & C machine.

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 existing Special Uses from commercial greenhouse (Specifications F - #12) and home workshop/business for the sale of bird houses and supplies (Specifications F - #45) to a Special Use for a home workshop/business for making

machining metal parts (Specifications F - #45) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for a period of three years with renewal before the Board.

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 *Clinton Township of Elkhart County* for an amendment to an existing Special Use for a fire station (Specifications F - #27) to allow for the addition of fire truck storage area and a 15 ft. Developmental Variance to allow for the construction of said addition 60 ft. from centerline of the right-of-way (Ordinance requires 75 ft.) on property located on the South side of Elm Street, 200 ft. East of SR 13, 3,600 ft. South of CR 40, common address of 500 Carriage Lane (Elm Street) in Clinton Township, zoned M-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #500CARRIAGE LANE (ELM STREET)-140813-1*.

There were 22 neighboring property owners notified of this request.

Jack Cripe of Pacemaker Builders, P.O. Box 259, North Webster, IN, was present representing the petitioner in this request. Due to the size of the vehicles they have now and expect to get in the future, he said the fire department needs a wider storage facility. He went on to explain that the need for the variance is because they are drive-thru bays. The trucks will not be able to make the turn to the north side without the 15 ft. variance to drive through. He noted Elm Street is a dead end street with very low traffic, and there will be no traffic increase. He submitted a letter from the Town of Millersburg recommending approval by the city council [attached to file as *Petitioner Exhibit #1*]. Including the proposed addition, Mr. Cripe indicated the structure will be a three storage bay with doors on both the north and south for drive-thru purposes.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood noted the proposed addition is actually only coming 6 ft. closer to the property line than the existing building, and a strong argument was made for approval by Mr. Cripe.

The Board examined said request, and after due consideration and deliberation: **Motion:** **Action:** Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello that this request for a 15 ft. Developmental Variance to allow for the construction of said addition 60 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. Elm Street is a low-traffic street.

2. Approval of the request will not cause substantial adverse affect on the neighboring property. This is a commercial and manufacturing area.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property in that there is not enough room to turn around emergency equipment on the property if the request is not granted.

The motion also included 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 fire station (Specifications F - #27) to allow for the addition of fire truck storage area 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.

15. The application of *Faus Groom and Room LLC* for a Special Use renewal for an existing mobile home being used for dog training purposes, for a site plan amendment for existing Special Use, for a Developmental Variance for a kennel on less than three acres, for a 150 ft. Developmental Variance for a 50 ft. setback from the nearest principal residence not occupied by the kennel operator (Ordinance requires 200 ft.), and for a 40 ft. Developmental Variance for a 10 ft. setback from any other property line (Ordinance requires 50 ft.) on property located on the West side of CR 11, 187 ft. South of Indiana Toll Road, North of CR 6, being Lot 2 of Windsong Minor, common address of 52677 CR 11 in Osolo Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #52677CR 11-140826-1*.

There were nine neighboring property owners notified of this request.

Brad Faus, 52677 CR 11, was present on behalf of this petition as the owner of the property. He reported he was notified that on January 1, 2015, they will be annexed by Elkhart City. He pointed out the south adjoining property has a kennel that is 10 ft. from the property line which is what he was going by when he took his measurements. On the aerial photo, he pointed out the location of the new proposed building. He noted he has verbal commitments from three members of a construction crew to have the mobile home scrapped on site and removed from the property within three days of notification to do so. He informed the Board that he is meeting with his accountant on September 24, 2014, to obtain necessary paperwork for his bank loan for new building.

Regarding the recommended condition for the Developmental Variance to obtain the Improvement Location Permit within 90 days from the date of the grant and construction completed within one year, Mrs. Wolgamood asked if this would be a problem. Mr. Faus indicated it would not.

James Carrico, P.O. Box 1991, Elkhart, was present in support of this request. He stated he owns the property immediately across the street from the subject property. He noted he has spoke previously in favor of this and would continue to speak in favor. As a neighbor, he has no complaints or problems with the kennel including noise or traffic and has not heard any complaints from other neighbors. He said Faus' Groom and Room has been a good neighbor, is very responsible, and has run a very good business there. Additionally, the police dog training has provided a level of security for Mr. Carrico's property that he could not get any other way. Mr. Carrico said he is very much in favor of letting the business continue, expand, and grow as he has everything to gain and nothing to lose.

When Mr. Hesser pointed out the drawing is not to scale, Mrs. Wolgamood indicated she believed it is the same site plan the Board accepted in the beginning. Mr. Campanello pointed out with the annexation, this file will become null and void. As a commercial building, Mrs. Wolgamood noted a to-scale site plan will be required when the building permit is obtained whether from the city or the county.

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 renewal for an existing mobile home being used for dog training purpose, for a site plan amendment for existing Special Use be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 08/26/14) and as represented in the petitioner's application.
2. Approved for a period of one year with renewal before the Elkhart County Board of Zoning Appeals if the subject property is still within the jurisdiction of the Board of Zoning Appeals at that time.
3. Approved only for the owner/operator of the dog training business on the Real Estate.

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** 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 Developmental Variance for a kennel on less than three acres, for a 150 ft. Developmental Variance for a 50 ft. setback from the nearest principal residence not occupied by the kennel operator (Ordinance requires 200 ft.), and for a 40 ft. Developmental Variance for a 10 ft. setback from any other property line (Ordinance requires 50 ft.) be approved with the following conditions imposed:

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

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

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

16. The application of *Orla H. & Erma L. Yoder* for a renewal of an existing Special Use for a home workshop/business for a woodworking shop (Specifications F - #45) and an amendment to the Special Use to allow for the construction of an addition to an existing building for a shop, and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure (residence) on property located on the East side of SR 13, 2,200 ft. South of CR 38, common address of 65438 SR 13 in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #65438SR 13-140815-1*.

There were four neighboring property owners notified of this request.

Orla Yoder, 65438 SR 13, was present on behalf of this petition. With the request for the addition, he said he wants to provide enough work for himself and his children to have a family-based operation. As he needs room for personal storage, he said the business does not take up the entire existing building. Mrs. Wolgamood confirmed that everything is stored inside. When she inquired if he still had the duck barns, he indicated the two long buildings on the aerial photo are his duck facilities. The proposed building is 48'x80' and will be attached to the existing building. He reported he is a full-time employee of this business.

There were no remonstrators present.

Referring to #21 of the questionnaire, Mrs. Wolgamood asked which neighbors Mr. Yoder had spoken to about this request. He reported it was the adjoining neighbor to the south and the one across the street to the west. Mr. Yoder stated he would like to avoid continued renewals if possible. Mr. Hesser said he believes the staff recommendation did not include a time limit.

The public hearing was closed at this time.

Noting the accessory storage is nearly 3,000 sq. ft over, Mrs. Wolgamood questioned the Board about when it is no longer a home workshop/business. She also noted Mr. Yoder has indicated that a portion of the existing building is personal storage. Although she understands the reasoning behind it, she also noted struggling with the issue of being used once or twice a year for church-related activities. Mr. Hesser said he believes size is a factor but not the determining factor. He noted another factor in the scope of the business as no other employees. It is secondary to the home as home and farming operations are still mostly what this property is about. When a home workshop/business gets bigger, it is a concern as is more employees and expansion. Mr. Hesser noted feeling it is moving some storage around possibly more than expanding the business. With no outside storage, Mr. Miller mentioned incoming raw goods and finished products are expected to be inside plus any other form of storage, and there is only so

much room which impacts the size of the building. Mr. Homan noted the business is limited in terms of the home workshop definition by the number of employees and by how fast they can produce products. In terms of whether the home workshop/business is secondary to the home or poultry production, Mr. Homan stated it is the fairly stereotypical family business that we see in Elkhart County that does a little bit of everything. He went on to say that he takes a little comfort in the limiting conditions of a home workshop to keep it under control. When Mrs. Wolgamood pointed out that staff is not recommending a renewal, Mr. Homan said he would not feel it necessary unless there is a site plan change. Mr. Hesser commented that if the petitioner gets more than two employees, he will have to come back to the Board.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a renewal of an existing Special Use for a home workshop/business for a woodworking shop (Specifications F - #45) and an amendment to the Special Use to allow for the construction of an addition to an existing building for a shop 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.

The motion also included 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 a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure (residence) be approved based on the following conditions:

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

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

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

No: Meg Wolgamood.

17. The application of **Brian Zimmerman** for a Use Variance to allow for warehousing and storing of construction material and equipment in an R-1 zone on property located on the North side of CR 20, 750 ft. East of US 20 bypass, being Lot 1 of Cozy Corner, common address of 25227 CR 20 in Concord Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #25227CR 20-140723-1*.

There were 15 neighboring property owners notified of this request.

Brian Zimmerman, 25227 CR 20, Elkhart, was present on behalf of this petition. He said he understands the complaint that was filed and knows it looked pretty bad. To improve the appearance, he installed a privacy fence. He went on to say that all materials on the property are for improvements to the property, and although he did own a business, it has been shut down. He questioned the process of a one year renewal and said he will not be done with improvements to the property in one year. He estimated it will take three to four years to be completed because there is extensive work to be completed on the house that will take time and money.

When Mr. Hesser asked about the time line for the pole barn, Mr. Zimmerman said the pole barn is on the bottom of his to-do list but eventually would like to get the bobcat and dump truck inside. Mr. Hesser inquired about other items being stored outside. Mr. Zimmerman reported approximately 20-30 skids of stone, three stacks of foam insulation for the existing pole barn, firewood, and a couple of piles of stone being using around the swimming pool which will be gone before winter. He submitted photos of the property and improvements that are being made *[attached to file as Petitioner Exhibit #1]*. Mrs. Wolgamood confirmed that the equipment consists of a bobcat, dump truck, and trailer which are currently stored outside.

When Mrs. Wolgamood inquired if his previous business was landscaping, he said he did more concrete work than landscaping and also did mowing and some demolition work. He added that the core of his work was probably demolition which he tried to do the most of. When she inquired about working out of this site, he stated he has not. Mr. Campanello confirmed that he currently has a full time job.

When she asked further about installing the fence because of the complaints he received, Mr. Zimmerman said the complaint prodded him to get the fence done which he had anticipated doing from the beginning and had not gotten done. As soon as the complaint was received, he stated he dropped everything else and put the fence up. He reported he talked to all of the adjoining property neighbors. Mr. Zimmerman indicated none of them reported any problems to him and said they are glad someone is living there and improving the property. As it was a foreclosure, he said the property sat vacant for approximately three to four years.

Robert Hershberger, 25768 CR 20, Elkhart, was present and reported he is a "lifer" on Mishawaka Road. He lives further down CR 20 and also stated he owns property east of Homer on the North side of CR 20. Because he has various properties up and down CR 20, he said he is curious about this hearing. He agreed the subject property was neglected but said he was curious about the supplies being brought to the property. He said he is not familiar with the type of fencing, and it does not remind him of what he sees up and down CR 20 except for down near SR 19. He reported he reviewed the file at the Planning Department and noted the questionnaire indicated for home and personal use but blended into more of a business use which led to more curiosity. Regarding his neutral position and being neither for nor against this request, he stated he has roughly a couple thousand feet of road frontage on both sides of Mishawaka Road, and is curious when he sees something happening that is different.

He expressed interest in knowing what is allowable these days and in this situation. When Mr. Campanello asked if most of Mr. Hershberger's property is R-1 or A-1, Mr. Hershberger said most is R-1, similar to the subject property. Regarding the fence, he said he assumes it is allowed. When Mrs. Wolgamood asked Mr. Kanney about it, he noted as far as he can tell, it is allowed. Mr. Hershberger questioned if it is common to put a fence up to house

materials being used on property. When Mrs. Wolgamood questioned Mr. Hershberger about not being in support or remonstrance of this request, he indicated he believes it is a change from what he has seen in his lifetime right in that stretch where he has lived. When he sees that, he wonders about the direction as it may impact his property or things he does with his property.

Of staff, Mr. Campanello questioned the possibility of a mistake being made in the request for warehousing and storing when it is his for use for his own personal property. Mr. Mabry said there is no distinction between commercial equipment and personally owned equipment used on your personal property. If he has a three acre parcel in the R-1 zone with a tractor that he uses for his lawn, Mr. Campanello further questioned if that would be considered construction equipment. Mr. Mabry stated he would not interpret that as construction equipment but to him, a dump truck and bobcat are clearly types of construction equipment whereas a lawn mowing tractor would not trip the line for becoming construction equipment.

In response, Mr. Zimmerman said he checked with the Building Department prior to erecting the fence to make sure he was not overstepping any rules or regulations, and to his knowledge, he has not. Regarding being outside of the “norm”, he said it may be, but he used materials he brought to this property from his previous property.

Regarding accessory buildings, Mr. Hesser questioned why the petitioner does not need a variance for accessory storage exceeding living space. Mr. Mabry said the Use Variance for warehousing and storing becomes another primary use for the property so it does not count as accessory to the residence anymore. He suggested if approved, the house could be demolished, and it could function as that use in and of itself. Mr. Hesser noted as Mr. Zimmerman explained it, the building is not being constructed right away and the materials and equipment he is using were previously part of his business but are now for personal use. From photos, he commented that Mr. Zimmerman is doing a nice job of greatly improving the property.

If approved, Mr. Hesser feels a short time limit of possibly one year should be included while this conversion progress occurs but not on a sustained basis. At the point that Mr. Zimmerman gets the material used up and gets the pole barn building constructed with the equipment storage inside, Mr. Hesser said there is no reason for a variance to continue. When Mr. Campanello questioned staff if approval would allow Mr. Zimmerman to go into business on the property, Mr. Mabry said a landscaping business would be an additional use that would need its own approval which would also be a Use Variance because of the R-1 zone. Mrs. Wolgamood noted the subject property is completely surrounded by residences in this R-1 zone. Mr. Hesser noted there are no remonstrators present and suggested the Board should give him a reasonable time to let him finish what he is doing.

The public hearing was closed at this time.

Mr. Hesser said he struggles with #3 as usual but suggested this is a temporary condition in this case.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan that this request for a Use Variance to allow for warehousing and storing of construction material and equipment in an R-1 zone be approved based on the Staff Analysis as amended by the Board as the Findings and Conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community. The warehousing and storing on the property is for on-site personal use only.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner. The petitioner has erected a wood fence to screen the warehousing and storing area.
3. A need for the Use Variance does arise from a temporary condition that is peculiar to the property involved. The warehousing and storing on the property is for on-site personal use only.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property if the proposed use is temporary.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for a period of one year with renewal before the Board of Zoning Appeals.

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

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

Mr. Campanello suggested to Mr. Zimmerman that he keep a photo diary of the progress to show to the Board at the hearing for renewal.

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

18. The application of *John S. Turk and Diana L. Gibson (landowners) and Karen Dahmen (business owner/operator)* for a Use Variance to allow for a heating, air conditioning, and refrigeration office and dispatching business on property located on the South side of CR 4, 2,536 ft. East of CR 13, common address of 23522 CR 4 in Osolo Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #23522CR 4-140806-1*.

There were six neighboring property owners notified of this request.

Karen Dahmen, 23522 CR 4, Elkhart, was present on behalf of petition. She reported they run a commercial heating, air conditioning, and refrigeration business with all work being done at the customer sites which are mostly local restaurants. She stated there are four employees in the office who receive calls from customers and dispatch technicians out in the field to go to those locations. Referring to the questionnaire, Mrs. Wolgamood noted the 12 full-time employees and asked if all of the employees come to the site at any time. Ms. Dahmen said they come in randomly to pick up and/or drop off paperwork or possibly small parts. She added

that those employees are not there for any duration. Mrs. Wolgamood further inquired if large parts and equipment, such as a furnace, are picked up on site and taken to the service location or delivered otherwise to the service location. Ms. Dahmen said equipment is picked up from the supply houses and delivered directly to the service location. She went on to say that the subject property only warehouses small parts such as igniters and tubing. On a normal basis they do not have large equipment because they do not have room for it. Mr. Campanello inquired if they made any duct work on site, and Ms. Dahmen reported no. He further asked about what they do with old/used equipment that they remove from the service locations. Most frequently, she reported they are taken to another location and cut down for scrap. When Mrs. Wolgamood inquired if this occurs at the subject property, Ms. Dahmen reported it has happened occasionally but is not normal practice.

When Mrs. Wolgamood asked why they would want a sign as it is not a retail location, Ms. Dahmen said although they do not have one now, it would be for salesmen trying to locate their business or for UPS and Fed Ex deliveries. Noting 4'x6' is a sizable sign, Mrs. Wolgamood inquired about a mailbox with the address on it out front, which Ms. Dahmen reported they do have. Mrs. Wolgamood questioned if the trailers, vans, and forklifts mentioned in the questionnaire are all stored inside. Ms. Dahmen reported three flat bed trailers are stored outside that are used for hauling equipment, but they are parked on the south side of the building which is the backside of the building. As a side note, Mrs. Wolgamood noted the commercial lease between Ms. Dahmen and Mr. Turk which was submitted, under maintenance states landlord and tenant joint obligations shall include applying for rezoning. She asked Ms. Dahmen if that is something they are looking at doing, and Ms. Dahmen said they were redirected to apply for this Use Variance instead of the rezoning. When Mrs. Wolgamood inquired if the adjacent property to the east is residential, Ms. Dahmen reported that is correct. Mrs. Wolgamood further inquired if there is a house on this property. Ms. Dahmen reported there is a house behind this property which has access across the subject property and used to be all one property.

There were no remonstrators present.

Of the eight technicians for the company, Mr. Homan asked who owns those vehicles. Ms. Dahmen stated the business owns the vehicles, but the employees take them home. Regarding Commitment #6 stating maximum of four on-site employees being allowed, Mr. Campanello asked staff if all employees on-site would be a violation. Attorney Kolbus used a monthly meeting as an example and said it would not be a violation and does not believe that is the intent. Mr. Homan noted on-site employees versus employees on site. When Ms. Snyder asked about #31 of the questionnaire, Mr. Mabry reported staff looks for previous actions and what is listed in the staff report is what was found. He added that nothing came to their attention when researched.

The public hearing was closed at this time.

Mrs. Wolgamood noted the business is hard to notice, low key, and not a lot of activity. She said she is not sure that she would support it if the request was to build. She acknowledged that the entire parcel was connected to the parcel to the south where the residence is located on the pond. Mr. Miller stated it also used to be a nursery.

Attorney Kolbus questioned how the Board will handle Commitment #2 regarding outside storage when Ms. Dahmen reported the storage of trailers behind the building.

When Mrs. Wolgamood asked the petitioner further about the trailers, Ms. Dahmen reported the three trailers are stored directly behind the building and cannot be seen from the road. When Mr. Homan questioned the size of the trailers, she reported the sizes vary from possibly 12 to 20 ft.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **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 Use Variance to allow for a heating, air conditioning, and refrigeration office and dispatching business 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. Outside storage is prohibited with the exception of three trailers to be stored on the south side of the building.
3. One sign is permitted, a maximum of 24 square feet in area.
4. Semi deliveries are prohibited.
5. On-site sales and repairs are prohibited.
6. A maximum of four on-site employees are allowed.

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.*****

19. The application of ***William E. & Claudia Landow*** for a Developmental Variance to create a buildable parcel with zero frontage and served by an access easement on property located on the 650 ft. South off of CR 126, 156 ft. East of Fawn River Road, South of CR 26, common address of 21144 CR 126 Unit 3 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #21144CR 126-140714-1*.

Bill Landow, 21144-3 CR 126, was present on behalf of this petition. He reported his desire to subdivide the property so that the east portion which is approximately two acres can become a home site to either build a home themselves or to sell it as a buildable site. He said they want to sell the home on the west side of the parcel to downsize as the house is much too large. He noted the access which he owns is 60 ft. wide with a 20 ft. paved drive.

There were no remonstrators present.

As hearing officer, Mrs. Wolgamood said she transferred the petition because questions about the easement were not answered on the questionnaire. When she asked Mr. Landow

during the hearing, he said there is no agreement about who maintains the easement and there are currently two other residences served by this easement. She noted the more properties served by an easement, the more problems that occur; and she stated she did not want that coming back on the Board or the County Commissioners. She recalled when she asked Mr. Landow who currently maintains the easement, he stated they all do which also concerned her about adding another person to that equation. She reported when she asked staff about the history of the other two adjacent properties served by the easement, staff could not provide a history. Wanting to be fair, she wanted Mr. Landow to have the process of the full Board which is why it was transferred. She noted there are no additional answers to her questions at this time than there were a month ago.

Mr. Landow submitted a letter of intent *[attached to file as Petitioner Exhibit #1]* and reported if approved, they will record an easement to all four properties accessed by this road. He said the maintenance of the road surface is handled by him as it is tied in with the house and reported the maintenance of the grounds around the easement are handled by the neighbors on either side. When Mr. Hesser asked if that was in a written agreement anywhere, Mr. Landow indicated it is not. He said the neighbors do it because they are good neighbors and it is their contribution but do not want to be obligated by it. He added that he does not see anything changing with that arrangement even with another person added. When Mr. Miller asked about snow removal, Mr. Landow reported he does as part of his responsibility of the road surface. With that being said, Mr. Miller questioned who becomes responsible for the maintenance if he sells. Mr. Landow said it will be whoever owns the big house as it is part of the big house property.

Mr. Hesser pointed out the Board does not usually grant approval when a property is accessed solely by an easement. It said it is usually something that is extremely unusual. He inquired if the other two parcels served by this easement were at one time owned by Mr. Landow. Mr. Landow stated he purchased the property 26 years ago as it is currently and that is the only parcel he purchased. When Mr. Hesser further asked if the other two houses were already there, Mr. Landow indicated yes and went on to say that one was the original farmhouse and the other one was built in the 1970's. He believes his house was the last one to be built. Mr. Hesser said he would be inclined to require that as either as a commitment or table the request until the recorded easements are completed. He also strongly suggested that mowing or maintenance obligations be spelled out in writing. Mr. Landow explained that the owners do not want to sign anything that is going to obligate them on their deed when they possibly sell that someone would have to do. Mr. Campanello asked if it would be the burden of the next purchaser of the big house to understand that they have responsibility for that lane. Mr. Landow reported that is the way he bought it. Mr. Hesser believes that at least a recorded easement should be a requirement. Mr. Miller said it should be on the deed and become a deed restriction for future buyers. Mr. Landow stated he would be glad to complete a recorded easement for the other properties served by it. As Hearing Officer, Mrs. Wolgamood stated she feels as though an additional building site on an access easement already serving three residences is just compounding the problem. If approved, Attorney Kolbus stated the Board could require the written easement to be part of the minor subdivision process.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Developmental Variance to create a buildable parcel with zero frontage and served by an access easement 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. A variance from the developmental standards of the Zoning Ordinance is void unless a copy of a recorded deed is provided to the Board of Zoning Appeals staff within 90 calendar days from the date of the grant.
3. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

The following commitment was imposed:

1. The owner to record a valid easement that would serve not only the new parcel but all parcels that are represented as being served by that easement and recorded easement to be submitted with the minor subdivision application.

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

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

No: Meg Wolgamood.

20. The application of *Church of God in Christ Mennonite, Northern Indiana Congregation, Inc.* for an amendment to an existing Special Use for a church (Specifications F - #48) to add a cemetery on property located on the East side of CR 113, 1,115 ft. North of Stonegate, common address of 60536 CR 113 in Concord Township, zoned A-1, came on to be heard.

As review, Mr. Hesser noted the church use and playground was approved at the previous hearing but the request for the addition of the cemetery was tabled.

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood to reopen the public hearing.

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

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

Mr. Mabry presented the Revised Staff Report/Staff Analysis, which is attached for review as *Case #60536CR 113-140620-1*.

Randy Litwiller, 1702 Longwood Court, Goshen, was present on behalf of this petition.

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** Doug Miller that the Board adopt the Revised 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 add a cemetery 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 plans submitted and dates August 28, 2014, and as represented in the petitioner's application, in particular, the cemetery by-laws dated August 28, 2014.

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

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

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

22. The first staff item for Cobus Green – 95-28920 – for a major/minor change for a site plan amendment for an existing Special Use was presented by Mr. Mabry. He explained they are proposing a 32'x36' addition to an existing building for a clubhouse with the existing clubhouse to be converted into office space. Using the aerial photo included in the memo, he pointed out the clubhouse in the mobile home park and the circled area where the addition will be placed. He noted May of 2000 was the most recent activity for this property with a denial by the BZA for a request to expand the park by 248 lots on 64 acres. Attorney Kolbus indicated the Board needs to distinguish the lots apart from the clubhouse. Mrs. Wolgamood said she feels it is a minor change as they are not relocating the area of the clubhouse, and the request has nothing to do with the number of lots and drainage. In his mind's eye, Mr. Miller said it is totally within the confines of that specific community which makes it minor.

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that this request is considered a minor change.

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

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

No: Randy Hesser.

23. Mr. Mabry also presented the staff item for Comunidad Christian Adulam – 20051560 – for a major/minor change for an addition to a church with an existing Special Use. He reported that the church was approved in 2005 and has been functioning since then. He went on to say that the building is 5,000 sq. ft. as shown on the site plan, and their request is to add a 20'x100' addition to side of building. Noting there were no remonstrators present at the previous hearing, he indicated the property is surrounded on two sides by orchards with a tree line and another

church on the adjoining property to the rear. Mr. Campanello noted it is a large addition and felt a public hearing is needed. As indicated by Mr. Miller, it is a 40% increase in the footprint. Attorney Kolbus noted under the new ordinance, the request would be a major change.

The Board examined said request, and after due consideration and deliberation:
Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello that this request be considered a major change.

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

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

24. The meeting was adjourned at 12:54 p.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Doug Miller, Chairman

Tony Campanello, Secretary