

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16TH DAY OF JUNE 2016 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; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Tony Campanello, Roger Miller, Randy Hesser, Suzanne Weirick, Denny Lyon.

2. A motion was made and seconded (*Miller/Weirick*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19th day of May 2016 be approved as read. The motion was carried with a unanimous roll call vote.

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

****It should be noted that Mr. Hesser recuses himself and steps down.****

4. The application of *Association for the Disabled of Elkhart County, Inc.* for a Developmental Variance for an electronic message center sign to be within 300 ft. of residence on property located on the South side of SR 120, 1,663 ft. East of CR 21, common address of 19620 SR 120 in Washington Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0212-2016*.

There were six neighboring property owners notified of this request.

Gary Potts of Professional Permits, 58171 Dragonfly Ct, Osceola, came forward representing the petitioner and Premiere Signs. Mr. Potts stated ADEC is requesting a variance to allow for installation of a new double sided identification sign, which includes an electronic message board where electronic message boards not allowed within 300 ft. of residential properties. He went on to say the new sign will allow ADEC to update their signage with their identity and to notify the general public of important events associated within their organization. Mr. Potts explained the use and value of the area adjacent to the property will not be affected in an adverse manner as the new sign is an investment and an aesthetic improvement to the ADEC campus. The physical location of the sign is located on SR 120 and therefore the impact of the neighbors will be minimal. Mr. Potts stated the current sign location meets the proper setback requirements and complies with traffic safety guidelines. He went on to say ADEC provides a critical service to those individuals with developmental and cognitive disabilities and their families so that they can live lives full of choice and responsibility. Mr. Miller questioned if Mr. Potts has any issues with the time frame allowed to obtain the permit. Mr. Potts stated his client has no issue with the time frame.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Weirck stated it is a good location to improve the sign as the current one is very outdated.

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 Developmental Variance for an electronic message center sign to be within 300 ft. of residence be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan submitted (dated 5/16/16) and as represented in the Developmental Variance application.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon.

*****It should be noted Mr. Hesser returns to the board at this time.*****

5. The application of **Joseph L. and Marilyn Miller** for a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence on property located on the East side of SR 13, 1,500 ft. North of CR 44, 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 #DV-0219-2016*.

There were six neighboring property owners notified of this request.

Peter Schnaars of Jones Petrie Rafinski, 4703 Chester Dr, Elkhart, was present representing the petitioners. Mr. Schnaars stated they were before the board in March 2016, and at that time the board approved a variance for a 7 to 1 length to width ratio. He went on to say Mr. Joseph Miller's neighbor and their attorney proposed evidence stating Mr. Joseph Miller's two parcels were not contiguous. Mr. Schnaars explained since the hearing in March, they have confirmed the information they provided stating there is a small wedge of land between Mr. Joseph Miller's two parcels that he does not own. He went on to say Mr. Joseph Miller has purchased a small triangle piece of land from their neighbor to the South to enable contiguity between subject parcels. Mr. Schnaars stated with the purchase of the 72x72 triangle of land, Mr. Joseph Miller will now have adequate access to his parcel to the East. He went on to say Mr. Joseph Miller is seeking to build a house on the subject parcel to the East and is seeking a legal way to have access to the parcel.

Joseph Miller, 67600 SR 13, Millersburg, was present on behalf of this petition. Mr. Joseph Miller stated he purchased the property and would like to make use of it by building a house. Mr. Lyon questioned who will use the property. Mr. Joseph Miller confirmed he and his family will be using the property.

Christopher Mandell, 67596 SR 13, Millersburg, came on in remonstrance. Mr. Mandell stated they are the neighbors with the property to the East of the subject parcel. He went on to say he is in opposition of this request because the parcel to the West is currently being used for a residence and also as a place of business. Mr. Mandell stated he has several concerns with this request being approved. He went on to list his concerns; will the two parcels share one driveway, and if it is two separate parcels it has to have two different road accesses; when the new home is built on the parcel to the East, will the parcel to the West become 100% business use and therefore reduce the value of his property. Mr. Mandell stated the parcel to West currently has heavy equipment, a storage container, and mobile home axels and tires on the property and does not want it to negatively affect his property value.

Mr. Schnaars responded to the concerns regarding the driveway. He went on to say the advantage to the solution they have come up with is that it does not require the construction of a new driveway as the home on the South side of the parcel can continue to use the driveway used for the main access by way of a driveway access easement. Mr. Schnaars stated they are not seeking to increase the number of driveways, and feel that using a combined driveway is to the advantage of everyone. Mr. Hesser questioned if the petitioner will complete a minor subdivision. Mr. Schnaars stated if the variance is approved, they will move forward with subdividing the property into two lots as shown on the application; the residence will remain on one parcel, and the outbuilding and the new residence will be on a different parcel.

Mr. Joseph Miller stated he plans to build a house on the parcel to the East, and plans to move his mother into the existing house. He went on to say he has no intention of turning the parcel to the West into 100% business use. Mr. Joseph Miller owns a construction company and his employees park by the out building and he parks his equipment there as well. Mrs. Weirick questioned if Mr. Joseph Miller has any immediate plans to expand his home business, and Mr. Joseph Miller replied he does not. He went on to say he purchased a facility in Shipshewana, and the activity may be minimal at the subject parcel. Mr. Joseph Miller stated if he is unable to do what is being proposed, he will have to tear the house down in the front because he has to take care of his mother. He went on to say his intentions are to remodel the existing house for his mother and build a new home on the parcel to the East where his family would reside. Mr. Lyon confirmed the petitioner does not anticipate creating another driveway.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan submitted (dated 5/16/16) and as represented in the Developmental Variance application.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

6. The application of *Maria Calderon (Buyer) and Larry Raines (Seller)* for a Special Use for an auto salvage business in an M-2 zone on property located on the Northwest corner of Riley Ave and Morgan Street, common address of 58027 Riley Ave in Baugo Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0231-2016*.

There were 23 neighboring property owners notified of this request.

Larry Raines, 28301 Old US 33, Elkhart, came on to be heard. Mr. Raines stated he is the owner of the subject property and explained it has been a salvage facility for a long time. Mr. Hesser questioned how long it has been a salvage plant. Mr. Raines replied he can recall back to his childhood and remembers a salvage yard operation being conducted. Mr. Hesser questioned if there have been any neighbor complaints. Mr. Raines stated he has never had any complaints as it is a large piece of property and comes up to an industrial park. Mr. Lyon confirmed he has no issues with the conditions proposed by staff.

David Wilkey, 58130 Morgan St, Elkhart, came on to be heard. Mr. Wilkey stated the property has operated as a salvage yard for as long as he can remember. He went on to say there is history on the subject property which can be found under, "Decatur Salvage." Mr. Wilkey explained each time a complaint is issued they locate the Decatur Salvage file to find the information. He went on to say that he is not opposed to the subject property being a salvage yard. Mr. Wilkey referenced the petitioner application and questioned the type of tools and equipment they stated they will be using. He went on to say he is curious why they indicated on the petitioner application that they plan to use the lot and not the building on the lot. Mr. Wilkey stated he talked to a gentleman named Mark from the Elkhart County Public Service building on June 13, 2016, and he stated that he recalls something about the history. He went on to say the last issue the neighbors had with Mr. Raines is when he cut the fence to install another gate, and they stopped him from doing that; now there is a gate up against the fence.

Mr. Wilkey stated he wants to make sure nothing changes with the ownership change. He went on to say they had issues with people using the gate that was supposed to be closed. Mr. Raines stated a previous renter was his neighbor as the renter lived by the subject property; they told the renter that he could only use the gate for personal use as he lived across the street. He added that all business was to be conducted off of Riley Street and as long as it remains that way, he has no issue but would like to see the fence fixed. Mr. Wilkey stated he is an asset to the property owner as he personally has cameras that monitor the area and, he keeps the grass cut on that side of the fence. He went on to say he does not remember getting a notification when the property changed hands from Decatur Salvage to Mr. Raines. Mrs. Weirick questioned if Mr. Wilkey notices any equipment at the subject property now. Mr. Wilkey stated he heard something with tracks on June 12, 2016; however he has not seen anything. He went on to say children in the neighborhood do not need to be playing in the cars sitting outside, and cars do not need to be drug through the neighborhood without tires on them as it will ruin the roads. Mr. Wilkey stated all loading and unloading of vehicles was supposed to be done in the salvage yard not on the street.

Carlos Avelar, 211 E Purl St, Goshen, came forward representing Maria Calderon. Mr. Avelar explained Mrs. Calderon is purchasing the property from Mr. Raines. He went on to say that they are willing to commit to working with everyone in the neighborhood in making this a good location for their business. Mr. Avelar stated they will commit to all the recommendations that the staff has provided and plan to do their very best to keep the subject property in good condition. Mr. Hesser questioned how many entrance and exists there are as there are none shown on the site plan. Mr. Avelar stated there is just one access into the property. Mr. Lyon confirmed Mr. Avelar plans to repair the hole in the fence as well as fencing the entire property with an 8 ft. fence. Mrs. Weirick stated the fence does not look like it is in good condition. Mr. Avelar stated they are purchasing the property from Mr. Raines and are working to make everything meet the conditions proposed by staff. Mr. Lyon confirmed Mr. Avelar is willing to work with the land owner. Mr. Miller stated one of the commitments that staff is recommending is that the 8 ft. fence must be maintained in good condition. Mr. Avelar stated there is no problem and agreed to fix the fence.

The public hearing was closed at this time.

There was further discussion amongst staff regarding the commitment to be added.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an auto salvage business in an M-2 zone residence be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 5/16/16) and as represented in the Special Use application.
2. An 8 ft. solid fence must be maintained in good condition, surrounding the Real Estate.
3. Vehicles and associated parts must be stored properly, and excessive and unusable junk and debris must be removed.
4. All business activities to use existing Riley Street entrance only and to take place entirely within the fenced area, including but not limited to the loading and unloading of vehicles.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

7. The application of **Michelle R. Steigmeyer** for a Special Use for an animal (dog) training facility on property located on the Northeast corner of CR 104 and CR 15, common address of 22465 CR 104 in Osolo Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0246-2016*.

There were 20 neighboring property owners notified of this request.

Michelle Steigmeyer, 257 Luawai St, Luhain, HI, came on to be heard. Mrs. Steigmeyer stated she recently purchased the subject property and it used to be a dog boarding facility. She

went on to say her friend has done a lot of work with shelters and volunteers in the area through her dog training facility. Mrs. Steigmeyer stated her friend is closing her facility and has created a large need in the area. She went on to say she has been looking for a property for awhile and the subject property was a really good buy; however it is an eye sore. Mrs. Steigmeyer explained the home located on the property is over 100 years old and they plan to demolish it and build a new three bedroom home. Although it is shocking to Mrs. Steigmeyer, she stated the property is not contained. Mike's Fencing is currently containing the entire property to keep the animals' safe, as well as anyone walking through the property. Mrs. Steigmeyer stated they plan to work solely with the shelter and dogs that are set to be euthanized for behavioral issues for the next two years. Once they are established in the community as a good resource they plan to take in client dogs. Mrs. Steigmeyer stated the current boarding kennel is 3,300 sq. ft. and is being gutted and all new heating, air conditioning, and ventilation will be installed. She went on to say her goal is to build an approximate 100' x 140' indoor facility for the purpose of holding dog seminars. Mr. Hesser questioned if Mrs. Steigmeyer plans to continue the kennel operation. Mrs. Steigmeyer stated this facility will be used for training purposes only, no boarding. She went on to say the neighbors have told her the previous owners would let the dogs run free and would bark constantly. Mrs. Steigmeyer stated there will be no barking at her facility as it will be dog training which consists of obedience and manners. She went on explaining her plan is to put a dock-diving pool inside the facility and offer hydrotherapy for dogs that have had surgery. Mrs. Steigmeyer stated she moved to Hawaii from Ft. Wayne and Elkhart is the only place that has the hydrotherapy pool on this side of Indianapolis. She went on to say her friend who is closing her facility is the same person who offers hydrotherapy for dogs and she is booked solid. Mrs. Steigmeyer explained that she would like to continue the services that her friend offered the area but on a larger scale. She went on to say that she will be working with her friend to make sure they are following the same actions.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Weirick questioned if the submitted site plan is acceptable. Mr. Auvil stated if there are any changes made to the site plan it will need to be amended. He went on to say based on the premise of the request for the Special Use the site plan is okay; when it comes to construction and if there is a change to the site plan, a new site plan will need to be submitted.

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 an animal (dog) training facility 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 5/16/16) and as represented in the Special Use application.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

8. The application of *Vernon Weaver (Buyer) and Clarence M. and Lena H. Martin (Sellers)* for an amendment to an existing Special Use for warehousing and storing, including construction storage yard and a well drilling business in an A-1 district, to allow for a floor coating business including warehousing and storing of materials and vehicles on property located on the North side of CR 10, 500 ft. East of SR 13, common address of 11431 CR 10 in York Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0217-2016*.

There were 15 neighboring property owners notified of this request.

Vernon Weaver, 905 N Division St, Bristol, came on to be heard. Mr. Weaver stated he is interested in purchasing the subject property if the Special Use is approved. He went on to say he will be renting the property to Ideal Coatings and the use of the property will not be changing other than more trucks going in and out. Mr. Campanello questioned the type of trucks that will be conducting deliveries and the frequency. Mr. Weaver stated service trucks will do the deliveries, which he estimated at on or two per week. Mr. Campanello questioned if there is enough room on the property to provide a turn around so that trucks are not backing out onto road. Mr. Weaver stated the trucks would have to back in and out. He went on to say their neighbor down the road backs in and out of his property. Mr. Campanello stated the board encourages property owners to create the ability to turn around on the property as backing in and out of a property creates a traffic hazard. Mr. Weaver stated the driveway is very wide. Mr. Hesser questioned if Mr. Weaver has the ability to modify the driveway so that semi-trucks have the ability to turn around. Mr. Weaver stated he will have to look into it. Mr. Hesser questioned if there will be any retail sales. Mr. Weaver stated there are no retail sales as of now, and there will be no show room as they have only one or two customers a week at this point in time. He went on to say there will not be a lot of added customer traffic.

Stan Miller, 403 E. Spring St., Middlebury, was present representing the sellers as their realtor. Mr. Miller stated there is room for a driveway and turnaround if it is necessary. Mr. Miller stated this has been a hard property to sell as it is difficult to find someone to fit in to the existing unit, and this is a good fit. He added that it would be a tremendous help for the sellers.

Steve Miller, 2134 Elkhart Rd, Goshen, came on to be heard. He stated it is important to know it is fairly close to SR 13 so most of the traffic would be heading out to the West and would not affect the neighborhood property. He stated a saw mill $\frac{3}{4}$ miles west of the property, which is loud and has several semis coming in and out.

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** Suzanne Weirick 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 warehousing and storing, including construction storage yard and a well drilling business in an

A-1 district, to allow for a floor coating business including warehousing and storing of materials and vehicles be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. Revised site plan to be submitted showing semi-truck turn around.

The following commitments were imposed:

1. Approved in accordance with the revised site plan to be submitted and as represented in the Special Use application.
2. Turnaround for semi traffic must be added.
3. Backing out or backing in of vehicles from/onto CR 10 is prohibited.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

9. The application of *Clarence M. and Lena H. Martin (Buyers) and Robert E. Slabach (Seller)* for a Special Use for warehousing and storing in an A-1 district on property located on the West side of CR 43, 3,200 ft. North of CR 10, common address of 53901 CR 43 in York Township, came on to be heard.

There were five neighboring property owners notified of this request.

Mr. Hesser confirmed that there was no one present in support or remonstrance to the request and reported that the petitioner has made a request to withdraw the petition.

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

Motion: Action: Withdraw, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a Special Use for warehousing and storing in an A-1 district be withdrawn as requested by the petitioner.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

10. The application of *Herman and Karen Miller* for a Special Use for a home workshop/business for a fabric-and-gift store on property located on the West side of CR 37, 460 ft. South of CR 26, Southeast side of CR 28, 960 ft. Southwest of CR 37, common address of 60039 CR 37 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 #SUP-0220-2016*.

There were eight neighboring property owners notified of this request.

Herman Miller, 60039 CR 37, Middlebury, was present on behalf of this petition. Mr. Miller stated that he planned to move the workshop/business for a fabric-gift-store to his property. When Mr. Hesser questioned where the business had been previously located, Mr. Miller stated it was previously located on CR 26. He also inquired about if there will be any semi deliveries. Mr. Miller stated there would not be any semi deliveries to this location.

Harley Bontrager, 57342 CR Middlebury, came on to be heard. Mr. Bontrager stated right now the business is on CR 126, the previous owner would like to retire, and they would like

to take over the business. Mr. Bontrager stated the current owner sells shoes, fabrics, and gifts. However, the new owners will only sell fabrics and gifts.

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 home workshop/business for a fabric-and-gift store 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 5/16/16) and as represented in the Special Use application.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

11. The Staff Item regarding the Kelley Appeal pending in Elkhart Circuit Court was introduced at this time by Randy Hesser. Mr. Kolbus gave some background information regarding the previous petition that was requested by the Kelleys. He noted this was at the time of Brian Mabry's (former Zoning Administrator) departure, and the record was not very good in terms of evidence to support the Board's decision. Mr. Mabry had attached a letter but did not prepare findings of fact, and the court wanted more specific findings of fact than the letter contained. Mr. Kolbus confirmed that all the board members have looked over the paperwork, and Mr. Hesser submitted a copy of the record [attached to minutes as Staff's Exhibit #1]. Mr. Kolbus reported that Mr. Hesser worked with him on findings of fact which Mr. Hesser read at this time after giving some brief additional background.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the document as read as the Findings of Fact in the Kelley Appeal.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

12. The application of *IMS Dairy LLP* for a Special Use for a solar array panel system on property located on the Northwest corner of CR 11 and CR 46, common address of 68845 CR 11 in Union Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0223-2016*.

There were six neighboring property owners notified of this request.

Irvin Martin 68845 CR 11, Nappanee, came on to be heard representing the petition, and indicated he is requesting a special use permit for the solar panels. When Mrs. Weirick

questioned which side of the building the solar array would be placed, he reported it will be located on the south side of the building towards the south parcel. Mrs. Weirick asked Mr. Auvil if he was satisfied with the site plan, and he replied yes.

Jim Straeter, president of AG Technology, 1261 E 100 S, Rochester, came on to be heard. Mr. Straeter stated that the solar system he intends to install is similar to many he has placed in the county and have been previously approved for other addresses. Mr. Straeter stated that the solar panel meets the engineering approvals for the State of Indiana.

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 solar array panel system 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.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

13. As a staff item, Mr. Auvil presented the request for a minor change to a site plan for an existing Special Use for Waypoint Community Church (2007-2334). Mr. Auvil stated Waypoint Community Church is requesting a minor change in order to add ball fields and a play ground. He noted the question before the Board is whether they feel the request is a major or minor change. Mr. Auvil reported their intent is to add a playground, batting cage, soccer fields, and other recreational uses on the property.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Denny Lyon that the Board determined this request to be a major change.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

14. The second staff item presented was for Pleasant Oaks Mennonite Church (95-3944) as a minor request to formally add a food pantry and preschool ministry to the church. Ms. Gunden noted the property is now owned by First Mennonite Church of Middlebury. Mr. Miller confirmed they are just requesting that they change the use within the facility.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Suzanne Weirick that the Board approve the request as a minor change.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

15. Ms. Gunden presented another staff item for Harvest Community Church (17285CR34-110520-1). They are requesting a minor change to replace an existing 75 sq. ft. sign with a 45 sq. ft. sign at a different location. This is being brought before the Board because the original sign was not on the site plan, but was shown in the application.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Suzanne Weirick that the Board approve the request as a minor change.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

16. Mr. Auvil presented the final staff item for Helena Chemical Company (63239SR13-110124-1) requesting a minor change to a site plan for an existing Special Use permit. Mr. Auvil stated the company would like to replace the old office building with a new building, which will be 15% larger.

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 determined this request to be a major change.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

*****It should be noted that Tony Campanello steps down at this time
and is replaced by Robert Homan*****

17. The application of ***IMS Dairy LLP*** for a Special Use to allow for two solar array panel systems on property located on the North side of CR 146, 700 ft. East of CR 23, 1,600 ft. North of CR 146, common address of 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 #SUP-0228-2016*.

There were 49 neighboring property owners notified of this request.

Irvin Martin 68845 CR 11, Nappanee, came on as the petitioner. Mr. Martin stated he is asking for a special use permit for solar panels in New Paris. Mr. Hesser questioned the location of the panels. Mr. Martin stated the solar panels will be on the North West side of the parcel.

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** Suzanne Weirick 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 to allow for two solar array panel systems 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 5/16/16) and as represented in the Special Use application.

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

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

18. The application of *Wilbur L. and Sarah A. Bontrager* for a Special Use for a wireless communications facility on property located on the 1,300 ft. North of CR 12, 1,200 ft. West of CR 8, common address of 13545 CR 12 in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0213-2016*.

There were seven neighboring property owners notified of this request.

Pat McCauley with MapleNet Wireless, 4561 Pond Creek Road, Elkhart, came to be heard for the petition. Mr. McCauley stated they are proposing a 100 ft. free standing tower on the Bontragers' property. He went on to say the intent of the tower is to provide high speed broadband internet for the area. He also stated this tower is only designed for internet and is not to be used as a collocated tower. Mr. Miller questioned if there will be any underground cables coming to the tower. Mr. McCauley stated no it will be fed from another tower. He went on to say they normally come forward for a business tower used to collocate for other businesses, but this tower is for personal use only.

Mike Yoder, 13519 CR 20, came on to be heard, and stated he helped facilitate a meeting of the residents of Middlebury to expand broadband coverage into the middle of Middlebury. He went on to say they also plan to expand to Millersburg, New Paris and other rural areas in Elkhart County. Mr. Yoder stated we are going to see more of these request as they are no longer looking at putting the towers on silos. He reported this particular area is hard, because of the hills and trees. He stated they looked at other options such as fiber optics and other cables, but this seemed to be the most cost effective choice. Mr. Kolbus questioned if this will be used by other people besides Mr. Bontrager. Mr. Yoder replied yes it is for a subdivision.

Mr. McCauley stated when they hear of a need in an area, they map out how many homes they can reach with one tower. He went on to say this tower will have broadcasting antennas on it, and will be able to reach several homes. He stated it should reach around a mile to a mile and a half. Mrs. Weirick questioned if the tower is higher in height than others requested. Mr. McCauley stated no, it is, however, a much lighter tower specifically meant for residential use rather than commercial use. Mrs. Weirick confirmed the tower is more for residential use.

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** Suzanne Weirick 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 wireless communications facility 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 5/13/16) and as represented in the Special Use application.

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

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

19. The application of **Robert W. and Amy C. Martin** for a Special Use for a wireless communications facility and for a 27 ft. Developmental Variance to allow for placement of a 150 ft. tower 125 ft. from the East side property line (requirement is 150 ft.) on property located on the Northeast side of CR 129, 750 ft. West of CR 131, common address of 15933 CR 129 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 #SUP-0215-2016*.

There were 22 neighboring property owners notified of this request.

Pat McCauley, with MapleNet Wireless, 4561 Pond Creek Road, Elkhart, came on representing the petition. He stated they would like to build a 150 ft. tower at the Martins' residence to provide high speed broadband internet to the area. He went on to say they have the ability to go higher for cheaper because of the larger area the Martins are providing. Mr. McCauley stated the variance is because they would like to put the tower on the edge of the barn, which is about a 125 ft. from the property line. He went on to say the tower will sit 25 ft. short of the required 150 ft. from the property line. He stated given how towers are now engineered collapsible and the only structure nearby is the Martins' barn, he believes they could receive a variance for this tower. Mr. Hesser questioned how far debris from the collapsed tower would spread, and Mr. McCauley stated it tends to be a third of the height of the tower.

Joseph and Cathryn Livings, 15850 CR 129 sent in a letter stating they support the tower being placed on the Martin's property [attached to file as Staff Exhibit #1].

Mike Yoder, 13519 CR 20, Middlebury, came on to be heard in support of the petition. Mr. Yoder stated this tower is the result of the meeting of the citizens of the Middlebury area who are requesting better access to broadband.

Carol Drummond, 15820 CR 10, Bristol, came on in remonstrance. Mrs. Drummond stated they spend a lot of time outside and the tower will be in their line of site. She went on to say she is in favor of having internet access, but she does not think the board is considering the three dimensional aspect of the tower. She stated they are now talking about obstructions that many people can see. She went on to say it is not just affecting the land owner but the whole community. Mrs. Drummond stated she moved to the area because she wanted to be remote. She also stated she works from home and is sometimes frustrated by the lack of internet coverage, but she will put up with the poor coverage in order to keep her area remote. She requested the board consider what the residential and agricultural areas will look like with several 100 ft. to 150 ft. towers. She stated she does appreciate that Mr. Martin is putting the tower in the corner

and not closer to her property. Mrs. Drummond stated her plea is that it seems there are a lot more commercially developed areas close by that could reach more populated subdivisions than the proposed location. She went on to say she has not gone out to asked people their willingness to put up an internet tower on their property, but she requested they at least route these commercial structures, even if they are not zoned commercial, away from rural areas. She ended by saying when she goes out to see the southern sky, she will now see the tower.

Jeff Drummond, 15820 CR 10, Bristol, also came on in remonstrance. Mr. Drummond stated the tower is in his direct line of sight for the whole length of his property, which puts the tower about 200 ft. from his property line. He went on to say the property is zoned agricultural, and he is unsure how a commercial enterprise is able to use agricultural zoned land for their benefit. Mr. Drummond stated the company plans to make money off of the tower. He went on to state he was told the tower will service about 100 homes and questioned of those homes, how many already have high speed internet. He continued saying internet contracts are usually good for 2-3 years so it will be awhile before neighbors can receive the benefit of the tower. Mr. Drummond also stated many Amish communities are within the three mile radius of the tower, and the chances of those communities using the internet are very slim. He questioned, if the use is granted, if that opens the community up to any other high speed internet companies that would like to put a tower in the same general area. He stated his property is on higher ground than Mr. Martin's proposed spot for the internet tower, and he believes height is typically important for the communications tower. He questioned if that allows him or a neighbor to agree with a company to put a tower on their property. Mr. Drummond stated they did not buy the farm land to see a metal tower sticking up in the air. He went on to state he was never contacted by anyone for his opinion on this tower.

Pat McCauley stated the term cell tower was used several times in that statement. He stated this is not a cell tower, but a different type of structure. He went on to say it may be an eye sore to some, but it will not have a giant building, be 25 ft. wide, or be painted red and white like a cell phone site. He stressed internet towers are completely different from cell towers. Mr. Hesser stated the other one was unique in that it would not serve as collocation, and Mr. McCauley responded saying this tower would be the same as the previous petition. Mr. Hesser questioned if other internet providers who operate on a similar basis can use the tower. Mr. McCauley stated they would not let any other companies use the tower. He also stated the height of 150' is because of the terrain and the need to meet more houses in the area. Mrs. Weirick questioned if the tower does not collapse upon itself like planned, would it collapse on Mr. Martin's house or property. Mr. McCauley stated in order for that to happen, all of the guy wires would have to break at the same time and something would have to hit the tower and tip it over. He continued saying the only place the tower could fall besides Mr. Martin's property would be the adjoining property which is all woods. Mrs. Weirick stated she is concerned with not meeting the required 150 ft. rule. Mr. Auvil stated most zoning ordinance requires a distance of the height of the tower if not more. Mrs. Weirick wondered why the 150 ft. standard exists, and Mr. Auvil responded saying it protects any neighboring properties from the tower if it falls. Mr. Hesser stated when they started approving towers it was a rule because they would simply fall over and did not collapse on themselves, and variances have been allowed for towers before. Mrs. Weirick also stated as the towers continue to go up it will potentially be an eye sore in the communities. She believes eventually this issue needs to be addressed.

The public hearing was closed at this time.

Mr. Kolbus stated the technologies have changed since the 150 ft. rule was established and the area of collapse has become smaller. Mr. Miller stated he did not find anything against towers in the ordinance. Mr. Hesser brought up he understands towers can be an eye sore, but he appreciates how the land owners made an effort to put the tower in a position away from their neighbors.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Suzanne Weirick 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 wireless communications facility 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 5/13/16) and as represented in the Special Use application.

Further, the motion also included that a 27 ft. Developmental Variance to allow for placement of a 150 ft. tower 125 ft. from the East side property line (requirement is 150 ft.) be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the Building Permit (where required), unless specific permission for additional time is granted by the Hearing Officer or the Elkhart County Advisory Board of Zoning Appeals.
2. Approved in accordance with the site plan submitted (dated 5/13/16) and as represented in the Developmental Variance application.

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

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

20. The application of *Jesse L. and Rebecca M. Denlinger* for a Special Use (1) for warehousing and storage for a concrete construction business, (2) for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres in an A-1 zone, and (3) for a 20 ft. Developmental Variance to allow for the construction of an accessory structure 55 ft. from centerline of the right-of-way of CR 30 (Ordinance requires 75 ft.) on property located on the North side of CR 30, 5,025 ft. West of CR 15, common address of 61964 CR 13 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 #SUP-0155-2016*.

There were 12 neighboring property owners notified of this request.

Jesse Denlinger, 61964 CR 13, Goshen, came on to be heard on behalf of the petition. Mr. Denlinger stated they have a small concrete construction business, which is used primarily

for replacing residential concrete driveways and sidewalks. He went on to say they have forms, small equipment, and other related materials stored at an offsite location. He stated they desire to bring the storage equipment to their home to help with the efficiency of their business. In order to do this, they are proposing a 48' x 64' structure to store their equipment. He went on to say they would also like a Special Use for farm animals to house chickens and a beef cow to feed their family. Mr. Denlinger also stated the North side of the proposed structure would be at the edge of their garden, and there is a natural swale in the land that will also be on the north edge of the proposed building site. He questioned if they can move the building back 20 ft. Mr. Hesser confirmed that the building could be moved back. He also went on to question if Mr. Denlinger planned on having any dairy cattle, and asked that part (dairy) be deleted from the petition. Mrs. Weirick questioned what the building would obstruct if it is moved 20 ft. Mr. Miller stated he does not see an issue with having the variance withdrawn as 20 ft. does not seem like a big difference. Mr. Homan questioned if a fence would be installed for the cattle, and Mr. Denlinger stated the grazing area would be fenced in and pointed out the proposed area. Mr. Homan also questioned if the business trucks and trailers are parked outside on the property. Mr. Denlinger responded saying they have a small dump truck and trailer, and two bays would be built in the proposed structure in order to park them inside. Mr. Homan suggested adding the fenced in area for the cattle on the site plan and as a commitment.

Gerald Demunda, 23894 Marguerite Way, came on to be heard in remonstrance, and passed out copies of his comments [attached to file as Remonstrator Exhibit #1]. Mr. Demunda stated in 1996 the area was sold at auction and purchased by a number of land owners. He went on to say they bought the property with the purpose of preventing a development or businesses from coming onto the property, and they did not pay farm prices for the land. He went on to stress the property is zoned residential. Mr. Demunda believes having the proposed facility will spot zone the entire area and affect the property values. He continued saying in Mr. Denlinger's sketch, there appears to be no setback along one portion of the property. He requested if the setback is granted, a survey be completed to determine the location of the property lines. Mr. Demunda also stated CR 13 is a hillside and all of the drainage goes onto the property in question, then his, and after that the other neighbors. He went on to say Mr. Denlinger will be covering half of the drainage area which will cause the additional water to flow onto Mr. Demunda's property. He also suggested materials used for this business are potentially dangerous to ground water, and when Mr. Denlinger washes and maintains his equipment, the water will run to Mr. Demunda's property. He stated he does not see any provisions made for excess water run-off in the plans. Mr. DeMunda stated his concern is with the blind area caused by this building near an intersection and also the damage to his property from the run-off. However, he does not have an issue with the proposed animals as long as there is no rooster. If approved, Mr. Demunda continued that he would like to know what the setbacks would be from his property line. He also stated he is familiar with his industry having dealt with contractors for a long time and if his business is successful, he is going to run out of property for the type of business he has.

Mr. Denlinger stated he talked with his neighbor Holly and she said she had no concerns or issues with the petition. He stated regarding run-off he is not sure how much more run-off he will have from the roof, but he is open to suggestions from the board. Mr. Hesser questioned what the 16'x32' area on the north side of the building on the site plan will be used for. Mr. Denlinger responded that it is a concrete area for storage under the lean-to. Mr. Lyon questioned

what the parking lot will consist of, and Mr. Denlinger stated it will be gravel. Mrs. Weirick questioned how long the business has been in operation. Mr. Denlinger stated the business has been in operation for 10 years, but the existing business is not currently on the property. Mr. Hesser questioned if there would be semi deliveries to the property, and Mr. Denlinger responded saying they have not at this point, just UPS and small truck deliveries. Mr. Miller questioned if there is water currently on the property. Mr. Denlinger stated there is not, it runs down based on the lay of the land. Mr. Homan questioned what the provisions will be made for manure, to which Mr. Denlinger responded it will be placed on the garden.

The public hearing was closed at this time.

Because of the size of the property, Mr. Hesser suggested that no dairy cattle will be allowed and a restriction of only two beef cattle be imposed along with the fenced in pasture shown on the site plan. Mrs. Weirick questioned if there will be sufficient room for a secondary sewer to be placed if it is required with the set back changed. She also believes the Board needs more time to determine what the consequences of changing the set back could be for this property. Mr. Miller stated he agrees with Mr. Hesser in that if he moves the building back 20 ft. he could lose some usage with the run off. Mr. Hesser suggested the setback portion of the petition be tabled pending additional information to be provided in regards to drainage. Mrs. Weirick noted line of sight is not an issue with the setback, and she is more concerned with the drainage issue.

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

Motion: Action: Approve, **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 a Special Use (1) for warehousing and storage for a concrete construction 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 revised site plan to be submitted for staff approval and as represented in the Special Use application.
2. Outside storage of equipment, materials, or concrete work-related debris is prohibited.
3. Backing out or backing in of vehicles from/onto County roads is prohibited.

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

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Suzanne Weirick 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 (2) for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres in an A-1 zone, be approved with the following condition imposed:

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

Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.

The following commitments were imposed:

1. Approved in accordance with the revised site plan to be submitted and as represented in the Special Use application.
2. Limited to two beef cattle, and twelve chickens, no roosters.
3. A fenced pasture to be provided for the cattle with a revised site plan submitted showing fenced area to be approved by staff.

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

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Suzanne Weirick that the request (3) for a 20 ft. Developmental Variance to allow for the construction of an accessory structure 55 ft. from centerline of the right-of-way of CR 30 (Ordinance requires 75 ft.) be tabled until the July 21, 2016, Elkhart County Advisory Board of Zoning Appeals meeting, for additional drainage information to be provided addressing the questions and concerns raised.

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

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

*****It should be noted that Mrs. Weirick steps down at this time.*****

21. The application of ***Paul W. Shirk, Jr. and Rosene S. Shirk, Trustees of the Shirk Family Revocable Living Trust*** for a Special Use for a wireless communications facility and a 90 ft. Developmental Variance to allow for the placement of said facility's tower 60 ft. from the North property line (Ordinance requires the height of the tower, or 150 ft.) on property located on the Northwest corner of CR 142 and 17, common address of 22153 CR 142 in Union Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0224-2016*.

There were seven neighboring property owners notified of this request.

Loren Sloat, attorney, 102 Heritage Parkway, Nappanee, was present representing the petitioners. Mr. Sloat stated Mr. Shirk has been in the business of transporting dairy products for many years, and he was given approval for an agricultural business on this location in 1989. He went on to say Mr. Shirk is highly dependent on the internet for his business. Mr. Hesser questioned who the internet provider will be, to which Mr. Sloat responded the internet provider will be Four Way Computer Products and the internet will be available to the surrounding neighbors. Mr. Sloat stated they are proposing to put the tower right next to the existing shop. He went on to say it is a 150 ft. tower with a single pole and no guy wires. He also stated they are requesting a variance because they are 90 ft. higher than their distance from the property line, and if the tower were to fall over towards the north, it would fall over onto a corn field. Mr. Hesser questioned what the owner of the parcel to the North thinks about the petition. Mr. Sloat stated they have spoken with the property owner, and he does not have any issues with the tower.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated his only concern was obtaining the reports of the neighbors' opinions.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon 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 wireless communications facility 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 5/16/16) and as represented in the Special Use application.

Further, the motion also included that a 90 ft. Developmental Variance to allow for the placement of said facility's tower 60 ft. from the North property line (Ordinance requires the height of the tower, or 150 ft.) be approved with the following condition imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).

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

Yes: Robert Homan, Roger Miller, Denny Lyon, Randy Hesser.

22. The application of **Brandon and Amanda Schwartz** for a Special Use for a home workshop/business for pottery making and sales, and for a 15 ft. Developmental Variance to allow for the construction of a workshop building 25 ft. from South front property line of Rosedale Rd (Plat requires 40 ft. from property line) on property located on the West side of CR 19, 756 ft. North of US 20, common address of 56815 CR 19 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0209-2016*.

There were 12 neighboring property owners notified of this request.

Brandon Schwartz, 56815 CR 19, Bristol, came on to be heard for the petition, and stated he wants to build a pole barn style building to make and store his pottery. He went on to say the variance is their first choice of location in order to make better use of their yard and not have to put it right in the center of their property. He also stated it will meet the 50 ft. from the centerline county setback, but the Do-More Acres Subdivision has an additional 40 ft. setback. Mr. Homan confirmed the county setback is 50'. Mr. Kolbus stated the variance from the subdivision's setback would be up to the Plan Commission to replat the lot in question. Mr. Hesser questioned where the boundaries of the subdivision were located. Mr. Schwartz stated based on the abstract they received when they purchased the home, it appears Do-More Acres is just the strip to the west of CR 19. Mr. Hesser stated he was not sure why this was brought before the board. Mr. Homan questioned the questionnaire and how close the structure will be to septic, to which Mr.

Schwartz responded saying the man who came to clean his septic tank told him the new structure should be closer to the tank rather than in the back yard which slants down. Mr. Miller questioned if the only use will be for the making and storing of property. Mr. Schwartz stated he will not discourage sales but also will not have a sign to promote sales.

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** 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 pottery making and sales 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 5/13/16) and as represented in the Special Use application.

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

Yes: Robert Homan, Roger Miller, Denny Lyon, Randy Hesser.

Motion: Action: Dismiss, **Moved by** Robert Homan, **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 15 ft. Developmental Variance to allow for the construction of a workshop building 25 ft. from South front property line of Rosedale Rd. (Plat requires 40 ft. from property line) be dismissed.

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

Yes: Robert Homan, Roger Miller, Denny Lyon, Randy Hesser.

23. The application of *George and Melissa Cornish* for a Use Variance to allow for the construction of an accessory structure on a parcel without a primary structure (residence) on property located on the South side of 4th Street, 230 ft. Southwest of Heaton Vista, 1,300 ft. Southeast of CR 113, common address of 23047 Heaton Vista in Osolo Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0210-2016*.

There were 19 neighboring property owners notified of this request.

George Cornish, 23047 Heaton Vista, came on for the petition. Mr. Cornish stated they had moved into the neighborhood about 2.5 to 3 years ago and purchased the vacant lot a year or so ago. He went on to say they are very restricted due to space, easements, and power lines, and he would like to put up a garage to store their boats and pontoons. He drove around the area to see what the neighbors are doing for storage in order to see their options. He stressed he does not want a big steel pole barn, but will put up a garage that matches their home. He continued saying they want it to be sold with their home if they ever sell it. Mr. Cornish stressed he is trying to

clean up the neighborhood by putting his boats away. Mr. Cornish also commented on the previous Special Use request for the property. He stated the previous owner wanted to build a self-storage unit but was denied; he believes because it was a commercial building.

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** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of an accessory structure on a parcel without a primary structure (residence) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 5/13/16) as represented in the Use Variance application and the petitioner's testimony.
2. Both of the petitioners' lots (Lot 27 and Lot 40 of Heaton Park) must be tied together with a deed restriction.

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

Yes: Robert Homan, Roger Miller, Denny Lyon, Randy Hesser.

24. The application of *Dallas L. and Karen M. Pletcher* for a renewal of a Use Variance to allow for a food distribution service in an A-1 district on property located on the West side of CR 11, 1,200 ft. North of CR 30, common address of 61759 CR 11 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 #UV-0211-2016*.

There were five neighboring property owners notified of this request.

Dallas Pletcher, 61759 CR 11, Goshen, came on representing the petition, and introduced Charles Books who came on to represent him. Mr. Books stated Mr. Pletcher would like to keep his food service going, and he has met all of the requirements made by the Health Department. He went on to say that at the moment Mr. Pletcher is looking to add a storage unit. Mr. Homan questioned if the operation has changed in any way, and he responded more people and food are coming in but no more trucks. Mr. Homan also questioned what the nature of the food distribution is. Mr. Books stated it is to help people who need food or help, sometimes through churches in the community, and it is a non-profit. Mr. Hesser noted there were some health compliance issues they needed to fix at the last hearing.

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** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a renewal of a Use Variance to allow for a food distribution service 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 5/13/16) and as represented in the Use Variance application.

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

Yes: Robert Homan, Roger Miller, Denny Lyon, Randy Hesser.

25. The application of *Matthew Burkholder (Buyer) and Hochstetler Family Limited Partnership No. 2 (Seller)* for a Special Use for home workshop/business for machine repair, for a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of workshop building, and for a Use Variance to allow for the construction of a second dwelling on a parcel located on the North side of CR 50, 1,355 ft. East of CR 3, common address of 28609 CR 50 in Locke Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0232-2016*. He also noted the petitioners submitted a letter [attached to file as Staff Exhibit #1] requesting the petition be tabled until the July 20, 2016 public hearing.

There were 18 neighboring property owners notified of this request.

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: Table, **Moved by** Randy Hesser, **Seconded by** Denny Lyon 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 home workshop/business for machine repair, for a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of workshop building, and for a Use Variance to allow for the construction of a second dwelling on a parcel be tabled until the July 20, 2016, Elkhart County Advisory Board of Zoning Appeals meeting.

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

Yes: Robert Homan, Roger Miller, Denny Lyon, Randy Hesser.

26. The application of *Helmut H. McClure and Rosemary G. McClure* for a renewal of an existing Use Variance to allow for the construction of a second dwelling on a parcel on property located on the South side of CR 4, 576 ft. East of CR 29, common address of 15860 CR 4 in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0111-2016*.

Helmut McClure, 15860 CR 4, came on to be heard for the petition. Mr. Hesser confirmed Mr. McClure is asking for more time to build his home and questioned how much longer he believes it will take. Mr. McClure stated he believes he needs a year and a half to finish his home. Mr. Hesser questioned if the board is okay without a time limit on the project; in response Mr. Auvil stated there has to be an end point. Mr. Hesser questioned if two years will be long enough to finish the home, and Mr. McClure stated he believes two years should be plenty of time. Mr. Homan questioned given the petitioner is doing the construction himself, is 30 days long enough to allow him to demolish the existing residence. Mr. McClure responded he is taking the home down himself, but is not sure how long the demolition will take him.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** 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 renewal of an existing Use Variance to allow for the construction of a second dwelling on a parcel be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The existing residence must be removed from the property within 30 days of the issuance of the Certificate of Occupancy for the new residence.
3. House to be completed within 2 years of this date.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 4/15/16) and as represented in the Use Variance application.

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

Yes: Robert Homan, Roger Miller, Deny Lyon, Randy Hesser.

27. The staff item regarding Waypoint Community Church (16903US20-110321-1) was previously heard as Item # 13 on page 10.

28. The staff item for Pleasant Oaks Mennonite Church (95-3944) was previously heard as Item # 14 on page 10.

29. The staff item for Helena Chemical (63239SR13-110124-1) was previously heard as Item #16 on page 11.

30. The staff item for Harvest Community Church (17285CR34-110520-1) was previous heard as Item # 15 on page 11.

31. The staff item regarding the Kelley appeal (150120-1) was previously heard as Item # 11 on page 9.

32. The meeting was adjourned at 12:17 P.M.

Respectfully submitted,

Deb Britton, Recording Secretary

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary