

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17TH DAY OF DECEMBER 2015 AT 8:30 A.M.
MEETING ROOM - DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser. Staff members present were: Chris Godlewski, Plan Director; Jason Auvil, Zoning Administrator; Liz Gunden, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Robert Homan, Tony Campanello, Roger Miller, Suzanne Weirick, Randy Hesser.

2. A motion was made and seconded (*Miller/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19th day of November 2015 be approved as read. The motion was carried with a unanimous roll call vote.

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

4. Mr. Godlewski recognized that today is Robert Homan's last meeting as a full-time Board member with 11 years of service on the Board of Zoning Appeals and thanked him for his service.

5. The application of *Nathan E. & Tracey L. Mort* for a Developmental Variance to allow for the total square footage of an accessory dwelling to exceed what is allowed by Ordinance on property located on the South side of CR 24, West of CR 1, common address of 30408 CR 24 in Baugo Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #30408CR 24-151116-1*.

There was one neighboring property owner notified of this request.

Tracey Mort, 30408 CR 24, Osceola, 46561, was present with her father who currently resides in Mishawaka. She explained her mother recently passed away, and she wants to have her father close to them in the accessory dwelling on their property. She reported the proposed structure that they chose is a modular home, but it is difficult to get an adequate one within the 1,000 sq. ft. requirement. She went on to say it is very nice looking and appealing which was important to them as well. She submitted a photo of the proposed dwelling [*attached to file as Petitioner's Exhibit #1*].

William Hartbarger, 3738 Terry Lane, Mishawaka, was also present in support of this request as the resident of the proposed accessory dwelling. He reported that they looked at smaller residences, but there were not as nice as this one. When Mr. Hesser questioned the dimensions of the dwelling, noting the site plan shows 28 ft. 8 in. by 56 ft., Mrs. Mort noted the 56 ft. measurement includes a porch so the dwelling itself is actually 48'x26'. Mr. Miller noted the porch is fairly large. Mr. Campanello questioned possible storage inside the residence. Mrs. Mort noted it is a three bedroom residence with one bedroom as a computer room, and one room

as a guest bedroom for visitors. She also reported it has a large kitchen as he cooks and bakes a lot. He submitted a floor plan of the proposed structure *[attached to file as Petitioner Exhibit #2]*.

There were no remonstrators present.

When Ms. Weirick asked if the Morts own the surrounding farm land, Mrs. Mort reported they just own the five acre parcel.

The public hearing was closed at this time.

Mr. Miller noted the time involved in setting the guidelines for an accessory dwelling in the Zoning Ordinance so it is difficult vote in favor of something exceeding those requirements. There was more discussion among Board members about accessory dwellings being allowed with guidelines in the new Zoning Ordinance. Mr. Campanello noted the ordinance says 1,000 sq. ft. of living space and 200 sq. ft. of storage is allowed for a second dwelling on a property. He indicated the request is for 1,248 sq. ft. of living area which he stated is why he asked about possible storage inside the residence. Mrs. Mort reported there would certainly be some storage in the residence since there is no basement.

Mr. Homan did question how the committee came to the square footage numbers in the guidelines for the accessory dwelling because many of these requests are living areas within an accessory building or they are stick-built. He went on to say that he had never thought about a modular home which would be difficult to find smaller than 1,200 sq. ft. Mr. Miller noted they are close to the 1,200 sq. ft. requirement if they can find something in that neighborhood and utilize it for storage.

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

Motion: Action: Deny, **Moved by** Roger Miller, **Seconded by** Randy Hesser that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Developmental Variance to allow for the total square footage of an accessory dwelling to exceed what is allowed by Ordinance be denied.

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

Yes: Robert Homan, Roger Miller, Suzanne Weirick, Randy Hesser.

No: Tony Campanello.

6. The application of *Donald & Janet Ganger* for a 61 ft. lot width Developmental Variance (Ordinance requires 100 ft.) to allow for the construction of a residence (proposed Parcel 1), a 74 ft. lot width Variance to allow for an existing residence (proposed Parcel 2), a 7 to 1 depth to width ratio Variance (proposed Parcels 1-3), a Developmental Variance to allow for the construction of a residence and existing mobile home on property served by an access easement (proposed Parcel 1 & 3), and a Developmental Variance to allow for mobile home within 300 ft. of an existing residence (proposed Parcel 3) on property located on the North side of CR 44, 2,450 ft. West of CR 31, common address of 16443 CR 44 in Jackson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #16443County Road 44-151116-1*. He submitted a letter from Elkhart County Highway *[attached to file as Staff Exhibit #1]*.

There were 10 neighboring property owners notified of this request.

Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th Street, Goshen, was present representing the owners and petitioners, Don and Janet Ganger who were also present. He stated they own approximately 30 acres with very limited (less than 200 ft.) road access, and most of the land is unbuildable. He indicated lake and wetland areas on the aerial photo. Mr. Pharis stated they want to subdivide the property into three buildable lots. He reported the Gangers purchased this land from her parents; and in 2000, they obtained BZA approval to place a manufactured home on the property to care for their parents. In 2003, Mrs. Ganger's father passed away and her mother passed away in 2006. Their son is permanently disabled and has resided in the manufactured home since 2006.

As the Gangers are now planning for the future, he reported their son's disability income through Social Security will not support the taxes, insurance, and living expenses for the entire 30 acres. They believe the solution is for them to downsize. He pointed out a smaller one acre parcel Southwest of the subject property that is a buildable legal tract in Elkhart County and reported the Gangers would like to build a smaller home for their son on this lot. They are confident that his disability income could support living and paying taxes and insurance on that space. Then they would sell Proposed Lot #3 with the manufactured home to a third party. He went on to say that the Gangers would then like to build a smaller home for themselves on Proposed Lot #1 near the lake and close to their son. At that point, they would like to sell their existing residence on Proposed Lot #2. Mr. Pharis stated he has already filed for a minor subdivision with Elkhart County. After reviewing that filing, staff asked that the petitioner come to the BZA to request variances.

Mr. Pharis restated and explained the different variance requests listed in the petition. He noted that the staff's analysis is to construct a street with a cul-de-sac and dedicate it to the County. On that 300 ft. of street, the road frontage that these three lots require could be created. Mr. Pharis referred to the letter received from Elkhart County Highway stating they do not want a 300 ft. street with a cul-de-sac. Mr. Pharis stated he agrees with staff and the Highway Department agrees with Brads-Ko Engineering that a single entry point on CR 44 is the safest way to go about this, not three separate driveways. The County does not want this to be a street because they would lose income on the dedication of the right-of-way so they would not get taxes, and they would be responsible for plowing and maintaining it forever. Mr. Pharis indicated the plan is to have the Gangers' attorney prepare a cross easement/cross maintenance agreement that allows all three parties to connect to the main drive and use one single entrance onto CR 44 and would specifically spell out the right to use it and their rights, requirements, and responsibilities for maintaining it.

Mr. Pharis stated that the mobile home that was approved in 2000 is really a manufactured home which was built and placed on the lot based on the 2000 standards which required that the footers be more than four feet below grade which is below the frost line. He also noted the home is tied to each footer to make it more secure. Though it could be picked up and moved, he pointed out it is not truly a mobile home. He went on to say that it is within 300 ft. of the Gangers' present residence so if it is approved for a lot, a variance is required. However, he stated if this goes to a plat, any potential buyer of the Gangers' home will be aware of the manufactured home next to it.

He stated the Gangers have spoken with their neighbors who are all in favor of the request. So, it is Mr. Pharis's position that this request will not be injurious to any neighbor.

There will be no adverse affect, and Mr. Pharis said he felt three lots on an easement with one entry is the same as a street with a cul-de-sac. He went on to say that building a new street would be injurious to Elkhart County. Mr. Pharis expressed this is a reasonable request which does comply with the intent of the Zoning Ordinance. He stated that strict application would result in a significant hardship to his client and to Elkhart County. Mr. Pharis indicated that the cemetery creation chunked off road frontage. He added that the drive on the west property line is owned by the Gangers who pay taxes on it. It not only serves the front section of the parcel but Elkhart County gets use of it for the cemetery. Mr. Miller stated if his figures are correct, there is only the possibility for three residences on these lots. Mr. Pharis agreed and stated that all of the other land is unbuildable as it is either lake or wetland.

There were no remonstrators present.

With respect to the staff recommendation in Finding #3 that talks about the option for the petitioner to file for a major subdivision with the construction of a new public road, Mr. Hesser asked if that were done if the staff recommendation would be favorable. Mr. Auvil indicated yes. While he understands the Ordinance is hostile to parcels served by easements which he agrees with generally, he questioned other concerns that would be addressed through a major versus minor subdivision. Mr. Auvil again noted the access to these parcels. He said the residual parcel cut off a lot of the frontage of that, either intentionally or unintentionally. Mr. Hesser agreed that the issue is self-imposed. Mr. Auvil noted that economic considerations are not relevant to land use decisions. When Mr. Campanello noted that the Highway Department seems to make decisions based on economic consideration, Mr. Auvil noted that would be Highway's perspective but this would be from the Planning Department's perspective.

If the Board decides to grant the requested variances, Mr. Auvil indicated the easement structure that Mr. Pharis described would be required. But based on the Zoning Ordinance, the recommendation was made based on developmental standards. Mr. Hesser noted he wanted to clarify that it was strictly the driveway that was between staff and a favorable recommendation. Mr. Auvil noted that the lack of frontage is also an issue. If the petitioner's proceeded as a major subdivision, Mr. Auvil reported that a public road would address that issue. Mr. Campanello further questioned if the Highway Department could deny it if the petitioner filed for a major subdivision including the construction of a new public road. Mr. Auvil noted the Highway Department does not want it but that is their opinion, and the Planning Department is basing it on developmental standards. He went on to point out that developmental standards are based on law, and the Highway Department is their opinion.

The public hearing was closed at this time.

Mr. Hesser noted that many of the comments made were about the family situation which does not have to do with land use. Regarding land use, he stated his concerns are frontage and access. In his mind, he said if the only issue between the staff recommendation is the easement, he would rather have the petitioner deal with the easement than dump the issue on County Highway. Mr. Miller said he felt the subject property does not have the ability to multiply into something else as there will not be additional properties possible in this area. If approved, Mr. Miller questioned possible stipulations that would appease staff. Mr. Auvil noted the easement and the maintenance component of the easement would have to go through the processes of legal descriptions, filing, and recordings to make it a truly vested instrument. He agreed with Mr. Hesser's previous comment about possible future conflicts with land owners regarding the

easement. As other conditions and commitments, Mr. Hesser also noted it would be consistent with the site plan and representations.

If a new road were created, Ms. Weirick noted, based on non-country sized lots, you could possibly place more than three housing lots back there in the future on Proposed Lot #3. Mr. Campanello suggested the Board could place a commitment on it to not divide again if approved. Mr. Auvil indicated a new request could be filed. Mr. Homan stated he likes Mr. Pharis's solution to the problem as it is a very peculiar piece of ground. If there is future development such as other houses, Mr. Homan said it could be addressed through subdivision later. He stated he would be in support of granting the various variances. Ms. Weirick noted she agrees with staff recommendations as she feels there is no additional need for development in the area immediately.

The Board examined said request, and after due consideration and deliberation: **Motion: Action: Approve, Moved by Roger Miller, Seconded by Tony Campanello** that this request for a 61 ft. lot width Developmental Variance (Ordinance requires 100 ft.) to allow for the construction of a residence (proposed Parcel 1), a 74 ft. lot width Variance to allow for an existing residence (proposed Parcel 2), a 7 to 1 depth to width ratio Variance (proposed Parcels 1-3), a Developmental Variance to allow for the construction of a residence and existing mobile home on property served by an access easement (proposed Parcel 1 & 3), and a Developmental Variance to allow for mobile home within 300 ft. of an existing residence (proposed Parcel 3) 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 effect on the neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The 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. A cross-access easement and maintenance agreement to be recorded for the proposed lots.
2. The developmental variances are limited to the three lots unless a public road is constructed and a request for a major subdivision is submitted.
3. Approved in accordance with the site plan submitted (dated 11/16/15) and as represented in the application and today's testimony.

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

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

No: Suzanne Weirick.

7. The application of *Board of Commissioners of the County of Elkhart (owner) and Elkhart County Sheriff's Department (operator)* for an amendment to an existing Special Use

for a firearm range and training facility for law enforcement officers to remove restrictions concerning the time of day or night and the number of days per year firearm training can occur on property located on the Northwest corner of CR 9 and CR 26, common address of 59881 CR 9 in Concord Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #59881CR 9-151105-1*.

There were six neighboring property owners notified of this request.

Sheriff Brad Rogers, 26861 CR 26, Elkhart, was present on behalf of this request. In 1996 when the original request was approved with the restrictions in place, he stated he was the Lieutenant over training under Sheriff Tom Snyder. He reported there have been no complaints since then, and he believes they have shown to be a good neighbor. He noted the original restrictions permitted six night shoots per year which they find almost impossible to train 160 officers within that time frame. He stated he is asking to remove the restrictions of certain time periods and only six days total per year and permit the use of the shooting range from 7 a.m. to 10 p.m. six days per week.

Noting this petition request was for seven days a week, 24 hours per day, Attorney Kolbus confirmed that Sheriff Rogers was agreeable to the staff's recommendation of Monday through Saturday from 7:00 a.m. to 10:00 p.m. Sheriff Rogers stated a neighbor indicated they objected to the 11 p.m. request even though that was the cut-off time during the summer in the original Special Use permit restrictions. Therefore, the Sheriff noted he is in agreement to the 10 p.m. cut-off time year-round. Referring to photos of the subject property, Mr. Hesser noted there appears to be fencing around the property currently. Sheriff Rogers stated that is correct and noted the only change from the original Special Use is #6 and #8 of the restrictions which are now #7 and #8 in the new amendment. He went on to say that the pine trees, fencing, and mounding is all in place, and they are not changing anything. Mr. Hesser confirmed that staff is satisfied with the existing fencing. Attorney Kolbus suggested changing the commitments to "maintained" trees instead of "to be planted" in #9 and "maintained" in #10 instead of "installed".

When Mr. Homan questioned the use of the existing building on the subject property, Sheriff Rogers reported it is a small classroom that holds possibly 15 people. He noted gun cleaning and maintenance is also performed in there. Mr. Homan further questioned possible use of the building for indoor tactical clearings, and the Sheriff reported no. As a neighbor has expressed concern about noise, Mr. Homan suggested in commitments #7 and #8, stating "outdoor shooting range hours of operation" from 7 a.m. to 10 p.m. for additional clarification, and Sheriff Rogers agreed.

Linda Wilson, 59725 CR 9, Elkhart, was present in remonstrance to the request. She reported she has been the adjoining property owner to the north for nearly 30 years and pointed out her property on the aerial photo. Before the original request was approved, she reported the previous Training Officer came over and spoke with them and a weapon was discharged so they could assess the noise from the range. At that time, she said she and her husband decided it was something they could live with because they want the officers to be well trained. She stated she believed the original restrictions were until 10 p.m. and did not know when it became 11 p.m. She stated the Sheriff's Department has been a good neighbor.

Although she is not totally opposed to the request, she expressed feeling that this is a chance to “sneak a little more in” to the existing Special Use. While she believes the Sheriff has very good intentions, she said this request is something that makes the neighborhood nervous. She said the shooting is disruptive if they are outside their home but noted it is not bad if they are inside. She noted her husband is an avid shooter so she has nothing to stand on when complaining about the Sheriff’s Department shooting. Regarding nighttime shooting, she suggested there should be adequate time for training in the dark if the restriction to a number of night shoots per year is removed. As a neighbor, she stated she would prefer to see if they can shoot Monday through Saturday until 10:00 p.m. every day if needed. She said she felt 11 p.m. is too late, and only gives her six hours of sleep.

The other issue she noted is that service weapons have changed a lot over the years. She stated they are now larger in caliber and capacity so they have a louder discharge. While the officers obviously need to train with these shotguns, assault weapons, and automatic weapons, she asked the Sheriff’s Department to be mindful of that at night. Also of concern to her was that a mobile home has been moved in and a couple of vehicles which they were told are for the purpose of training SWAT officers. Mr. Miller suggested since that is not listed in the petition, the Board does not have time to hear those comments. She expressed she is a little leery about the training facility because it sounds ambiguous, and she stated that does effect the neighborhood. She stated in the original construction plans for the shooting range there was an industrial-sized scoop mechanism to remove lead out of the ground. She mentioned she is being told all of that lead goes into the ground and will affect their groundwater.

Dennis Smeltzer, 54090 Eastview Drive, Bristol, was present representing his father’s property at 26080 CR 26. He noted his father is in assisted living, and they plan to rent his residence. He expressed concern about residential properties that will be affected by this request. While he does not object to the shooting range there, he is worried about no restrictions proposed on the type of weapons that can be fired. In the past while at his father’s house, he has heard what he said sounds like a small canon being shot. He suggested possibly a limit on decibels.

As they are preparing to rent his father’s house, he sees potential for future complaints from tenants or even difficulty renting the residence because of the shooting range. As they will be counting on the income from renting to cover his father’s care, he said he does not want any possible activities at the range to adversely affect his father’s property. Regarding the hours, Mr. Smeltzer stated he believes 10 p.m. is reasonable. He noted this request is getting extremely less restrictive than the previous one that only allowed six training evenings per year. He suggested possibly two evenings per week would be adequate with approximately 104 evenings of training versus the six that were allowed previously. He went on to say he feels the shooting range may get out of hand if a few more restrictions are not placed on the request with regard to the type of weapons and amount of noise generated. He also expressed concern about possible future expansions of the request.

In response, Sheriff Rogers noted lead is contained in a concrete trap. When he became Sheriff, he reported one of his first priorities was to clean the lead out as it was causing problems for training because it was so full. A professional was hired and cleaned 9,000 pounds of lead out of the embankment. He reported it was not considered hazardous material because there is a concrete encased trap with sand so the lead is not going into the true embankment. He went on to say that the sand can be filtered to retrieve the lead.

Sheriff Rogers stated the time cut-off is a mute issue as they have already agreed to 10 p.m. Since 1996 when the range was installed, he believes the firearms have not changed except possibly the addition of patrol rifles which are a .223 or .556 caliber rifle. He stated reports on noise levels from those indicate they are not any louder than handguns. He noted use of SWAT rifles which are .308 caliber, but he stated he does not know what is being referred to as a canon. Sheriff Rogers indicated he is open to the neighbors visiting the range for a tour and watching during firearms training to observe the types of activities they are doing. He said they are not trying to do any secret police stuff or trying to sneak in any variations that have an agenda for the future to try to shoot 24/7. As it is a public hearing, Mr. Miller noted they are definitely not sneaking anything in. He added that he understands the noise issue with shotguns being fired could be unnerving when sitting in one's back yard.

Captain Culp of the Elkhart County Sheriff's Department, 26861 CR 26, Elkhart, was also present in support of this request. He responded to the Sheriff's question about any additional information on possible weapons added since 1996. Capt. Culp confirmed that the same weapons are being shot today that were shot in 1996. He noted the Emergency Services Unit does conduct training there as members of law enforcement and members of the Sheriff's Department. He stated the only thing that could potentially be perceived as a canon would be a diversionary device that is used in their operations and requires training. Regarding decibels, he stated it would compare very similarly to a 12 gauge shotgun or a .308. He went on to say that the Emergency Services Unit trains on a monthly basis, but those devices are not utilized every month.

Mr. Homan noted the public comment about going from six days to a much larger number of days. Compared to when the facility was first put into operation, Mr. Homan questioned if the training requirement and number of staff increased. In 1996, Sheriff Rogers reported the old jail was still in operation with 41 corrections officers compared to the new facility that has close to 90 corrections officers. He went on to say that although they are not police officers, as limited deputies they are still expected to have firearm training. To get the training in a six day window is difficult as he is also trying to manage budget items such as excess hours during the training. Additionally, he noted the shooting range is only 12 lanes so there are only 12 shooters at a time. With 170 employees that need qualifications, they require a wider window of time. Sheriff Rogers also noted there will not be night shoots in the summer because it gets dark around 10 p.m. When Mr. Miller questioned lighting at the range, Sheriff Rogers indicated there is minor lighting such as flood lights.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a firearm range and training facility for law enforcement officers to remove restrictions concerning the time of day or night and the number of days per year firearm training can occur 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 11/4/15) and as represented in the Special Use Amendment application.
2. Firing to be restricted to the designated firing lanes as per site plan submitted.
3. Adequate mounding to be provided for a safe backstop.
4. The range is to be posted with no trespassing signs.
5. The range is not to be open to the general public unless supervised by Elkhart County Sheriff Department employees or a representative of same as designated by the Sheriff of Elkhart County.
6. Rules governing scheduling and range discipline will be the responsibility of the Elkhart County Sheriff.
7. **Outdoor shooting range hours of operation being 7:00 am to 10:00 pm Monday through Saturday year round.**
8. Non-shooting training activities permitted twenty-four (24) hours per day.
9. Pine trees to be maintained along CR 26 and CR 9.
10. A chain link fence to be maintained to secure the property.
11. Use of the facility is limited to Elkhart County Law Enforcement Agencies, Elkhart County Sheriff's Reserve Officers, Elkhart County Sheriff's Cadets, and civilian employees of the Elkhart County Sheriff's Department.

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

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

8. The application of *Triple Bend School Board (buyer) and Marvin & Norma J. Nisley (sellers)* for a Special Use for a school in an A-1 district on property located on the Northeast curve of CR 116, 2,500 ft. West of CR 43, in Middlebury Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 116-151106-1*. He submitted a revised survey of 3.28 acre school site *[attached to file as Staff Exhibit #1]*.

There were six neighboring property owners notified of this request.

Harley Bontrager, 57342 CR 116, Middlebury was present on behalf of this petition as a parent with children in the new school and as the contractor. He reported that the current school is overloaded so they are trying to expand. He submitted a signed petition from neighbors in support of this request *[attached to file as Petitioner Exhibit #1]*.

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** Suzanne Weirick, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a school in an A-1 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 (dated 11/6/15) and as represented in the Special Use application.

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

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

9. The application of *Lisa K. Gardner (buyer) and Robert D. & Emma J. Jones (sellers)* for a Special Use for a home workshop/business for a dog grooming business on property located on the Northeast side of CR 20, 1,000 ft. East of CR 111, common address of 24643 CR 20 in Concord Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #24643CR 20-151116-1*.

There were 19 neighboring property owners notified of this request.

Lisa Gardner, 1201 S. Main St, Goshen, was present on behalf of this petition as the potential buyer of the property. She reported her business is currently located in downtown Goshen and has been there for five years. She will reside on the subject property and will not board any animals. Ms. Gardner stated it has been a lifelong dream to own a home with her business on the property. Additionally, she said her mother is elderly so they are trying to consolidate. She reported the grooming will be done in the front garage which will have soundproofed walls.

John Heiliger, 421 W. Waverly Avenue, Goshen, was present in support of this request as a customer of the petitioner for past 10 years. He reported Ms. Gardner is very competent, very conscientious, and cares about people and the animals.

Present in remonstrance was Edward Piaz of 24632 CR 20, Elkhart. He stated he resides across the street and has had an existing dog grooming business there for the past 10 years. He stated their clientele is very well established, and they operate from 8 a.m. to 4:00 p.m. Tuesday through Saturday. Mr. Piaz felt it is strange to place an identical business across the street from an existing one. Regarding traffic, he noted a bus driver living nearby, and there is a school bus stop at CR 20 and Concordia. He suggested it is a very clustered intersection. He expressed that two dog grooming signs would look funny and be a distraction to drivers. He stated he cannot compete with another business, and they have kept their business small so as to be conducive to neighborhood. Mr. Campanello confirmed that Mr. Piaz has an existing Special Use for their business. Ms. Weirick noted that the existing dog grooming business has set precedence for approving this Special Use. When she questioned Mr. Piaz about his objection, he reported the existing traffic and possible increased traffic. He stated they stagger their clients a half hour apart just to keep traffic flowing. Ms. Weirick pointed out that the business owner will adjust to the customers' needs to allow their business to survive.

Gilbert Munet, 24687 CR 20, Elkhart, was also present in remonstrance to this request. He reported he resides three houses west of the subject property. He also expressed concern about the traffic which he feels is increasing with more businesses going up. He stated he could

see a different type of business going in but suggested the neighborhood is already covered as far as a dog groomer.

In response, Ms. Gardner stated concerning traffic that the mall is located behind the subject property. She noted she can see JC Penney from the back door of the house so there is a lot of traffic in the area, and she really does not see that her 6-10 clients per day will make much difference. Additionally, she reported the property has a turnaround driveway so no one will be backing onto the roadway. Mr. Homan noted a home workshop/business is allowed two outside employees and staff has recommended one outside employee. Referring to Ms. Gardner's questionnaire, he noted she listed one full-time employee and two part-time employees. He questioned if that is her current employment situation. Ms. Gardner reported she is full-time and the second full-time employee is going to step-down from full-time. He went on to ask if she would ever have three full-time employees operating from the property, and she indicated no. Mr. Hesser clarified that Ms. Gardner herself is the one full-time employee and that she would have one part-time employee. Mr. Homan questioned staff's recommendation for one outside employee since two outside employees are defined in the home workshop/business. Mr. Auvil stated the recommendation was based on the application. He added that two part-time would equal one full-time. If granted by right for a home workshop, Mr. Homan stated he would be inclined to make it no more than two non-occupant full-time employees.

The public hearing was closed at this time.

Since the Board has already approved a dog grooming business across the street, Mr. Hesser stated precedence has been set, and there have been no problems with the existing business. Based on the volume Ms. Gardner has described, he does not feel there will be a significant impact on traffic.

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

Motion: Action: Approve, **Moved by** Suzanne Weirick, **Seconded by** Randy Hesser that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a dog grooming 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 (dated 11/16/15) and as represented in the Special Use application.
2. Hours of operation to be Tuesday through Saturday 8:00 am to 6:00 pm.
3. Limited to two non-occupant full-time employees.
4. Must maintain 6 parking spaces (1 parking space required per every 200 sq. ft. of area devoted to the home workshop/business, plus residential parking requirements.)
5. No dog boarding.

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

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

10. The application of **Matthew Miller** for a renewal of an existing Special Use for a home workshop/business for a construction business and for a Developmental Variance to allow for a 20 sq. ft. sign (Ordinance allows 4 sq. ft.) on property located on the East side of CR 33, 1,150 ft. South of US 33, common address of 68548 CR 33 in Benton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #68548CR 33-151028-1*.

There were 10 neighboring property owners notified of this request.

The petitioner was not present.

The public hearing remained open.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that this request for a renewal of an existing Special Use for a home workshop/business for a construction business and for a Developmental Variance to allow for a 20 sq. ft. sign (Ordinance allows 4 sq. ft.) be tabled until the January 21, 2016, Advisory Board of Zoning Appeals meeting due to the absence of the petitioner. If the petitioner fails to appear for the January 21, 2016, meeting, the petition will be dismissed.

Before voting on the motion, Mr. Hesser asked for any comments from the audience.

Present in opposition was Allan Mawhorter, 13019 N. Eastshore Drive, Syracuse, who owns surrounding property and adjoining property to the south. Although he is not opposed to the business there, he reported that storage is not all kept inside. He reported the biggest issue is that semi trucks park on the road while being unloaded with a forklift. Mr. Mawhorter reported most of the metal is stored outside the building. Additionally, he indicated between the sign, fence, and semi trucks at the subject property, he cannot see to safely exit his property. If approved, he suggested a time limit placed on semi unloading. Mr. Campanello stated he believed he recalled from the prior approval that the petitioner was to have a turnaround on the property. It was discussed that the existing circular drive would not be large enough for a semi to turn around. Mr. Mawhorter did report he does not live on the adjoining property to the south but has an accessory building there. Overall, he noted the business is pretty quiet and mostly used as a warehouse. He expressed feeling that the size of the sign is too large in conjunction with the fence and semi unloading. When Mr. Homan questioned outside storage, Mr. Mawhorter stated that there are skids of supplies on the concrete that remain there. He did note that Mr. Miller has made some good improvements to the subject property.

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

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

11. The application of **Calvin J. and Joann Mullet** for an amendment to an existing Use Variance to allow additional employees and an addition to existing woodworking shop on property located on the Southeast side of CR 28, 1,800 ft. Southwest of CR 37, common address of 13320 CR 28 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #13320CR 28-151112-1*.

There were nine neighboring property owners notified of this request.

David Bontrager, Jr., 59811 CR 37, Middlebury, was present representing the petitioner on behalf of this request. He reported the proposed addition will be on the back side of the existing building and would hardly be visible from the road. Mr. Bontrager stated the petitioner indicated there will probably be less traffic rather than more with most of the employees being in the neighborhood. Regarding the addition, he explained it will be used for assembly and storage rather than more equipment which would add to the noise. He stated that both IDEM and the Health Department stopped by during the summer, and the business remains up to code. Mr. Bontrager suggested it would be difficult to find a cleaner-looking location or operation than this one. He stated he was also involved in the amendment in 2013 but not in the original request in 2005. Mr. Hesser suggested the original request was a Use Variance instead of a home workshop/business due to the number of employees. Regarding some of the staff's comments about septic, driveway, and noise, Mr. Bontrager noted all of those issues will be addressed during the process if this request is approved. He indicated he has never heard of any neighborhood complaints. As Mr. Bontrager farms the field directly across from the subject property, he reported you do not hear much noise from it.

Calvin Mullet, 13320 CR 28, Middlebury was present as the petitioner and owner of the operation. He confirmed that there would not be any additional noise as a result of this request, and there would probably be less retail traffic. When Mr. Hesser questioned the current retail traffic, Mr. Mullet reported they have some now, but a lot of their business of making custom kitchen cabinets and some RV parts, is shipped out. He estimated possibly 20-25% in local business and the rest being shipped out of the area. Of the local business, Mr. Hesser asked how much is RV versus retail. Mr. Mullet reported approximately 15% is retail and 10% is for the RV industry. Although the business was started 16-17 years ago in Lagrange County, he reported moving to this location in 2006. He reported since the economy decline in 2008-2009 when he was down to one employee, the business has slowly grown back up. He said he has never been considered and does not want to be a big company, and he wants to keep it small. Although he did not get signatures, he reported he talked to some of the neighbors, and they all support him. He indicated recent random IDEM and Health Department inspections have been fine. Mr. Mullet stated saw dust is used for animal bedding. Waste and wood scraps are placed in a dumpster that is removed by Himco. He went on to say that finishing coatings are reported to the State yearly and B & B Environmental picks up waste which is also recorded. Regarding his request for four employees, he suggested he would be satisfied with three employees if the Board feels that four employees is beyond the scope. When Mr. Hesser questioned uses on nearby properties, Mr. Mullet indicated a residence and a couple of farms. He also reported his father-in-law lives just west of him. Lastly, he stated he would like to keep his business at home if possible.

There were no remonstrators present.

The public hearing was closed at this time.

Ms. Weirick questioned what evidence staff is looking for to say this facility will be safe and accommodate the addition. Mr. Auvil stated the staff makes their findings based on the application and research that is completed by staff. Regarding the point where they question if a

facility is too big or has too many employees, he noted that is a gray area. Based on what staff feels is appropriate and based on the Zoning Ordinance, the staff gave their recommendation that they support. He suggested if Mr. Mullet would entertain two additional employees instead of four that could be a compromise. Mr. Hesser questioned the incremental standard of a Use Variance. He noted the Use Variance is already approved and exists, and pointed out the discussion today is just the amendment. If this had been a home workshop that the Board has allowed to creep up, then Mr. Hesser said he would look at it more along those lines and ten employees is not a home workshop. But this was done as a Use Variance. Ms. Weirick pointed out the two issues in this case being an increase in the number of employees and a building addition. She mentioned having some trouble understanding where the line is and suggested possibly separating the two issues to understand it better. Mr. Auvil stated with the Use Variance, the site plan would be amended because of the addition. The use itself is being amended because of the request for additional employees. He explained that the present request is not necessarily as much of a concern as the future unknowns.

With the suggestion that the land could be sold, there was discussion about the request running with the land. Attorney Kolbus noted there could be an owner/occupant restriction. Mr. Hesser noted the site plan is not to scale. Looking at the 2013 minutes, Mr. Hesser noted he mentioned intensity at that time but it was not much of a concern. Additionally, he noted there have been no complaints about the property. When Mr. Campanello suggested placing a commitment that no more employees can be added, Attorney Kolbus stated the petitioner always has the right to request a change. Mr. Homan stated that this is a commercial business that has been allowed by a Use Variance and amended once before. However, he said in the Amish community, there are not a lot of commercial spaces zoned in such a way that it works very well. He noted Mr. Mullet's representation is that he wants to keep the business small, and it will not get out of hand. With the request for a total of ten employees, he reported the business has grown. Mr. Homan pointed out that Mr. Mullet did say he would be happy with nine employees. Regarding the addition to the building, he stated from a visual standpoint does not make any difference. It looks like an agricultural building and could be used as such. Mr. Miller noted the Board does have discretion, and he does not see this as a big change. Having driven past the property, he reported it is in beautiful condition. He suggested they could say it is reaching the border but was in favor of approving the request.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for an amendment to an existing Use Variance to allow additional employees and an addition to existing woodworking shop be approved based on the following 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.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved. The Use Variance was previously granted for six employees.

4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.
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 revised to-scale site plan to be submitted and as represented in the petitioner's application.
2. Use Variance includes only the 4.63 acres on the south side of CR 28.
3. Approved for a total of 10 employees outside of family members.
4. Signage limited to four sq. ft. per side and unlighted.
5. Any required IDEM permits to be obtained.
6. Use Variance exclusive to the owner/occupant of the residence on site.

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

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

12. The application of *David Stalter* for a Use Variance for automotive repair on property located on the North side of SR 119, 2,400 ft. East of CR 15, common address of 22625 State Road 119 in Harrison Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #22625State119Rd-151116-2*.

There were five neighboring property owners notified of this request.

Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. Ninth St, Goshen, was present representing the petitioners who were also present. Also present was Mr. Statler's mother who is the adjacent property owner to this site. He reported Mr. Stalter purchased this business in 2005 from his brother. Additionally, he indicated Mr. Stalter lives on the property and operates the business under the existing Special Use and conditions imposed at the time. Mr. Stalter has grown the business and would like to increase number of outside employees to three and would like to add a 14'x18' office for personal use and waiting room for clients to the existing 3,200 sq. ft. building. Mr. Pharis explained the current office and waiting area is inside the garage work area which they would like to separate for safety reasons. Mr. Pharis noted that the petitioner would also like to add a 480 sq. ft. lean-to for total of 3,923 sq ft. which is still below the 4,000 sq. ft. in the original commitment. He explained the lean-to is for personal storage items such as the snow plow, lawn mowers, and wheelbarrows.

As the existing residence does not have a garage, the petitioner is requesting a two stall garage addition to the south side of the residence. Lastly, he noted the request for a 100 ft. tower so they can obtain internet service which is very difficult in the area of the subject property. Mr. Pharis reported that Mr. Stalter has told neighbors and they are more than welcome to connect to the tower at no additional charge. He submitted a packet of information including a signed petition, aerial showing location of signatures, and a letter from the Elkhart County Sheriff [attached to file as *Petitioner Exhibit #1*]. Upon Mr. Hesser's request, Mr. Pharis indicated the tower on the

aerial photo. There was further discussion about the site plan. When Mr. Hesser questioned the reason this request is a Use Variance instead of a home workshop, Mr. Pharis stated it is because the request is for three employees instead of two. He noted the neighbors are all in favor of this request, and the letter from Sheriff Rogers was submitted as he is a customer of the business.

There were no remonstrators present.

Mr. Auvil stated he is not sure if the tower can be allowed in the Use Variance and may have to come back as a Special Use permit application because of the height of the tower. He also reported that as of January 1, 2016, there is a whole new set of State laws for wireless communication facilities so he would be more comfortable with the filing as a Special Use. As this was advertised as a Use Variance, it will need to be refiled and advertised without a new filing fee.

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** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance for automotive 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.
2. The issue of the tower to be removed from this request as a separate Special Use application will be filed with fee waived.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 10/16/15) and as represented in the Use Variance application.

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

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

****For the record, Mr. Auvil reported only speaking with one party involved in the following Show Cause Hearings which was regarding Item #14. No one was present in the audience.****

13. The application of *Jorge H. & Teresa Pizana (land contract holders) and Claudia V. Granados (land contract purchaser)* for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the North side of CR 146, 1,300 ft. East of SR 13, common address of 11267 CR 146 in Benton Township, zoned A-1, came on to be heard.

As noted previously, Mr. Auvil had no contact with the petitioners, and there were no remonstrators present.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Randy Hesser that this request for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

14. The application of *Nathan R. & Janice Books (lessors) and Studio 7 Tattoo (Chris Kaercher) (lessee)* for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the North side of Old US 33 and South side of Rosen Court, 275 ft. East of Best Avenue, common address of 28445 Old US 33 in Baugo Township, zoned B-3, came on to be heard.

As noted previously, Mr. Auvil received a call from Nathan Books who expressed understanding of the request and agreement with the rescission. There were no remonstrators present.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

15. The application of *Noah Lace & Mara A. Strebs* for a requested rescission of a Developmental Variance for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the North side of CR 16, 1,000 ft. East of CR 1, common address of 29683 CR 16 in Baugo Township, zoned R-1, came on to be heard.

As noted previously, Mr. Auvil had no contact with the petitioners, and there were no remonstrators present.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a requested rescission of a Developmental Variance for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

16. The application of *Avery L. Aragona & Samuel L. Burns* for a requested rescission of a Special Use Renewal for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the South side of CR 20, 400 ft. West of CR 31, common address of 16084 CR 20 in Jefferson Township, zoned A-1, came on to be heard.

As noted previously, Mr. Auvil had no contact with the petitioners, and there were no remonstrators present.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan this request for a requested rescission of a Special Use Renewal for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

17. The application of *William E. & Claudia Landow* for a requested rescission of a Developmental Variance for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals 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.

As noted previously, Mr. Auvil had no contact with the petitioners, and there were no remonstrators present.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller this request for a requested rescission of a Developmental Variance for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

18. 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 requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals 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.

As noted previously, Mr. Auvil had no contact with the petitioners, and there were no remonstrators present.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan this request for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

19. The application of *ECB Real Estate Holdings, LLC* for a requested rescission of a Developmental Variance for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the West side of CR 43, 1,300 ft. South of SR 120, common address of 10900 SR 120 in York Township, zoned A-1, came on to be heard.

As noted previously, Mr. Auvil had no contact with the petitioners, and there were no remonstrators present.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a requested rescission of a Developmental Variance for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

20. The application of *Harvest Ministries A Church Association* for a requested rescission of a Developmental Variance for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the East side of CR 1, 700 ft. North of CR 12, common address of 54820 CR 1 in Cleveland Township, zoned A-1, came on to be heard.

Mr. Auvil reported the commitment has been filed and recorded.

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

Motion: Action: Dismiss, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a requested rescission of a Developmental Variance for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be dismissed.

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

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

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

22. The staff item for the 2016 Agreement for legal services for Attorney Kolbus was presented by Mr. Auvil.

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board approve the 2016 agreement for legal services for Mr. Kolbus as presented by staff.

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

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

23. The meeting was adjourned at 11:19 pm

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary