

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19TH DAY OF MARCH 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: Mark Kanney, Planner; Liz Gunden, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

2. A motion was made and seconded (*Miller/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19th day of February 2015 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.

4. The application of *Steve & Carla Kasten* for an amendment to an existing Special Use for a kennel to allow for training on property located on the West side of Jefferson Parkway, 980 ft. South of US 20, being Lot 9 of Jefferson Park Section 11, common address of 57185 Jefferson Parkway in Jefferson Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #57185Jefferson Parkway-150216-1*.

There were 18 neighboring property owners notified of this request.

Steve Kasten, 57185 Jefferson Parkway, Bristol, was present on behalf of this request. He stated he started the business in 2006, and through the years has seen the need to grow in two aspects. He provides a residency-based training where he keeps a dog for 7, 11, or 14 days, provides training, and then returns the dog to its owner. He reported he also provides refresher training which may occur over a weekend. He went on to say that another reason for expansion is to have the ability to provide group lessons if needed. While group lessons do not provide one-on-one attention, they are more economical. He explained his proposed design is to build to the north. Mr. Campanello inquired if he is agreeable with the maximum number of dogs being 34. In conjunction with group lessons and so forth, Mr. Kasten said he believes so. Mr. Hesser confirmed that Mr. Kasten is changing the site plan by expanding the building and increasing the number of dogs. Mr. Kasten also noted the group lessons.

When Mr. Campanello questioned neighbors' feelings about the request, Mr. Kasten said he has not talked to all of them. Noting he talked to his immediate neighbors, he reported one mentioned concern about the view. In response to this concern, Mr. Kasten said he will landscape around it just like his residence and noted the desire for a professional appearance. He indicated he was not developer of the neighborhood when Mr. Campanello inquired. Regarding signage, Mr. Homan pointed out a discrepancy between Mr. Kasten's request for two signs and the Staff Report notes one sign. Mr. Kasten said one sign out front should be sufficient and went

on to say that he just asked for the other sign while he was before the Board. Mr. Miller noted his only concern with this request is the possible noise level with other nearby homes. Mr. Kasten reported that all dogs are inside during the night, and the runs are inside. The fenced area to the south will be a training area and also used during the day for dogs to relieve themselves. He went on to say that basically from 10 p.m. to 7 a.m. roughly the dogs would be inside.

Addressing staff, Mr. Homan asked why this is not allowed by right rather than having a Special Use. Mr. Kanney said this is by right as the new ordinance permits everything that Mr. Kasten is doing. As this was under a Special Use permit, when the new ordinance came in, the general discussion was to continue these approvals and work with them rather than dismiss them and let them do what they want to do. He noted that would be an option.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello suggested the petitioner come back to the Board to see how this is working as the request is high impact in a neighborhood. According to the new ordinance, Mr. Homan pointed out that Mr. Kasten is within the parameters and has the right to do what he is requesting. He feels this request is simply updating the existing Special Use to the definition of the current operations, and Mr. Kasten should not have to come back unless the ordinance was to change. Mr. Miller agreed that this is a process that he does not feel Mr. Kasten needs to complete and the new ordinance should be followed.

In the midst of the motion, there was discussion about signage being allowed. Mr. Kanney reported with that amount of frontage, the petitioner would be entitled to a sign but could not quote the size based on the frontage.

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

Motion: Action: Dismiss, **Moved by** Roger Miller, **Seconded by** Robert Homan, after he clarified that the motion also includes that Special Use 57185JeffersonParkway-110218-1 and 20081287 become null and void, that this request for an amendment to an existing Special Use for a kennel to allow for training be dismissed based on the Finding that the request complies with the new Zoning Ordinance and no Special Use permit is required.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr.

No: Randy Hesser.

5. The application of *Jerry W. Wengerd and Wilma O. Wengerd* for a Special Use for a home workshop/business for retail sales of fabrics and crafts on property located on the North side of CR 32, 825 ft. East of CR 41, common address of 11319 CR 32 in Clinton Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #11319CR 32-150211-1*. He pointed out there is a residence and accessory buildings on site which are not shown on the aerial photo as they are relatively new.

There were six neighboring property owners notified of this request.

Paul Hochstetler of Freedom Builders, 54824 CR 33, Middlebury, was present representing the petitioners who want to operate a craft/fabric store out of part of the existing

residence. He indicated there will be no new structures constructed. Regarding traffic, he said this is a small store and not much traffic is generated. He suggested it would be unusual for them to have 10 customers per day. Although not legally a factor, Mr. Hochstetler noted the unique reason for this request is that the husband is handicapped and an in-home store will allow wife to have an income while providing care for her husband in the home.

When Mr. Campanello inquired about truck traffic for deliveries, Mr. Hochstetler said there will be no semi trucks but an occasional box truck and some pick-up truck and trailer deliveries. Mr. Hochstetler confirmed that there would be no backing out onto the roadway. Mr. Miller inquired about any shipping out of merchandise. Mr. Hochstetler said he does not believe that will occur.

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** 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 home workshop/business for retail sales of fabrics and crafts 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 2/11/15) 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, Jennea Schirr, Randy Hesser.

6. The application of *Barry J. & Angie R. Taylor (buyers) and Slavic Church of Evangelical Christian-Baptist, Inc. (seller)* for a Special Use for an indoor/outdoor recreational rental facility, including single family residence on property located on the at the Northeast curve of CR 23, 435 ft. West of SR 15, in Jefferson Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #000CR 23-150216-1*.

There were six neighboring property owners notified of this request.

Barry Taylor, 58439 Fillmore Court, Goshen, was present on behalf of this request. He explained it is going to be a residence but wants to create a facility and allow kids and the community to come there. But also host events such as weddings. He said they have noticed that people in our community have to travel outside the county to rent barns and facilities for large events. This request would provide a service for the community and bring others into the community.

Mr. Homan noted the petitioner's previous discussions with staff and staff's recommendation to table this request for further details. Regarding those details, Mr. Taylor stated the responsible thing to do is pursue his own license to manage and control alcohol consumption. Concerning noise on the site, he noted the design and shape of the building creates

a courtyard so noise will be surrounded by the building. He indicated only wedding ceremonies would be held outside which are relatively quiet. Other activities would be held indoors so the noise would all be enclosed. He went on to say there is an existing tree line, and he proposes to add to it. He explained the lighting would be similar to that at a home with can lights on the outside of the building and low voltage lighting for the parking. He stated they are not requesting an LED sign as he does not care for them and that type of lighting would not be fair to the neighbors. He expressed a desire to keep the site with a residential appearance. Regarding hours of operation, he said the plan is from 10 a.m. to 11 p.m., and he does not see much happening during the week with most of the events being held on Fridays and Saturdays.

As far as security, he stated he is living there, and it will be the same as a residential home with nothing there to take except tables and chairs. All of the vendors will bring their equipment to the site. Concerning the size of the facility, he questioned if that pertained to the square footage of the building or the size of the property. He reported the property is basically a 13 acre square, and the building size is 120'x120' including the courtyard area. He said he does not expect noise to travel out of the building area, but he will be there to control the situation. Believing that he has answered staff's questions, he indicated feeling the Board should make a decision based on that.

When Mr. Hesser asked about a more specific site plan layout of the building and showing the residential area, Mr. Taylor submitted a new site plan *[attached to file as Petitioner Exhibit #1]* and indicated he is working with Alpha Builders. For fire safety reasons, he noted the u-shaped building plan so the courtyard is open on one end. When Mr. Campanello questioned the number of people, Mr. Taylor said the average wedding is 134, with a maximum capacity of 288 based on the size of the building, but he does not see that happening.

Mike Stump, 56635 CR 13, Elkhart, was present representing Pete Liegl, who owns the 240 acre farm across the road. He expressed agreement with the recommendation to table the request. He said they feel the best usage of the acreage across the road from the subject property is residential and expressed concern about how the eventual residential development will blend in with the proposed request. He noted the petitioner has shown a basic footprint today but questioned the plan for the remainder of the property. He further questioned whether there is a problem with having a residence and rental facility all in one structure. He noted feeling that should be two separate structures.

He noted Mr. Liegl previously owned the subject property and sold it to the church so they are very familiar with the property. Mr. Campanello pointed out if it was previously approved for a Special Use for a church, the amount of traffic and weddings could be similar to this request. He went on to say that churches do blend in with residential areas. Mr. Stump further questioned possible long term plans for the remainder of the 13 acre parcel. He stated they are not necessarily against request, but would like more information.

In response, Mr. Taylor stated he believes he has provided the requested information and noted building size, parking areas, and even trees are indicated on the submitted site plan. He went on to say that he respects the blending issue. Setting religion aside, he pointed out that church building structures vary in brick, vinyl siding, or whatever they want to be. He noted the area surrounding the subject property has many barns, and this request is also a barn.

Noting the revised site plan, Mr. Hesser said the petitioner shows what he is going to do with the entire parcel so he does not think that is a concern. He added that he does not

necessarily have an objection to this type of use. As this is all new information, he expressed that he would like to have staff input with respect to the layout of the building and recommended conditions and commitments. Regarding the public hearing, he noted it could be closed but it would have to be reopened to hear any conditions. Mr. Homan suggested postponing the hearing for a month to include new information in questionnaire and for a staff analysis, and a decision can be made at that point. Mr. Hesser explains to petitioner what the Board is expecting to happen prior to the next hearing and suggested Mr. Taylor schedule an appointment with staff to get information to them as quickly as possible so staff can come up with an appropriate recommendation. If staff's recommendation is for approval, they will also recommend conditions and commitments placed on the Special Use permit.

Mr. Campanello questioned Mr. Taylor's ability to get building elevations that quickly to see how the building will look as far as blending with surrounding properties. Attorney Kolbus stated that Mr. Taylor can provide what he has at this point. Mr. Hesser pointed out that staff may not recommend approval.

The public hearing was left open.

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

Motion: Action: Table, **Moved by** Robert Homan, **Seconded by** Randy Hesser that this request for a Special Use for an indoor/outdoor recreational rental facility, including single family residence be tabled until the April 16, 2015, Advisory Board of Zoning Appeals meeting for a staff report and recommendations based on new information provided by the petitioner.

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

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

7. The application of *Sutter Robert N. and Carol Ann Trustees Liv Tr (lf Est)* for a Use Variance to allow for the construction of an accessory structure without a residence on property located on the North side of CR 26, 821 ft. West of SR 13, being Lot 2 of Sutter Minor, common address of 000 CR 26 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #000CR 26-150216-1*.

There were five neighboring property owners notified of this request.

Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th, Goshen, was present representing the owners/petitioners who are present today. In 2005, Mr. Pharis reported they represented the petitioners who owned three acres and thought it was time to downsize. At that time, they completed a two lot subdivision with the original house and a new residential parcel for a smaller footprint and an outbuilding that Mr. Sutter could use for his personal needs. Now, the Sutters have decided to keep their house as they now need room for their children and grandchildren. Instead of downsizing, they have decided to remodel their existing home and put plans together for an accessory building. The builder suggested constructing the building on the vacant parcel. Although the owners are most likely not going to down size and build a smaller home, Mr. Pharis said they want to keep that option open which is why they recommended putting building on second parcel. Mr. Pharis met with Mr. Mabry to decide the best route which Mr. Mabry felt was going to the BZA.

He noted that staff has recommended denial, stating that the parcel is designed for a single family home, but he pointed out that all of the neighbors have out-buildings. This is the only home that doesn't. He stated their neighbors are also their friends, so the Sutters do not want to create a nuisance for them. He went on to say that on CR 26 between SR 13 and CR 37, in approximately a half mile, there are five homes on the north side of CR 28, one being the Sutters, and the other four have multiple out-buildings. He stated there is one residence on the south side which also has an out-building. Mr. Pharis noted that CR 26 changes to CR 28 west of CR 37. Driving that stretch, he reported from CR 37 to CR 127, he did not see a single home in that three mile stretch that did not have an outbuilding. He went on to say that this area is a mix of English and Amish residents who live side-by-side. When you get to CR 127, that is the point where there is a subdivision which is single family homes with no outbuildings.

Mr. Pharis acknowledged that they imposed the condition on themselves but noted their explanation for that. If it were unplatted, he said they would be here requesting a variance for a larger accessory building than the residence. He said they are not opposed to vacating the subdivision but Mr. Mabry advised him differently, and Mr. Pharis would like the possibility in the future for the owners to downsize and build a smaller home on Lot 2. He noted that neighboring property owner letters have been sent out. In checking with the Building Department prior to the hearing, he reported staff had not received a single letter or phone call in remonstrance to this request. He went on to say that he would be surprised if anyone was present in remonstrance during the hearing. He noted the proposed building is less than 916 sq. ft. larger than the residence.

When Mr. Hesser asked Mr. Pharis if they were proposing a commitment that these two parcels would not be sold separately until such time as a smaller residence is build on-site, Mr. Pharis said they would agree to that.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Tony Campanello that this request for a Use Variance to allow for the construction of an accessory structure without a residence be approved based on the following Findings and Conditions 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 based on ownership of the adjacent property.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property as testified to here today.
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 (dated 2/16/15), today's testimony, and as represented in the petitioner's application.
2. Lots 1 and 2 of Sutter Minor cannot be separated in ownership until such time as a primary residence is constructed on Lot 2.

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

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

8. The application of *Jason Wier and Sheri Wier* for a Special Use for a wireless communications facility and a Developmental Variance to allow for the placement of the tower for said facility 30 ft. from the East property line (Ordinance requires the height of the tower or 80 ft.) on property located on the South side of CR 8, 4,300 ft. East of CR 131, common address of 14458 CR 8 in York Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #14458CR 8-150210-1*. He noted a letter of remonstrance and an email from Mr. Wier which was provided to members at the beginning of today's meeting. A copy of the remonstrance letter was given to the petitioner. When Mr. Miller questioned any additional information staff is requesting, Mr. Mabry said the new Zoning Ordinance requires a FAA form, a collapsibility report, and a report of any nearby towers that could be co-located on, setbacks, and the height of the tower. Mr. Campanello questioned what the Comprehensive Plan says about towers and locations of towers. Mr. Kanney said he does not believe the Comprehensive Plan addresses it. When Mr. Hesser inquired, Mr. Kanney confirmed that prior to the inclusion in the Zoning Ordinance; cell towers had a separate policy.

There were 12 neighboring property owners notified of this request.

Gene Crusie of Maplenet Wireless, 4561 Pinecreek Road, Elkhart, was present representing the petitioner. He explained that Mr. Weir is an IT technology professional and high speed internet is needed for his employment. He noted the petitioner's home which is not shown in the aerial photo because it is new. Mr. Wier's plan was to try to use the available technology in the area for it but it is not working. Mr. Crusie said they got together to try to find a creative way for Mr. Wier to be able to do his job. He noted high speed internet is not available in that area at all other than Wild Blue Satellite technology which is too slow for the type of work that Mr. Wier does and affects his ability to do his job. He explained they got together with Copper Wireless which is a local internet provider in Elkhart County, and they are able to provide service to this location. However, it requires a small tower to get above the trees, basically a TV tower, like the residential ones that are scattered all throughout the county. They are not talking about a cell tower or telecommunications facility.

Noting that some of the FAA requirements have changed, Mr. Crusie explained they now have a tool on the FAA and FCC website to see if notification is required. Although the FAA previously encouraged the Form 7460 filing on all towers, the tool indicates whether a form is required or not. He said included in the packet that Mr. Wier emailed to staff is that 7460 notification is not required because the tower is so small. He also referred to a letter from Nello

indicating generic collapsibility of towers. He explained generally towers are designed to collapse on themselves and do not fall over. He noted an 80 ft. tower would never fall 80 ft. It would fall over itself in the middle, more or less. He said the tower is available for co-location but it is only 80 ft. which is barely above the trees so they do not think anyone is going to want to use it. He noted that is not the purpose of this particular tower. When Mr. Campanello questioned the size of the tower, Mr. Crusie said it is not a big structure, being 42 inches at the base and 18 inches at the top. He noted it is a used tower that they removed from one location, have repainted, and are putting up at Mr. Wier's house. When Mr. Miller stated that is comparable size to a silo, Mr. Crusie said it is much smaller.

When questioned about submission of required information, Mr. Crusie explained that the property owner started the process on his own initially but after receiving the staff report, he sought out Mr. Crusie's help with the rest of the requirements. Mr. Campanello confirmed that this is strictly for the use of the homeowner which Mr. Crusie indicated is correct. There was some discussion about the lack of availability of cable TV service in that area. Mr. Crusie did note that he believes Copper Wireless is interested in adding an antenna on to provide service to the neighbors because there are a number of other people around that area who do not have service as well. Mr. Homan noted that one of the issues that has come up in the past is possibility of collocation on an existing tower. In response, Mr. Crusie said they went out with a bucket truck and went above the ground until they could see the nearest tower. He reported that 80 ft. was the first line of sight to the nearest tower. He further explained that they need to build this tower to co-locate on another tower.

Mr. Miller asked for a response to the remonstrator. In his opinion, Mr. Crusie said an 80 ft. tower is not going to degrade property value because they are all over the county. When Mr. Miller questioned the collapse of the tower, Mr. Crusie referred to the collapsibility study that Mr. Wier sent to staff which says if a tower falls, it collapses on itself. A tower never falls as far as the height of the tower. Mr. Crusie submitted that study *[attached to file as Petitioner Exhibit #1]*. Mr. Homan noted the ordinance says there must be equal distance from the height of the structure to the property line. He questioned if there is a reason that the petitioner wants to locate the tower 30 ft. from the property line. Mr. Crusie stated the owner indicated it is possible to move the structure further from the property line. Mr. Wier pointed out the location of the house on the aerial photo. Mr. Crusie pointed out a possible location for the tower to meet setback requirements. Mr. Wier said location there is possible but it will make the tower more visible for their neighbors and themselves. Mr. Crusie said a Special Use is needed regardless. But the variance request would allow them to place it near the house which in Mr. Crusie's opinion would make it less visible. When Mr. Campanello questioned any trees to hide it, Mr. Crusie indicated the East side is all trees.

Noting that the ordinance allows them, Mr. Miller questioned if the information requested by staff has been submitted, if staff has received it, and if they are satisfied with it. Mr. Kanney said he felt the application is now complete. When Mr. Hesser noted the lack of a staff recommendation regarding the variance, Mr. Kanney said staff would say if the tower can be moved to meet the requirements and not need a variance, it should be moved. When Mr. Crusie asked Mr. Wier if he is willing to move it, Mr. Wier indicated yes.

John Thomas, 14440 CR 8, Middlebury, was present in remonstrance. He stated he owns the property to the east of the subject property. He indicated his only objection is sight of tower

and stated he wishes it was not right beside his driveway. With the terrain, he feels the tower is going to stick up even higher than the 80 ft. While Mr. Hesser said he understands not wanting the tower, he asked if Mr. Thomas would prefer to have the tower placed in the middle of a field to view or have it near a tree line. Mr. Thomas said his gut feeling is the further away from property line, the better.

The public hearing was closed at this time.

Attorney Kolbus suggested voting separately on each issue.

Mr. Campanello noted he is bothered by the letter of collapsibility as this particular tower is a used tower, and if it is a pyramid type of tower, it cannot collapse on itself. Mr. Hesser noted that issue was more concerning the Developmental Variance. He pointed out that area does not have access to cable. He questioned if there are normally any conditions or commitments that would be recommended on this type of request under the new ordinance. Attorney Kolbus mentioned if the Developmental Variance is going to be denied, the Board would still approve in accordance with the Special Use application and presentation with a revised site plan submitted showing the location of the tower meeting the ordinance requirements. He went on to suggest the Board vote on the variance request first. If this tower is going to be approved, Mr. Campanello said he felt the best location for it is the proposed location. He does not want it to move where it is more visible just to meet setbacks and believes they should come back with a tower they can prove will collapse. Mr. Hesser indicated to him, the issue is the Developmental Variance. He suggested the Board could approve the Special Use, table the Developmental Variance and the petitioner can choose to come back with a plan or put it within the setback requirements. Attorney Kolbus pointed out that there is no guarantee exactly how a tower would fail and fall. When Mr. Miller inquired about guyed wires, Mr. Crusie indicated no.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Robert Homan this request for a Special Use for a wireless communications facility be approved based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will substantially serve the public convenience and welfare.

The following condition was imposed:

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

The following commitment was imposed:

1. Approved in accordance with the Special Use application and the petitioner's presentation, with a revised site plan to be submitted showing the location of the tower meeting the Ordinance requirements.

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

Yes: Robert Homan, Roger Miller, Jennea Schirr, Randy Hesser.

No: Tony Campanello.

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the request for a Developmental Variance to allow for the placement of the tower for said facility 30 ft. from the East property line (Ordinance requires the height of the tower or 80 ft.) be tabled indefinitely for more evidence and renotification.

Vote: Motion failed (**summary:** Yes = 2, No = 3, Abstain = 0).

Yes: Tony Campanello, Randy Hesser.

No: Robert Homan, Roger Miller, Jennea Schirr.

Motion: Action: Denied, **Moved by** Robert Homan, **Seconded by** Roger Miller that the request for a Developmental Variance to allow for the placement of the tower for said facility 30 ft. from the East property line (Ordinance requires the height of the tower or 80 ft.) be denied.

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

Yes: Robert Homan, Roger Miller, Jennea Schirr, Randy Hesser.

No: Tony Campanello.

9. The application of *Storco, Inc. (landowner) and Central States Tower II, LLC (tower owner)* for a Special Use for a new wireless communications facility, for a 65 ft. Developmental Variance to allow a tower 110 ft. from Lewis Avenue front property line (Ordinance requires 175 ft.) and for a 108 ft. Developmental Variance to allow for said tower 67 ft. from the Northeast rear property line (Ordinance requires 175 ft.) on property located on the Northeast corner of Lewis Avenue (CR 13) and US 33, common address of 59058 Lewis Avenue in Concord Township, zoned B-3, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #59058LewisAve-150127-1*. He noted receipt of a letter from the FAA with determination of no hazard to air navigation.

There were 31 neighboring property owners notified of this request.

Brian Donley of Insite Incorporated, 660 Midwest Road, Oak Brook Terrace, Illinois, was present representing both Central States Tower and Verizon Wireless. He explained it is for a new telecommunication facility with a 175 ft. monopole to be contained inside that facility. He said the need for this tower arose from residents living, working, shopping, and commuting along US 33 requesting better service in this area and the need for more capacity as the surrounding cell sites have become overloaded. He reported the volume of voice and data usage in this area is causing surrounding cell sites to become overloaded. As texting, emailing, and data usage increases, customers are demanding improved telecommunications service. The only way to improve the level of coverage and capacity of coverage is to install more equipment in the air which this tower will do. He gave some statistics on cell phone usage in the U.S.

He said this site was chosen to try to blend in with the existing landscape of the area. He reported there is an existing 150 ft. lattice tower on this property currently which he pointed out on the aerial photo. He also showed the proposed location of the new tower on the aerial. Their plan is to remove the existing tower and install a new 175 ft. monopole that can be used by up to four additional wireless carriers. He noted Maplenet Wireless has antennas on the existing lattice tower, and Central States Tower is allowing Maplenet Wireless to put their equipment on

the new tower. He noted they would be replacing what is essentially a useless tower with one that is more valuable and useful to the community. He said this tower is designed similar to another tower nearby to the Southeast that was previously approved by this board. He noted the proposed placement of this tower is as close to the railroad tracks as could be reasonably expected, and it is placed as far away from US 33 as they possibly can. He reported they also chose a commercial business that has commercial traffic in and out similar to the tower to the Southeast.

Regarding collocation and the question of if this equipment could be collocated on an existing tower, he said the tower to the Southeast is currently owned by American Tower Corporation. Verizon Wireless designed their network with the purpose of using the American Tower site as a collocation well over two years ago. Verizon went as far as signing a lease and began paying rent to put their antennas on that tower. American Tower was unable to provide Verizon with a utility easement in order to provide electrical service and fiber optic service to the tower for Verizon. After American Tower tried multiple times to come to an agreement with the underlying landlord/owner of that property to provide that easement, and they were unable to do to do so, American Tower forced Verizon to terminate the lease, stop paying rent, and look for a new location. He went on to say that in this particular area, Elkhart County does not have the tower inventory for multiple carriers to provide the quality of service that the residents are demanding, requiring, and using on their existing cell phones.

Regarding the FAA report, Mr. Donley said he submitted that report and Central States Tower has done their due diligence and filed the appropriate form with the FAA. He noted that report came back as no hazard with the 175 ft. tower as anything below 200 ft. does not need to be filed with the FAA. When Mr. Hesser questioned the distance from the railroad tracks, Mr. Donley said he submitted a full set of drawings but does not have that exact dimension. He noted from the tower to the property line is 67.5 ft. with whatever the additional easement is to the railroad tracks. He guessed it is likely 10-12 ft. shy of 100 ft. When Mr. Campanello questioned the railroad's response to this request, Mr. Donley said they are contained within the landlord's property and have no obligation to get any type of approval from the railroad. He noted notification of neighboring property owners. When Mr. Campanello mentioned an existing tower towards Goshen near US 33 along the tracks at Peddlers Village Road that is probably the same height and questioned if they looked into using that tower, Mr. Donley said they did and it is too far outside of the coverage area where it is needed.

Regarding requested information, Mr. Miller confirmed that they provided Form 7460 and proof from American Tower saying they had to vacate the lease. Further, Mr. Donley reported the tower is designed to carry up to four wireless carriers so others could collocate on this proposed tower and they are doing their best to accommodate the existing collocation on the existing tower that will be allowed to maintain service on the new tower. When Mr. Hesser questioned the existing business on the site, Mr. Donley reported it is Bontrager Pools, a commercial pool contractor, and their traffic far exceeds any traffic Verizon would create to maintain it. He suggested possibly a monthly service call but the entire system is completely monitored by a switch at the office. When Mr. Campanello questioned how this tower collapses, Mr. Donley said this is a brand new monopole tower which is designed to collapse upon itself. When Mr. Miller questioned any further possible issues that staff may have with the additional information provided, Mr. Kanney said he believes all of staff's questions have been answered.

There were no remonstrators present.
The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello that this request for a Special Use for a new wireless communications facility be approved based on the submittal of FAA Form 7460-1; the Notice of Proposed Construction or Alteration; and supporting evidence that the collocation of the proposed facility with an existing approved tower cannot be accommodated.

The following condition was imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 1/27/15) and as represented in the Special Use application.
2. The old tower currently on the property to be removed on or before completion of the new proposed tower.

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

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Jennea Schirr that the request for a 65 ft. Developmental Variance to allow a tower 110 ft. from Lewis Avenue front property line (Ordinance requires 175 ft.) and for a 108 ft. Developmental Variance to allow for said tower 67 ft. from the Northeast rear property line (Ordinance requires 175 ft.) be approved as submitted in the questionnaire and as presented today.

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

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

10. The application of **Melissa K. Kelley** for an Appeal from the Zoning Administrator's decision on property located on the South side of E. Warren Street (CR 16), 1,500 ft. East of SR 13, 500 ft. East of Mill Street, common address of 411 E. Warren Street in Middlebury Township, zoned R-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #411E. WARREN STREET-150120-1*.

There were five neighboring property owners notified of this request.

Mike Kelley, 411 E. Warren St, was present representing his wife on behalf of this petition. Referring to the email he previously sent to Mr. Mabry, he noted that he should have included the term "household employees" as well based on the illustration in the Zoning Ordinance. Noting Figure #2 of the photos shown, he explained that it is an existing building that was a previously approved as a business and has existing 100 amp electric, running hot and cold water, sewer, heating and air conditioning, a full bath, and several rooms. He stated his purpose is to house his parents and help them reside there. Aside from that relationship, he wishes to employ his mother so she can receive some form of income by caring for their three

children as he and his wife both work outside the home. He also noted yard work and chores listed as a result of email correspondence with Mr. Mabry which his mother will be reimbursed for as well. He said they would not be expecting any type of payment or rent from his parents which would also help his parents. Mr. Kelley said he is attempting to use the existing structure as an accessory building as a household employment opportunity for his parents which would also assist him and his wife.

When Attorney Kolbus asked if this was the same thing Mr. Kelley attempted to do last July which was denied, Mr. Kelley indicated yes and stated he was not quite prepared for the conversations and other things. Mr. Hesser inquired if there was a site plan in the packet, but Attorney Kolbus said there would not be one on an appeal. At last hearing, Mr. Kelley said Attorney Kolbus had mentioned the reason for the rejection was that they were going to tear down a shed and build a new structure. He said that is not the case and also noted previous concern from a neighbor about the visual aesthetics. Instead, he said they decided to use the existing structure that is already there and has the amenities so there is no type of visual hindrance. He noted this is a win-win situation both from his parents' perspective and he and his wife's perspective as well.

If he remembers correctly, Mr. Miller said the existing building used to be a little store which Mr. Kelley indicated was correct. When Mr. Miller inquired if they were planning on making any changes to the existing structure such as re-siding, re-roofing, or putting on an addition, Mr. Kelley said they are not adding on at this point. He went on to say that new windows have been put in place, and they have some siding that they could use. Mr. Homan said he presumed if this would have been approved back in July, they would have installed a bedroom and kitchen. He asked Mr. Kelley about the existence of a bedroom and kitchen, and Mr. Kelley said there is a bedroom existing in there as two of his children resided in there temporarily until they got their feet on the floor. He also noted there was an existing refrigerator.

Mr. Hesser had some discussion with Attorney Kolbus about servants' quarters vs. two families. Mr. Kolbus noted Mr. Mabry's basic position as stated in a previous letter was that a formalized relationship is not the type of relationship that he felt was common with master/servant. Mr. Kolbus also noted for Mr. Kelley's information that the board received his complete application including exhibits. Mr. Kelley pointed out that the Zoning Ordinance does use the term "servant" or "household employee" and since they have been paying his mother, he feels she falls under the classification of household employee.

When Mr. Campanello inquired why this request would not fall under a dawdy house, Mr. Kolbus said it is probably due to the R-1 zoning, and 99% of the dawdy houses are in A-1. With respect to the payments, Mr. Hesser asked Mr. Kelley if they are withholding taxes for the employment, Mr. Kelley indicated because it is actually less than \$600 per year, the IRS does not require them to actually file any type of taxes whatsoever. He stated he could provide a copy of that IRS ordinance if needed. Regarding domestic help, Mr. Hesser inquired if there were any Health Department requirements and if those have been met. Attorney Kolbus said if they convert the building to a residential structure, they would need to meet building and Health codes which are outside of this board's purview. When Mr. Hesser asked Mr. Kelley if he had talked with the Health Department, Mr. Kelley indicated after discussion with Mr. Mabry, he was trying to get building permits and to get Mr. Mabry to understand the purpose which brings Mr. Kelley to this point. Mr. Campanello asked if this was previously approved in 1997 as a Special Use for

a home workshop and there is an existing restroom inside, if it already has its own septic system. It was noted this parcel is served by city water and sewer. Mr. Kelley said he inquired about this with the previous owner who verified that this structure was hooked in to city septic.

Bruce Scase, 411 E. Warren, was present in support of this request and stated he is living in the accessory building. According to the ordinance that he read and said they were trying to meet, he stated they can use an accessory building for "servant's quarters" if part of an accessory garage and solely for the occupancy of a servant or household employee of the occupants of the principle dwelling. He went on to say that he believes they have met the ordinance requirements.

Mark Salee, Middlebury Town Manager, was present, not necessarily speaking in favor or remonstrance, but to get some clarification. He reported the town sewer use ordinance requires any second structure or any livable dwelling unit to be connected to sewer and water on its own connection. He asked staff if this were approved for an accessory building allowing for servant's quarters, if that is considered a separate dwelling. Additionally he inquired if down the road when there are other property owners, if they can rent out that property. Mr. Hesser confirmed that a duplex can have a single connection of water and sewer that is separated and on separate meters. Attorney Kolbus said it would be considered a separate dwelling under the Zoning Ordinance when the working relationship would end, then the use of it would end unless they got another servant. Mr. Salee said that would be the town's concern, and it would be an avoidance of issues in the future, as they have all kinds of situations where garages have been converted into apartments, and they just run sewer and water back to them. Then they begin renting them out with the possibility of conflict over who is paying the bill when there is only one meter. He went on to say, that is the purpose of having separate connections.

He noted the other issue is that this is R-1 zoning, and this is creating another dwelling on the property. When Mr. Campanello inquired if this would have been required when previously approved in 1997, Mr. Salee reported that as an accessory building or shop, it would not have been mandatory. In his opinion, Mr. Salee said if the use goes away after the property is sold, it would become somewhat of a moot point in terms of questioning if it is a separate dwelling; as long as that occurs when the property is sold. From the town's perspective, he said he is trying to avoid having issues of who is paying for water and sewer down the road. He went on to say, if this is a separate dwelling, the town would be asking for separate connections for water and sewer of the property owners. If this was zoned A-1 and this was a dawdy house, Mr. Campanello asked if Mr. Salee would still require separate services, and Mr. Salee said yes because it could be rented out also. When Mr. Campanello argued that a dawdy house is more for a family member to live in and not to be rented, Mr. Salee said that is a gray area. Mr. Campanello expressed concern about not allowing someone to take care of their parents.

Anne Piatt, 504 E. Lawrence, was present in remonstrance and indicated her property is directly south of the subject property. Noting that she spoke at the previous meeting in July 2014, she said she understands that their hearts are in the right place. As also previously stated at the prior meeting, she reported that she took care of her own mother for four years in her home, but she did not violate any zoning laws doing so. With apprehension, she said she thinks the Kelleys are grasping at straws trying to cover up what has already been done. After their request was denied in July 2014, she reported they immediately began converting the large outbuilding into the second dwelling that they wanted in the first place. She said Mr. Kelley's parents have been living there for several months so this not a request for the future but a done deal. She

reported that the building is a large building, and there has been constant remodeling. They installed new windows and doors, removing the siding from the building to do so. She said there has been truck after truck of bathroom equipment, kitchen equipment, and furniture. Unfortunately, with the elevation of her property, she stated it is not hard to see what goes on. At the previous hearing, she noted the Kelleys' only option was the addition of an in-law suite on the back of their home if they wanted to care for their parents. Instead, she reported they added a daycare on to the home. She assumes that the only option the Kelleys thought they had was to convert the outbuilding. Although the building had existing plumbing and that type of thing because it was previously used as an antique shop, she explained her issue is that the lot is R-1. Additionally, she noted they are breaking the law and not being honest about what has already been done.

Mr. Kelley said in terms of the zoning, they are trying to get that which is why they are here at this point. He noted that two people came out to do inspections, and he inquired when the first person came out about the process and how to go about it. He said he has been here several times attempting to get that accomplished. In terms of the reason for the previous denial, he said it was to convert the actual outbuilding – tear the outbuilding down and put in a new building. He said they totally negated the idea at that point during the hearing in July of using the existing building. He reported there has been activity at that existing building, and he is attempting to ratify that so it is underneath to zoning. He noted several emails with Mr. Mabry, and said he cannot get anything accomplished until he actually gets it rezoned. In terms of the relationship with his parents as Mr. Salee had mentioned, Mr. Kelley said if it comes to the point that the relationship with his parents is dissolved, they are willing to put something in writing that the structure cannot be used for anything else. He also suggested if he needs to put up hedges on the rear of the property near the neighbor's privacy fence, he said he can do that to hinder any type of visual aesthetics.

Attorney Kolbus said the history does not address a daycare and asked Mr. Kelley to respond to that issue. Mr. Kelley noted an email surfaced which raised the issue which has since been resolved. He stated he responded via email indicating that since they have less than five children, they do not need a license or zoning. Approximately 12 years ago, he said he was part of the Indiana State Committee that revised the rules and regulations for home daycares and several loop holes were created allowing for daycares without county approval because of the ratio of children to adults in relation to a state license. He indicated that issue was resolved through email correspondence. Mr. Miller confirmed that the answer is that they do have a daycare in their home but it within the limits.

The public hearing was closed at this time.

Mr. Miller stated that he does not see that anything has changed since the last denial. Mr. Hesser noted they are denying something slightly different as the Kelleys are trying to find a way around it, and he said he does see that working. While he appreciates and understands that they want to take care of the parents, he hopes there are other ways that can be done to accomplish it. He went on to say he does not think they are meeting it and is not comfortable stretching beyond the limits in interpretation of the ordinance to have it fall within that. More and more, Mr. Homan noted our society is confronted with multi-generational living arrangements, and he feels that is what the dawdy house is about in the A-1 district. Unfortunately, he said the Zoning Ordinance does not really speak to dawdy houses in the R-1 or R-2 districts.

As far as the semantics are concerned, the conversation between the petitioner and the Zoning Administrator; he feels is grasping at straws trying to make verbiage fit the ordinance. In his opinion, this could lead to stretching things far outside the boundaries, if the Board were to accept the appeal and rule against the Zoning Administrator in this case. Mr. Campanello suggested their only option at this point is add onto their house, which was previously suggested, to somehow tie the house into that building. Mr. Homan noted at the July 2014 hearing, the suggestion of an addition for a suite was made.

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

Motion: Action: Deny Moved by Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Appeal from the Zoning Administrator's decision be denied.

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

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

11. The application of *Jack A. & Mary U. Personette (land contract purchasers/owners of semi tractor) and Terry R. & Geraldine M. Bloom (land contract holders)* for a Special Use for warehousing and storing (parking of two semi tractors) in an A-1 district (Specifications F - #44) on property located on the North side of SR 120, 1,100 ft. West of CR 37, common address of 13187 SR 120 in York Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #13187SR 120-150107-1*.

This request was tabled at the February 19, 2015, meeting until today.

Mary Personette, 13187 SR 120, was present on behalf of this request. She said they would like to park their semi tractor on their property when they are not using it. Mr. Hesser inquired if it was just one semi.

Deborah Brown, 1206 E. Dade 122, Walnut Grove, Missouri, responded to Mr. Hesser saying that they have two other semi trucks that they use for parts to maintain their working truck for a total of three vehicles. Referring to Figure 2, she indicated those trucks are their personal vehicles which Mr. Hesser indicated are not the issue. She indicated Figure 3 is the semi trucks which are the subject of the request. She reported that they run but are not licensed or road worthy and are used for parts as needed for the semi tractor that he uses for his employment with G Diamond. When Mr. Hesser inquired if the trailer portion is ever on the property, Ms. Brown indicated it is not. Although some clean-up has been completed, she noted there are many trees down on the property as a result of a storm.

Referring to the staff report, Mr. Hesser noted the report mentioned screening the different sides. Ms. Brown reported fencing was blown down from the storm but is now in the process of being put back up along the East property line which she pointed out in the aerial photo. She noted the pipeline owns the land that is cleared in photo Figure 4. As trees have been cleared out that were taken down in the wind, the house is now visible from the road. Ms. Brown stated Mrs. Personette plans to put an 8 ft. fence up along property line, except on the pipeline land.

Mr. Homan asked if Mr. Personette could park his truck at G Diamond, but Ms. Brown indicated no. She said G Diamond called and spoke with a staff member of the Planning Department. Their yard is just large enough for the drivers to come in, pick up loaded trailers, and leave. Ms. Brown said she, and other drivers she has talked to, were under the impression that this ordinance was just for the City of Elkhart or downtown South Bend. She noted that ordinances were meant to be changed, and they are approaching this one to be changed. Mr. Hesser noted this is not a new requirement and was also prohibited under the old ordinance. Mr. Campanello pointed out that this would not come before the Board unless there was a valid Code Enforcement complaint filed. Ms. Brown stated the complaint comes from the neighbors behind as they are trying to sell their property. Mr. Campanello suggested the possibility of screening to hide the trucks. Ms. Brown said she can guarantee that there will not be any more trucks purchased. Whether screened or not, Mr. Miller said it is not permitted to have a semi parked on your property without a Special Use permit. When Ms. Brown asked if that rule is only for semis, Mr. Hesser stated it is all commercial vehicles.

There were no remonstrators present.

The public hearing was closed at this time.

Unfortunately, Mr. Miller said the Zoning Ordinance is clear that the parking of semis is not allowed, and these trucks are not even driven but are for parts. He went on to say that he does not even know that they could issue a Special Use in this case although he is sympathetic to the situation. Mr. Campanello suggested placing a commitment of screening the trucks. Mr. Homan noted the Board has usually issued a Special Use when there is actually an accessory building to park within. Mr. Hesser noted the Board has approved them in other situations with other circumstances. He said his inclination is, based on what is presented today, to deny the Special Use as presented and requested and to give the petitioner six months to have these removed.

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

Motion: Action: Denied, 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 for warehousing and storing (parking of two semi tractors) in an A-1 district (Specifications F - #44) be denied with the following condition imposed:

1. The petitioner is given six months (September 19, 2015) to remove the semi tractors from the property.

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

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

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

13. The staff item presented by Kathy Wilson was the request for approval of the Board for the candidate interviewed by several staff members and recommended to be the new Zoning Administrator. She reported Kevin Williams, Chris Godlewski, Steve Warner, and she interviewed three very good candidates but they felt that Jason Auvil was a better fit for the office. She noted Chris previously emailed a copy of Jason's resume and gave some back-

ground information. She went on to say they felt his qualifications were very similar to Mr. Mabry's.

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 approve the recommendation of Jason Auvil as the new Zoning Administrator.

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

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

14. The second staff item was the reminder of the American Planning Association (APA) free BZA board member training session from 4-6 p.m. on 10/07/15 at the Century Center in South Bend.

15. The meeting was adjourned at 11:22 a.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary