

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 19<sup>TH</sup> DAY OF JANUARY 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. Mr. Hesser welcomed Mr. Atha as a new member of the Board of Zoning Appeals.

3. A motion was made and seconded (*Miller/Lyon*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 15<sup>th</sup> day of December 2016 be approved as read. The motion was carried with a unanimous roll call vote.

4. 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.

5. A motion was made and seconded (*Lyon/Miller*) to elect the following Board members: Mr. Lyon as Hearing Officer, Mr. Hesser as Chairman, Mr. Miller as Vice Chairman, and Mr. Campanello as Secretary.

**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 *Nappanee Raceway Inc/Garold Delagrang*e for a site plan amendment to an existing Special Use for animal racing or training (track) to allow for the construction of an open pavilion on property located on the South side of CR 6, 1,545 ft. West of CR 13, common address of 24332 US 6 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-0681-2016*.

There were six neighboring property owners notified of this request.

The petitioner was not present; hearing continued to the end of the 8:30 A.M. time slot.

See item #12 on page 4.

7. The application of *Marion & Kathy Miller* for a Special Use for a home workshop business for a retail greenhouse, roadside stand, and garden supplier on property located on the North side of CR 14, 450 ft. West of CR 35, common address of 14377 CR 14 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-0672-2016*.

There were 14 neighboring property owners notified of this request.

Paul Hochstetler, Freedom Builders, 54824 CR 33, was present along with Marion Miller representing this petition. Mr. Hochstetler submitted a petition signed by neighboring property owners in favor of this request [Attached to file as Petitioner Exhibit #1]. He then stated Mr. Marion Miller is seeking approval to grow flowers and produce to sell on site. He continued saying two greenhouses are already being used on the property, but they would like to build a third. Mr. Hochstetler pointed out the location of the existing greenhouses, proposed greenhouse, and proposed retail space on the aerial. He stated retail sales of flowers, produce, and garden supplies will take place in a roadside stand to be constructed in front of the proposed greenhouse. He stressed this will be a small scale business run mainly in the summer months. He believes this business will only produce 5 to 10 customers a day. He also added a semi will deliver potting soil to this location about twice a year, and all other deliveries will be made by FedEx or UPS. Mr. Hesser stated this property appears to have plenty of room for a semi turn-around without backing on or off of CR 23. Mr. Campanello questioned if the revised site plan requested by Staff has been submitted yet, and Mr. Hochstetler stated it has not. Mr. Hochstetler stated the new site plan will show the location of the roadside stand. Mr. Campanello questioned an area on the map, and Mr. Hochstetler responded that is an existing garden.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated he is comfortable with the semi turn around, and Mr. Hesser agreed. Mr. Campanello requested Mr. Hochstetler come back on and asked where parking will be located. Mr. Hochstetler pointed out four proposed parking spots on the West side of the proposed greenhouse. Mr. Campanello also asked the number of employees, and Mr. Hochstetler responded there will be no outside employees. Mr. Hesser clarified the updated site plan can be approved by staff, and it does not need to come before the Board.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop business for a retail greenhouse, roadside stand, and garden supplier 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 petitioner must provide a revised site plan clarifying where retail activities will take place.

The following commitment was imposed:

1. Approved in accordance with the revised site plan to be submitted for staff approval 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 *David & Jennifer Berkey* for a Special Use for ground mounted solar panels on property located on the South side of CR 44, 1,010 ft. West of CR 13, common address of 24194 CR 44 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-0684-2016*.

There were four neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems LLC, 1952 W. Market St., Nappanee, was present representing this petition. Mrs. Salyer stated they would like to install a solar system on the South side of the woods along the back of this property. Mr. Lyon questioned if 10 ft. will meet the setback requirements. Mr. Godlewski responded 10 ft. is the setback for an accessory structure. Mr. Hesser added this petition does not include a Variance. He also questioned if the property owner to the South support this petition, and Mrs. Salyer responded yes. Mr. Campanello questioned how tall the solar panels will be, and she stated 16 ft. Mr. Hesser questioned if this will be one long solar panel, and that was confirmed.

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** Joe Atha, **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 ground mounted solar panels 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 12/8/16) 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.

9. Mr. Godlewski presented the Certification of Residency for Mr. Atha and Mr. Campanello. The forms were signed and submitted for the record.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the Certification of Residency for Mr. Atha and Mr. Campanello be accepted into the record.

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

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

10. Mr. Godlewski presented a staff item to approve a contract for Special Counsel for Attorney Glenn Duncan to represent Elkhart County during the Indiana Gravel petition. Attorney Kolbus stated he represents the City of Goshen and will have to step down for that

petition due to a conflict of interest. Mr. Godlewski passed around a copy of the contract. He added this contract will cover the life of this case including any appeals.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the contract for Special Counsel for Glenn Duncan be approved for the Indiana Gravel petition.

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

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

11. Mr. Godlewski introduced Mae Kratzer as the new planner.

12. The application of *Nappanee Raceway Inc/Garold Delagrang*e for a site plan amendment to an existing Special Use for animal racing or training (track) to allow for the construction of an open pavilion, previously heard as Item #6 on Page 1 was recalled at this time.

Garold Delagrang, 11270 W 600 S, was present representing this petition and stated he would like to construct a pavilion behind the grandstands. Mr. Hesser questioned what that location is currently being used as, and Mr. Delagrang pointed out the current drive and bleachers on the site plan. He then stressed many Amish come to the races, and shade is not readily available to them. He also mentioned picnic tables will be placed inside. Mr. Lyon questioned if anything will be sold from the pavilion, and Mr. Delagrang responded no. Mr. Hesser asked if vendors are located on the premises. Mr. Delagrang stated food is sold out of their cook shop.

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** 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 site plan amendment to an existing Special Use for animal racing or training (track) to allow for the construction of an open pavilion 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 12/6/16) 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.

13. The application of *Indiana Gravel Inc. (Buyer) & Lavern & Josephine Miller Family Limited Partnership (Seller)* for a Special Use to allow for a mining business for the preparation of dirt, sand, gravel, and stone for sale to the public on property located on the West side of US 33, 2,300 ft. South of CR 40, in Elkhart Township, zoned A-1, came on to be heard.

Due to the large amount of people present: hearing continued to the end of the 9:00 A.M. time slot.

See Item #15 on page 6.

14. The application of *Akos Sefcsik* for a Use Variance for warehousing and storing of a semi truck and trailer on property located on the Southwest side of Claudia Ln., West of Westlake Dr., South of US 20 , common address of 57048 Claudia Ln. in Middlebury Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0687-2016*.

There were 23 neighboring property owners notified of this request.

Paul Eicher, 57048 Claudia Ln., was present for this request, seeking approval to park his semi at his home. Mr. Eicher submitted pictures showing where his truck is typically parked [Attached to file as Petitioner's Exhibit #1]. Mr. Campanello clarified Mr. Eicher is parking both the tractor and trailer in his drive. Mr. Eicher stressed the vehicle is parked completely in his drive, and he stated the garbage truck has not had any issues driving through the round-about. He added a neighbor down the road also parks a semi on his property. Mr. Campanello questioned if Mr. Eicher owns the trailer, and he responded he owns both the semi and trailer. He continued stating he can park the trailer at a different location if needed. Mr. Miller asked how often Mr. Eicher's truck is parked in his drive, and Mr. Eicher stated he is home every day for about 12 hours. Mr. Campanello questioned if he leaves it running to warm up in the winter, and he responded only for 15 minutes. Mr. Campanello also asked if he has looked into an alternate location to park his truck. Mr. Eicher stated he has checked into two different locations, but they do not currently have room for his truck. Mr. Campanello questioned where his neighbor is located who also parks a semi on his property, and Mr. Eicher responded 1/8 of a mile from his property. Mr. Lyon asked if that owner has permission to park it there, and he responded he is not sure. Mr. Eicher also stressed his neighbors are parking on the round-about, and he believes this could cause an accident. Mr. Lyon also questioned if his neighbors to the North are in favor of this, and he responded yes. Mr. Hesser asked if parking just the cab in his drive would require a Special Use, and Attorney Kolbus responded that would not make a difference.

David Kozlowski, 57088 West Link Dr., came on in remonstrance. Mr. Miller requested Mr. Kozlowski point out his home on the aerial. Mr. Campanello asked if other commercial trucks are parked in this subdivision. Mr. Kozlowski pointed out the location of another truck, and he confirmed the owner has not petitioned for a Special Use. He also added he has not seen it parked on the property for a while. He stressed he has lived in his home since 1982, and the county has only repaved their roads once during that time. He continued saying he believes with strictly residential use these roads could last another 15-20 years. Mr. Kozlowski stated by allowing semis to park in their subdivision his property value will decrease. He believes approving this petition will cause an extra burden on county residence as their roads will need to be repaved more often. He also added the way Mr. Eicher enters and exits the subdivision adds an extra burden to an already busy intersection. He stressed allowing commercial vehicles in this subdivision will create the need to repave their roads every other year causing a huge burden on tax payers.

Emily Bender, 57034 Claudia Ln., the neighbor to the North of the property was present in remonstrance. Mrs. Bender stressed this is an older subdivision with no sidewalks, and many children ride their bikes and scooters through the subdivision. She is also against this petition due to the road conditions, because the trash truck has already caused a large pot hole in the cul-de-sac. She stressed the semi can fit in their drive on one side. However, if it is parked on the other side, it sticks into the road blocking access to her drive. She also stated Mr. Eicher's family vehicles have driven across their property to get around the semi. She continued saying she has addressed the issue with the Eichers' land lord, but it still continues to happen.

The public hearing was closed at this time.

Mr. Hesser stated a shortage of places to park commercial vehicles is a problem throughout the county. Mr. Campanello added he is not sure how Mr. Eicher backs the semi into his drive.

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

**Motion: Action: Deny, 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 for warehousing and storing of a semi truck and trailer in a R-1 district be denied.

**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 Attorney Kolbus recused himself at this time, and Attorney Duncan came on as the Board's Attorney\*\****

15. The application of ***Indiana Gravel Inc. (Buyer) & Lavern & Josephine Miller Family Limited Partnership (Seller)*** for a Special Use to allow for a mining business for the preparation of dirt, sand, gravel, and stone for sale to the public on property located on the West side of US 33, 2,300 ft. South of CR 40, in Elkhart 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-0688-2016*.

There were seven neighboring property owners notified of this request.

Barry Pharis, Brads-Ko-Abonmarche, 1009 S. 9<sup>th</sup>, Goshen, was present representing Indiana Gravel Inc, with Burnell Weaver and Devon Miller. Mr. Pharis stated this petition has a negative recommendation from Staff and a lengthy opposition from the City of Goshen. He stressed the city's position covers four areas: traffic impact, Goshen Land Plan, Redevelopment Plan, and waterfowl. Mr. Pharis went on to review Indiana Gravel's plan for this property. He began by stating this property has 1,786 ft. of frontage on US 33. He continued saying 31 acres of this property is within the airport's height restriction; this means for every foot away from the airport they can only build up one foot. He pointed out a point on the aerial and stated the maximum height is 15 ft. and followed it down to where the maximum height is 1 ft. Mr. Miller questioned if that applies to the entire outlined triangle on the aerial, and Mr. Pharis confirmed. Mr. Hesser questioned why the entire length of the property is not under a height restriction as a runway runs the length of the property. Mr. Pharis responded the runway along the property is a grass runway which does not affect height restrictions on the property. Mr. Pharis pointed out

the proposed locations for a 30 ft. wash tower, a 1,200 sq. ft. office building, and a 7,200 sq. ft. existing barn to be used for storage and maintenance. He continued by pointing out the two existing houses on the property, and he stated both houses have a curb cut along with one for an existing barn. He stressed their intention is to sell one house with the barn, and eliminate the curb cut for the barn. He stated they would then request a new curb cut from Indiana Department of Transportation for the gravel operation. He pointed out this property currently has three curb cuts, and it will end up with three curb cuts. Mr. Pharis stated this property is zoned A-1, and the Ordinance permits mining in an A-1 zone with Special Use approval. He continued saying this operation will mine gravel and sand, but they will not accept, store, grind, or haul concrete or asphalt. He also added Burnell Weaver currently operates Yellow Creek Gravel on CR 11, West of Goshen, which is nearing the end of production. Barney Beer, he stated, owns a mine in the North East quadrant off of SR 120 along with an operation in New Paris, and their future operations will be in Milford. He continued saying he is aware of another operation which will be filing for a Special Use West of Goshen, but they will primarily be mining sand for animal bedding along with accepting concrete for grinding. Mr. Pharis stated Mr. Weaver has looked at this site, and he does not feel there will be any competition between the two companies. He went on to stress this site will serve the City of Goshen Street Department, Elkhart County Highway Department, Eagle Ready-Mix, Ozinga, and any other contractors constructing roads or buildings in Elkhart County. He also stressed other than the wash tower and any piles of stored gravel, sand, or pea stone, the operation will be below grade. Mr. Pharis stated the Indiana Mining Aggregate Association, which Indiana Gravel belongs to, requires they prepare a reclamation plan to be implicated as an active part of their business plan. He continued saying they anticipate this site will be in operation for at least 50 years. He added prior to committing to a contract with the seller, Loren Sloat met with the City of Goshen, and he was told it is not in the city and not their concern. He stressed Mr. Weaver met with many of the Airport Board members and reviewed the Federal Aviation Administration ruling. He continued saying he left with the understanding that once the height and fowl issues were addressed, they would have no more concerns. He also stated an initial letter in favor of this project was submitted, but it was later rescinded. Mr. Pharis added he requested a meeting with the City on December 15<sup>th</sup>, and he was later told they were working on a response. He then contacted Jason Auvil to request a copy of the submitted letter, and he suggested Mr. Pharis schedule time to sit down and review the letter and file. He stressed if they had been able to meet with the city prior to this meeting to discuss their concerns, they would not be in this position. He stated they have made a reasonable effort to alleviate the city's concerns. Mr. Pharis went on to address Goshen's concern with traffic. He stated this is on a state road which is designed to handle large trucks, and INDOT standards have been met for the weight requirements. He stated if this is approved, INDOT will conduct a traffic study, which will dictate the improvements they will need to make on US 33. He continued saying they could be required to build over 500 ft. of state road in order to provide a left turn lane from the South. He stressed they must be compliant with INDOT's request to receive a permit. Mr. Pharis continued saying their largest client at this time will be Eagle Ready-Mix, whose trip will be considerably shortened with this new location. He stated the second area of concern is the Goshen Land Plan, and the city's potential lost revenue from their investment. Mr. Pharis then submitted a handout addressing the land plan [Attached to file as Petitioner's Exhibit #1]. He stated the land around the airport has been designated for industrial use, and

he stressed they represent clients who have a 200 acre, M-2, manufacturing subdivision without a single building. He continued saying the airport owns or has control of 350 acres. He stated combined the manufacturing subdivision, airport, and private farms add up to 750 acres which have access to CR 27 and CR 40. He stressed this 130 acre property is the only one requiring access to US 33 and INDOT curb cuts. Mr. Pharis then added their 130 acres to the 750 acres, and he stated their piece represents only 14.6% of the property. He continued stating it is difficult to believe this piece alone can cause a \$400,000 negative impact to the City of Goshen. He also added this will save money for the Highway Department as it will provide them with a closer location for gravel. Mr. Pharis feels the only real concern for the City is the issue of fowl attracted by the pond. He stated he understands fowl and airplane collisions are a concern, but he has traveled to many airports located by water such as Hong Kong, Portland, San Francisco, and Seattle. He then stressed airports have the right to kill fowl, and he believes technology, science, and common sense will develop better means of controlling fowl. He went on to say most fowl do not nest on the water instead they nest adjacent to it. He stated fowl love hay fields, because it provides great nesting material. He added they will not allow hay to be grown on their site, and they are willing to work with the Airport Board to help them do the same. Mr. Pharis stated geese and other fowl like a gentle slope to the water's edge and short grass. He stressed the banks to this pond will be stone with a two foot drop off to discourage fowl, and they will also implement other procedures and practices to make this pond unattractive to wildlife. He continued saying for the next 50 years fowl will be discouraged from this site due to the mining activity. Mr. Pharis went on to say the county Staff Report is also negative, but Staff agrees this is consistent with the intended zone and will substantially benefit the public welfare. However, they have recommended denial based on the fact this is in close proximity to 28 homes. He believes those homeowners will be more adversely impacted by manufacturers in this area than by this mining operation. He stated gravel is a resource which is only available in certain areas. He stressed they did not intentionally chose a location close to the airport, but a large gravel deposit is located here. Mr. Hesser stated Mr. Pharis answered most of his questions, but he asked if there will be any grinders on the site. Mr. Pharis clarified they will not grind concrete, but they will have grinders for gravel. Mr. Campanello questioned what this operation will look like, and what will happen inside the triangle on the map. Mr. Pharis responded they can mine inside of the triangle due to their operation being below grade. Mr. Campanello also asked what this property will look like in 50 years. Mr. Pharis responded like Fiddler's Pond, but there will be no slopes to the water's edge. Mr. Campanello then asked if any airports in Elkhart County have water on their property, and Mr. Pharis stated he is not sure. Mr. Campanello stated he believes Elkhart Airport has a small lake and pond on their property. Mr. Miller mentioned Syracuse Airport is located by a lake. Mr. Lyon questioned how low they plan on mining and what the water depth is currently. Mr. Pharis responded 80 to 100 ft., and the high water table is 16 to 18 ft.

Mike Yoder, County Commissioner, 13519 CR 20, Middlebury, was present neither for nor against this petition. Mr. Yoder stated he understands Goshen's concerns, but he is concerned that people in this county are under the impression gravel is easy to come by. He continued saying his perception is that is not completely true, as he knows many farmers who may have a small amount of gravel but not enough to warrant this type of operation. He stressed this is a large and very valuable deposit. He also added the county's streets and roads will use

this material. Mr. Yoder stated he knows of counties in Indiana that import this type of material. As an example he mentioned Daviess County is building their own asphalt plant in order to lower their asphalt prices. He also added Daviess County imports all of the materials used for their roads. He went on to question how many places in Elkhart County are like this, and he stressed this is a very unique resource.

Adam Scharf, 1631½ S. Main St., Goshen, District City Council Representative for the South side of the city including the industrial area and the airport, came on to make a few comments on the packet submitted by Goshen. Mr. Scharf clarified the Goshen City Council has never taken a vote or stand on this issue. He continued saying the letter submitted by Mayor Stutsman details some concerns from talking with the Board of Aviation Commissioners and Goshen Redevelopment Commission. He stressed he is one of five members on the Redevelopment Commission, and he did not know about the city's issues until reading the letter. Mr. Scharf stated the Redevelopment Commission had a public meeting two days ago, where they were presented with a resolution draft to recommend denial. However, he stated, the Board discussed this issue, did not believe they had the ability to make a recommendation to this body, and chose to take no action on this issue. He also added the December 23<sup>rd</sup> memo from Mark Brinson states the proposed use is incompatible with the South East Economic Development Area Plans. However, he continued, the map shows this parcel is not within the boundaries of that plan. Mr. Scharf stated Goshen City Street Department buys and uses sand, gravel, and other such products from local mining operations, and he recognized the need for these materials will carry into the future. He stressed many neighborhood meetings have taken place to discuss the sewer, water, and utility extensions, where the property owners were told they would not be forced to hook onto city utilities. He believes the concerns listed in the packet imply a different standard is being imposed on this particular property owner. He stressed this letter seems to imply the subject property is expected to be annexed into the city, rezoned to manufacturing, and hooked onto public water/sewer. He went on to say this could be developed into a dense manufacturing operation, which would not allow for warehousing and storing operations that are commonly found near airports.

Harold Schmucker, 66217 US 33, came on in favor of this petition and pointed out his home on the aerial along with his parent's home. Mr. Schmucker also pointed out a piece of land now part of the Goshen Airport, which his family owned twenty years ago. He continued saying it was their intention to subdivide this property, but they were told they could not due to height restrictions from the runway. He added he asked if the runway would ever be moved due to being a grass runway that is not used often, but he was informed due to federal regulations it would not be moved. Mr. Schmucker stressed his father believed that property was useless, and they then sold it to the airport. He stated he is glad some of this property can be put to good use. He also stressed he does not see any negative impacts from this petition, and he would much rather have a gravel pit next to his property than an industrial park. He continued saying this could one day look like Fiddler's Pond. Mr. Schmucker stated he has known Devon Miller for a long time and stressed anything he tells you, he will do.

Jeremy Stutsman, Mayor of Goshen, 202 S. 5<sup>th</sup> St., was present in opposition to this petition. Mayor Stutsman addressed the commissioners' verses commission typo in his letter. He also clarified he asked for a discussion with the Redevelopment Commission and not a decision. Mayor Stutsman went on to say the City of Goshen Government tries to stay out of

land use as much as possible, but they cannot stay out of it completely. He stressed he does not believe this land can be used as a gravel operation. He agreed this would be great for the Goshen Street Department, but he also added he is not convinced this is the only location with a large gravel deposit in Elkhart County. He continued by addressing the investment issue and stated he understands you either win or you lose with investments. Mayor Stutsman stressed his main concern with this petition is the safety of every pilot and passenger flying in and out of Goshen Airport. He continued saying Goshen Airport is one of the top 10 busiest general aviation airports in Indiana out of 66 airports and excluding the four major airports. He stressed this is a very busy airport with multiple chartering companies for jets and helicopters. He believes this gravel operation will start to puddle and create ponds much sooner than the implied 50 years. Mayor Stutsman stressed he is very concerned with the amount of geese this location could gather. He continued saying the FAA has labeled geese the second most dangerous bird to aviation. He mentioned a year or two ago an airplane hit a small bird, and although they landed fine it caused \$12,000 worth of damage. He stated fowl is his main concern, and he is not sure how this issue can be avoided. He brought up the fact that Fiddler's Pond attracts hundreds of geese, and he does not know how they can be managed so close to the airport. Mr. Stutsman stated he does appreciate that this company is taking steps to deter geese, such as a two foot drop off to the water's drop-off. However, he is concerned about someone falling into this pond and not being able to get out due to the edge. He went on to say the President of the Airport Board was unable to make it to this meeting, but he did ask Mark Shillington, an engineer who works with the FAA and the Goshen Airport, to speak on his behalf.

Mark Shillington, Woolpert Inc., 7635 Interactive Way, Indianapolis, a civil engineer specializing in airport development and federal funding programs, was present in remonstrance. Mr. Shillington stated he has worked with the Goshen Airport since 2000, and he also works with many other airports. He continued saying he has three main concerns with this petition, which are identified by the FAA. He added Goshen Airport has received several million dollars of federal funds, which come with grant assurances. He went on to state the FAA publishes advisory circulars that relate to what they consider compatible land use on or near airports. Mr. Shillington stated one issue raised by this petition is that surface mining is specifically mentioned as a potentially hazardous condition within 10,000 ft. of airport property, if it serves turbine powered aircraft, which the Goshen Airport does serve. He went on to say his second concern is height restrictions, and he believes the petitioner has misrepresented the height restrictions on this property. He stated the entire property is under a height restriction not just the triangle outlined by Mr. Pharis. He continued saying that triangle seems to line up with the approach to Runway 23 which has a 20 to 1 approach slope for 5,000 ft. from the end of the runway. He added the remaining property is subject to height restrictions from the transitional area of Runway 927. Mr. Shillington stated for 500 ft. from the centerline of the runway no point can be higher than the runway, and the remaining property is subject to a 7 to 1 slope. He continued saying the height of any equipment and stockpiles would be a concern over the entire property. His third concern deals with the location of two instruments, and he pointed out their location on the aerial. Mr. Hesser clarified he is talking about an area near the Southwest corner of the subject property. Mr. Shillington stated a glide slope attendant and an automated weather observing system are both used by the pilot to make an instrumented approach to the Eastern runway. He stressed in times of poor visibility a properly trained pilot can fly and land solely

with instruments. He continued saying the glide slope attendant produces a navigational signal which provides vertical alignment to the pilot in relationship to the runway. He added the weather station provides on the spot weather information to assist the pilot in determining the altitude setting used to find elevations. Mr. Miller asked if there is only one glide slope on airport property, and Mr. Shillington responded it is the only glide slope. He also added another navigational instrument called a localizer is located on the far West end of the runway, which provides the horizontal alignment. Mr. Campanello requested Mr. Shillington point out the instruments on the aerial. He also questioned if any height difference from the proposed gravel operation will interfere with the instrumentation. Mr. Shillington responded he is more concerned with concentrated dust emissions as dust particles can scatter the electromagnetic signal of the glide slope. Mr. Miller clarified the location of the glide slope. Mr. Campanello questioned if it can be relocated to a different spot, and Mr. Shillington responded no due to standards of location. He continued saying the slope of the instruments signal has a narrow range. Mr. Miller mentioned the subject property is 750 ft. from the centerline of the runway, and he questioned how the 500 ft. height restriction applies to this property. Mr. Shillington responded an Indiana State Law called the Tall Structures Act, determines the protected airspace for an airport. He continued saying no object within a 1,000 ft. box around the runway can be taller than the runway. He clarified this means a 500 ft. restriction on any side of the runway in which the surface must be flat. He then added for an additional 500 ft., the land is restricted to a 7 to 1 slope. He explained this means one foot of elevation for every seven feet of distance. Mr. Campanello questioned if that is based on the topography the land, and Mr. Shillington stated it is based on the runway elevation. Mr. Campanello questioned if they have looked into the topography of the proposed site. Mr. Shillington responded he has not, and he is simply laying out the FAA guidelines. Mr. Hesser clarified Mr. Shillington is not necessarily saying this property violates the regulations; he is just stating what regulations apply to this property. Mr. Miller questioned if the houses on the property are in violation of a height restriction, and Mr. Shillington responded they are also subject to a height restriction. He continued saying the instruments are also affected by large metallic objects, and he questioned where the gravel operation proposes to put excavation equipment and trucks. He stress similar objects close to glide slopes have been known to distort the signal. He stated the FAA obligates the Airport Board of any airport receiving federal funds address any issues with land use decisions near their airport. He continued saying, if conflicting land use is approved by the community, the FAA could determine it is not a compatible land use and withdraw funding from the airport. Mr. Lyon questioned if industrial/commercial use on the subject property would be worse than gravel. Mr. Shillington responded industrial uses have not been determined as hazardous to an airport, but surface mining is mentioned. He continued saying height, no matter what is on the property, will remain a concern, but industrial uses are not mentioned as a wildlife attractant. He also added dust from a smokestack would be another concern with an industrial use.

Mayor Stutsman came back on to close by expressing gratitude for allowing them to present. He stated he does not believe anyone present took part in deciding where the airport would be located, but he stressed airports come with many regulations. He continued saying he wants to ensure everyone's safety is considered with this decision. He also added the wheat issue has been address, and it is not a problem. Mayor Stutsman stressed it is very unfortunate that this property is adjacent to the airport. Mr. Campanello asked Mayor Stutsman what he

would like to see on this property. He responded the City of Goshen has always considered this location industrial property. However, he is not sure with height restrictions if that would be possible. He went on to stress he wishes the City of Goshen could purchase this property to add onto the airport, but the city does not have enough money at this time. He then stressed many times cities expand so quickly they create a hodge-podge of different uses, and he believes the city needs to think about how they would like to expand. Mr. Campanello questioned if the main two issues are waterfowl and dust. Mayor Stutsman responded he mentioned the Goshen's investment in that area, but he realizes investments are a gamble. He also added today was the first time he had heard about the issue with dust. He stressed he believes the waterfowl issue is not if but when. He stated he can overlook some of the issues with this petition, but the danger from waterfowl is very concerning.

David Daugherty, Goshen Chamber of Commerce, 232 S. Main St., Goshen, came on in remonstrance. Mr. Daugherty stated the Goshen Chamber of Commerce supports both the Staff Recommendation and Mayor Stutsman's comments. He also believes Mr. Pharis and Commissioner Yoder made some good points for this gravel operation. He continued saying from around 2003 to 2005 the City of Goshen was facing a problem with industrial land. He stated they looked for the best areas in the community for industrial growth, and this area was identified as a logical progression of industrial use. He stressed the City then started to invest money to support growth in that area. He closed by saying this is a very important area for future growth, and it could potentially supply many jobs for the community. Mr. Campanello stated previous testimony has suggested manufacturing would be limited due to height restrictions. Mr. Daugherty stated the height restriction is 7 to 1, and this issue was addressed when they first looked into this property. He stressed this property has the ability to produce some substantial development especially with the US 33 access. He stated they looked at every parcel of land and determined which ones have the easiest access to water and sewer. He continued saying this location has access to US 33, which could keep semis from driving through Goshen.

Mr. Pharis came back on for this petition and stressed no one knows where other large sand and gravel deposits are located. He continued saying Mr. Beer who owns two gravel sites in Elkhart County will be opening his new operation in Kosciusko County, because that is where they found gravel. He stressed gravel has been found on this location, which they believe will last for fifty years. Mr. Pharis addressed Mr. Shillington's statements and agreed most of what he said is true. However, he stressed the gravel operation will be well over 500 ft. away from the runway. He pointed out the airport must be opposed to this petition as their support would jeopardize future FAA funds. He added he understands that, and he would like the airport to receive all the funds possible. Mr. Pharis stated if this petition is approved, everyone is aware they will have to comply with INDOT and the FAA. He stressed the 30 ft. wash tower will be the only tall building on the property, and it will be within the height restrictions. Mr. Campanello asked if the wash stand will stay at one elevation or move down to the gravel, and Mr. Pharis responded it will remain at the same elevation. He continued saying material will be brought up to the wash station by elevators, cleaned, separated, and washed. Mr. Miller questioned if Mr. Pharis knew the height restrictions in areas closer to the airport, and Mr. Pharis responded they have been told 30 ft. is within those restrictions. He continued saying they cannot build in the outlined triangle and pointed out the location of the majority of the mining

operation. Mr. Miller asked if they will store gravel inside the triangle area. Mr. Pharis pointed out the location to be used for gravel storage, and he added it will not be over 30 ft. Mr. Hesser questioned if the wash tower is a movable or fixed structure and its location. Mr. Pharis responded it is fixed and pointed out its proposed location on the aerial. He continued by pointing out the proposed location for the new curb cut. He also stressed the centerline of the runway is 750 ft. from the property line. He then commented he was not aware dust was a potential issue.

Burnell Weaver, 64341 CR 11, Goshen, came on for this petition. Mr. Weaver stated in a wash plant water is poured over the materials, and this situation does not produce dust. He continued saying most of the dust will be produced by trucks driving in and out of the property. He added at his existing gravel operation they use a water wagon to keep the driveways watered down, and dust is kept at a minimum. He stated this is not a perfect solution, but this is an agricultural area which is accustomed to dust. Mr. Campanello stated he is sure Soil and Water will closely watch the runoff from this operation. Mr. Weaver stated with a gravel deposit most of the water is absorbed into the ground. He added three ponds will be located near the wash stand, but fowl will not be an issue due to the mining activity on this property. He then pointed out on the aerial a location which will not be mined, because it is an old barrow pit with only a small amount of gravel. He stated the further South they tested, the more clay they came across. Mr. Weaver stated as far as height restrictions they will begin with a restriction of 35 ft., which grows throughout the length of the property.

Mayor Stutsman came back on and stated his letter refers to an FFA advisory circular printed with the purpose to help communities making land use decisions. He went on to say this circular specifically mentions mining operations which create ponds as a major wildlife attractant. He stated the FAA suggests the minimal distance between an airport and a major wildlife attractant be 10,000 ft. He stressed he believes this property can be used for commercial purposes as long as they monitor the height of the buildings. Mr. Campanello stated 10,000 ft. is a suggestion.

Mr. Shillington came back on to address Mr. Campanello's comment. He explained the FFA states it as a suggestion if the airport is operated off of local funds, but it is a requirement if they receive federal funds.

Mr. Pharis came back on for this petition and stressed this operation is not asking for any money from the county, city, or the federal government. He added this gravel operation will be privately owned.

Ryan Beer, 1997 Country Circle, Nappanee, came on representing his family who owns Elkhart County Gravel, neither in favor of nor against this petition. He stated their company has been mentioned several times during this petition. He continued saying their mining operations are located on SR 120, CR 35, and just South of Goshen in New Paris. He added they do have intentions of starting an operation just across the county line in Kosciusko County, but they also have a mining reserve in New Paris.

The public hearing was closed at this time.

Mr. Campanello stated all of his questions have been answered. Mr. Miller said he understands the concern with water fowl in close proximity to an airport. Mr. Campanello responded he believes a plane and bird collision can happen anywhere at any time. He added Elkhart airport has tall trees, ponds, and a small lake within 1,000 ft. of the airport. Mr. Hesser

stated several airports are located close to water, but he believes there is a difference between dealing with what you have and adding to a problem. Mr. Campanello explained he feels as though the Federal Government is pushing the Board into a corner by threatening to take away funds from the airport. Mr. Lyon mentioned he was originally opposed to this petition, but the testimony has changed his mind. He continued saying he is now for this petition, because the mining will take place below ground rather than above ground. Mr. Hesser brought up his concern with the density of the area. He stated he has lived near gravel pits, and they can cause a large amount of traffic and noise. Mr. Lyon responded industrial parks can cause the same issues. He added he is not persuaded by the city's argument to develop the land, because he feels the city would like to control and annex this property. However, he is concerned about this intense of a use in an urban area along with possible safety issues. Mr. Lyon stated he is more concerned about the airport expanding onto the property they own to the West. Mr. Miller stated he lived with Fiddler's in the middle of Goshen, and he feels it did not cause a lot of additional traffic. He stressed he believes access to US 33 makes this a great location, but he wishes it was farther from the airport. Mr. Miller mentioned he is in favor of this proposal.

Attorney Duncan stated in the past similar petitions have been approved with conditions and commitments imposed. He continued saying he asked Staff to compile a list of possible commitments. Mr. Campanello questioned if a GPUD would need to be created for this property, and Mr. Godlewski responded no. Mr. Campanello clarified this is the final step for approval. Mr. Miller stated his only concern is with the buildings' height, and he would feel more comfortable if this issue was settled. Mr. Lyon questioned making a commitment stating they cannot exceed a certain height. Mr. Miller responded he is not sure the Board can make that decision, and he believes the government needs to work with Mr. Pharis on this issue. Mr. Hesser suggested this petition be approved subject to conditions and commitments to be considered at the next meeting. Mr. Campanello asked if another meeting would be held for this petition. Attorney Duncan clarified this will be the last meeting unless the Board specifies this will be finalized at the next meeting. Mr. Campanello stated he does not want to choose conditions and commitments without discussing them with the other Board members. Attorney Duncan suggested Staff compile a proposed list, which the Board can then approve or amend. Mr. Campanello agreed Staff should be part of this decision. Mr. Miller questioned if the Board could allow Staff to impose the conditions and commitments as he feels Staff would be more qualified. Attorney Duncan stated the Board needs to impose the conditions and commitments themselves. Mr. Godlewski stated this would need to be a public vote, because what is suggested could be favorable or unfavorable to both parties. Mr. Hesser stated this could be tabled or approved subject to conditions and commitments to be determined at the next meeting. He also suggested this be the first item for the February 16, 2017 Board of Zoning Appeals Meeting.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that this request for a Special Use to allow for a mining business for the preparation of dirt, sand, gravel, and stone for sale to the public be approved (subject to conditions and commitments to be

finalized at the February 16, 2017 Board of Zoning Appeals Meeting) based on the Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance. Resource extraction is allowed by Special Use, and this is a large, 130-acre property.
2. The Special Use will not cause substantial or permanent injury to the appropriate use of neighboring property. There are 28 residences within a ¼ mile of the subject property. This will not have a more adverse affect on them than if the property was developed in a different way.
3. The Special Use will substantially serve the public convenience and welfare by providing a local source for gravel.

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

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

**No:** Randy Hesser.

16. The Certification of Residency for Joe Atha and Tony Campanello was previously heard as Item #9 on page 3.

17. The staff item for approval of a Contract for Special Counsel from Glenn Duncan for Indiana Gravel was previously heard as Item #10 on page 3.

18. The meeting was adjourned at 10:36 A.M.

Respectfully submitted,

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Laura Gilbert, Recording Secretary

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Randy Hesser, Chairman

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Tony Campanello, Secretary