

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20TH DAY OF JULY 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; Matt Shively, Planner; Duane Burrows, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board. Roll Call.

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

Absent: Tony Campanello.

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 15th day of June 2017 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Atha/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 **Aaron Rink (Buyer) & DKRINK Farms LLC (Seller)** for a Special Use for warehousing and storing of RV units on property located on the Southwest corner of CR 43 & CR 40, in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0464-2017*.

There were 21 neighboring property owners notified of this request.

Dean Rink, 13799 CR 40, was present representing this petition and stated he owns DKRINK Farms LLC. He continued saying he purchased this property in 1974, and his son is now buying the farm from him on land contract. He mentioned he is in support of this petition. Mr. Hesser asked staff what the revised site plan should include, and Mr. Godlewski responded dimensions.

Jean Willard, 10587 CR 40, was present in remonstrance and explained she has a petition signed by 45-50 neighbors opposed to this request. She stated the area is primarily agricultural/residential, and she believes RV storage lots are typically found in commercial areas or off of state highways. She stressed a RV storage lot in an agricultural/residential zone is a concern to the neighbors, and she added everyone who signed the petition lives within a mile of the subject property. Mrs. Willard stated another concern is the road conditions, and she mentioned CR 43 is not well maintained by the county. She explained some places of the road have become gravel due to lack of road maintenance. She added CR 40 and CR 43 are both narrow, and CR 40 has several rises with poor visibility. She stressed a considerable number of people walk, run, or ride bikes in this area raising a safety concern. She explained a park is located off of CR 43 just North of CR 40, and she again mentioned a safety concern from children coming and going to/from the park. Mrs. Willard then touched on the activity 150 RV units will generate, and she believes turning the RVs once a month will create around 600 trips. She added she has looked at the site plan, which is not to scale. She mentioned a few neighbors

have concerns about lighting. She also stated traffic on CR 40 has increased over the past year mostly from through traffic. She added two large trucks cannot pass each other without one of them driving on the edge of the road. She stressed over the years their driveway culverts have been compressed, and their mailboxes knocked down several times by RVs and trailers. Mrs. Willard mentioned the area does not have the infrastructure to support this operation, and both CR 40 and CR 43 have poor visibility. Mrs. Willard then submitted the signed petition [Attached to file as Remonstrator's Exhibit #1].

Mr. Rink came back on and stated he does not disagree with Mrs. Willard's comments. He continued saying traffic is a problem in that area; however, he does not believe this operation will increase traffic. He mentioned hundreds of RVs travel on CR 40. Mr. Hesser asked where the mentioned RVs travel from, and Mr. Rink responded the industrial park. Mr. Hesser then asked what direction they travel, and he responded from the West. He continued saying they leave the industrial park and travel to Millersburg or Topeka, and he added he is not sure where the RVs will come from to be stored on this lot. He continued saying possibly Forest River in Millersburg or RV plants in Topeka, and he stressed RV lots are not typically connected to a single RV plant. Mr. Miller questioned lighting. Mr. Rink responded he is not aware of the lighting requirements, and he does not plan to initially install any. He added he has seen lots without lights. Mr. Miller clarified lighting is not a requirement for a lot, but it is something, to add for protection. Mr. Hesser stated no lighting is mentioned in the questionnaire and Mr. Rink stressed he is not aware of any lighting. Mr. Lyon asked, if the entire property will be used, and Mr. Rink responded he owns a 160 acre farm. Mr. Lyon clarified a 66'x435' area will be used for storage and is not located near the ditch. Mr. Rink added a 50 ft. filler strip was made along the ditch for conservation, which will remain in place. He mentioned between the ditch and the road is approximately six acres. He stated his neighbor planted blackberries across the road, and although he follows the spraying guidelines, the neighbors are worried their plants will die. Mr. Atha mentioned blackberries are very sensitive. Mr. Rink explained as a farmer he believes spraying his crops close to the blackberry farm is high risk. Mr. Hesser stated the proposal mentions a fenced in area, and he asked what surface will be put down. Mr. Rink responded stone or crushed asphalt will be put down for a drive. Mr. Lyon clarified the entrance will be off of CR 43. Mr. Atha asked, if the entire lot will be covered in gravel, and Mr. Rink responded just the driveway. He continued saying the RVs will sit on grass, and he mentioned he has seen Jayco store RVs that way. He added as long as the soil is well drained the RVs should not get stuck.

The public hearing was closed at this time.

Mr. Lyon stated he agrees with the restriction of 25 RVs per acre. Mr. Miller stated he understands CR 40 is a heavily traveled road. However, he added he does not believe this operation will significantly increase traffic, and he stated he does not have a problem with this request. Mr. Hesser suggested adding a time limit, and Mr. Miller agreed. Mr. Hesser stressed a large number of remonstrators are present, and it appears to only be a small capital investment to start. He added he would like to add a time limit to see, if it is disruptive to the neighborhood. He stated the Staff Report refers to both the site plan submitted and a revised site plan. Mr. Godlewski mentioned the revised site plan can be approved by Staff, and he added they would like to see more details including distances. Mr. Atha stated the driveway should also be shown. Mr. Miller asked, if the Board has problems with the surface to be put down, and Mr. Godlewski stated there are no surface requirements.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for warehousing and storing of RV units 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 and more detailed site plan.

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. Petitioner must obtain a driveway permit and meet all Elkhart County Highway standards.
3. Limited to 25 RVs/acre, for the 6 acres (150 RVs maximum).
4. Approved for a period of two years with renewal before the Elkhart County Advisory Board of zoning Appeals.

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

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

5. The application of ***Daniel R. & Esther E. Mullet*** for a Special Use for an outdoor recreational use to allow for an RV campsite and picnic shelter on property located on the East side of CR 15, 3,200 ft. South of CR 32, in Harrison Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0449-2017*.

There were 11 neighboring property owners notified of this request.

Attorney Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner and stated he forgot his power point at home. However, he continued the application he filed contains the same pictures as his power point. He stated Mr. Mullet first contacted him on May 11, 2017 about three days after a complaint was filed against his property. He went on to say he agrees with the Staff Report, but he would like to add another condition. He stressed when talking to a few of the neighbors he became aware of an ad that was run in the paper advertising this site for commercial use prior to his involvement. Mr. Sloat stated he informed his client that this property can only be used as a private campground for him and his family. He continued saying he understands a complaint was filed, because the petitioner started construction of an open-sided picnic shelter. He stressed the petitioner lives about a mile down the road and wanted to have a shelter in case of storms. He explained the petitioner's family likes to enjoy the property and camp in tents of the existing RV. He again stressed this will be used by the petitioner, his family, and church groups they participate in. He suggested adding a condition limiting use to family or groups to which the family is a member. Mr. Sloat added the 18 acre tract is wooded with a pond, and the camping area is located back from the road. He then pointed out the neighboring properties and added he does not see this request becoming a nuisance. He stated he believes the Ordinance allows for this, and he agreed to meet with Chris

or Jason after the meeting to work on a revised site plan. He stressed he agrees with the Staff Report with the added condition that the property not be used for commercial use. Mr. Hesser asked how many people would be included in the groups previously mentioned, and Mr. Sloat suggested around fifteen.

Daniel Mullet, 64297 CR 15, was present for this request and came on to answer Mr. Hesser's question. Mr. Mullet stated he is not sure the size of the groups, but only single family groups would be allowed. He stressed he has eight children, who like to enjoy nature. He explained he has twelve brothers and sisters with families that have a reunion here once a year. Mr. Hesser stated he does not believe Board approval is needed, if only family will use this site. He continued saying he can see several families camping on the property raising concerns with the neighbors. Mr. Hesser stressed allowing groups on the property could open a wide door. Mr. Mullet stated this petition is needed, because he started building a hard-roof shelter for his family. He went on to say he was surprised a Special Use permit was required for this situation. He added it will not be used for the public, because the drive is not wide enough. He stressed fifty families will not be on the property at one time.

Loren Sloat suggested any groups using the property have at least one family member as a participant. Mr. Hesser clarified the property will not be rented out. Mr. Mullet stated any money exchanged would be by donation only to help cover expenses. Mr. Lyon questioned Commitment #5 and asked highway's standards for an access road. Mr. Godlewski responded that is based on intensity, and he stressed it can no longer be an agricultural drive. Mr. Miller asked, if a Special Use is required strictly for family use of the property, and Mr. Godlewski responded the size and scope of this operation requires one. He explained the mentioned friend and group use tipped the scale to require a Special Use. Mr. Hesser stated Commitment #3 limits the property to the RV on site, with no additional RVs allowed. Mr. Sloat responded an RV is currently parked by the electric service, and Mr. Hesser stressed no additional RVs are allowed on the premises. Mr. Sloat clarified the petitioner has no intention of bringing any more RVs onto the property, and he added they primarily tent camp. He continued saying the petitioner lives about a mile down the road, and the property is mainly used for recreation not camping.

James White, 63652 CR 15, was present in remonstrance and stated he owns the property adjacent to the South. His wife then pointed out their property on the aerial. Mr. White stressed increased noise and traffic are major concerns. He explained their residence is only 65 ft. from the drive back to the subject property, and he added the amount of traffic to and from the property has become a nuisance. He stated they also have concerns about the pavilion's location and loud trucks. He went on to say dirt bikes with loud mufflers and expansion chambers are ridden on the property. He mentioned a Gater drives up and down CR 15 frequently throughout the day. He added sewage management is a concern, because a large number of people without a restroom. Mr. White stressed he saw over 20 vehicles drive back to the property last Saturday. He added their property value may decrease due to this activity. He also mentioned he is worried about security with more people coming into the neighborhood. He stressed the property owner informed him he planned to building a residence on the property, but he never mentioned a campground. He also brought up the fire risk. He explained the lane back to the subject property is very narrow, and he is not sure fire trucks could reach the property. He stressed his family would like to enjoy a quiet weekend in the country. Mr. Hesser asked when this activity started, and Mr. White responded shortly after the property was purchased. Mr. Hesser then

asked when the property was purchased, and he responded about a year ago. Mr. Lyon asked, if the drive is gravel, and he responded partly gravel but mostly grass.

Beth White, 63652 CR 15, came on in remonstrance and stated the driveway is gravel/grass. She added the driveway does not produce a large amount of dust

Mr. White then submitted some materials including pictures to the Board [Attached to file as Remonstrator's Exhibit #1]. He pointed out the second page of the submitted materials, a copy of the ad the petitioner published in the newspaper. He stressed the petitioner advertised this property as a commercial camp ground. He then explained the next page a picture of his house, which showed the corner of his house only 65 ft. from the subject property's drive. He stressed 20 cars disrupts their quiet weekend, and he then showed a few pictures of the RV and picnic shelter from his property. He asked how long approval would be in effect.

Mrs. White stated questioned how the property owner could discriminate against non-church groups since it was publicly advertised. She stressed she is opposed to this petition due to the ad in the paper, and she mentioned they do not care about family use. She also added their house sits in the woods, and it would burn down, if a fire became out of control on the petitioners' property.

Steve Miller, 63626 CR 15, came on in remonstrance and his wife pointed out their property northwest of the subject property. Mr. Steve Miller stated the front portion of the property is wetland, and he is not sure the driveway can be widened. He added he had problems installing his drive due to wetland. He continued saying when Mr. Mullet is not home, his children race up and down CR 15 and the drive. He also mentioned his concern about his property value decreasing. Mr. Steve Miller mentioned the ad, which ran in the paper, and Mr. Lyon asked when it was published.

Christy Miller, 63626 CR 15, came on and stated the ad came to their attention a week ago. She also stated noise has increased in the neighborhood since the petitioners purchased the property mostly from dirt bikes, gators, and revving trucks. She continued saying they enjoy campfires in the woods, but now they hear dirt bikes and four-wheelers.

Mr. Steve Miller stressed the pavilion is already built, and he asked, if the petitioner obtained a building permit. It was found the petitioner did not pull a permit, but that will be required with approval. Mr. Hesser stated the permit is a separate issue from this request.

Mrs. Miller stressed another concern about an out of control fire on the property. She stressed continued saying a narrow lane runs back to the property, and she is worried fire trucks would not be able to reach the property. She added an out of control fire could spread to their property. Mr. Steve Miller asked what they plan to use for restrooms.

Mrs. White came back on and stated the ad was brought to their attention around May 8th or 9th.

Steve Paul, 63114 CR 15, was present in remonstrance and pointed out his property to the north. Mr. Paul stated the road is heavily traveled with several blind spots, and he stressed the entrance is very narrow. He continued saying the trailer delivering the picnic shelter trusses had a difficult time fitting into the drive. He added that area also has a blinded hill, which could become very dangerous. Mr. Paul stated he is concerned about brining outside people onto the property, because he has been robbed several times. He continued saying police cornered a burglar in his cornfield a few years ago, which has made him leery of strangers. He added his property has a beautiful view of Goshen, and he is worried people will trespass to see it. Mr.

Paul also stated the ad mentions a barn, which is on a different piece of property owned by the petitioner.

Mrs. White came back on and stressed a dangerous hill is located close to the petitioners' property. She continued saying she believes their eight year old drives a gator up and down the road. She also added one of the children was riding a skateboard crouched down and was almost hit on that hill. She stressed she is concerned about small children riding gators and skateboards up and down the road.

Mr. Sloat came back on and Mr. Hesser asked him to address the commercial use mentioned. Mr. Sloat stated he was not aware of the ad until this morning, but he understands it predates his involvement with the case. He continued saying the petitioner showed him an email sent to the newspaper company back in January who ran the ad for several weeks. Mr. Hesser clarified the commercial use mentioned in the ad will not take place. Mr. Hesser also brought up a commitment, which prohibits onsite waste disposal and questioned how the petitioner plans to dispose of waste. Mr. Sloat responded the property has an existing outhouse. Mr. Hesser asked, whether an outhouse is allowed within the proposed commitments, and Attorney Kolbus asked, if an outhouse is considered onsite solid waste disposal. Mr. Godlewski stated he believes that will be okay as long as it is contained. Mr. Miller stated this petition was originally for public use, but will now only be used by the family. He continued saying the family is considerably large. Mr. Godlewski stated permits will need to be obtained for all buildings, and he mentioned this is a large scale request. He continued saying an outhouse addresses needing a restroom but would not be classified as a dump station. Mr. Hesser asked about the bike groups mentioned in the complaint. Mr. Sloat responded he believes the petitioners' son has a motorcycle.

Mr. Mullet stated his daughter's boyfriend owns a motorcycle, which he has ridden on the property. Mr. Lyon asked, if he is allowed on the property, and Mr. Mullet responded yes. He also stressed no wild parties take place. Mr. Hesser stated when he joined the Board he became aware that driving a vehicle in a path continuously is classified as a track under the Zoning Ordinance. He continued saying a Special Use is required for a track, which is not part of this request. Attorney Kolbus added random riding is permitted, and Mr. Hesser clarified continuous riding is not. He also asked about the twenty vehicles mentioned by a remonstrator and, Mr. Mullet responded his family frequently comes and goes to/from the property to feed the fish, care for the horses, etc. He stated the gators are used to help feed their horses. He also added his youngest son is 12, and the gator's top speed is around 12 miles an hour. Mr. Atha request the petitioner point out his residence on the aerial, and it was found to be off of the aerial. Mr. Miller stressed the petitioner has a 12 year old driving a gator on the road, and Mr. Atha asked, if it is road licensed. Mr. Mullet responded it is a farm machine, and Mr. Sloat clarified he understands a gator is allowed on the road for farm purposes but not recreation. Mr. Atha asked, if the property needs a fire inspection, to ensure a fire truck can fit down the drive in case of emergency. Mr. Hesser responded he believes the highway department will address that with the driveway permit. He stated he is not comfortable with the commitment Mr. Sloat suggested, because he believes it creates a loop hole. He suggested approval for family and guest, no commercial use. He also added he believes reimbursement for expenses classifies as commercial use. Mr. Miller questioned visibility of the campsite from the neighboring property. Mr. Sloat responded he believes a telephoto lens took the submitted pictures, and Mr. Mullet stated the RV and picnic shelter are 500 ft. from the neighboring property. Mr. Hesser added he does not

believe visibility of the RV and shelter is an issue, and he mentioned he can see his neighbors' RV parked in their drive. Mr. Miller stated 50 people in that area is different than just an RV, and he added the family appears to be large. Mr. Sloat stressed he looked towards the neighbors from the RV/shelter and could not see much.

The public hearing was closed at this time.

Mr. Hesser stated a commitment should be added limiting this property to family use. Mr. Miller added he does not believe the Board has control over a strictly family use, and he mentioned a revised site plan and building permits are still required. Attorney Kolbus stressed the term guest is discretionary, and Mr. Lyon asked who classifies as a guest. Mr. Atha stated since it is not a commercial use he believes the petitioner has the right to use his property. Mr. Miller added, if the request is denied, the Board cannot limit the property's use. Mr. Hesser stated the petitioner cannot have a picnic shelter without Board approval. Mr. Godlewski explained the requested building is classified as accessory to the requested use, and he believes it requires a Special Use due to the associated building. He continued saying the property will have the look and feel of a campground. Mr. Hesser suggested a two year time limit be added to this request.

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 Special Use for an outdoor recreational use to allow for an RV campsite and picnic shelter 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. Petitioner must provide a revised and more detailed site plan.

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. Approval is for primitive camping only (no on-site solid waste disposal.)
3. Limited to the one existing RV on-site.
4. Any amendment, including building additional structures/facilities/amenities (including but not limited to electric meters), must receive approval from the Elkhart County Advisory Board of Zoning Appeals.
5. A driveway permit is required (if not already approved), and the driveway must meet Elkhart County Highway standards.
6. Approved for a period of two years with renewal before the Elkhart County Advisory Board of Zoning Appeals.
7. Limited to family and guest only, no commercial use.

Vote: Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

Yes: Joe Atha, Roger Miller, Randy Hesser.

No: Denny Lyon.

6. The application of **Mark L. & Brenda K. Slabaugh** for an amendment to an existing Special Use for an agri-business to allow for the construction of an addition to the existing facility on property located on the East side of CR 101, 1,100 ft. South of US 6, common address of 72700 CR 101 in Locke 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-0450-2017*.

There were four neighboring property owners notified of this request.

Mr. Hesser suggested Commitment #2 reference the revised site plan, and he asked if a date should to be referenced. It was found the date for the revised site plan is referenced in Commitment #1.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. Mr. Sloat questioned the need for Board action, because an agribusiness is permitted in an A-1 zone under the new Ordinance. Mr. Godlewski clarified that is true; however, all existing Special Use request must be honored and have standing over the new Ordinance. Mr. Sloat then explained the request is to amend the site plan, and he added the conditions and commitments will remain the same. He continued saying the cooler capacity needs to increase to separate the deer carcasses from the domestic carcasses as required by the meat inspector. He added the holding area for cattle will also be improved. Mr. Hesser clarified it is currently fenced in, and Mr. Sloat explained it will be enclosed and covered to make it weather friendly. He then pointed out the holding pen on the site plan, and he explained the green area is the addition with the yellow area being the current pen. Mr. Hesser reiterated the cooler and holding area will be covered, and then questioned another area on the drawing. Mr. Sloat stated the entire area will be covered, and he added the area in question is for a generator. Mr. Sloat mentioned they typically process around 500 head of deer a year along with 12-16 beef and 10-15 hogs a week. He stressed this operation has been an asset to the community.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** 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 an agri-business to allow for the construction of an addition to the existing facility be approved with the following condition imposed:

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

The following commitments imposed:

1. Approved in accordance with the site plan submitted (dated 6/9/17) and as represented in the Special Use application.
2. The Special Use for the Agri-Business shall be confined to the area identified on the revised site plan as the meat processing building and outdoor holding pen.
3. No outside storage of anything related to the Agri-Business is permitted except for the outdoor holding pen.

4. One unlit sign, four square feet per side, is permitted.
5. The number of employees who are not residents of the Real Estate is limited to six.
6. The residence on the Real Estate must be occupied by the owner/operator of the Agri-Business.
7. No expansion of the buildings or building operations is permitted without Elkhart County Board of Zoning Appeals approval.
8. All blood, water, animal tissue waste (offal) to be collected and disposed of per Indiana State Board of Health and Elkhart County Health Department regulations and will not be placed in any domestic sewage system. Further, offal must be collected separate from blood and rinse water and disposed of properly.
9. All Indiana State Board of Health and Elkhart County Health Department regulations to be adhered to regarding pest control.
10. Schedule / Hours:
 - a. Receipt of Animals:
 - i. Scheduled Monday and Friday, 3:00 p.m. to 7:00 p.m.
 - ii. Other times in case of emergency
 - b. Custom Pickup:
 - i. Monday through Friday, 6:00 a.m. to 3:00 p.m. and Saturday, 8:00 a.m. to noon.
 - c. General Hours of Operation:
 - i. Monday through Saturday, 6:00 a.m. to 3:30 p.m.
11. The duration of the Special Use shall be for an indefinite period of time unless otherwise terminated by the Elkhart county Advisory Board of Zoning Appeals.
12. There will be no backing out onto County Road 101.

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

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

7. The application of *Cornell & Mary Price* for a Special Use for a wireless communications facility on property located on the Southwest side of Reith Blvd., 825 ft. West of CR 17, common address of 60787 Old CR 17 in Concord Township, zoned A-1, B-3, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0461-2017*.

There were 20 neighboring property owners notified of this request.

Derek McGrew, 103 Wilshire Court, Noblesville, was present representing this petition. He stated this request is for a smaller tower, and he pointed out its proposed location on the aerial. He continued saying the tower is surrounded by woods, meets the required setbacks, and is in a zone, which allows towers by Special Use. He added the company constructing the tower is the same company who installed the tower for his last petition. He mentioned the area has several 50 ft. towers, and he does not believe it needs landscaping. Mr. McGrew stated the property's curb cut was placed 30 ft. too close to CR 17. He added the County Commissioners have given them permission to use it for this purpose, but the problem will have to be addressed for any use, which produces more traffic. He explained the proposed location was chosen to meet the required setbacks and stay out of the wetlands. He went on to say the tower is short, because they could not meet the setbacks for a taller tower. Mr. McGrew stressed this tower will

service Wal-Mart and the surrounding shopping center. He added in a previous meeting Mr. Auvil mentioned he frequently drops calls in Wal-Mart, and he stated that is why he is here today.

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 for a wireless communications facility be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 6/9/17) and as represented in the Special Use application.

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

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

8. The application of *John Yoder (Buyer) & Middlebury Hay Auction (Seller)* for a Special Use for warehousing and storing RVs on property located on the East side of CR 43, 1,100 ft. North of CR 16, 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-0462-2017*.

There were four neighboring property owners notified of this request.

John Yoder, 68987 CR 27, New Paris, was present representing this petition. Mr. Yoder requested permission for a RV storage lot. He explained he arrived at the end of Mr. Rink's petition, and his request is very similar. He added this property is about six miles from the other petition.

Calvin Lehman, 10405 CR 16, was present in remonstrance and stated he owns the property behind the petitioner. He expressed a concern about the noise RVs could produce in the neighborhood on weekends especially Sundays. He stressed his main concern is water run-off, and he explained a four inch tile runs from the subject property to Meredith Ditch. He added he has already lost two acres of alfalfa due to rain this spring. He continued saying he would like something to be done to handle the extra run-off this operation will create. He stated the area is mostly farmland with a large amount of water. He stressed he does not want to cover the cost caused by their run-off on his land. Mr. Lyon asked, if the existing tile is a mutual tile. Mr. Lehman responded he is unsure, because the tile already installed when he purchased the property in 2005. He continued saying he dug trenches this spring to help alleviate the water problems he has in this area. Mr. Miller clarified water runs across his property to the ditch.

Daniel Miller, 56246 CR 43, came on in remonstrance and stated he owns the property to the north. He stated he does not want to fight this petition, but traffic should be addressed. He continued saying he is concerned this operation will change the neighborhood. He stressed he

would like to see this in the city rather than the county, and he does not see how approval of this petition will benefit his property. Mr. Lyon asked, if he has any water problems, and he responded no.

Lamar Eash, 56343 CR 43, came on and stated he is the property owner across the street from the petitioner. He stated his run-off drains underneath the road onto the subject property. He also asked the proposed drive's location and added the road has a decent amount of traffic. He stressed he is not necessarily against this petition.

Mr. Yoder came back on to address the parking design. He explained the parking lot will not take up the entire property; instead he will have 40ft. wide sod areas for RVs parking separated by 40 ft. wide lanes. He stressed about 50% of the lot will be covered. Mr. Lyon asked what material he plans to use, and Mr. Yoder responded slag. Mr. Miller asked the driveway's location. Mr. Yoder stated he has not decided, and he mentioned the owner of Middlebury Hay Auction installed a gate connecting the two fields. He continued saying he considered using the existing drive with an easement to his property. He added another option would be to install a drive between the property corner and the Eashes' driveway. Mr. Yoder then pointed out a low area on the aerial, and he suggested digging a retention pond there, if needed. He stressed the low area is extensive, and soil from the retention pond can be used to level the sloping areas. He again offered to install a retention area, if drainage issues arise. Mr. Miller asked, if drainage should be approved prior to a Board decision. Mr. Godlewski stated it can be approved at the Staff level, and he added the Board could also require a review by the Surveyors Department. Attorney Kolbus stressed, if the Board has drainage concerns extra conditions can be added. Mr. Hesser stated the site plan references an existing driveway on a separate parcel, and he asked, if this parcel can be served by an easement. Mr. Miller stated using the existing driveway would be convenient. Mr. Godlewski suggested the Board require written approval from the property owner giving permission to use the easement, but he added the subject property has plenty of road frontage. Mr. Lyon asked the width of the drive, and Mr. Yoder responded probably about 15 to 20 ft. He continued saying the agreement between him and the seller has changed since the application was submitted. He added the property will be resurveyed to move the south property line back to an existing fence. Attorney Kolbus stated he is concerned, because the easement is on a parcel that was not included in the petition. He went on to say one of the commitments requires the driveway meet all highway standards. Mr. Hesser stated he is surprised a revised site plan was not requested due to the lack of dimensions, and he suggested a revised site plan be submitted for staff approval addressing the driveway and drainage.

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 for warehousing and storing RVs 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 showing the driveway and drainage.

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. Petitioner must obtain a driveway permit and meet all Elkhart County Highway standards.
3. Limited to 25 RVs/acre, for the 8 acres (200 RVs maximum).

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

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

9. The application of **Brian J. & Andremene R. Chupp** for a Special Use for an agricultural use for the keeping of chickens on property located on the Southwest corner of Weymouth Ln. & Cambridge Crt., East of Pine Crest Dr., South of US 20, common address of 56909 Weymouth Ln. 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-0466-2017*.

There were 26 neighboring property owners notified of this request.

Andremene Chupp, 56909 Weymouth Ln., was present for this request, and asked for approval to keep 4-H chickens. Mr. Miller asked the number of chickens she would like, and Mrs. Chupp responded three. Mr. Hesser asked, if the chickens will be kept in a coop or pen. She responded in a small, enclosed chicken coop. He also asked, if the chickens have room to roam outside, and she stated underneath the coop. Mr. Atha questioned, if the coop will be moveable, and Mrs. Chupp responded no. Mr. Hesser also asked, if the chickens will be used for eggs or meat. Mrs. Chupp stated they will be for show. Mr. Atha questioned manure disposal, and she responded it will be composted.

Jane Higgins, 56862 Weymouth Ln., came on in remonstrance and stated she lives catty-corner from the petitioner. Mrs. Higgins stressed Pine Crest Subdivision has covenants prohibiting chickens. Mr. Miller clarified the Board does not regulate subdivision covenants. Mrs. Higgins then submitted a copy of their covenants to the Board [Attached to file as Remonstrator's Exhibit #1]. She went on to say she is not opposed to the petitioner showing birds, however, she does not believe they belong in a subdivision.

Renee Choler, 56924 Weymouth Ln., came on in remonstrance and pointed out her residence, across the street from the petitioner. Mrs. Choler stated her concern is the length of time the chickens will be kept on this property. She questioned, if approval will be for fair season or year round. She also mentioned chickens are noisy, and she is worried they will get loose. She stressed approval of this request could affect their property value. She also stated she is relieved the request is for a Special Use not a Rezoning. She also mentioned their subdivision covenants state no poultry is allowed and lots should only be used for residential purposes.

Rich Moser, 29640 CR 42, Wakarusa, came on in favor of this request and stated he does not live in the area. However, he stated he has been a 4-H member and leader. He stressed 4-H is a great opportunity for children, and he believes it is good to get them involved. He added statistics are very good for children involved in 4-H.

Mrs. Chupp came back on and stated they plan to keep the chickens until her daughter decides she no longer wants to be part of that project. Mr. Hesser asked, if she is aware of any

other chickens kept in the subdivision, and she responded no. She added she has seen several dogs/ cats and a few rabbits. Mr. Lyon asked, if she anticipates her daughter participating for a year or two, and she replied yes.

The public hearing was closed at this time.

Mr. Miller stressed the Board does not have control over covenants and restrictions. Mr. Atha stated this request can be approved, but the neighbors still have the right to enforce their covenants. Mr. Hesser clarified this request does not violate the county Ordinance, but that does not mean this request is allowed under the subdivision covenants. He continued saying covenants are still enforceable, and the Board's decision does not supersede them. Attorney Kolbus explained the Board can consider covenants. Mr. Hesser mentioned the Board has approved several small 4-H chicken requests. He stressed the neighbors can still enforce the covenants, but he is not opposed to this request. Attorney Kolbus suggested approving the petition for a period of time, and Mr. Miller mentioned approval for two years. Mr. Hesser clarified at the end of two years the petitioner can ask to renew the Special Use. He also suggested the number of chickens approved match the petitioner's testimony rather than the Staff Report, and he stressed they will be for show not eggs.

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 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 6/12/17) and as represented in the Special Use application.
2. Limited to three (3) chickens, no roosters.
3. Approved for a period of two years with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

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

10. The application of *Nathan L. Nisley* for a Special Use for a home workshop/business for wholesale distribution of general merchandise for local country stores 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 South side of CR 34, 1,180 ft. East of CR 35, common address of 13770 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 #SUP-0463-2017*.

There were five neighboring property owners notified of this request.

Nathan Nisley, 13770 CR 34 was present representing this petition. Mr. Nisley stated he started a small business in a neighboring shop four years ago. He continued saying he purchased

this property a year ago and discovered it did not have enough room for the business. He explained he would like to add a lean-to on either side of an existing building for pallet storage. Mr. Nisley stressed he would like approval for a home workshop/business to work from home, but it cannot be done without approval of more storage. Mr. Miller asked if the lean-to will keep the pallets out of site, and Mr. Nisley responded it will be enclosed with a roof and sides. Mr. Miller also asked how much traffic the business generates. Mr. Nisley responded about 99% of his products are sent by FedEx with daily pickups. He also added a semi comes to the property about once a week. He mentioned he has a loading dock on the adjoining property used for unloading the product. Mr. Hesser clarified semis have room to turn around. Mr. Miller asked the anticipated number of employees, and Mr. Nisley responded he would like to keep it a small family business. He explained he currently has one part-time employee, and he hopes his wife will also help.

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** 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 wholesale distribution of general merchandise for local country stores 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 condition was imposed:

1. Approved in accordance with the site plan submitted (dated 6/12/17) and as represented in the Special Use application.

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 6/12/17) and as represented in the Developmental Variance application.

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

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

11. The application of *Elkhart County Park Recreation Board (Buyer), City of Elkhart (Seller), & Robert E. & Diane Williams* for a Special Use for a park and for a Developmental Variance to allow for the construction of a park on property served by an access easement

located on the East side of CR 3, 2,184 ft. North of CR 5, Cleveland/Osolo 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-0470-2017*.

There were 58 neighboring property owners notified of this request.

Mr. Godlewski suggested the 180 day restriction be removed. He explained the road is existing, and an Improvement Location Permit is not currently required. He also asked the Board to consider staff approval of picnic shelters and other minor changes down the road as the park develops. Mr. Miller clarified Mr. Godlewski is asking that a condition be removed. Mr. Godlewski explained a commitment also needs to be added allowing administrative changes to the site plan. Attorney Kolbus added Staff will bring any issues back to the Board.

Gordon Lord, County Attorney was present representing this petition along with Suzanne Weirick and Mike Yoder, County Commissioners; Rhonda DeCaire, Elkhart County Parks Director; and Loren Sloat, Attorney from Nappanee along with his client Bob Williams. Mr. Lord clarified Bob and Diane Williams are co-petitioners with the City of Elkhart, County Park Board, and the County Commissioners. He continued saying Boot Lake Nature Preserve is a 300 acre parcel the City of Elkhart has owned for several years. He mentioned it was used as a tree farm for the City of Elkhart. He added over time due to grants and the Department of Natural Resources they obtained land to the North, which is subject to strict rules and standards. He explained that area cannot be used for parking, soccer fields, etc. due to DNR covenants. Mr. Lord pointed out the principle entrance to the park on property owned by Bob and Diane Williams. He went on to say the City placed a paved road and decorative trees on the easement. He added they have now realized there is no need for a park several miles outside city limits, and decided to pass it onto the County Parks Department. He mentioned county parks typically do not have soccer fields etc. Mr. Hesser clarified the easement is permanent and can be handed over to the County. Mr. Lord explained Mr. and Mrs. Williams have already signed documents to transfer the easement to the county, and he stressed it will not become a public road. He continued saying they do not want a public road that dead-ends into a park. He added the Williams and Park Board agreed on rules and standards for the easement. He mentioned use of the access easement will not significantly increase, and the County Parks Department will take over ownership and maintenance. He went on to say Elkhart City owned this property from the passing of time/changing of events, and it has been in the process of being transferred for several years. Mr. Lord stated they believe it will be in the right hands and well maintained. He continued saying the City of Elkhart is appropriating funds to help the Park Board enhance the park. He stressed although the property is large it is mostly subject to DNR approval and does not have room for several buildings. He explained a preserve and bathroom may be built, and they do not want to come back before the Board for site plan changes. He stressed the park will be held to County Park Department rules and standards. Mr. Lord stated the Williams requested a gate be installed at the park entrance to enforce the park's hours of operation, which will typically be from dawn to dusk. He added large crowds and excessive parking not expected, and any parking will not be visible from the road. Mr. Hesser asked, if lighting will be installed. Mr. Lord responded he is not aware of any lighting, and it would be minimal. He also added the northern property is held to DNR restrictions, and Mr. Miller mentioned it is all wetland. Mr. Lord stated the access easement will be the only legal access to the park, and he pointed out a

modest easement to the north, which will not be used by the public. Mr. Atha clarified the entrance has been used for years. Mr. Lord responded Elkhart City never received a Special Use or Variance for the property. He continued saying he spoke to Chris Godlewski about the property possibly being grandfathered in, but they concluded it should receive Board approval.

Mike Yoder, County Commissioner, came on in favor of this request. Mr. Yoder stated the park transfer has been in the works for several years. He continued saying it is complex and involved several agencies, but Board approval is one of the final pieces to the puzzle. He added he believes this will be a great asset to the community, and the County Commissioners fully support this request. He mentioned they hope to have everything completed by the end of the year.

Loren Sloat, 102 Heritage Parkway, Nappanee, attorney for Mr. and Mrs. Williams was present in favor of this request. Mr. Sloat stated he was involved with working out the details of the access easement, and he pointed out the Williams' residents. He continued saying Mr. Lord and others involved have worked to alleviate the Williams concerns, and they came to an agreement. He added the parties involved are anxious to finalize this petition.

Reina Sommers, 51422 CR 3, Elkhart, came on in favor of this request and stated she lives on the corner of CR 3 and Williams Ln. She stressed a lot of traffic comes and goes to/from the park at night. She continued saying they are 100% in favor of the County Parks Department taking over and installing a gate at the entrance.

Mr. Lord came back on and stated the Parks Department request Staff approval of modest site plan changes to avoid coming before the Board.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked, if anyone has a problem with Staff approval of site plan changes, and Mr. Lyon mentioned Staff will bring the site plan back, if any problems arise.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a park 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 6/12/17) and as represented in the Special Use application.
2. Future changes to the site plan may be approved by staff.

Further, the motion also included that a Developmental Variance to allow for the construction of a park on property served by an access easement be approved with the following condition imposed:

1. Approved in accordance with the site plan submitted (dated 6/12/17) and as represented in the Developmental Variance application.

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

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

12. The application of *Power Line Amish School (Buyer), Glen D. & Rosa Ellen Lehman as Trustees of the Lehman Trust Revocable Trust Agreement (Seller), & David L. & Mary Lou Schwartz* for an amendment for an existing Special Use to change the location and for a Developmental Variance to allow for the construction of a school on property served by an access easement located on the South side of CR 32, 1,320 ft. East of CR 43, in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0431-2017.

There were 13 neighboring property owners notified of this request.

Scott Zeigler, Hand to Plow Surveying, 5678 W 350 S, Albion, was present representing the petitioners. Mr. Zeigler stated this spring a new Amish school was approved on a three acre site in the northwest corner of the property. He continued saying since then they decided to relocate the school to the back southwest corner of the Lehman property. He explained the original site set the school close to the road, and the septic system would have been in a pasture field with poor soil conditions. He stressed the new site allows them to install a gravity septic system rather than a mound system. He also added the school can be placed off of the road to alleviate any safety concerns. He went on to say they feel placing the school back in the corner will be a better location than right on the road. Mr. Zeigler explained an easement through the Schwartzs' property will be used for access. He clarified this request is to move the school back into the southeast corner of the property with an access easement. He went on to say they looked at the site and found a good location for the septic system. Mr. Hesser asked why the property is accessed by an easement instead of purchasing road frontage for a drive. Mr. Zeigler responded the Schwartzs did not want to sell property to the school, but they were willing to grant an easement. Mr. Hesser asked what conditions were imposed on the easement, and Mr. Zeigler responded no conditions were imposed. He continued saying everyone intends to use this property for a school, but the Board can add a condition limiting it to school use only. He also added the submitted site plan shows the school 30 ft. from the north property line; however, they would like to add a walk-out basement. He continued saying in order to have the basement the school would have to be moved 10 ft. making it 20 ft. from the north property line. He added a 6 ft. porch would also be added and the new setback would be 14 ft. from the north property line. Mr. Hesser asked, if the new location will meet the required setbacks, and Mr. Zeigler responded yes. He added he believes the minimum setback is 10 ft. He asked, if the new site plan can be approved today and he added stated the septic and driveway were approved. He again stressed the new location will be a better school site than the original location.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he is concerned, because the access easement does not have any conditions, but he does not believe that is the Board's to enforce. Mr. Hesser suggested Staff approval of the revised site plan.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment for an existing Special Use to change the location 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. An Administrative Subdivision must be completed.
3. The petitioner must provide a revised site plan showing the new location of the school.

The following commitment was imposed:

1. Approved in accordance with the site plan to be submitted for staff approval and as represented in the Special Use application.

Further, the motion also included that a Developmental Variance to allow for the construction of a school on property served by an access easement 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 to be submitted for staff approval and as represented in the Developmental Variance application.

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

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

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

13. The application of ***Rich & Joni Moser (Buyer) & Mark W. & Betty S. Johnson (Sellers)*** for a Use Variance to allow for the construction of an accessory structure before the construction of a residence, for a Developmental Variance to allow for the construction of a residence on property with no road frontage served by an access easement, 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 located on the North side of access easement, 1,380 ft. East of the CR 26 & CR 3 intersection, common address of 28884 CR 26 in Baugo 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-0454-2017*.

There were 11 neighboring property owners notified of this request.

Mr. Miller asked, if Staff is comfortable with the site plan submitted, and Mr. Godlewski responded yes.

Joni Moser, 29640 CR 42, Wakarusa, was present for this request along with her husband. Mrs. Moser stated Betty Johnson is deceased, and Mark Johnson lives in the northern part of Michigan. She continued saying Mr. Johnson sent a letter allowing the Mosers to

represent him along with his realtor. She explained the residence burnt down in January of 2015, and she added he had a year to rebuild. She continued saying Board approval is needed, because he did not rebuild within a year of the fire. She stressed the new residence will be close to the same location and size as the original residence. Mrs. Moser stated she has spoken to the owner of the strip of property to the north, which was originally part of the subject property. However, she continued he would not sell the property at this time, but she added he is not opposed to this request. She went on to say she also spoke with Kathleen Johnson and the Fricks who were not opposed to this request. Mr. Lyon asked the location of the easement, and Mrs. Moser pointed it out on the aerial. Mr. Miller clarified an existing easement to access the property. Mr. Lyon added access from CR 26 is not possible due to Baugo Creek, and Mrs. Moser mentioned the property does not have any road frontage.

Michele Mathewson, 28752 CR 26, came on in remonstrance. Mrs. Mathewson stated she spoke to Mr. and Mrs. Moser, and she pointed out her property on the aerial. She also pointed out the easement, which she believes stops and becomes Mr. and Mrs. Fricks' property. She stressed she is not opposed to the Mosers building a residence on this property; however, Mrs. Moser mentioned her husband owns a construction business. She stressed the easement consists of dirt, rock, and old cement and is in desperate need of repair. She explained it would not be able to handle a construction business, and she added the trash truck causes a lot of wear. Mrs. Mathewson stated the neighboring property owners' deeds have an addendum, which states everyone has to pay towards maintaining the easement. She continued saying she has lived here for three years and has put down around \$450 worth of rock on the easement. She mentioned it is typically only used by cars and an occasional tractor. Mr. Miller asked, if the neighbors have a written agreement describing maintenance. Mrs. Mathewson responded yes an addendum to their deed, but she could not find any other documentation. Mr. Miller stated the neighbors need to come to an agreement for maintenance, and this request cannot be approved or denied based on that agreement. Mr. Godlewski explained a maintenance agreement is not required to build a house off of an easement, but the Board should verify the landowner has legal access to their property. He suggested adding a condition requiring the petitioner to prove legal access to the property. Attorney Kolbus mentioned the easement is established between the private property owners, and the Board wants to know, if an easement exists. He continued saying the easement conditions are between the property owners and may prohibit a construction business. Mr. Lyon stated he is aware of the first section of the easement, but he has concerns about the second half. Mr. Miller clarified the Board needs to add a condition stating the property owner must provide proof of legal access to the property.

Tina Holt 28754-2 CR 26, came on in remonstrance and pointed out her property on the aerial. Mrs. Holt stated the easement has several problems, and she was not aware of them when she purchased her property. She continued saying her residence started as a garage, which was added onto, and then sold to her as a residence. She added it was illegally sold to her, because it was built too close to the subject property. She explained her residence is not 5 ft. off of the property line. Mrs. Holt stressed she drives across the subject property, and they drive across her property to reach their residences. Mr. Miller questioned where the petitioner cuts across her property, and she pointed out a corner where the drive touches her property. Mr. Lyon clarified the property owned by the petitioner, and Mr. Miller stated the Board cannot address the problems with her property. Mr. Atha also questioned the location of the drive, and it was found

to cut across the corner of her property. Mrs. Holt stressed a lot of unwanted traffic has been caused from the property being up for sale. She added she has pictures of cement that the trash truck pulled up this week. She continued saying she believes heavy trucks using the lane to pour concrete will tear the easement up leaving the neighbors with the expense of fixing it. She mentioned the previous owner had time to rebuild but did not. Mrs. Holt stated she offered to purchase the property to prevent anyone from building there.

William Burke, 28756 CR 26, came on in remonstrance and stated the legal easement ends at his property. Mr. Miller request Mr. Burke point out his property on the aerial, and he showed both his property and where he believes the easement ends. He continued saying in 1998 it was determined no one else was allowed to build off of the easement. Mr. Miller clarified Mr. Burke is suggesting the homes past his residence have no legal access. Mr. Burke agreed and stated he has paperwork at home to prove it. He stressed he is against anyone building in this area, and he believes pole buildings should not be allowed. He then said he is not necessarily against this particular residence being built as long as it does not open up the door for others to build back there. He added the easement has been a problem for many years, and he had to go through the courts for permission to build his home.

Arlene Silba, 28754 CR 26, came on in remonstrance and stated her home is the first home entering the easement. Mrs. Silba stated she is concerned a business will be run out of the house. She added she is also concerned approval of the request will open up the area for subdivisions.

Marian Frick, 28754-3 CR 26, came on in remonstrance and stated she has lived on the easement since 1980. She stressed the easement has always been a mess, and she added several places have large mud puddles and broken/cracked concrete. She explained they took the initiative, because nothing states all of the homeowners must contribute to easement maintenance. She went on to say out of the seven families living off of the easement only three pay towards maintenance and one grates it. She mentioned the UPS truck does not have room to turn-around and backs up in their yard. Mr. Miller stated he understands her concerns, but the Board cannot fix the easement. He continued saying all the Board can do is make the petitioners provide proof of legal access to their property, and he stressed they cannot fix the easement. Mrs. Frick clarified the Board cannot help the neighbors write up a maintenance agreement. Mr. Miller stated, if the neighbors cannot come together to make a decision the Board cannot help them. He stressed they understands the easement has always been a mess, but they cannot address that issue. Mrs. Frick reiterated the only way to work out the easement for the neighbors to come to an agreement. She added she does not appreciate trucks backing into her yard to turn-around.

Kathleen Johnson, 28754 CR 26, came on in remonstrance and pointed out her property on the aerial. Mrs. Johnson stated she is opposed to this petition, if a business is run from the property. Mr. Lyon asked how she accesses her property, and Mrs. Johnson responded they use the easement.

Kathy Hansen, 70294 Sunrise Dr., Edwardsburg, came on as the listing agent for the property. Mrs. Hansen stated a maintenance agreement is written in the title work from 1980. Mr. Miller asked whose title, and she responded Meridian Title. She continued saying she believes the drive's description is inaccurate, and she added the drive is solid. She mentioned the original house tragically burned down in 2015. She stated she believes the present owner did not

rebuild, because he was romantically involved with the neighbor, which has since ended. She stressed she feels as though that is part of the reason for all of the resistance. Mrs. Hansen stated this property is unusable without a Variance, and she added the parcel is over two acres.

Mr. Godlewski stated a letter was submitted by Mark Johnson, but he was not sure, if it is in favor or remonstrance [Submitted as Staff's Exhibit #1].

Mrs. Moser returned to the stand and stated Mark Johnson is the property owner. Mr. Miller clarified Mr. Johnson is the current owner of the property, and Mrs. Moser added there is a signed purchase agreement between them. She then addressed the easement, and Mr. Lyon mentioned the area in question. Mr. Miller stated, if this petition is approved, Mrs. Moser must provide proof of legal access to build. She added as far as the construction business, her husband is the sole proprietor, and the largest vehicle he drives is an F-150 pick-up truck and a van. Mr. Miller clarified he owns a construction business, and Mrs. Moser stated he remodels homes. She went on to say they he has employees, and no construction equipment will be kept on the property after the house is built. She mentioned they do not receive deliveries for the business, because her husband picks up his own material. She added he only drives a pick-up or passenger van.

Rich Moser, 29640 CR 42, Wakarusa, came on for this petition. Mr. Moser stated they plan to fix the easement after construction is complete. He added construction will not cause any more wear than, if an existing property owner decided to install a pool. He stressed they plan to move their drive and put in a circle drive to alleviate problems with backing out.

Mrs. Moser offered to re-grate the easement after construction, and even add crushed rock if needed.

The public hearing was closed at this time.

Mr. Godlewski stated, if the Board is inclined to approve this request, Staff will review documentation and map out the easement to ensure it connects. Mr. Miller suggested the petitioner provide proof of legal access to the property for Staff approval. Mr. Godlewski also request proof of both ownership granting right to the easement and a map showing its exact location. Attorney Kolbus clarified proof of legal access satisfactory to Staff is required. Mr. Lyon asked Mrs. Holt, if the easement reaches her property, and she responded no.

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 Use Variance to allow for the construction of an accessory structure before the construction of a residence be approved with the following condition imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. A minor subdivision must be completed.
3. The building permit for the residence and accessory structure must be obtained at the same time.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 6/9/17) and as represented in the Use Variance application.

Further, the motion also included that a Developmental Variance to allow for the construction of a residence on property with no road frontage served by an access easement and 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 6/9/17) and as represented in the Developmental Variance application.

The petitioner must provide proof of legal access to the property satisfactory to staff.

Vote: Motion passed (**summary:** Yes = 3, No = 0, Abstain = 1).

Yes: Joe Atha, Roger Miller, Denny Lyon.

Abstain: Randy Hesser.

Attorney Kolbus clarified the petitioner cannot build without providing proof of legal access.

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

14. The application of *Carl H. II & Stacy Walker* for a Use Variance to allow for a temporary residential use in an RV/camper on property located on the South side of CR 38, 1,200 ft. East of CR 13, common address of 23794 CR 38 in Harrison Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0411-2017*.

There were eight neighboring property owners notified of this request.

Stacy Walker, 23794 CR 38, Goshen, was present representing this petition and requested permission to live in an RV. Mr. Hesser clarified the petitioner has plans to rebuild. He also asked, if the new home will be finished within a year, and Mrs. Walker responded that is the plan. Mr. Lyon asked, if DNR has contacted her about wetland, and she responded no. She continued saying they have a one acre pond.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he does not think a year is long enough to rebuild their home, and he suggested extending the time frame. Mr. Hesser mentioned the petitioner can ask for an extension, if needed.

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

Motion: Action: Approve, **Moved by** Joe Atha, **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 Use Variance to allow for a temporary residential use in an RV/camper 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 6/2/17) and as represented in the Use Variance application.
2. Approved for a period of one year from the BZA approval date.
3. The petitioner must obtain all Elkhart County Environmental Health approvals.

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

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

15. The application of **Stephen R. Ryno** for a Use Variance to allow for the construction of a second dwelling on a parcel located on the South side of CR 4, ½ mile East of CR 35, common address of 13252 CR 4 in York Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0451-2017*.

There were eight neighboring property owners notified of this request.

Craig Pawling, Silver Creek Homes, 2260 Cassopolis St., Elkhart, was present representing the petitioner. Mr. Pawling stated Mrs. Ryno is a stroke victim, and he request six months to transfer her to the new residence. He continued saying Mr. Ryno has a contractor lined up to demo the existing home, and he added the lender will not close on the loan for the new residence until the existing one is demolished. Mr. Miller clarified the six month time requirement is not a problem. Mr. Pawling stressed the family will move into the home prior to him receiving funding. He continued saying power and gas will be taken away from the existing home towards the end of construction. He stressed once the new residence has received the certificate of occupancy they will move and demolish the existing residence.

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 Use Variance to allow for the construction of a second dwelling on a parcel be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The existing home must be removed within six (6) months of completion of the new residence.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 6/9/17) and as represented in the Use Variance application.

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

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

16. The application of *Galen W. & Lorraine L. Yoder* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the East side of CR 37, 1,020 ft. North of CR 38, common address of 64868 CR 37 in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0459-2017*.

There were seven neighboring property owners notified of this request.

Kenny Bontrager, Allstar Construction, 4510 W 450 N, Shipshewana, was present representing the petitioners. Mr. Bontrager stated the petitioners want to build a new residence for their growing family and convert the existing residence into a shop/garage. He stressed they plan to build on the other side of the drive, and the septic is already in place. Mr. Hesser asked, if he understands what should be done to convert the existing building. Mr. Bontrager responded he is not sure, but he believes the bedrooms will be taken out. Mr. Godlewski clarified a residence consists of a bedroom, kitchen, and toilet. He explained having all three classifies as a residence; however, he continued two of the three would not. Mr. Bontrager reiterated the kitchen and bathroom can remain as long as the bedrooms are taken out. He added he plans to take out all walls to open it up. He also asked, if it will require an inspection, and Mr. Godlewski responded yes. Mr. Atha mentioned the site plan shows the existing house is to be demolished, and Mr. Bontrager stressed it will be converted. It was decided a revised site plan is needed showing the existing residence to be converted rather than demolished.

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 Use Variance to allow for the construction of a second dwelling on a parcel be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The existing home must be converted to accessory storage within six (6) months of completion of the new residence.
3. The petitioner must provide a revised site plan showing the existing house will be converted rather than demolished.

The following commitment was imposed:

1. Approved in accordance with the site plan to be submitted for staff approval and as represented in the Use Variance application.

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

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

17. The application of **Jason A. & Vicki Elaine Becker** for a Use Variance to allow for the construction of a second dwelling on a parcel located on the West of CR 25, 1,950 ft. South of CR 50, common address of 71025 CR 25 in Jackson 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-0460-2017*.

There were five neighboring property owners notified of this request.

Vicki Becker, 71025 CR 25, New Paris, was present for this petition along with her husband Jason Becker. Mrs. Becker stated they purchased the property in August of 1999 and lived in the existing residence. She continued saying they have since purchased five additional acres, and their family has grown. She explained their goal is to build a new residence for their family and demolish the existing residence. Mr. Hesser asked, if they have any concerns with the Staff Recommendation, and she 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** 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 existing home 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 6/6/17) and as represented in the Use Variance application.

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

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

18. The application of **Paul L. & Lisa L. Holdeman** for a Use Variance to allow for the construction of a second dwelling on a parcel located on the Southeast corner of CR 7 & Edwards Rd., $\frac{3}{4}$ mile South of CR 6, common address of 53744 CR 7 in Osolo 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-0465-2017*.

There were 32 neighboring property owners notified of this request.

Paul Holdeman, 53744 CR 7, was present for this request. Mr. Holdeman stated they would like to live in their existing home until the new residence is completed. He continued saying once it is completed the existing residence will be torn down. He stressed from a financial standpoint they need to live in the old home instead of moving off site.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel was approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The existing home must be removed within 6 months of competition of the new residence.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 6/9/17) and as represented in the Use Variance application.

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

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

Mr. Hesser questioned the tabled matter for Mr. and Mrs. Martinez and clarified staff is requesting the matter be re-tabled. Mr. Godlewski explained the neighboring property owners were not properly re-notified for this meeting. He continued saying due to the number of remonstrators, Staff feels this cannot proceed until proper notice is sent out. He stated Staff is requesting this matter be re-tabled. Attorney Kolbus clarified the petition was tabled indefinitely and re-notification was requested, but the letters were not sent to the neighboring property owners. Mr. Hesser mentioned several people were in the hall for this matter, and Mr. Godlewski added Staff informed them that matter would not be heard today. Mr. Hesser clarified Board action is required to re-table this mater. It was found no one remained in the hallway for this request.

19. The application of *Wayne & Corinna R. Wingard* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the East side of CR 35, 750 ft. South of CR 20, common address of 59156 CR 35 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 #UV-0468-2017*.

There were nine neighboring property owners notified of this request.

Blake Doriot, P.O. Box 465 New Paris, was present representing the petitioners. Mr. Doriot pointed out the building in question and stressed the apartment has existed since 2008 or 2009. He explained this property recently went through a minor subdivision. He added he was involved in the subdivision, and he did not realize that building was rented as an apartment. He went on to say Mr. Wingard purchased the property, and the previous owner moved into the apartment. He added they believed this property was okay, until new windows were installed, and someone filed a complaint. Mr. Doriot stated the request is for this property to remain the same. He added a suggestion was to subdivide the property, but he believes it would be messy. He mentioned the Health Department has record of a septic system for the apartment. He

stressed in order to subdivide the property one of the septic systems would have to move, and he feels a subdivision will be injurious. He stated Mr. and Mrs. Wingard took a petition to the neighbors stating this request will not affect the neighboring property values, be injurious to the neighbors, or go against the comprehensive plan, which the majority of the neighbors signed [Attached to file as Petitioner's Exhibit #1]. Mr. Doriot stated he believes the Ordinance should fit the general character of the area, and he stressed the people affected by this petition are not opposed to it. He then submitted mail, which was addressed to Unit B [Attached to file as Petitioner's Exhibit #2]. He continued saying the mail submitted belongs to the new apartment tenant. He added this property went through a subdivision, and this problem did not arise. He again stressed he does not believe this lot can be properly subdivided. Mr. Atha asked, if the apartment has its own mail box, and he responded yes. Mr. Hesser stated this property needs to meet the 1,000 sq. ft. living area restriction to be classified as an accessory dwelling. Mr. Godlewski mentioned accessory dwellings do not have separate addresses, and it would need to appear secondary to the primary dwelling. Mr. Atha asked the apartment's square footage, and Mr. Doriot responded 1,600 sq. ft. of living area. Mr. Godlewski clarified it consists of two rentals, which could not be qualified as an accessory dwelling. Mr. Hesser reiterated the apartment cannot be classified as an accessory dwelling even, if it is only 1,000 sq. ft. Mr. Doriot stressed the petitioners purchased this property in good faith, and they were never told it was not legal during that process. He also added the property went through a subdivision, and the apartment was not mentioned. Mr. Hesser stressed when it went through the subdivision process no one knew about the separate living unit. Mr. Doriot added he did not mention the apartment, because he also did not realize it existed.

Mr. Wingard, 60497 CR 33, came on in favor of this request. Mr. Wingard stated when he purchased the property Gary Helmuth, the previous owner, lived in the back apartment and rented out the main residence. He added the apartment was rented during subdivision process. He continued saying after he purchased the property Mr. Helmuth rented the apartment from them. Mr. Hesser asked, if the petitioner is aware of any building permits pulled to convert the apartment. Mr. Godlewski stated without a Use Variance a permit would not have been issued for an apartment in a barn. Mr. Wingard stated Mr. Helmuth purchased the property from Kerm Troyer, who constructed the building. He continued saying the building included a bathroom, and Mr. Helmuth decided to convert it to living area without a permit. Mr. Wingard stressed the apartment existed when he purchased the property. Mr. Miller clarified the building was originally a storage building with a bathroom, which they then converted into an apartment. Mr. Doriot stated he believes dozens of similar situations exist throughout the county.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the Ordinance allows one dwelling per parcel, and the Commissioners set guidelines for allowed second dwellings. He continued saying the Board had several issues with second dwellings, and he believes the Commissioners' decision should be followed. He stressed the Board realizes the petitioner did not convert the building; however, he believes the purpose of limiting a property to one residence is to prevent a rental situations. He added approval of this petition would allow rental units on a single family property. He stated the Staff Analysis may be exaggerated; however, he does not believe this petition can meet the requirements for a Use Variance. Mr. Atha stated he could justify denying a new request, but he

added this has taken place for ten years with no problems. Mr. Miller stressed the Board has denied several similar requests. Mr. Lyon added he believes a new building is different than an existing situation. Mr. Miller stated he has a hard time approving this request after it was done improperly, and then denying someone asking for approval. He added he does not believe this was done with malicious intent.

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

Motion: Action: Deny Moved by Randy Hesser, Seconded by Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel be denied with one year to bring the property into compliance.

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

Yes: Roger Miller, Randy Hesser.

No: Joe Atha, Denny Lyon.

Mr. Hesser stated Mr. Campanello will have a chance to review the materials from the hearing and make a decision. Mr. Doriot mentioned he has a previous commitment on the August hearing date, and he request it be tabled until the September Board of Zoning Appeals Hearing. Mr. Hesser suggested the neighbors be re-notified of this petition, and the public hearing will remained closed. He added, if Mr. Campanello needs more information before making a decision the public hearing can be re-opened.

Motion: Action: Table, Moved by Randy Hesser, Seconded by Denny Lyon that this request for a Use Variance to allow for the construction of a second dwelling on a parcel be tabled until the September 21, 2017, Elkhart County Advisory Board of Zoning Appeals Meeting due to a tied vote.

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

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

Mrs. Britton clarified the neighboring property owners should be re-notified. Mr. Hesser stressed the public hearing will be closed, but Mr. Campanello can choose to re-open the hearing. Mr. Doriot submitted a large copy of the aerial highlighting the neighboring property owners in favor of this petition for Mr. Campanello to review [Attached to file as Petitioner's Exhibit #3].

20. The application of *Esteban Sr. & Maria R. Martinez (Buyers) & Traco LLC C/O Karla Ruelas (Seller)* for a Special Use for warehousing and storing of RVs and transport on property located on the North side of CR 26, 1,720 ft. East of CR 9, in Concord Township, zoned A-1, came on to be heard.

There were no neighboring property owners notified of this request.

Mr. Godlewski stated due to lack of notice this petition should be tabled until next month's hearing.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a Special Use for warehousing and storing of RVs and transport be tabled until the August, 17, 2017 Advisory Board of Zoning Appeals Meeting due to lack of notice.

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

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

21. As a staff item, Attorney Kolbus presented a proposed amendment to the Rules of Procedure. He brought up the go-kart track recently approved by the Board. He continued saying Elkhart County Superior Court II reversed the Board's decision, because they determined the evidence was not sufficient to grant the request due to uniqueness. He stated about a month ago the neighboring property owners' attorney contacted him to see what should be done with the Commitment, because it was recorded before the Court's decision. Attorney Kolbus proposed additional language be added to the Rules of Procedure to allow for an Exhibit L. He explained Exhibit L can be filed by the Zoning Administrator to show the decision was reversed, and the Commitment was terminated. He went on to say without Exhibit L a title search would find a Commitment for the approved Use Variance, but no paperwork showing the Courts overturned that decision. He requested the Board approve both the amendment and Exhibit L. Mr. Hesser clarified the Court's decision is no longer subject to appeals.

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller the Board approve the request for a Rules of Procedure change to Rule 6. 06. B. as presented including the addition of Exhibit L.

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

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

22. Mr. Godlewski recognized Planner, Liz Gunden's, last BZA Meeting.

23. Mr. Godlewski introduced Matt Shively as Liz's replacement as Planner.

24. The meeting was adjourned at 12:02 P.M.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary