

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20TH DAY OF APRIL 2017 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; Mae Kratzer, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

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 16th day of March 2017 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.

4. The application of *Diocese of Fort Wayne-South Bend Inc.* for a Special Use to expand a cemetery on property located on the South side of CR 16, 675 ft. West of SR 19, in Baugo 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-0129-2017*.

There were 14 neighboring property owners notified of this request. Terry Rodino, 23393 Shore Lane, Elkhart, a member of the Saint Vincent's Cemetery Board was present for this petition. Mr. Rodino explained a gentleman passed away, and his will stated that the land next to the cemetery be purchased for future expansion. He continued saying the family purchased the land, and the Cemetery Board decided all zoning should be approved for future burials. He continued saying their intention at this point is to gain approval then a committee will be formed to decide the next step. He added funds are tight as the church is currently going through a 150th anniversary renovation. He stressed the church would first like approval, and then the committee will decide if the entrance will change ect. Mr. Hesser asked if the land has already been donated, and Mr. Rodino responded it has been deeded to the Diocese. Mr. Campanello questioned if this petition was brought before the Plan Commission, and Mr. Godlewski clarified a parcel was rezoned close to this property.

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 Special Use to expand a cemetery be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 3/2/17) and as represented in the Special Use application.

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

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

Mr. Rodino questioned if the conditions set forth need to be signed. Mr. Hesser clarified a commitment will be sent to him in the mail.

5. The application of **Brian D. & Tracey Reames** for a Special Use for a home workshop/business for a tree service business on property located on the North side of CR 18, 1,277 ft. East of CR 27, common address of 17511 CR 18 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-0164-2017*.

There were five neighboring property owners notified of this request.

Mr. Godlewski stated two remonstrance letters were received for this petition.

Brian Reames, 17511 CR 18, Goshen, was present representing this request. Mr. Reames stated he is seeking approval to run a business from his home. Mr. Lyon pointed out the petitioner was present two months ago for a different request. Mr. Atha questioned the location of the storage area. Mr. Hesser asked the size of the building, and Mr. Reames responded it is 25'x90'. Mr. Hesser also asked the size of the back parking area. Mr. Hesser asked if the vehicles will be parked in the garage, and Mr. Reames responded some vehicles will have to be parked outside. Mr. Miller pointed out a 20'x63' location on the site plan, which is marked truck and trailer with 9'x20' spaces. Mr. Reames responded he is limited on space and was trying to determine how to park his vehicles. Mr. Campanello clarified the 9'x20' spaces are for trucks and trailers to park. Attorney Kolbus stressed the 20'x63' pad is the designated outside storage area. Mr. Reames also added the complaint filed against his property stated he is storing junk vehicles, but he stressed every vehicle is plated, insured, and used every day. Mr. Hesser asked about objects on the aerial to the North, and Mr. Reames responded some of it belonged to him and the rest his neighbor. Mr. Hesser clarified that area is not on his property, and the business will take place only on his property. Mr. Lyon asked if the parking spaces will be on his property, and Mr. Reames responded yes.

Mr. Godlewski submitted two letters in remonstrance [*Attached to file as Remonstrator Exhibit #1 and #2*]. He went on to mention one of the remonstrators requested this petition be tabled, and they both state concerns about this petition. He continued saying they could not make it to this meeting due to one being sick, and the other had a prior obligation. Mr. Hesser clarified Mr. Reames is not operating a manufacturing business. Mr. Reames responded the complaint states he is building trailers, and he did have a trailer company for five years. However, he is now in the tree cutting business and has been for six years. He also added he works on his racecars, but it takes place inside his garage. Mr. Hesser also asked if he maintains his vehicles, and Mr. Reames responded he does all of the repairs himself. He went on to clarify he does not use all of

his vehicles every day. Mr. Miller mentioned one of the letters states he hauls trees to the back of the property and burns them. Mr. Reames stated he did a year and a half ago, but that no longer takes place. Mr. Atha mentioned that issue is covered by Commitments #2. Mr. Lyon asked if he would consider installing a fence, Mr. Reames responded he started putting up a chain link fence. Mr. Atha clarified this petition is only for the tree service business. Mr. Reames explained he had a trailer business in Jim Town, but it has since closed down. Mr. Miller questioned a picture of split wood, and Mr. Reames responded that is on his neighbors' property. He went on to stress he does not split wood; instead it is taken to the environmental center.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser mentioned outside storage is rarely allowed with home workshop approval. Mr. Atha stated the business equipment will be the only storage. Mr. Miller added the proposed storage area is next to an open field. Mr. Campanello suggested a fence be place around the outside storage, but he realized it would be difficult to maneuver a trailer in that area. He continued saying he believes a barrier should be put in place, because outside storage is not allowed with home workshop approval. Mr. Miller stressed a fence would be difficult, because there does not appear to be enough room for a fence along the driveway. Mr. Hesser questioned staffs' recommendation for approval with the outside storage. Mr. Godlewski clarified Jason mentioned this area is in the back of the property with a small pine tree row between the property and the house to the West. He went on to suggest possibly continuing the existing tree screen. Mr. Campanello asked where the remonstrating neighbors' property is located; it was determined to be the neighbors to the West. Mr. Reames stressed he has done tree work for all of his neighbors including the neighbors who submitted the letters in remonstrance. Mr. Hesser mentioned the remonstrators asked if approval of this request will open up the property to any business. He went on to stress the Commitment holds the petitioners to what is represented in the application and site plan. Mr. Miller also mentioned hours of operation do not apply in this case, because he is simply storing the equipment on this property. Mr. Reames added he typically works from dawn to dusk. Mr. Atha asked what equipment will be stored outside, and Mr. Reames responded five trucks/trailers, chippers, and a bobcat. Mr. Lyon asked if he uses trailers to haul wood away from the job site, and he responded he has dump trailers. He stressed, if the environmental center is closed by the time he is done with the job, he stores the full trailer at his home until the next day. It was found the environmental center closes at 6 p.m. Mr. Campanello questioned if it is possible to put up a buffer and still be able to maneuver trucks on the property. Mr. Hesser mentioned trees could be planted on the property line. Mr. Reames stressed the property slopes down on the West side of the drive making it almost impossible to plant trees in that location. Mr. Hesser stated he is okay with allowing outside storage as long as it is confined.

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 home workshop/business for a tree service 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 3/13/17) and as represented in the Special Use application.
2. No storage of tree debris from off-site work sites.
3. Storage must be limited to area designated on the site plan.

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

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

6. The application of **Cheryl J. & Scott D. Martin** for a Special Use for an agricultural use for the keeping of chickens on property located on the East side of CR 113, 285 ft. South of CR 26, common address of 60064 CR 113 in Concord Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0153-2017*.

There were 13 neighboring property owners notified of this request.

Mr. Lyon asked, if the property owners are aware, the building will be in a drainage easement.

Cheryl Martin, 60064 CR 113, Elkhart, was present representing this request. Mrs. Martin responded to Mr. Lyon's question by saying the structure will not be permanent. She went on to say she has talked to the Surveyor's Office and due to the location of Shaffer Ditch they cannot construct a permanent structure. Mr. Godlewski clarified this building will not have a foundation, and it has been approved by the Drainage Board. Mr. Campanello asked the size of the lot, and Mrs. Martin responded she is not sure. She went on to stress it is a fairly large corner lot. She added it is a subdivision lot, however, it is accessed by CR 113. Mr. Campanello asked if approval would be needed for a three acre parcel in an R-1 district. Mr. Godlewski responded yes due to the residential zoning. Mr. Hesser asked about the subdivision restrictions, and Mrs. Martin responded she is not aware of any. Mr. Hesser stressed, if this petition is approved, it does not trump subdivision covenants. Mrs. Martin stated they do not have a neighborhood association. She went on to mention this building will be a small storage barn with a chicken run. Mr. Campanello mentioned an area on the aerial, which appeared to be a garden and asked if the chicken waste will be used on it. Mrs. Reames responded it will probably be used as garden fertilizer.

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** Joe Atha 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 for the keeping of chickens 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 3/8/17) and as represented in the Special Use application.
2. Limited to 12 chickens, no roosters.

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

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

7. The application of *Brookins Farms, LLC* for a Special Use for a ground mounted solar array on property located on the West of CR 121, 1,440 ft. North of CR 142, common address of 67261 CR 121 in Jackson Township, zoned A-1, B-3, GPUD R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0168-2017*.

There were 18 neighboring property owners notified of this request.

Roger Method, 19326 CR 142, New Paris, a sales representative for Solar Energy Systems was present for this request representing Mark Brookins. Mr. Miller asked if this will be a standard solar panel, and Mr. Method responded yes. Mr. Hesser asked the location of the solar panels on the site plan. Mr. Method pointed out the location of three chicken barns and the solar array along the side of a barn. Mr. Hesser clarified the panels will be located North along the border of an A-1 parcel also owned by the Brookins. Mr. Godlewski clarified the chicken barns were built after the aerial was taken. Mr. Atha asked if the solar panels will be the same length as the chicken barns. Mr. Method responded currently only 50% of the length of the barns will be covered, but they do have plans for future expansion. Mr. Hesser clarified the location of the barns and solar array on the site plan. He also asked the number of solar panels, and Mr. Method responded 304 total panels. He explained there will be eight racks of 54 panels. Mr. Lyon questioned the height, and he responded 12 ft. to 15 ft. He added the panels will also be mounted on manual tilt racks in order to take full advantage of the sun.

Gary Brumbaugh, 67559 CR 23, New Paris, was present in favor of this request. Mr. Brumbaugh asked the amount of power the panels will produce, and Mr. Method responded 110 KW. Mr. Brumbaugh clarified this will be used to run the chicken barns. He also asked how a Special Use works. Attorney Kolbus stated each piece of property is a particular zoning, and a Special Use is an exception to it that zones rules. He continued saying if the criteria is met, a Special Use can be granted. He stressed Special Uses/Use Variances are exceptions to the rule, and the Board makes the final decision for approval or denial.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello that 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 solar array 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 3/13/17) and as represented in the Special Use application.

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

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

8. The application of **Keith A. & Denise L. Hurst** for a Special Use for a ground mounted solar array on property located on the Southwest corner of CR 50 and CR 15, common address of 23244 CR 50 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-0170-2017*.

There were 14 neighboring property owners notified of this request.

Betsy Salyer, 1952 W. Market St, Nappanee, a representative from Solar Energy Systems was present for this petition. She stated the solar array will be placed South of the hog barn. She added it is 182 ft. wide, 13 ft. deep, and 12 ft. tall.

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** Joe Atha 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 solar array 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 3/13/17) and as represented in the Special Use application.

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

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

Mr. Campanello asked how these solar panels will be disposed of 20 years down the road. Mrs. Salyer responded they should work for at least 40 years, and she added they will be recycled after being taken down. Mr. Campanello asked if it is safe to bury them in a land fill. Mrs. Salyer stated they would be taken to a solar panel recycling company. Mr. Campanello stressed the Board has approved several solar panels, and he wants to ensure they can be safely disposed of in the future.

9. As a staff item, Mr. Godlewski presented the request for approval of a site plan change to a Special Use for Power Line Amish School (SUP-0094-2017). He stated Harley Bontrager has requested a minor change to the site plan in order to move the 20'x24' barn to the Northeast

corner of the property and to shift the school 16 ft. to the East. He added both buildings will remain the same size. He continued saying Staff recommends approval of this request as a minor change. Mr. Hesser asked if the changes meet the required setbacks, and Mr. Godlewski responded yes. He then questioned if any remonstrators were present for the original approval of this request, and Mr. Godlewski responded no. Mr. Miller clarified Staff has already determined this is a minor change.

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 approve the request as a minor change.

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

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

*****It should be noted that Mr. Hesser recused himself and stepped down*****

10. As a staff item, Mr. Godlewski presented the request for approval of a site plan change to a Special Use for New Paris Elementary (SUP 20034445). He stated Commonwealth Engineers Inc. has requested a minor change to the site plan for two additions to the elementary school. He continued saying the proposed additions will only be 11% of the total square footage of the existing buildings on the property. He added staff recommends approval of this request as a minor change. Mr. Miller mentioned the additions will replace the mobile units currently on the property. Mr. Godlewski added the square footage is high, but it is only a small percentage of the overall buildings on site.

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 approve the request as a minor change.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon.

*****It should be noted that Mr. Hesser returned to the Board at this time*****

11. The application of **Allen & Ruth Helmuth** for a Special Use for a home workshop/business for a woodworking and mill shop on property located on the North side of SR 13 and CR 46, 2,160 ft. West of CR 43, common address of 11489 CR 46 in Benton 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-0166-2017*.

There were 11 neighboring property owners notified of this request.

Charlie Zercher, Kindig and Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. Mr. Zercher stated this request is for a Special Use permit for a home workshop for woodworking and mill work. He continued saying the petitioner currently has one primary customer, who is a lumber wholesaler in the area. He added Mr. Helmuth intends to operate the business inside an existing 40'x72' building on the property. He mentioned Mr. Helmuth will

work full-time, and his daughter and wife may work part-time. He went on to say depending on business one more full-time employee may be hired. Mr. Zercher stated staff has indicated this is a large 46 acre parcel shielded by woods and a pasture. He continued saying the hours of operation will be Monday through Friday 6 a.m. through 2:30 p.m. and occasionally until 5 p.m. He added Mr. Helmuth does not intend to work on Saturdays, but if needed he will only work 6 a.m. until 2:30 p.m. He went on to say no retail sales will take place on the property. Mr. Zercher mentioned the application indicated a pick-up and trailer would deliver to the location daily, however, based on the product a semi truck will come to the property two to three times a week. He stressed the site plan shows parking spots, which will rarely be used, but it provides plenty of room for a semi turn around. He added no one will be parking or backing out onto CR 46. He went on to mention Mr. Helmuth has had a dust trap delivered by a semi, and it was able to turn around in the designated area. Mr. Zercher added no products will be stored outside. Mr. Campanello asked what work will be done at this location. Mr. Zercher responded Mr. Helmuth will be making trims, and no cabinets will be constructed on the property. Mr. Miller asked why the site plan shows 15 parking spaces, and Mr. Zercher responded that is what the ordinance requires. Mr. Lyon added the amount of parking spaces needed is determined the by building's square footage. Mr. Campanello stressed it appears semis have plenty of room to turn around, and Mr. Miller stated he cannot see semis being a problem at this location.

Brian Weirich, 11507 CR 46, Millersburg, was present in remonstrance and pointed out his property directly in front of the Helmuths. Mr. Weirich stated he received a letter informing him of this petition on April 10th, and he came in to look at the file on April 11th. He stressed he was unaware of a new business going in on this property, as a business has been taking place there for several years. He continued saying he believes it was a cabinet staining business, and semis would deliver stain to the property. He added the Elkhart River is behind Mr. Helmuth's property, and he is concerned with how materials will be disposed. Mr. Weirich stated mill he has seen mill trucks deliver material to this location. He stressed he is against this petition, because of the additional truck traffic it will cause on CR 46. He continued saying dust collection/semi deliveries will add heavy equipment traffic to an already rough road. He added he is also concerned with staining, business operations, and building a larger facility. Mr. Lyon asked his main concern, and He responded it is environmental. He stressed the Elkhart River runs along the back of the property, and he is worried about fuel containment. He continued saying the submitted application does not address fuel containment. He also added he can see this building from his house as his view is not shielded by a buffer. Mr. Miller clarified the main concerns are traffic and environmental issues. Mr. Weirich went on to stress the water table is very high in this area at about 4 ft. He continued saying anything soaked into the soil comes onto his property or to the river. He asked if Mr. Helmuth will be able to add onto his business in the future.

Mr. Zercher came back on to state Mr. Helmuth attempted to talk to his neighbors about the business, but he was unable to reach them until after the notice was received. He stressed the previous staining business was part-time, and he did not understand a Special Use permit was required. He added the staining business is no longer in operation. He continued saying the new business will not involve staining, and it will comply with correct disposal off all products. Mr. Campanello asked if the petitioner would be against adding a commitment prohibiting staining and finishing of materials on the property. Mr. Helmuth agreed to the added commitment. Mr.

Zercher went on to point out existing trees, and an area where more trees could be planted. He also pointed out the location of a barn and noted it would be difficult to plant trees in that area due to the animals. Mr. Campanello stated he believes the buffering should be settled between Mr. Helmuth and his neighbor. Mr. Lyon stressed it is a large parcel, and Mr. Campanello added it is also an agricultural district. He went on to ask about containment of the diesel generator and fuel storage. Mr. Hesser questioned diesel fuel storage on the property, and Mr. Zercher responded a 300 gallon tank is on the property for diesel storage. Mr. Campanello suggested a commitment be added requiring all diesel fuel storage to be contained. Mr. Godlewski mentioned typically only a substantial amount of fuel requires containment. Mr. Campanello questioned if diesel containment is the Board's responsibility or the fuel providers. Mr. Hesser responded it is a concern the Board can consider. Mr. Atha stated a double-walled tank classifies as containment for fuel and does not require a dike. However, he continued chemical storage would need to be diked. Mr. Zercher responded diesel fuel will be the only chemical stored on the property. Mr. Miller mentioned 300 gallons is not a large amount of fuel. Mr. Atha stressed most farms do not have dikes around their fuel tanks, only the fertilizers. Mr. Miller suggested containment of diesel fuel be made a commitment due to the high water table and proximity to the Elkhart River. Mr. Campanello asked if the petitioner has a problem with providing spill containment for the fuel tank, and he responded no. Mr. Lyon asked if the petitioners' property has ever flooded, and he responded no. Mr. Miller also addressed the additional expansion concern. Mr. Hesser stated at this point the Board is approving the site plan submitted, and any expansion would need to be approved by the Board. Mr. Zercher stated no plan for future expansion is in place at this point, but Mr. Helmuth realizes any future changes will need to come before the Board. Mr. Hesser also mentioned this petition is approved for a maximum of two outside employees.

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** Joe Atha 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 woodworking and mill shop be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 3/13/17) and as represented in the Special Use application.
2. Staining/finishing of raw materials on site is prohibited.
3. Spill containment must be provided for the diesel fuel.

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

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

*****It should be noted that Mr. Hesser recused himself and stepped down*****

12. The application of *Baugo Community Schools* for a Special Use for a wireless communication facility on property located on the Northeast of CR 22, 196 ft. West of CR 3, in Baugo Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0171-2017*.

There were 13 neighboring property owners notified of this request.

Derek McGrew, 103 Wilshire Court, Noblesville, was present representing Verizon Wireless, PI Tower Development, and Baugo Community Schools for this request. Mr. McGrew stated his job is to fill coverage holes, and Verizon Wireless assigned him a specific location where calls are frequently dropped. He stressed the area he was given to search was centered on Jimtown High School. He added if possible they like to give back to the community by paying rent to an entity such as a school. He continued saying he looked at other properties in the area and he did not receive any interest from agriculturally zoned properties. Mr. McGrew stated unfortunately the only location available is in a residential zone, which is the counties lowest tier of preference in the ordinance. He went on to say a 105 ft. tower is being proposed in order to fill this coverage hole. He stressed collocation on an existing tower is impossible as every tower in the area is already being used by Verizon. He mentioned when he talked to the high school about building a cell tower on their property, the response was, "It's about time." He stressed the high school sits in a bowl and has dealt with a lack of cell coverage for years. Mr. McGrew stated the proposed tower meets and exceeds all of the required setbacks. He continued saying the tower will use an existing access to the school, with no additional traffic produced. He stressed the tower is quieter than a residential air conditioner, and no generator is being proposed. Mr. Miller asked if the tower will collapse on itself, and Mr. McGrew responded yes. He also asked that Mr. McGrew point out the proposed location of the tower, and if the tower could fall on the nearby school building. Mr. McGrew stressed it will not as it will collapse upon itself. He continued saying landscaping is being proposed as requested by staff. Mr. Miller asked if this cell tower will only be used for Verizon, or if it will be leased out to other cell companies. Mr. McGrew responded at this point it is only for Verizon; however, all five carriers in this area have coverage holes at the high school. He continued saying he does not typically apply for a tower taller than what is needed. He stated in this instance Verizon only needs a 100 ft. tower, but other companies may need a taller tower. He went on to request the Board approve a larger tower, as another cell company could come through and need a tower taller than 100 ft. Mr. Miller stated he would be inclined to approve what is being proposed, and the petitioners can come back for approval of a taller tower. Mr. McGrew responded if a 100 ft. tower is constructed a 50 ft. extension cannot be added to the top. He continued saying if only a 100 ft. tower is approved then a 100 ft. tower will be built. However, if the Board approves a taller tower, then sections of the tower would be stacked for future use. Mr. Miller asked if the setback requirements will be met for a taller tower, and he responded it would exceed the requirements.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated he is in favor of approving a taller tower. Mr. Miller asked staff if the Board can approve a taller tower. Attorney Kolbus clarified this petition was advertised as a

wireless communications facility, and Mr. Godlewski mentioned the tower height was not specified. Attorney Kolbus stressed approving a taller tower would not violate what was advertised. Mr. Godlewski mentioned the tower would still have to meet the required setbacks. Mr. Campanello stated he believes a taller tower will benefit the community, and Mr. Atha mentioned everyone will benefit from this tower. Mr. Campanello stressed no remonstrators are present, and he believes people are waiting for this tower to be built. He continued saying he does not have a problem approving this tower for taller than requested, and he asked the petitioner how tall of a tower he would like to have approved. Mr. McGrew responded 150 ft. should be tall enough as this is a residential area. Attorney Kolbus suggested this request be approved up to 150 ft. provided it meets all of the setback requirements. Mr. Godlewski stated an updated site plan will be needed as the approved site plan was based on a 105 ft. tower, and a taller tower will change the dimensions.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a wireless communication 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. A revised site plan must be submitted for approval by staff showing size and other dimensions of the proposed tower.

The following commitments 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. Tower is approved up to 150 ft., provided it meets the required setbacks.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon.

*****It should be noted that Mr. Hesser returned to the Board at this time*****

13. The application of ***River Oaks Community Church of Elkhart Inc.*** for an amendment to an existing Special Use for a church for the construction of a storage and restroom building on property located on the East side of CR 115, 300 ft. North of Jeri Ann Dr., common address of 58020 CR 115 in Concord 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-0163-2017*.

There were 31 neighboring property owners notified of this request.

Jeffery Schaffer, 3720 Oak Ridge Dr., Elkhart, a member of River Oaks Community Church was present with Randy Judd, the Facilities Manager, and Tom Eichorst, Chair of a church board representing this petition. Mr. Schaffer stated about two years ago a Special Use amendment was granted by the Board to allow for the construction of a recreational facility called Rock Park. He continued saying that park has been constructed and opened last

September. He added that project went very well, and it is frequently used by the community. He explained the park is made up of basketball courts, a playground, and soccer field. Mr. Schaffer stated the new request is to allow for a storage building/restroom facility. He stressed the church congregation has grown taking away from storage in the church building. He continued saying the church has two temporary storage units on the property and rents an additional unit. He explained the new building will provide the church with needed storage and a restroom facility for the park. He added scheduled community events will have a key to the restrooms, which will remain locked at all times. Mr. Campanello mentioned a walking path was proposed at the last hearing and asked if it has been constructed. Mr. Schaffer responded it is currently a mowed walking path, which is used frequently. Mr. Campanello also asked if the church has had any issues with the remonstrators from the last hearing, and Mr. Schaffer responded no.

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** Joe Atha 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 for the construction of a storage and restroom 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 commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 3/13/17) and as represented in the Special Use application.

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

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

14. The application of **Richard A. & Sandra S. & Gregory R. Hoover** for a Special Use for a home workshop/business for a small tractor and automotive shop and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the Southeast corner of SR 13 & CR 24, 345 ft. North of Stoney Dr., common address of 59534 SR 13 in Middlebury 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-0156-2017*.

There were nine neighboring property owners notified of this request.

Richard Hoover, 59534 SR 13, Middlebury, was present for this request and stated he would like to be self-employed. He continued saying his neighbors frequently come to him for small tractor/vehicle repairs, and they suggested he start a business. He mentioned he has spoken with most of his surrounding neighbors, but he was unable to reach all of them due to one moving. He explained his neighbors are in favor of this request. Mr. Hesser confirmed the residence and

asked if it is in town. Mr. Hoover responded he is not in town limits. Mr. Miller stated he is concerned several vehicles will be parked outside. Mr. Hoover stated he owns four vehicles, and his son parks two vehicles on the property. He continued saying the proposed building will allow him to put a few of his personal vehicles inside. He also added his neighbors cars are sometimes on his property while he is working on them. Mr. Campanello asked if a car counts as outside storage while it is being worked on, and he added he does not believe that should be classified as storage. Mr. Hoover stated the only outside storage on his property is a flat-bed trailer and pontoon. He continued saying he left room between the existing garage and new building to hide the storage. He went on to stress customers will bring their vehicles to be repaired; he will repair them and have the vehicles picked up as soon as possible. Mr. Hesser stated he is concerned, because he has seen similar operations with up to 50 cars outside, and some are not worked on for months. Mr. Hoover responded he avoids having too many cars, as he can determine what he wants to work on. He continued stressing he does not have a lot of room, and he would like to keep his yard looking nice. Attorney Kolbus mentioned a commitment can be added restricting the number of vehicles/tractors which can be kept on the property at one time. Mr. Hesser suggested a time limit be added to this petition. Mr. Hoover clarified he will only repair lawn mowers/garden tractors, no large tractors.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stressed he is concerned that this type of operation frequently gets out of hand. However, he added he is okay approving a small, local operation, which deals within its capacity. He also stated he approves of the Developmental Variance. Mr. Hesser stated no remonstrators are present, suggesting the neighbors trust him. He continued suggesting a time limit be added to this petition in case any problems arise. Mr. Campanello suggested a three year time limit. He stressed it is important to remember one or two cars may be parked outside. He asked if a time limit should be added restricting how long a car can be kept outside. Mr. Hesser responded it would be hard to police that commitment, and he suggested a two year time limit be imposed instead. He continued saying when Mr. Hoover comes in for renewal; his neighbors will be given the opportunity to voice any concerns that arise. Mr. Atha asked if outside storage should be limited, and Mr. Hesser responded he will give the petitioner flexibility with that. Mr. Hoover came back on to add the new building will have room to store four vehicles. He continued saying he will not work on four vehicles at a time, and he stressed any vehicle being worked on will be inside the building.

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 home workshop/business for a small tractor and automotive shop be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 3/9/17) and as represented in the Special Use application.
2. No outside storage of vehicles, tractors and equipment.
3. Approved for a period of two years with renewal before the Elkhart County Advisory Board of Zoning Appeals.

Further, the motion also included that a Developmental Variance to allow for the total square footage 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 180 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 3/9/17) and as represented in the Developmental Variance application.

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

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

15. The application of *Dakota Santoyo* for a Use Variance to allow for a kennel, for a 9 ft. Developmental Variance to allow runs 41 ft. from the property line (Ordinance requires 50 ft.), and for a 80 ft. Developmental Variance to allow runs 120 ft. from a residence not occupied by the kennel owner (Ordinance requires 200 ft.) located on the South side of CR 20, 914 ft. East of CR 111, common address of 24654 CR 20 in Concord Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0169-2017*.

There were eight neighboring property owners notified of this request.

Mr. Godlewski submitted a letter in remonstrance [*Attached to file at Remonstrator Exhibit #1*]. Attorney Kolbus mentioned this request is not for a commercial kennel. He stressed this request is based on the number of personal dogs not boarding other dogs, because more than five adult dogs is classified as a kennel.

Dakota Santoyo, 24654 CR 20, Elkhart, was present representing this request. Mr. Santoyo stated he is requesting to keep more than five dogs, because they show American Bullies. He continued saying they purchased their home in order to pursue dog showing. He stressed their dogs are contained and up to date on their shots. He continued saying their dogs are social animals, which are frequently around people and animals at the shows. Mr. Miller asked if the dogs are breed, and Mr. Santoyo responded he has completed one breeding so far. He continued saying they had five dogs when their home was purchased, but they have since acquired three more dogs. He stressed they were unaware a Special Use was required when the additional dogs were purchased. He added he was informed no special approval was required until the complaint was filed. Mr. Campanello stated he is impressed with the presentation. Mr. Santoyo added he has a box with the dogs' show winnings. Mr. Campanello clarified dogs are not brought there by owners who no longer want them. Mr. Atha asked if they plan to breed the dogs, and Mr. Santoyo responded they would like to have one litter a year. He continued saying

they have a large number of dogs in order to produce high-quality show dogs. Mr. Miller asked the number of dogs currently on the property, and Mr. Santoyo responded eight. Mr. Atha mentioned breeding would produce more dogs than allowed. Mr. Hesser explained puppies do not count towards the total number of dogs allowed. Mr. Godlewski clarified puppies are considered adult dogs once they reach six months. Mr. Santoyo stressed all of the puppies are micro chipped and up to date on shots. He added before a puppy is purchased the prospective home is inspected. He continued saying the new owners keep them informed on the dogs' progress. Mr. Hesser stated the number of puppies can be considered, but they do not count towards the total number of dogs. Attorney Kolbus stressed if this request is granted the petitioner needs to understand that the puppies must be off of the property once they reach six months of age. Mr. Santoyo asked if one puppy can be kept per litter. Mr. Hesser stated if a puppy is kept past six months one of the existing dogs would need to leave the premises, because they cannot exceed eight adult dogs.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller asked if Mr. Santoyo would like to speak to the remonstrance letter submitted, and he mentioned it seems like eight dogs would cause a lot of noise. Mr. Hesser confirmed the petitioner received a copy of the letter. Mr. Santoyo responded the letter, which mentioned dog fights and a dog dying. He continued saying a complaint was made due to dogs barking, but dogs biting/fighting is not taking place. Mr. Miller asked if the dogs are quiet, and Mr. Santoyo responded many people do not realize how many dogs they own. He continued saying their dogs are kept indoors and occasionally kept outside when they cannot be supervised in the house. He also added the dogs are not all kept outside at the same time. Mr. Atha asked if additional approval is needed for dog breeding, and Mr. Campanello mentioned it is not a puppy mill. Attorney Kolbus stated once the limit of eight adult dogs is reached, the decision will need to be made to keep a puppy past six months of keep an existing dog. Mr. Miller asked if additional dogs will be brought to the property for breeding purposes, and if so will those dogs count towards the total number allowed. Mr. Santoyo responded he breeds within his own stock, but he occasionally receives interest from people who would like to breed with their dogs. He continued saying the female could then be brought to their home but only for a short time. He added breeding typically takes place at a vet or through artificial insemination. Mr. Hesser noted the presentation was impressive, but he cannot agree with staffs' finding #3. He continued saying nothing in the presentation proves this property is peculiar enough to support approval of a Use Variance. He added staff's comment about the location being residential and close to city limits would incline him to deny this request. He stressed he does not have a problem with the Developmental Variance, and he noted reducing the number of dogs to five would not require a Use Variance. Mr. Campanello stated he understands Mr. Hesser's view based on land use. Mr. Miller suggested adding a time limit to this petition, but Mr. Hesser stressed land does not change over time. Mr. Miller stated he understands it is odd to allow so many dogs in a residential area, but he likes the dogs, presentation, and people. Attorney Kolbus stated if the Board believes this petition satisfies the Use Variance criteria a motion needs to be made and voted on. Mr. Miller stressed a time limit could be imposed to allow the neighbors a chance to speak if the noise increases. Mr. Campanello asked how long they have lived on the property, and Mr. Santoyo responded since August. Mr. Campanello mentioned no address is listed on the

remonstrance letter. Mr. Hesser explained the Commissioners increased the number of dogs allowed without a Special Use when the new Zoning Ordinance was adopted. Mr. Campanello clarified this petition is granting three additional adult animals than allowed along with puppies, which will have to be gone before they reach six months.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **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 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 commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 3/13/17) and as represented in the Use Variance application.
2. Limited to 8 dogs.

Further the motion included that a 9 ft. Developmental Variance to allow runs 41 ft. from the property line (Ordinance requires 50 ft.), and for a 80 ft. Developmental Variance to allow runs 120 ft. from a residence not occupied by the kennel owner (Ordinance requires 200 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 180 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 3/13/17) and as represented in the Developmental Variance application.

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

Yes: Joe Atha, Tony Campanello, Denny Lyon.

No: Roger Miller, Randy Hesser.

16. The application of *Clayton Bontrager* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the South side of CR 34, 900 ft. West of CR 35, common address of 13838 CR 34 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-0160-2017*.

There were seven neighboring property owners notified of this request.

Clayton Bontrager, 13838 CR 43, Goshen, was present representing this request. Mr. Bontrager explained he would like to build a new home and live in the existing residence until construction has been completed. He stressed remodeling the existing home is not possible. He also added the current home is close to the road, and the new home will be built farther of off the road. Mr. Hesser noted the application request a year to remove the old residence, and he asked if the Staff recommendation of six months after the Certificate of Occupancy is issued will be

adequate. Mr. Bontrager responded he requested a year from the meeting date, and six months from completion of the new residence will be fine.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser mentioned he was under the impression these cases were no longer going to need Board approval. Mr. Godlewski responded in the past the old residences were not always torn down; however that no longer seems to be the case. He added staff is still looking into changing it.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha 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 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 old residence must be removed within 6 months of completion of the new residence.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 3/10/17) and as represented in the Use Variance application.

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

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

Mr. Campanello requested the Board member packets no longer include all of the cell tower specs.

17. The staff item for New Paris Elementary (SUP 20034445) was previously heard as item #10 on page 7.

18. The staff item for Power Line Amish School (SUP-0094-2017) was previously heard as item #9 on page 7.

19. The meeting was adjourned at 10:42 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary