

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15TH DAY OF SEPTEMBER 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; Liz Gunden, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

Absent: Robert Homan, Suzanne Weirick.

2. A motion was made and seconded (*Miller/Lyon*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of August 2016 be approved with the following corrections: Mr. Hesser arrived before the first vote, but abstained from the vote. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/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 *Carlin J & Jayme R Yoder* for a Developmental Variance to allow for the construction of a residence on property served by an unimproved and non-maintained county road on property located 2,000 ft. North off of SR 120, 6,800 ft. East of SR 13, in York Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0442-2016*.

There were three neighboring property owners notified of this request.

David Myers, real estate agent representing the petitioners, 2809 Ferndale Road, Elkhart, was present on behalf of this petition. Mr. Myers stated he agrees with the staff analysis, except the 90 day and one year time limits. He continued saying the land is for sale and he does not want to set a time limit when the property has not yet closed. He also believes the taxes are high on this property for it not having road frontage or being buildable without a variance.

Shannon Long, 6405 N 1200 W, Middlebury, was present in remonstrance. Mr. Long stated the 12 ft. driveway was developed in late 1980's, early 1990's and was completed by the original owner. He continued saying this is on the Elkhart and Lagrange County line. He stated the Lagrange County land side was developed with deeds requiring the owners to contribute to the repair and maintenance of the drive. He also believes the driveway is more on the LaGrange County side per their private survey of the land. Mr. Long stated his house is built at the end of the finished driveway and is located across the drive from the subject property. He submitted photos of the driveway [attached to file as Remonstrator's Exhibit #1]. He then continued saying he believes it was never intended for the drive to go past his house. Past his drive, he stated the drive becomes a two-track path and vehicles without 4-wheel drive would likely become stuck. He also added the drive dead ends and there is no room to turn around without trespassing on his property. Mr.

Long voiced his concern that he and two other neighbors were not notified of this public hearing. Mr. Campanello responded they were not notified because they live in LaGrange County. Mr. Long did, however, state he has received papers from the Yoders' attorney. He continued saying his neighbor, Tony Chupp, received notification and also went through the process of building on an unmaintained county road. Mr. Miller questioned if Mr. Long's objection to the Yoders' petition is that the road is not adequate for building a home on the property or if Mr. Long owns the end of the road. Mr. Hesser confirmed Mr. Long does not own the road, and Mr. Long stated the other neighbors have deeded access to the drive. Mr. Hesser questioned if the issues would be resolved if the Yoders agree to participate in the maintenance agreement. Mr. Long responded it would not; he believes it was sold and purchased as agricultural and should remain agricultural. Mr. Hesser questioned if Mr. Long would have an objection to it being used as farm land, and he responded he would not enjoy the land being farmed. Mr. Hesser mentioned if Mr. Long wishes to restrict the use of the property he would need to purchase it himself. Mr. Long then stated he believes if Mr. Yoder is allowed to build on this property, then Elkhart County should maintain the road. Mr. Lyon asked if all the neighbors share in the road improvements and, Mr. Long responded they do not. He continued by saying Tony Chupp, Ben Miller, David Bontrager, and Mr. Long are the only neighbors who share in the road work. Mr. Long mentioned he is concerned about the Yoders selling the property and not residing there personally. Mr. Long requested this item be tabled as they are seeking legal counsel, and their attorney is currently on medical leave until October. He also stated the petitioner has never helped with maintenance of the driveway since he has owned it (approximately 10-15 years). Mr. Long then read a text from his neighbor, Tony Chupp who was unable to attend the hearing due to work [Attached to file as Remonstrator Exhibit #2].

Mr. Myers responded saying he has gone through the proper channels and filed for this variance according to the Elkhart County standards. Mr. Hesser asked about notification of neighbors across county or state lines, and recognized notification is not a legal requirement but a courtesy. Mr. Myers also commented that the driveway does not end at 12 ft., but is a 40 ft. public right of way according to Mr. Doriot, Private Surveyor. He also stated they have an accepted purchase contract on the property. He continued saying since Mr. Long does not seem to like Mr. Yoder; he might like some new neighbors. He also stressed the couple looking at purchasing the property seem to be very community-minded. Mr. Hesser questioned if the buyers have approached the neighbors about sharing in the drive maintenance and cost. Mr. Myers responded they have not because they have not yet purchased the property. However, he stated they are aware of the situation, and he does not believe they will have a problem with the agreement. He also stated the couple plans on building a very nice home on the property. Mr. Myers stressed he cannot address the complaints about Mr. Yoder. However, Mr. Long received notification when the property was being placed on the market and put up a barricade which inhibited anyone from reaching the property. Mr. Lyon questioned if the right of way extends to the North. Mr. Myers stated according to Mr. Doriot's letter, it is an unimproved public right of way which extends the entire length of the property and beyond. Mr. Hesser questioned why Mr. Myers is opposed to the time frame imposed. Mr. Myers responded he is worried because they have not yet closed on the property and would like this to be available to other buyers if the purchase falls through. Mr. Hesser stated a time limit is imposed because the Board does not grant hypothetical situations. Mr. Myers stated he does not understand the need for a variance as the property is zoned A-1 and is on a public right of way. He continued saying he is requesting

an extension on the time limit in case this buyer does not close. Mr. Lyon questioned if Mr. Myers had a problem with tabling this item until next month. He responded yes, because the property is supposed to close within the next 30 days, and the buyers do not want to purchase the property, if they cannot build on it.

The public hearing was closed at this time.

Mr. Hesser stated he does not have any sympathy for neighbors who obstruct the right of way. However, he also does not have sympathy for a buyer who has made no effort to state they agree to participate in maintenance of the road. Mr. Lyon stated the maintenance of the road should be made a commitment. Attorney Kolbus questioned if making road maintenance a commitment would put more power in the neighbors' hands. Mr. Hesser stated if the buyer was willing to pay their fair share; this would be a different scenario. Mr. Lyon does not believe that is the case and does not think the potential buyer is aware of what is being asked of them. Mr. Hesser stated he is willing to table this petition. Mr. Miller stated that seems fair as most of the interested parties are in LaGrange County and have not had time to respond.

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

Motion: Action: Table, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the request for a Developmental Variance to allow for the construction of a residence on property served by an unimproved and non-maintained county road be tabled until the October 20, 2016, Elkhart County Advisory Board of Zoning Appeals Meeting to allow remonstrators to seek legal counsel.

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

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

5. The application of *Thrash Properties LLC* for a 41 ft. Developmental Variance to allow for the construction of a storage shed 34 ft. from the centerline of Larue St. (Ordinance requires 75ft.) and for a 19 ft. Developmental Variance for the construction of said storage shed 6 ft. from the property line (Ordinance requires 25 ft.). on property located on the North side of US 33, 1,104 ft. East of Fulton St. Intersection, common address of 28827 US Highway 33 in Baugo Township, zoned M-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0445-2016*.

There were four neighboring property owners notified of this request.

Jesse Thrash, 28827 US 33 W, Elkhart, was present on behalf of this petition, and stated he has outside storage he would like to clean up and put inside. He continued saying this addition will match the existing building and roof line. Mr. Hesser questioned who owns the land to the East, and Mr. Thrash responded Paul Hull, Hull Lift, is the owner. He also mentioned Mr. Hull has requested that Mr. Thrash clean up the property. Mr. Hesser questioned if the parking lot to the East was in use. Mr. Thrash clarified that the building on the aerial has burned down and a new building has been constructed causing some confusion with the site plan and aerial. He then pointed out the property in question and where the new construction will be placed on the west side of his property inside the fenced area.

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** Denny Lyon, **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 41 ft. Developmental Variance to allow for the construction of a storage shed 34 ft. from the centerline of Larue St. (Ordinance requires 75 ft.) and for a 19 ft. Developmental Variance for the construction of said storage shed 6 ft. from the property line (Ordinance requires 25 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), when applicable.
2. Approved in accordance with the site plan submitted (dated 8/15/16) and as represented in the Developmental Variance application.

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

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

6. The application of *Maria Gutierrez (land contract buyer) and Aranda Adrian Andres (land contract seller)* for a Special Use for a mobile home on property located on the South side of Medford St., 220 feet West of CR 11, common address of 25044 Medford St. in Osolo Township, zoned R-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0354-2016*. Mr. Hesser questioned if the previous variances are still needed and active. Attorney Kolbus stated the previous variances are still in effect.

There were 27 neighboring property owners notified of this request.

Maria Gutierrez, 54182 North Hastings Street, was present on behalf of this petition and stated she is looking for approval to place her mobile home on this property. Mrs. Gutierrez continued saying she attempted to receive septic clearance from the Environmental Health Department, but was told she needs a building permit first. She also stated she has done all that she can at this point. Mr. Miller questioned if the mobile home is already on the property and if there is an existing garage. Mrs. Gutierrez responded the mobile home is not on the property but, there is an existing garage and pad. Mr. Campanello questioned if the new mobile home will be the same size as the previous mobile home. Mrs. Gutierrez stated it is and she has shown pictures of the home to neighbors. Mr. Hesser questioned if she has any concerns with the conditions suggested by staff, and she responded she does not.

Howard Turlin, 25057 Hastings Park, came on in remonstrance to this petition. Mr. Turlin stated the two people who previously lived on the property pumped their septic every two weeks showing the existing septic is failing. He also believes there is not enough room on the property to place a field system or a proper septic tank. Mr. Campanello stated, if this petition is approved, the Environmental Health Department is in charge of the septic situation. Mr. Turlin continued stating they live in a struggling neighborhood trying to make improvements. He then questioned why they would want to place a 14 year old mobile home in the community, which he believes would devalue their property. He stressed that the mobile home previously on the property was never improved upon and has left a bitter feel in the neighborhood. He also brought

up a mobile home on the corner lot, which has not been improved upon. Mr. Campanello suggested Mr. Turlin file a complaint against the mentioned property. Mr. Turlin stated he would like agreed upon conditions before the home is placed. Mr. Lyon asked what conditions he would like, and Mr. Turlin responded that the home be properly set and kept. Mr. Lyon stated the building department will make sure the home is properly set.

William Stephens, 52163 Medford Street, across from the subject property was present in remonstrance. Mr. Campanello questioned if Mr. Stephens had any new information to share and Mr. Stephens responded he had the same comments as the previous gentleman.

Nancy Molnar, 1825 Osolo Road, came on in remonstrance, and stated the trailer Mrs. Gutierrez would like approval to place on the property is 21 years old. She continued saying a trailer park is located right down the road, which is where she believes this trailer should be placed. She continued asking if trailers older than 10 years need a hazardous permit to be moved. Mr. Lyon responded that is not in the Board's jurisdiction. Mrs. Molnar also mentioned that she believes the well located on the property is only 25 ft. deep because she watched the previous owner put in the well. She continued saying the garage has recently been repaired without a visible building permit.

In response, Mrs. Gutierrez stated the septic problems have been looked into. She continued saying she has paid someone to look for a trench area and has been told by the Environmental Health Department that a field system would eliminate the frequent pumping. Mrs. Gutierrez also commented several single wides and double wides are located on Hastings Park. She continued saying her mobile home is 21 years old but is in good condition. She also stated they wish to put the house on a permanent foundation rather than tying it down. She finished by stating if the Special Use is granted, they wish to renew it every three years and stay there for a while.

The public hearing was closed at this time.

Mr. Lyon stated he referred this petition to the Board from the Hearing Officer last month due to the remonstrance, although, he does not feel it is an issue. Mr. Hesser noted the Building Department will ensure the home is properly secured, and the Environmental Health Department will handle the septic issues. Mr. Hesser commented that he does not remember seeing condition D. in other petitions. It was found that the condition is standard for Special Use Mobile Homes. Mr. Campanello stressed that the petitioner needs to get along with her neighbors and if approved she needs to keep up with maintenance of the home.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **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 mobile home 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 for a period of three years with a one year review to verify compliance with the following:

- a. The mobile home shall be adequately stabilized, skirted and have tie-downs installed.
 - b. The water supply and sewage disposal system shall be installed in accordance with County Health Department specifications.
 - c. Adequate provisions for storage shall be provided at all times to eliminate exterior storage of personal property, tools and vehicles, except licensed motor vehicles.
 - d. At all times, the real estate shall be kept free of abandoned junk vehicles or parts thereof as described by Indiana State Law.
2. Approved in accordance with the site plan submitted (dated 7/11/16) and as represented in the Special Use application.

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

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

7. The application of *Jason & Jamee Holmes* For a Special Use for a private off road track on property located on the East of SR 15, 1,445 ft. North of CR 26, common address of 59904 SR 15 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0405-2016*.

There were 12 neighboring property owners notified of this request.

Jason Holmes, 59904 SR 15, Goshen, was present on behalf of this petition. Attorney Kolbus questioned if Mr. Holmes is aware of the issues that the Environmental Health Department has with the track location. Mr. Holmes stated he was aware of it and is willing to move the portion of track in question as far as the Environmental Health Department tells him it needs to be moved. Mr. Godlewski stated this petition will need a new site plan once it is determined where the track will need to go.

Franklin Vaughn, 59956 SR 15, Goshen, was present in remonstrance and stated the track is 50 ft. from his front porch. He continued saying when Mr. Holmes came to him and told him he was going to build a track; he did not have a problem with it. However, the track has large jumps, is loud, and dusty. He also stated Mr. Holmes put up a fence, which he stated was a good effort but does not control the sound and dust. Mr. Vaughn stressed he bought his property for the lake access and a quiet place to retire. He also mentioned he did not sign the petition from Mr. Holmes and received a cold shoulder from the petitioner. He closed by saying he did not buy his property 20 years ago to have his neighbor put a dirt track right on top of him.

In response, Mr. Holmes stated prior to the construction of his house; he talked with Mr. Vaughn about his hobbies and wanting a track. He also mentioned he grew up two properties down from Mr. Vaughn, and his parents were like family. He continued saying after speaking with his neighbors, he did not apply for a Special Use last year due to their support. However, approximately nine months after the track was constructed, Mr. Vaughn did not come to him about his issues but filed a complaint through Code Enforcement. Mr. Holmes stated after receiving the violation letter, he stopped use of the track. He also stated Mr. Vaughn wished a privacy fence be put up, but never contributed to the cost of the fence. Instead, Mr. Holmes stated he took it upon himself to purchase the materials and install the fence. Mr. Holmes stressed he feels he has done everything he can to be neighborly and get along. He continued stating his other neighbors signed the petition he had drafted in support of his request. Mr. Holmes noted they are not seeking to run a business or open the track to the public, but his 14

and 4 year old sons, himself, occasionally his brother, and two nephews like to use the track. Mr. Lyon asked if Mr. Holmes has a problem with any of the conditions. Mr. Holmes responded that he believes not riding on Sundays or after dark is just a common courtesy, and he does not have a problem with any of the conditions. He also mentioned he has put in a pond in the southwest corner of the property, which is the lowest area. He continued saying this has reduced water containment in other areas of his and the neighbors' properties. He also stated he will use the pond to water the track.

The public hearing was closed at this time.

Mr. Miller stated he has concerns because he previously lived near a track, but he also enjoys riding. Mr. Campanello mentioned the track is maintained very nicely. Attorney Kolbus stated, if the Board is inclined to grant this petition, they can add a time limit as a condition. Mr. Campanello suggests a three year time limit with renewal before the Board.

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 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 private off road track 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 conditions were imposed:

1. Approved in accordance with the site plan to be submitted for staff approval and as represented in the Special Use application.
2. The track must be relocated in order to avoid the septic area (see Health Department attachment).
3. No riding after sun down.
4. No riding before 12:00 pm on Sunday.
5. Dust control must be maintained.
6. All equipment operated on track will have O.E.M. exhaust or more restricted aftermarket exhaust to comply with AMA sound testing requirements and local county code.
7. Track is for personal / private use only.
8. Must maintain 80' privacy fence on the South boundary of the real estate.
9. Approved for a period of three years from September 15, 2016, with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

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

8. The application of *Logan Rees and Lisa Rees (Lessee) and Central States Tower (Lessor)* for a Special Use for a wireless communications facility on property located on the East side of CR 19, 800 ft. North of CR 8, common address of 53792 CR 19 in Washington Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0412-2016.

There were 22 neighboring property owners notified of this request.

Brian Donley with Insite, 660 Midwest Rd. Oakwood Terrace, IL, was present representing the petitioners. Mr. Hesser requested Mr. Donley point out the previous location and the new location, which he stated is significantly to the north, equidistant from the residential areas, and away from the high power utility lines. Mr. Hesser confirmed it was the neighbors to the South who had complained at the last meeting, and stated that Mr. Donley should address the location and imposed conditions. Mr. Donley submitted new documentation on the location of the tower [attached to file as Petitioner Exhibit #1] and a coverage map [attached to file as Petitioner Exhibit #2]. He continued stating Verizon is already using all of the existing towers in the area and the land owner on the West side of CR 6 turned down their offer. He also stressed that if the residences of Elkhart County would like better coverage, this is one of their last options. Mr. Hesser asked how many carriers could co-locate on this tower, and Mr. Donley responded four carriers. Mr. Miller questioned if Mr. Donley has any issues with the conditions imposed by the Staff. Mr. Donley stated he does not if his email and submitted documentation would suffice as the letter required for condition #3.

Tiffany Nead, 53830 CR 19, Bristol, was present in remonstrance and questioned the number of neighbors notified. She continued by referring to the towers referenced in the previous meeting, located at the RV Hall of Fame and at Pine Creek. She also stated she has no issues with Verizon coverage at her home, and she asked who was requesting better service. Mrs. Nead stressed that the property owners live in Chicago, so this will not affect them. Mr. Campanello referenced the previous question and stated there were 25 neighbors notified of this petition. Mrs. Nead also stressed the effect of the tower on the resale value of her home. Mr. Hesser questioned if this was farm land, and Mrs. Nead stated she believes it is leased to a farmer.

In response, Mr. Donley stated the need for this tower is not just to give customers more bars, but to help with the capacity during peak hours as the existing towers are being overloaded. He continued stating this denies other customers access to the Verizon network due to capacity issues. Mr. Hesser questioned if this tower just dealt with cell coverage, Mr. Donley clarified this tower will also include data for cell users.

The public hearing was closed at this time.

Mr. Miller stated last time his concern was the proximity to the neighbors, and he believes there is legitimacy to the need for another tower. Mr. Hesser agreed the main issue was putting the tower so close to the neighbors, and they have made the needed adjustments.

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

Motion: Action: Approve, **Moved by** Roger Miller, **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 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. If an access drive to the site is necessary; a County Highway driveway permit is required.
3. The petitioner must provide a letter with evidence supporting the choice of location for the proposed wireless support structure, and if co-location at a nearby tower is an option.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 8/1/16) and as represented in the Special Use application.

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

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

9. The application of **Raymond & Esther Yoder** for a Special Use for an agricultural use (keeping of horses) on a parcel containing less than three acres and for a 35 ft. Developmental Variance to allow for the construction of an agricultural/personal storage building 40 ft. from centerline of the right-of-way (Ordinance requires 75 ft.) on property located on the West side of CR 133, 1,600 ft. North of SR 4, common address of 61113 CR 133 in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0422-2016*.

There were five neighboring property owners notified of this request.

Raymond Yoder, 61113 CR 133, came on representing this petition. Mr. Yoder stated he would like to build a horse barn, not for raising livestock or agricultural use. He continued stating he is building a new home on the property and currently owns the adjoining farm. He stated behind the proposed site is a wooded area and behind that grassland, making it impossible for the barn to be moved back. He also clarified that the barn will be far enough back from the road that it will not cause site problems. Mr. Hesser questioned the elevation where the wooded area is located, and Mr. Yoder stated the elevation probably drops 20 and 25 feet from the woods to the low pasture land. Mr. Hesser clarified if Mr. Yoder was to comply with the variance he would run into elevation and drainage issues. Mr. Yoder stated they plan to build the barn into the hill to allow the horses to walk into the lower level, and the short upper level would be used as storage. Mr. Miller mentioned the barn is not near an intersection and will not cause site issues.

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 an agricultural use (keeping of horses) on a parcel containing less than three acres 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 8/4/16) and as represented in the Special Use application.
2. Limited to two adult horses at any one time.

Further, the motion also included that a 35 ft. Developmental Variance to allow for the construction of an agricultural/personal storage building 40 ft. from centerline of the right-of-way (Ordinance requires 75 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), when applicable.
2. Approved in accordance with the site plan submitted (dated 8/4/16) and as represented in the Developmental Variance application.

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

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

10. The application of *Ervin Heatwole* for an amendment to an existing Special Use for an agri-business for a custom meat processing business on property located on the Northwest corner of CR 15 & US 6, common address of 72155 CR 15 in Union Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0431-2016*.

There were seven neighboring property owners notified of this request.

Ervin Heatwole, 70151 CR 17, New Paris, IN, was present on behalf of this petition. Mr. Heatwole stated he wants to add another building for chicken processing at this location. He continued saying they have purchased a chicken processing business and would like to move it to the same location as their existing business. Mr. Campanello suggested they bring in a commercial site plan next time they come before the Board due to their growing business.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser commented when this was first approved, there were some remonstrators. However, he continued since there is no one here today, it suggests the operation is being run in an acceptable fashion. He also stated the site plan seems to be to scale.

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 an amendment to an existing Special Use for an agri-business for a custom meat processing business be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 8/9/16) and as represented in the Special Use Amendment application.
2. The original commitment dated November 26, 2014, and recorded as document 2014-23219 remains in full force and effect except as modified by commitment #1 above.

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

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

11. The application of *Fair Haven Amish Mennonite Church C/O Allen Miller* for an amendment to an existing Special Use for a church to expand the existing cemetery on property located on the North side of SR 4, 1/2 mile East of CR 35, common address of 13513 SR 4 in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0437-2016*.

There were 11 neighboring property owners notified of this request.

Chris Marbach, Marbach, Brady, & Weaver, 3220 Southview Dr. Elkhart, was present representing the petitioner. Mr. Marbach stated the church is hoping to reserve an area for a future cemetery expansion. He continued saying they recently purchased a five acre parcel and would like the South 100 ft. to be used for this Special Use. He closed by saying they have no other concerns and agree with the staff report.

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** 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 an amendment to an existing Special Use for a church to expand the existing cemetery be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 8/12/16) and as represented in the Special Use Amendment application.

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

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

12. The application of *Paul R Royer & Rose E Royer, Trustees of the Living Trust* for a Special Use for a ground mounted and building mounted solar array panel system, and for an amendment to the site plan for an existing Use Variance on property located on the Northwest side of SR 119, 1,500 ft. East of CR 9, common address of 25743 SR 119 in Harrison Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0438-2016*.

There were four neighboring property owners notified of this request.

Betsy Salier, Solar Energy Systems, 1952 W. Market Street, Nappanee, was present representing the petitioner. Mrs. Salier stated they are proposing a ground mounted system in the back of the property, one row panels in the front, and panels on top of the building. Mr. Hesser

questioned if the property owner had communicated their plans with the farmer to the north, and Mrs. Salier responded the farmer has no issues with the plan.

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 Special Use for a ground mounted and building mounted solar array panel system, and for an amendment to the site plan for an existing Use Variance 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 8/12/16) and as represented in the Special Use application.

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

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

13. The application of *Glen and Rebecca Harshberger* for an amendment to an existing Special Use for a home workshop/business for the assembly of residential windows and doors to add a new warehousing and storage building and for a Developmental Variance to allow for the total sq. ft. of accessory structures to exceed the total square footage in the primary structure on property located on the West side of CR 9, 1,100 feet South of US 6, common address of 72729 CR 9 in Union Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0440-2016*.

There were two neighboring property owners notified of this request.

Charlie Zercher, with Kindig & Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner, and stated he agrees with the staff analysis. He continued saying Mr. Harshberger would like to put up a 48'x80' multipurpose building to be used for Amish Church, family gatherings, and personal storage. Mr. Hesser clarified the use of the property is not changing; they are just adding a new 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** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a home workshop/business for the assembly of residential windows and doors to add a new warehousing and storage building 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 8/15/16) and as represented in the Special Use Amendment application.
2. Hours of operation are 3:00 pm to 6:00 pm, Monday through Friday, and 7:00 am to 5:00 pm, Saturday.
3. Exterior lighting for said Real Estate, if any, shall be restricted to security, rural, dusk to dawn night guard-type lighting.
4. No new construction of additional structures beyond the proposed new warehouse and storage building and no expansion of area used for the Special Use is permitted without Elkhart County Board of Zoning Appeals approval.
5. One unlighted sign limited to four square feet per side is permitted.
6. The total number of employees, associates or partners is limited to three. Two such employees may reside off-site.
7. Adequate on-site parking on the area on the real estate should be provided for four vehicles.
8. No outside storage of anything related to the home workshop/business is permitted.
9. No inventory may be held for on-site retail sales.

Further, the motion also included that a Developmental Variance to allow for the total sq. ft. of accessory structures to exceed the total square footage in the primary structure 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), when applicable.
2. Approved in accordance with the site plan submitted (dated 8/15/16) and as represented in the Developmental Variance application.

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

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

14. As a staff item, Mr. Godlewski presented the request for a minor change for an additional extension of an Improvement Location Permit deadline for an existing Use Variance/ Developmental Variance for Steven R. Rodman (Buyer) and Bradley S. & Jennifer L. Rodman (Sellers) (CR27-140421-1). Mr. Godlewski read a memo from Mr. Rodman dated September 1st 2016, requesting an extension of the Improvement Location Permit deadline until April 1st 2017. He continued saying the original Variance was granted on May 15th 2014, and was given an extension on the Improvement Location Permit deadline on both August 21st 2014, and June 1st 2015. He finished saying Staff recommends approval as a minor change with the condition that if the April 1st 2017, deadline is not met, the Variance be rescinded. Mr. Hesser questioned if anyone remembered this petition. It was established Mr. Rodman is building a house and was

last before the board on June 1st 2015. Mr. Hesser questioned if anyone remembered neighbor issues when Mr. Rodman was first before the Board, but no one could remember this petition.

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 approve the request as a minor change..

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

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

15. The application of *Humane Society of Elkhart County, Inc.* for a Special Use for a kennel on property located on the West side of CR 19, 1,441 ft. South of SR 120, common address of 54687 CR 19 in Washington Township, zoned M-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0441-2016*.

There were 24 neighboring property owners notified of this request.

Ken Jones, Jones, Petrie, Rafinski, 4703 Chester Drive, was present representing the petitioner. Mr. Jones stated they agree with the staff recommendation and ask that the Board support it. Mr. Campanello questioned where the animals would be housed during construction. Mr. Jones stated the existing shelter will remain in operation until the new shelter is completed; it will then be torn down and that area will be used as parking. Mr. Hesser noted this is a significant expansion of space and will double the amount of animals they can house.

Anne Real, Executive Director of the Humane Society of Elkhart County, came on to be heard in favor of this request. Mrs. Real stressed their current building is crumbling, and this new building will include educational rooms, a veterinarian, and veterinary interns. She also stated that people will be able to rent the educational room, and they hope this will become a county facility. Mr. Hesser clarified that the Humane Society is the animal control agency for Elkhart County.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** 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 for a kennel 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 8/15/16) and as represented in the Special Use application.

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

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

16. The application of **Bill Cooper** 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 Lake Dr., 120 ft. West of Lakeland Rd., 2,800 ft. North of CR 4, East of SR 19, in Osolo Township, zoned R-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0426-2016*.

There were 23 neighboring property owners notified of this request.

George Cooper, father of the property owner, 25947 Lake Dr., Elkhart was present on behalf of this petition. Mr. George Cooper stated he would like to put up a storage building on the property to store his motor home, pontoon boat, and cars in order to keep his property clean. Mr. Hesser questioned if Mr. George Cooper had any concerns with the commitment stating the properties will be tied together on one deed. Mr. George Cooper stated that his son Bill Cooper owns the lot he would like to put the pole building on, and Mr. George Cooper owns the lot with their home on it. Mr. Hesser clarified the two properties are owned by two separate people, and the Staff assumed same ownership when creating the staff report.

Peg Cooper, 25947 Lake Dr., Elkhart, came on for this petition. Mrs. Cooper stated her son lives in Battle Creek, MI, and was unable to take off work to be at the hearing. She continued saying she had requested a copy of the deed, but was told they do not have it yet. Mr. Hesser noted that some pages in the packet name Bill Cooper and others name George Cooper as the owner. Mrs. Cooper also mentioned they have been in contact with their neighbors. Mr. Hesser stated the Board does not normally favorably view building accessory structures without a primary residence on the parcel. He went on to note the two exceptions to this, when the lots are tied together and when the lots are small around water. He also believes the Board does not always require the lots be joined on the deed when the lots without a primary residence are around a lake. Mr. Godlewski mentioned if the parcels were touching the owners would be allowed to straddle the property line with their building, but the lots in question happen to be separated by a right of way. He continued stating this should be treated as a stand-alone accessory structure. Mr. Hesser stated he believes when properties are around a lake, the Board does not restrict them to being tied together with a deed. Mr. Miller mentioned they once approved a petition with the condition the building would be torn down when the property was sold. Attorney Kolbus mentioned a petition recently approved where the building was on a lot down the street from the residence.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated his problem is whether commitment #2 should be included with approval. Attorney Kolbus mentioned the house to the East may someday want to buy the property with the storage building. He continued saying since the property is on the lake there are many possibilities and other property owners who would like to purchase the accessory lot. Mr. Miller stated he only has a problem with lots not being tied together when the properties are in the country. Mr. Hesser brought up the point that someone looking for a storage building without a residence on the lake will not pay the high price to buy a building there.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 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 commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 8/9/16) and as represented in the Use Variance application.

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

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

17. The application of *Joe D. & Sarah Miller* for a Use Variance to allow for the construction of a second residence on a single parcel, for a Use Variance to allow said residence to be built on a basement in ponding soils, for a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of said residence, and for a 50 ft. lot-width Developmental Variance to allow for the construction of said residence (Ordinance requires 100 ft.) on property located on the West side of CR 37, 800 ft. South of SR 4, common address of 61745 CR 37 in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0444-2016*. Mr. Hesser questioned the definition of ponding soil. Mr. Godlewski responded the new ordinance is striving to steer people away from building on certain soil types. He continued stating they mapped several soil types in order to know where people should and should not build. He also stated in order to build on certain areas, a soil test must be completed to prove that land is the proper soil type needed. Mr. Hesser requested a definition for ponding soil, and Mr. Godlewski stated it is not a wetland soil but is a marginal soil. He also clarified they are looking to approve the Use Variance, however, the owner will need to prove it is not ponding soil in order to build the root cellar. Mrs. Gunden clarified if the soil is found to be ponding soil, the house can be built on a slab, but no basement is allowed.

There were 11 neighboring property owners notified of this request.

Mervin Stoltzfus, MS Construction, 60112 CR 41, Middlebury, was present representing the petitioners. Mr. Stoltzfus stated the current home was made as a guest house and is built more like a cabin than a house. He continued saying they would like to build a new residence on the property with a storm shelter/root cellar. However, due to the ponding soils they will need a report from a soil scientist for the root cellar/storm shelter to be placed on the property. Mr. Miller confirmed the home will be on a slab, and there will be no other basement area besides the root cellar. Mr. Hesser clarified the current residence will either be removed or be converted into a personal storage building. Mr. Stoltzfus responded he is not sure if the current residence will be removed or converted as the home owners have not agreed upon either option yet.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis (**as amended by the Board**) 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 a second residence on a single parcel and for a Use Variance to allow said residence to be built on a basement in ponding soils be approved based on the findings and conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community. The temporary placement of two houses will not be injurious as it will still serve one family as it does now.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner. Replacing the old house with a new one should increase the value of the subject property and neighboring properties.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved. The existing house will be removed or modified to no longer be a legal residence upon the completion of the new house.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property. Displacement of the family in order to comply with the Zoning Ordinance under these conditions would be an unnecessary hardship.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan. The property will remain agricultural and residential in use.

The following conditions were 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. If the old residence is to be removed; it must be removed within 6 months of completion of the new residence.
3. If the old residence is to be converted to personal storage; a building permit must be acquired with proof upon inspection that the kitchen and/or bathrooms have been removed.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 8/16/16) and as represented in the Use Variance application.
2. The petitioner must provide soil information proving that the soils are not ponding in the location of the proposed root cellar in order to construct the root cellar.

Further the motion also included that a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of said residence, and for a 50 ft. lot-width Developmental Variance to allow for the construction of said residence (Ordinance requires 100 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), when applicable.

2. Approved in accordance with the site plan submitted (dated 8/16/16) and as represented in the Developmental Variance application.
3. Either a minor subdivision or an administrative subdivision (in conjunction with the building permit for the new residence) must be completed.

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

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

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

19. The staff item for Steven R. Rodman (Buyer) and Bradley S. & Jennifer L. Rodman (Sellers) (CR27-140421-1) was previously heard as Item # 14 on page 13.

20. The meeting was adjourned at 10:59 pm

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary