

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16TH DAY OF NOVEMBER 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; Matt Shively, Planner; Mae Kratzer, Planner; Duane Burrow, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

Absent: Roger Miller.

2. A motion was made and seconded (*Lyon/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19th day of October 2017 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Campanello/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 **John M. & Tammy S. Moore** for renewal of an existing Special Use for warehousing and storing of trucks, trailers, and machinery for a snow plowing, property maintenance, and light excavating service business on property located on the East side of Ash Rd., 535 ft. North of CR 28, common address of 60904 Ash Rd. 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 #SUP-0817-2017*.

There were six neighboring property owners notified of this request.

Mr. Hesser asked if anything has changed since the petition was previous approval, and Mr. Godlewski mentioned the request is for a renewal. The petitioner clarified his request was approved with a five year renewal.

John Moore, 60904 Ash Rd., came on for this petition and mentioned the business has not changed over the past five years. He added he has now purchased another business, decreasing the use of this facility. Mr. Campanello asked if he is aware of any complaints against his business, and he 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 renewal of an existing Special Use for warehousing and storing of trucks, trailers, and machinery for a snow plowing, property maintenance, and light excavating service business be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 10/16/2017) and as represented in the Special Use application.

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

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

5. The application of *Lindale R. & Amy D. Johns* for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing less than three acres located on the Southeast corner of Jackson St. & Mission St., 180 ft. West of US 33, common address of 15530 Jackson St. in Benton Township, zoned R-3, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0785-2017*.

There were 22 neighboring property owners notified of this request.

Lindale Johns, 15530 Jackson St., Goshen, was present for this petition. He requested approval to have chickens on his property. Mr. Lyon asked if he spoke to any of the neighboring property owners. Mr. Johns responded they did not express any concerns about his request. Mr. Hesser asked how he disposes of waste, and he responded it is placed on the flower beds for fertilizer.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** 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 agricultural use for the keeping of chickens on a tract of land containing less than three acres be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 10/4/2017) and as represented in the Special Use application.
2. Limited a maximum of twelve (12) chickens, no roosters.

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

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

6. The application of *James & Crystal Rinehart* for a Special Use for a home workshop/business for a lawn care business on property located on the South side of Meadow Oak Ln., 1,440 ft. East of Johnson St., common address of 25748 Meadow Oak Ln. 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 #SUP-0824-2017*.

There were 20 neighboring property owners notified of this request.

Jarrold Rinehart, 25748 Meadow Oak Ln., Elkhart, was present for this request and stated he would like approval to run a lawn care business from this property. He continued saying he agrees to a one year review by staff, because he does not plan on his business remaining at this location. Mr. Atha clarified approval of this request is only for this location. Mr. Rinehart stated he started this business last year and currently lives in the residence with his parents. He explained his equipment is stored in the back yard, which is enclosed with a six foot privacy fence. He mentioned he received a complaint about a sign in the front yard, which he then removed. He continued saying he also received a noise complaint, and he no longer starts his equipment early in the morning or late at night. He stressed his equipment is left on the trailer, covered, and placed in the backyard. He added he has pictures of his property taken from the front yard, and his equipment is not visible. Mr. Rinehart stated he also took pictures of other residences in the neighborhood with equipment stored outside. Mr. Lyon asked the size of his trailer, and he responded 5x16. Mr. Hesser asked if Mr. Rinehart resides on the property, and he responded yes. Attorney Kolbus mentioned Commitment #2 prohibits outside storage, but the petitioner stated he plans to store his equipment outside. He continued saying it does not appear he has enough room to store his equipment inside. Mr. Rinehart agreed he does not have room to store the trailer inside. However, he continued he has a shed that he could modify to fit his mower. Mr. Lyon questioned the one year renewal commitment mentioned in the Staff Report. Mr. Godlewski mentioned the recommended commitment calls for review by Staff, but the Board can require the renewal be before them. Attorney Kolbus clarified if the Board grants this request, a Commitment would need to be added for one year renewal before the Board. Mr. Lyon stated he believes renewal before the Board would be fair to the neighbors. Mr. Atha asked the amount of equipment he owns. Mr. Rinehart responded two riding mowers, and a push mower, which he stores in the shed. He went on to say he had more equipment this summer, but it was sold. He explained a few high school students worked for him, but he is now the only employee. He stressed he believes outside storage of his equipment is no different than storing a boat, RV, or trailer in the yard. Mr. Atha asked if he stores bulk fertilizer or chemicals on site, and he responded any chemicals he owns are for personal use. Mr. Hesser mentioned outside storage is not permitted for a home workshop/businesses.

Robert Smith, 25804 Meadow Oak Ln., was present in remonstrance. Mr. Smith stated Mr. Rinehart only started storing his equipment in the back yard about a month ago. He also stressed during the summer he started up the equipment early in the morning to load it onto his trailer, which created a lot of noise for a residential neighborhood. He mentioned the truck and trailer have been parked in the middle of the street. He stated a child was run over in the neighborhood about 30 years ago, and equipment parked in the street is a safety concern. He stressed one of the neighbors has a four year old, and a bedridden woman also lives close to the property. He added he has heard noise anywhere from 6:30 A.M. to 10:00 P.M. He again stressed the business causes too much noise for a residential neighborhood. Mr. Hesser asked if noise in the morning and evening has stopped, and he responded yes when fall started. He continued saying he believes the business slows down in the fall, and Mr. Rinehart does not leave his residence as early as he did during summer. He stated this past summer he heard

equipment being washed before 6:30 A.M. He also stressed equipment was not stored in the back yard until a few months ago. Mr. Hesser asked if he would be okay with equipment stored in the back yard, and he responded no. He went on to say he does not want to see equipment parked in the street or hear equipment running early in the morning and late at night. Mr. Lyon mentioned the petitioner will no longer remove his equipment from the trailer. Mr. Hesser also asked if any other equipment is stored outside in the neighborhood and he responded no.

Mr. Rinehart came back on and stated he employed a few high school students this summer. He explained they cleaned equipment in the morning to keep them busy, but he no longer removes his equipment from the trailer at morning or night. He also mentioned he does not park in the road. He clarified he only parks in the road when he mows a neighbor's yard. Mr. Rinehart also submitted pictures from the previous day showing equipment stored outside around his neighborhood *[Attached to file as Petitioner Exhibit #1]*. He added his bedridden neighbor is in support of his business, but she was unable to attend the hearing. He added he spoke to several neighbors and did not receive any complaints. He stressed he is busier now with leaf cleanup than during the summer. Mr. Hesser asked what equipment he needs to start in the morning, and he responded none. He added he was taking the equipment off to check it on a daily basis during the summer, but he had double the equipment at that point. He continued saying he currently only uses one riding and push mower, which stay on his trailer. He stressed he does not park in the road, and he understands the safety concerns as he has a child of his own. He mentioned he spoke to the neighbors who have a child, and their only concern was the noise. Mr. Rinehart pointed out his neighbors mow their yards or have a lawn service come early in the morning. He explained the fence was modified to allow the trailer to fit inside. Mr. Lyon asked if he is okay with renewal in one year. Mr. Rinehart responded yes, and stated he does not plan to run the business from this property for longer than a year. Mr. Lyon also asked if the trailer is enclosed, and he responded no. However, he explained it does have a canvas cover.

The public hearing was closed at this time.

Mr. Hesser mentioned any statements made during the hearing are part of the record, and the petitioner is held to them. He recommended the outside storage Commitment be eliminated, and the request be approved for a period of one year.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a lawn care business 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.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 10/16/2017) and as represented in the Special Use application.
2. Approved for a period of one year 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, Tony Campanello, Denny Lyon, Randy Hesser.

7. Mr. Godlewski presented a staff item for *Steven & Waneta Borkholder* (72990CR 101-131021-1). He stated David Raber from B & B Roofing is requesting a minor change to the site plan for a woodworking home workshop/business Special Use on behalf of the Borkholders. He explained this request is for the construction of a 4,800 sq. ft. agricultural building, which will not be used for the business. He mentioned the new site plan is attached to the Board Members' packets, and staff would recommend approval as a minor change. Mr. Hesser stated the building's dimensions on the site plan add up to 3,500 sq. ft. rather than 4,800 sq. ft. Mr. Godlewski responded it must be an error, or the building has a second story. Mr. Campanello mentioned this request is getting close to a major change.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the Board approve the request as a minor change.

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

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

8. Mr. Godlewski also presented a staff item for the *Board of Commissioners of the County of Elkhart Indiana* (21968CR 38-130225-1). He stated Martin Builders is requesting a minor change to the site plan for a salt and truck storage facility Special Use. He explained the request is to construct a 2,000 sq. ft. addition to the existing salt storage building. He stated staff recommends approval of this request as a minor change. Mr. Hesser questioned where the addition will be constructed, and Mr. Godlewski responded the South side of the building.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the Board approve the request as a minor change.

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

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

9. The application of *Richard W. & Vada J. Berkey as Tenants in Common Undivided ½ Interest (Lessor) & PI Tower Development, LLC (Lessee)* for a Special Use for a wireless communication facility on property located on the Southwest corner of CR 2 & CR 39, 2,730 ft. East of CR 37, 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 #SUP-0805-2017*.

There were seven neighboring property owners notified of this request.

Bryon Donely, Insite, Inc., 660 Midwest Rd., Oakbrook Terrace, IL, was present representing PI Tower Development and Verizon Wireless and submitted a packet [*Attached to file as Petitioner Exhibit #1*]. Mr. Lyon asked if CR 39 is paved, and Mr. Donely responded the pavement ends after the round-a-bout. He stated this request is for a new telecommunications facility including a 185 ft. cell-tower. He explained the residents of Elkhart County have asked for better signal level and quality of coverage from Verizon Wireless. He continued saying

coverage complaints are frequently received from customers living, working, and commuting in this area. He stressed a higher capacity is needed, because usage during peak times overloads the tower, keeping users from gaining access to service. Mr. Donely mentioned existing towers in this area are unable to provide users with the highest quality coverage Verizon can provide. He went on to say customers are demanding improved service where they work, live, and drive due to increased texting and data usage. He explained installing more equipment is the only way to increase the level of coverage, and this tower will help meet that need. Mr. Donely stated a January 2014 study showed that 97% of American adults have cell phones, and 40% of homes use only wireless phones. He added the FCC estimates 70% of America's 911 calls are placed from wireless phones, and many Americans own phones because of the ability to call 911. He continued saying wireless phones provide emergency dispatchers with a call back number and approximate location. Mr. Donely stressed the location for this tower was chosen to improve coverage between Interstate 80 and State Road 13. He added this property meets Elkhart County requirements for public communications facilities. He pointed out the property is zoned agricultural, and all fall zone setbacks are met. He stressed this tower has the ability to support all four major wireless carriers, reducing the number of towers needed in the county. Mr. Campanello asked if this tower will be one of the tallest in the area, and he responded 185 ft. is close to the maximum height for towers. He explained they typically do not exceed 195 ft., because of FAA and FCC restrictions. Mr. Atha asked if the tower will interfere with the field's irrigation system. Mr. Donely responded the irrigation system's radius was taken into account, and the system will not be impeded.

Charles Thorold, 51414 CR 39, was present in remonstrance and pointed out his property east of the subject parcel. Mr. Thorold stated he is in close proximity to several businesses, and he feels a better location can be found for this tower. He requests it be moved, because he believes his property values will be negatively impacted. He added a property's value is affected anytime it is close to a commercial use. He stressed he is not opposed to having a tower on this property at a different location. He explained the tower will be highly visible from his driveway. He pointed out the proposed location is 185 ft. from his property, and he request it be moved farther away. Mr. Thorold stated he printed off aerials of all the towers in the area, which he found to be in industrial or densely wooded areas. He stressed he did not find any towers in Middlebury within a 1,000 ft. of a residence. He added he would not be opposed to the tower, if it was moved to the other end of the field. He then submitted the aerials *[Attached to file as Remonstrator Exhibit #1]*.

Mr. Donely came back on and stated this location was chosen partially based on the existing access road. He continued saying they tried to avoid cutting across the property or interfering with the irrigation system. He stressed the property is zoned agricultural, which is encouraged for cell towers. He agreed the tower will be visible from CR 39. He then explained the system is remotely operated/monitored, and tower technicians will only visit the site once or twice a month. He stressed a cell tower is different than a commercial facility, and traffic will not increase. Mr. Donely explained they spoke to other property owners, but no one was interested in the tower. He went on to say they strive to respect the existing use of the land. Mr. Campanello asked if the land lord occupies one of the surrounding residences, and he responded he is unsure. Mr. Campanello also asked if the land lord receives a monthly lease, and he responded yes. Mr. Campanello stated he believes the tower should be moved, and he brought up a previous request on CR 8 and CR 19 where they required the tower be moved. Mr. Lyon

asked if the tower could be moved north. Mr. Donely stressed the purpose of the tower is to cover I-80 and moving it north would defeat the purpose. He stressed the farther the tower moves from I-80, the greater the need for an additional tower. Mr. Hesser asked if the tower could be moved west. He responded that would move the tower farther from SR 13, and a longer access road would be needed. He mentioned they looked at land closer to the intersection, but they could not find any interested property owners.

Mr. Lyon asked Mr. Thorold if he is opposed to this request due to the location, directly across from his residence. Mr. Thorold came back on and stated his residence overlooks the field. Mr. Lyon asked the distance between his residence and the toll road, and he responded it is roughly 600 ft. to the fence. He continued saying the tower will be around 500 ft. from his residence. He added he cleared a spot for a pole barn, roughly 300 ft. from the proposed tower. He stressed he is concerned because of the close proximity to his buildings. He explained he understands this location has an existing access road, but it will negatively impact his property values. Mr. Hesser clarified the proposed tower will be in line with Mr. Thorold's pond.

Mr. Atha mentioned the petitioner chose the location to avoid installing a new access road to the tower and questioned alternate locations. Mr. Donely stressed the tower must remain on the parcel shown on the aerial. He continued saying this location is already farther west than Verizon originally planned and moving it more will not improve coverage. Mr. Campanello asked if moving the tower 1,000 ft. west will affect the service it provides, and Mr. Donely stressed after a certain point it will matter. Mr. Campanello mentioned the petitioner appears to be focused on what is best for the landlord rather than the neighbors. Mr. Donely responded he is considering what is best for the residents of Elkhart County. He continued saying he understands the neighbors' concerns, but they have limited options. He stressed moving the tower could affect the irrigation system. He added the network is striving to improve coverage throughout the county.

The public hearing was closed at this time.

Mr. Hesser stated he understands the Board has required towers be moved, because they were purposefully placed closer to neighbors. However, he believes this tower will simply obstruct the neighbors' view of the toll road, and manufacturing areas are located close to the property. Mr. Campanello stated he believes the tower should be moved 1,000 ft. west.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** Randy Hesser that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a wireless communication 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 10/12/2017) and as represented in the Special Use application.

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

Yes: Joe Atha, Denny Lyon, Randy Hesser.

No: Tony Campanello.

10. The application of ***Eric Roy Brown*** for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing less than 3 acres located on the North side of Kimberly Dr., 195 ft. East of CR 17, South of Clinton St., common address of 21963 Kimberly Dr. in Elkhart Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0731-2017*.

There were 24 neighboring property owners notified of this request.

Eric Brown, 21963 Kimberly Dr., Goshen, was present representing this petition and request approval to have chickens. Mr. Lyon mentioned the site plan shows the coop five feet from the north property line. Mr. Atha asked if Mr. Brown spoke to any of the neighboring property owners, and he responded they did not express any complaints. Mr. Hesser asked how he plans to dispose of waste, and he responded on their garden or in the woods behind them. Mr. Atha stressed waste should not be placed in the woods, and Mr. Brown stated he can spread it on his garden. Mr. Lyon reiterated the neighbor to the north is in favor of this request.

Dain Morehouse, 62615 Jennifer St., was present and stated he lives east of the subject property. Mr. Morehouse asked the number of chickens Mr. Brown is requesting. Mr. Lyon responded he is limited to twelve chickens and no roosters. Mr. Morehouse stated that is similar to Goshen City's restrictions, and Mr. Atha mentioned that is the county's standard. Mr. Lyon asked if he is opposed to the request, and Mr. Morehouse responded not for that amount. He continued saying he would be opposed to a larger amount of chickens, and he stressed this is an urban area. He added he is far enough from the property that this request should not affect him.

William Miller, 62567 Old CR 17 came on and mentioned he lives across the road from the subject property. He stated he does not have a problem with the chickens, but he would like to see them contained on the property. He mentioned he has seen them roaming, and he added, if one comes onto his property, he will have chicken for dinner. Mr. Lyon mentioned the chickens have a run and coop.

Mr. Morehouse came back on and stated coyotes have been spotted in the woods behind the subject property. He added coons have also been seen, and he suggested the chickens be kept confined.

Mr. Brown came back on and stressed the chickens are kept in an enclosed run. However, he stated they occasionally let them out, and they sometimes roam onto the neighbors' property. He continued saying they are typically only out for a few hours before night fall. He explained when it gets dark they go back into the coop on their own. Mr. Brown also mentioned he does not have a problem with the limit of twelve chickens, because they cannot have any more due to the size of their property.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus asked if the Board has a problem with allowing the chickens to roam. Mr. Campanello mentioned dogs and cats are allowed to run free, and he does not have an issue with chickens doing the same. Mr. Lyon stressed the petitioners keep track of the chickens when they run free.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing less than 3 acres be approved with the following condition imposed:

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

The following conditions were imposed:

1. Approved in accordance with the site plan submitted (dated 9/18/2017) and as represented in the Special Use application.
2. Limited to a maximum of twelve (12) chickens, no roosters.

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

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

11. The application of *Forrest C. & Shelley L. Hershberger* for a Special Use for a home workshop/business for small engine repairs, services, and retail sales (ATVs and motorcycles) on property located on the Northeast side of CR 45, 2,885 ft. East of Old CR 17, common address of 21901 CR 45 in Concord Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0754-2017*.

There were 19 neighboring property owners notified of this request.

Forrest Hershberger, 21901 CR 45, was present for this request. Mr. Lyon asked if the new building will replace an existing one, and Mr. Hershberger clarified the building in question was constructed years ago. Mr. Hesser clarified no new buildings will be constructed.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello asked who will operate the business, and Mr. Hershberger responded himself. Mr. Campanello then mentioned products for sale are often placed out by the road, and then brought back inside at night. He continued saying he believes it is a good business, and he asked if the Board needs to address outside storage. He stressed he does not have a problem with it, because everything is placed inside the building at night. Mr. Godlewski stated temporary outside storage is allowed, but permanent storage would be an issue. Mr. Hershberger mentioned their products would not be there in the morning, if they were outside during the night.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for small engine repairs, services, and retail sales (ATVs and motorcycles) 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 10/16/2017) and as represented in the Special Use application.

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

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

12. The application of *David Allen Selman & Joanne Ward-Selman* for a Special Use for a ground mounted solar array on property located on the West side of CR 21, 1,795 ft. South of CR 40, common address of 66045 CR 21 in Elkhart Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0816-2017*.

There were four neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 1952 W. Market St., Nappanee, was present representing the petitioners. Mrs. Salyer stated they would like approval to place a solar system 75 ft. from the road, just east of an existing building. She explained two ground racks will be placed, one in front of the other.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a ground mounted solar array be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 10/16/2017) and as represented in the Special Use application.

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

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

13. The application of *Christopher J. & Patricia J. French* for a Special Use for a ground mounted solar array on property located on the West side of CR 29, 2,790 ft. South of US 20, common address of 57537 CR 29 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0820-2017*.

There were 20 neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 1952 W. Market St., Nappanee, was present representing the petitioners. Mrs. Salyer stated both of the French's parcels are combined onto

one deed. She mentioned the solar system will be placed on the vacant parcel 25 ft. from the property line. Mr. Lyon asked if the system will service the entire residence, and Mrs. Salyer responded possibly depending on the amount of energy used. She stressed it will make a huge impact or cover it all.

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** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a ground mounted solar array be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 10/16/17) and as represented in the Special Use application.

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

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

14. Mr. Godlewski mentioned Staff is currently looking into Zoning Ordinance Amendments. He explained the Ordinance is reviewed annually, and he asked the Board for feedback. Mr. Hesser stated he believes it would be reasonable to adopt guidelines to allow solar panels by right. Mr. Godlewski mentioned solar panel guidelines already exist, but the requests often exceed what is allowed. He explained panels on roofs are permitted by right, but ground-mounted arrays over 800 sq. ft. require a Special Use. He questioned how much that number could be raised. He mentioned the amount of solar systems should significantly drop off after this year, due to changes in the federal guidelines. Mr. Hesser also suggested a revision to allow chickens by right under certain criteria. Mr. Godlewski mentioned Special Use requests for chickens often have remonstrators. Attorney Kolbus suggested six or fewer chickens be permitted by right with a coop and enclosed run. Mr. Hesser stressed covenants will need to be enforced by subdivisions, and he suggested they only be allowed by right, if permitted by the subdivision covenants when applicable. Mr. Lyon asked if the courts have overturned any of the Board's decisions to approve chickens in subdivisions with covenants against it, and Attorney Kolbus responded no. Mr. Campanello stated he does not believe covenants should be mentioned in the Ordinance, and he stressed most covenants are not followed. Mr. Hesser stated Goshen allows chickens by right under certain criteria. Mr. Godlewski pointed out Duane Burrow is working on the Zoning Ordinance Amendments. Mr. Burrows came on and stated the state law has changed, and he believes fewer people will install solar arrays. Mr. Godlewski mentioned staff will consider the suggested changes. Mr. Atha suggested allowing six or fewer chickens by right, and Mr. Hesser stressed chickens are routinely approved. Mr. Campanello explained the Board has given permission for chickens in highly populated areas for 4-H

projects, and he believes adding a covenant restriction may prevent that. Mr. Hesser stressed he believes subdivision covenants should be considered.

15. Mr. Godlewski introduced Natasha Kauffman as Laura Coyne's replacement.

16. The application of *Armando Velazquez Yanez* for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing less than 3 acres located on the East side of Brendon Ct., North of CR 18, West of CR 3, common address of 57942 Brendon Ct. 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 #SUP-0798-2017*.

There were 25 neighboring property owners notified of this request.

Jennifer Velazquez, 57942 Brendon Ct., Elkhart, was present for this request. Mrs. Velazquez stated she would like approval to have chickens. Mr. Atha asked where the chickens are located, and she pointed out their location on the aerial. She explained the chicken coop is built off of an existing building. Mr. Atha asked if she spoke to her neighbors. Mrs. Velazquez stated she spoke to a few of the neighbors, and one did not know she had chickens. Mr. Atha also asked how long they have owned chickens, and she responded since May 21, 2015. Mr. Campanello asked how many chickens she owns, and she responded 40. He explained the Board typically allows chickens for 4-H projects and eggs, and he mentioned 40 chickens is a large amount. Mrs. Velazquez stressed the eggs are not sold, and the manure is placed on her flower beds. She added the beds are mulched to ensure waste does not pile up. Mr. Atha asked the reason for 40 chickens, and if she would be opposed to having fewer. Mrs. Velazquez mentioned she recently adopted 14 chickens from a woman who could not keep them. Mr. Lyon asked if she has a rooster, and she responded one. She explained she taught her children about fertilized eggs, and they watched chickens hatch the eggs. Mr. Hesser asked if the chickens are laying hens, and she responded two or three are meat birds. Mr. Campanello asked if her children are involved with 4-H, and she responded no. She stated their children feed and water the chickens along with collecting their eggs. Mr. Lyon stated the site plan shows a pool, and he asked if it is above ground. Mrs. Velazquez responded yes, and she mentioned during the summer quite a few flies gather from the chickens, dogs, and cats. However, she added a company comes to sprays for flies every three months. Mr. Hesser questioned the lot's acreage, and she stated just under an acre. Mr. Atha asked if the property is fenced, and she responded yes. Mr. Atha then clarified the chickens remain inside the fence. Mrs. Velazquez mentioned the chickens rarely leave their coop. She stated their neighbor has a dog that dug under the fence and killed a few chickens. She stressed their own dogs are trained to leave the chickens alone.

Scott Amos, 57924 Brendon Ct., Elkhart, came on in remonstrance and pointed out his property next to the petitioner. Mr. Atha clarified he is the neighbor with the mentioned dog. Mr. Amos stated his biggest complaint is the smell. He stressed he would like to enjoy his backyard with his family without smelling the chickens. He continued saying it took him 17 years to install his \$30,000 back yard. Mr. Amos mentioned a hawk now hangs around his yard watching the chickens. He went on to say his daughter has a small dog, and he is worried about its safety. He added he also has a grandson who plays in his yard. He then stated he is worried about the resale value of his home due to the smell. Mr. Campanello asked if he would have a

problem with 12 chickens, and he believes fewer chickens will help the smell. Mr. Amos responded he would be okay with that amount. Mr. Campanello continued saying neighbors rarely complain about smell with less than 12 chickens. Mr. Lyon mentioned the smell is probably from their waste, and Mr. Atha added 40 chickens create a large amount of waste. Mr. Amos stressed the smell does not go away, and it is noticeable 24/7.

Mrs. Velazquez came back on and stated she can dispose of the waste at her father's house. She stressed they have people over, and they have not heard any complaints about the smell. She then submitted pictures of her property to the Board *[Attached to file as Petitioner Exhibit #1]*.

The public hearing was closed at this time.

Mr. Godlewski mentioned the standard commitment of 12 chickens no roosters should have been on the Staff Report but must have been an oversight. Mr. Campanello mentioned the Board has not approved requests for a large number of chickens in a residential area, and he believes 40 is too many. Mr. Atha stated he is inclined to approve this request for 12 chickens, no roosters. He added he believes fewer chickens will help alleviate the smell. Mr. Campanello stressed he does not remember the Board ever allowing roosters.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing less than 3 acres be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 10/10/2017) and as represented in the Special Use application.
2. Limited to a maximum of twelve (12) chickens, no roosters.
3. Petitioner must reduce the number of chickens to twelve (12) within sixty (60) days.

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

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

Mr. Campanello asked if the petitioner should be given a time period to comply with Commitment #2. Mr. Godlewski suggested a 30, 60, or 90 day time period, and Mr. Campanello suggested 60 days. Attorney Kolbus clarified a commitment should be added giving the petitioner 60 days to reduce the number of chickens to 12.

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Denny Lyon that the previous motion be amended to include Commitment #3 that the petitioner must reduce the number of chickens to twelve (12) within sixty (60) days.

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

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

17. The application of **Todd D. Lederman & Cynthia J. Lederman** for an amendment to an existing Special Use for warehousing and storing to add property and to allow for a garden supplies business located on the West side of CR 39, 3,300 ft. North of CR 10, common address of 53899 CR 39 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 #SUP-0759-2017*.

There were 10 neighboring property owners notified of this request.

Todd Lederman, 53899 CR 39, Middlebury, was present for this request. Mr. Lederman stated he originally received approval to operate an excavating business on this property. He continued saying that business was sold, and he planted trees to start a tree farm. He mentioned he only sold a few trees a year when his business began, but it has since grown. He then apologized for not requesting permission to operate the tree farm, but he has now sold the business. He explained he would like put everything in order for the new owner to continue the business. Mr. Lederman also mentioned he is in the process of parceling off and selling his residence along with five acres. Mr. Lyon clarified the business and residence will use the same easement. Mr. Lederman explained the farm will own the easement, and the residence will have permission to use it for access. Mr. Hesser mentioned a separate request is needed to access the property by an easement. Attorney Kolbus clarified a Developmental Variance for a residence served by an access easement was approved by the Hearing Officer. Mr. Atha asked if he anticipates increased traffic compared to the excavating business. Mr. Lederman explained the tree business has been in operation for 23 years, and they hope it continues to grow. He continued saying it has been growing about 5% per year. He also mentioned they received approval to operate the business on property across the road.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha mentioned the business has operated here for several years. Mr. Campanello stated the property is well maintained.

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 an amendment to an existing Special Use for warehousing and storing to add property and to allow for a garden supplies business be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 10/16/2017) and as represented in the Special Use Amendment application.

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

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

18. The application of *Town of Wakarusa* for a Special Use to allow for a town police department, for a Developmental Variance to allow for 12 off-street parking spaces (Ordinance requires 17 spaces), for a 10 ft. Developmental Variance to allow for the construction of an addition to an existing building 0 ft. from the East side property line (Ordinance requires 10 ft.), for a 4 ft. Developmental Variance to allow for an addition 51 ft. from the center line of the right-of-way of Waterford St. (Ordinance requires 55 ft.), for a 22 ft. Developmental Variance to allow for an existing building 33 ft. from the centerline of the right-of-way of Waterford St. (Ordinance requires 55 ft.), and for a Developmental Variance to allow building coverage to be 55% of the property (Ordinance allows a maximum of 50%) located on the Northeast corner of Elkhart St. & Waterford St., common address of 100 N. Elkhart St. in Olive Township, zoned B-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0814-2017*.

There were 49 neighboring property owners notified of this request.

Jeff Troxel, Town Manager of Wakarusa, 100 W. Waterford St., was present for this request. Mr. Troxel stated he expected DLZ to present on behalf of the town. He explained the town purchased the old key bank building to renovate it for the town police department. He continued saying they plan to add a garage to the east side of the building. Mr. Godlewski mentioned the questionnaire for this request is very thorough. Attorney Kolbus asked if the addition will share a common wall with the neighboring building. Mr. Troxel responded it will only share a wall with the key bank building, because the neighboring restaurant causes some structural concerns. He explained the original plans show a three car garage, but the size has been reduced to avoid potential problems. Mr. Atha mentioned the site plan shows the addition attached to both walls. Mr. Troxel responded DLZ informed him the wall would be pulled back, and new drawings reflecting that will be submitted.

Casey Erwin, DLZ Indiana, 825 S. Barr St., Ft. Wayne, was present for this request along with Stephen Kromkowski from the South Bend office. Mr. Erwin stated he agrees with Staff's findings. He continued saying the addition will no longer share a wall with the neighboring building, but it also will not meet the required 10 ft. setback. He stressed the two buildings will be separated. He then submitted a revised site plan showing the change *[Attached to file as Petitioner Exhibit #1]*. Mr. Campanello asked if a separation between the two buildings is required, because the restaurant's wall is not fire rated.

Stephen Kromkowski, principle architect at DLZ, 2211 E. Jefferson, South Bend, came on to answer Mr. Campanello's question. Mr. Kromkowski responded one reason for a separation between the buildings is the wall's condition including its fire rating, but that could have been resolved during construction. However, he explained the existing building also has an overhang that crosses the property line, interfering with their plans. He added constructing a foundation next to the wall causes concerns due to the wall's condition. He continued saying the walls will be separated by 5.5 ft. to safely dig footings. Mr. Lyon mentioned that gap will create a walkway, and Mr. Kromkowski stressed it will be gated to prevent public use.

Abner Brown, 117 N. Elkhart St., Wakarusa, came on against this petition and explained he owns both 115 and 117 N. Elkhart St. Mr. Campanello asked if his business is north of the subject property, and he responded it is across the street. Mr. Brown requests the Board deny any Variances to change the existing building. He continued saying it is the old Key Bank

building, and he does not feel a police station downtown will represent the community well. He added the existing building is 9,000 sq. ft. not including the proposed addition. Mr. Brown mentioned one of the requests is to vary from the parking standard. He explained the town owns four additional lots including one Dr. Weldy and Associates employees use for parking. He pointed out they usually take eight of the eleven available spaces on that lot. He went on to say the proposed addition will eliminate six parking spaces on the east side of the building, increasing the demand for street parking. Mr. Brown stressed Wakarusa needs a new police station, but he believes a better location can be found than down town. He continued saying several cost estimates have been heard as high as \$2,600,000, which he believes is a large amount for the population of Wakarusa. He requests the Board deny the petition as he believes a better location can be found to build a police station. Mr. Campanello stated the building already exists, and it is perfect for a police station. Mr. Brown mentioned the building would be good for a bank. He explained when Key Bank left Wakarusa, the town purchased the building and signed a restrictive deed, which stated the building could not be used for a financial institution as long as a Key Bank is operating in Nappanee. He went on to say he believes the town could remove those restrictions, and a bank could utilize that building. He explained he contacted a bank, who showed interest in coming to Wakarusa. He stressed a bank would help grow the community, and he believes a police station will hinder that growth. He added it will take away parking and could negatively impact the town.

Mr. Kromkowski came back on and stressed the project cost should not affect the Variance. However, he added it will not cost \$2,600,000. He then addressed the parking concerns and mentioned the northern parking lot is already owned by the town. He stated the police station should not increase traffic, and they welcome a partnership with the vet in terms of parking. Mr. Lyon asked if parking will be restricted. Mr. Kromkowski responded no, and he clarified it will remain public parking. He stressed the addition is needed to provide secure parking for police vehicles. Mr. Hesser mentioned the petition states no detention facility will be located on site, and there will be seven employees. Mr. Kromkowski agreed they will not have a detention facility, and he explained the police station currently has five sworn officers and employees. Mr. Campanello stressed a bank would use more parking spaces than the police station. Mr. Kromkowski added on-street parking is also available along CR 3 and Waterford St., but it will not be a high traffic police station. He stressed they have no need for a holding cell, because the station has an agreement with the county. He continued saying all inmates are taken to the jail for booking. He explained this building will be used for interviews and taking statements. Mr. Campanello questioned alternate locations for the police station.

Mr. Troxel came back on to answer Mr. Campanello's question and stated this project has been in the works for about five years. He explained they explored constructing a new building next to town hall, moving into the old Dollar General store, or moving into a building donated by Thor. He continued saying the donated building was sold to another business to keep them in town. He stressed the town has explored several different options and they feel down town is the best location. He added placing the station on SR 19 would move it farther from the residential part of town.

Mr. Kromkowski came back on and stated the building does not meet ADA or accessibility requirements. He explained it has two different levels: the original building and an addition. He continued saying the new addition will make it fully accessible. He mentioned he

understands the building has been considered for other uses, but it will be an undertaking to bring it up to code.

The public hearing was closed at this time.

Mr. Hesser stated he respects Mr. Brown's comments, but he believes they involve Town of Wakarusa decisions. He stressed the Board's decision is based on land use, and he does not see a problem with this request. He stated the revised site plan should be referenced in the commitments.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Randy Hesser that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use to allow for a town police department 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 11/16/2017) and as represented in the Special Use application.

Further, the motion also included that a Developmental Variance to allow for 12 off-street parking spaces (Ordinance requires 17 spaces), for a 10 ft. Developmental Variance to allow for the construction of an addition to an existing building 0 ft. from the East side property line (Ordinance requires 10 ft.), for a 4 ft. Developmental Variance to allow for an addition 51 ft. from the center line of the right-of-way of Waterford St. (Ordinance requires 55 ft.), for a 22 ft. Developmental Variance to allow for an existing building 33 ft. from the centerline of the right-of-way of Waterford St. (Ordinance requires 55 ft.), and for a Developmental Variance to allow building coverage to be 55% of the property (Ordinance allows a maximum of 50%) 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 11/16/2017) and as represented in the Developmental Variance application.

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

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

19. The application of *Vernon E. & Mary Etta Yoder* for a Special Use for a home workshop/business for a small engine repair and sharpening service business, for a 4 sq. ft. Developmental Variance to allow for an 8 sq. ft. sign (Ordinance allows 4 sq. ft.), and for a 5 ft. Developmental Variance to allow for a sign 50 ft. from the centerline of the right-of-way of SR 120 (Ordinance requires 55 ft.) on property located on the North side of SR 120, North end of CR 37, common address of 12993 SR 120 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 #SUP-0809-2017*.

There were 10 neighboring property owners notified of this request.

Vernon Yoder, 12993 SR 120, Middlebury was present for this request. Mr. Yoder mentioned he enjoys working on small engines and decided to take over a shop that was closing. He continued saying he would like to operate his business out of a workshop in the back of his garage while he insulates an existing outbuilding. He explained his goal is to eventually move the business to the insulated building. He added his neighbor to the west owns a large piece of property and offered to sell him part of his woods to build a new shop. However, he continued his neighbor is terminally ill and would like to live on the property as long as possible. He explained when his neighbor moves he plans to purchase the property and operate his business there. Mr. Campanello asked if semis ever deliver to the property. Mr. Yoder responded he does not receive any deliveries by semi, but UPS delivers about once a day. Mr. Campanello stressed semi deliveries would be impossible due to the lack of room for a turn-around. He also asked if he will have retail sales, and Mr. Yoder responded no. Mr. Campanello clarified mowers will be dropped off, fixed, and picked up. Mr. Yoder mentioned he is currently employed at Jayco, and he plans to work on the engines during the afternoon. He explained he would like to try the business and possibly turn it into a full time job in the future. Mr. Campanello brought up the Developmental Variance request. Mr. Yoder mentioned he does not believe a smaller sign will be visible from the road.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the petitioner is requesting a 2x2 double sided sign. He continued saying in the past he interpreted a 4 sq. ft. sign as a double sided sign. Mr. Godlewski stressed Staff's position on sign size has not changed, and he believes it is a complicated issue to explain. He suggests sign Developmental Variances continue to come before the Board for approval.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a small engine repair and sharpening service business be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 10/12/2017) and as represented in the Special Use application.

Further, the motion also included that a 4 sq. ft. Developmental Variance to allow for an 8 sq. ft. sign (Ordinance allows 4 sq. ft.), and for a 5 ft. Developmental Variance to allow for a sign 50 ft. from the centerline of the right-of-way of SR 120 (Ordinance requires 55 ft.) be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan submitted (dated 10/12/17) and as represented in the Developmental Variance application.

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

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

Mr. Hesser mentioned if the business moves, this request will need to come back before the Board.

20. The application of *Rodney G. & Sharon K. Ramer* for a Special Use for an agri-business for the repair of agricultural equipment, vehicle repair, and tire sales (agricultural and commercial) and for a Developmental Variance to allow for the total sq. ft. of accessory structures to exceed the total sq. ft. allowed based on living area in the residence on property located on the Northeast corner of CR 50 & CR 17, common address of 21925 CR 50 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 #SUP-0815-2017*.

There were seven neighboring property owners notified of this request.

Charlie Zercher, Kindig & Sloat, 102 Heritage Pkwy., Nappanee, was present representing the petitioners. Mr. Zercher stated Staff determined this operation falls within the parameters of an agribusiness, which would not require a Special Use. He continued saying the need for a Developmental Variance was then discovered during that process. He explained the building on the site plan labeled one, two, and three, will not be entirely used for the business. He stressed they would like to receive approval to exceed the square footage now rather than later. Mr. Zercher added due to the square footage designated for the business 32 parking spots are required and displayed on the site plan. He went on to say a turn-around area is also labeled on the site plan, and he stressed the property is a dairy farm, which receives a large amount of truck traffic. He explained most deliveries for the business are by box trucks, but a semi has plenty of room to turn around if needed. He stressed all tires were moved inside of building two and three. He also mentioned the business has one employee, the petitioners' son, who occupies the residence. Mr. Zercher stressed a petition was submitted with the application signed by the majority of the neighbors. He explained the recorded owner of one property passed away, and they were unsure of the heirs. Mr. Hesser mentioned the application states they will also install personal tires, and he asked how they plan to dispose of used tires. Mr. Zercher responded a recycler will pick them up once a month, and they will be stored inside until then.

Ed Miller, 55348 CR 27, was present representing Jule Unzicker, 1415 Pembroke Circle. Mr. Miller explained Mrs. Unzicker owns property across the road from the petitioners, and he added she is not against this petition. He requests if concrete is poured in the future, that water is kept from draining onto their field. He continued saying their field has always had a low spot, and he is concerned additional water will amplify that problem.

Mr. Zercher came back on and stressed any change to the site plan would require an amendment to the Special Use. He added the petitioners are required to retain all water on 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** Tony Campanello, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agri-business for the repair of agricultural equipment, vehicle repair, and tire sales (agricultural and commercial) 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 10/16/2017) and as represented in the Special Use application.
2. Outside storage is prohibited.

Further, the motion also included that a Developmental Variance to allow for the total sq. ft. of accessory structures to exceed the total sq. ft. allowed based on living area in the residence be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 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 10/16/17) and as represented in the Developmental Variance application.

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

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

21. The application of **Gregory Collins** for a Use Variance to allow for warehousing and storing of a semi truck and trailer on property located on the East side of Best Ave., 620 ft. North of Mishawaka Rd., common address of 57562 Best Ave. in Baugo Township, zoned R-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0765-2017*.

There were 24 neighboring property owners notified of this request.

Bob Collins was present representing his son, Gregory Collins, who was unable to attend the hearing due to work. Mr. Collins stated his son purchased the residence about two or three years ago, and he also purchased and cleaned up the north lot. He stressed his son then placed gravel on the lot to park his semi when he is home. He added he is only home about ten to twelve days a month. Mr. Campanello asked if both the tractor and trailer will be stored on the property. Mr. Collins responded he also has a trailer for hauling cars that he parks with the semi.

He mentioned a commercial building is located across the street, and his neighbors do not have a problem with the semi being parked there. He stressed it is an improvement to the neighborhood. Mr. Campanello asked if the semi is backed onto the property from Best Ave. Mr. Collins explained his son pulls into Mishawaka Plastic and backs down the road about 200 ft. He added his son often parks the trailer at another location and only parks the truck on this property.

Lowell Greer, 57611 Woodrow St., was present against this request and pointed out his property directly east of the petitioner. Mr. Greer stated Mr. Collins has cleaned up the property, and he would like to see it stay that way. He stressed he is against having a semi parked on the property, and he is worried additional vehicles will be added later. Mr. Campanello pointed out the petitioner's property on the aerial. Mr. Greer mentioned he recently installed a privacy fence to help clean up the neighborhood. He added he is also concerned about ground-water contamination from washing the semi. He also asked what Mr. Collins plans to warehouse. He request the property stay residential.

Mr. Collins came back on and stressed his son would simply like approval to park his semi on the property ten to twelve days a month. He continued saying the semi is well maintained and will not be an eyesore.

The public hearing was closed at this time.

Mr. Campanello commented it is a dense area. Mr. Hesser mentioned this is a common problem, and he understands semis are important to the economy. However, he continued the Board has consistently denied these request, especially when one is backed down the road. He added he believes the semi can be stored nearby. Mr. Campanello stressed this property appears to be a difficult location to safely park a semi. Mr. Hesser recognized Mr. Collins has cleaned up the property, but the Ordinance prohibits semis in residential areas.

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

Motion: Action: Deny, Moved by Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for warehousing and storing of a semi truck and trailer be denied with the following condition imposed:

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

Yes: Joe Atha, Tony Campanello, Randy Hesser.

No: Denny Lyon.

Included as part of the motion, Staff to delay enforcement for 90 days.

22. The application of *John J. & Gail F. Bergan* for a 10 ft. Developmental Variance to allow for an existing residence 0 ft. from the North property line (Ordinance requires 10 ft.) and for a 5 ft. Developmental Variance to allow for an existing accessory structure 0 ft. from the South property line (Ordinance requires 5 ft.) on property located on the West side of CR 3, 2,630 ft. South of CR 26, common address of 60473 CR 3 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 #DV-0660-2017*.

Loren Sloat, 102 Heritage Pkwy., Nappanee, was present representing the petitioners. Mr. Sloat stated he became involved with the case ten days ago, and he was not part of the Hearing Officer meeting. He continued saying he believes the request was transferred to the Board of Zoning Appeals to allow the petitioner time to complete a property survey. He explained the petition was filed for a 5 ft. Developmental Variance from the south property line, and a 10 ft. Variance from the north property line. He then submitted a packet of information on the request *[Attached to file as Petitioner Exhibit #1]*. Mr. Sloat stated they received the property survey, and it showed the accessory structure 5.4 ft. from the south property line eliminating the need for that Variance. He requests that the 5 ft. Developmental Variance be withdrawn. He then addressed the distance between the north property line and the residence, which was found to be 4.8 ft. over the property line. He explained Mr. Bergan purchased a vacant piece of property in 1973, and the subdivision was platted around his property in 1981. He went on to say a gap area, 45 ft. from the back and 10 ft. from the north side of Mr. Bergan's property, remained when the subdivision was platted. He added he spoke to a surveyor who told him a gap area was sometimes left to ensure the subdivision did not cross the property line. He explained Mr. Bergan assumed his property line included the gap area. Mr. Sloat stated Mr. Bergan constructed the garage addition in 1984, which they built 4.8 ft. into the gap area. He went on to say the owner of the subdivision planted trees, and they were recognized as the property line for several years. He added the Bergan's house is visible on an aerial from 1998, but no houses had been constructed in the subdivision. He continued saying in 1999 a residence was constructed on lot 13. Mr. Sloat explained Mr. Harter purchased lot 12 in 2002, and he purchased the gap area in 2005. He then addressed the aerial and stressed according to the survey the property lines are not accurate. He mentioned Mr. Harter constructed a shed on the gap area. He went on to say he believed the shed was 10 ft. from the property line, but the survey found it was actually built on the line. He also explained Mr. Harter's subdivision lot and gap area are combined on one deed. Mr. Sloat then pointed out the gap area, which the Bergan's residence crosses 4.8 ft. into is recorded as 10 ft. but only measures 9.7 ft. He stated he has spoken with Mr. Harter and Mr. Bergan's realtor, and they are going to work on a neighborhood agreement addressing the property line concerns. He explained Mr. Bergan would like to acquire the 10 ft. gap area north of his property. He continued saying the Variance needed would no longer be for 10 ft. He added Mr. Harter would then like to purchase a strip of property north of the gap area for access to his detached garage. Mr. Hesser clarified the garage built in the gap area is owned by the Harters. Mr. Sloat then pulled up the survey, pointed out the property lines, and explained Mr. Harter is willing to work with them to eliminate the building's encroachment. He added they have not spoken to the neighbor to the north, but he believes he will be willing to sell Mr. Harter a 10 ft. strip of land. Mr. Sloat requests the north property line variance be table for 30 days to give the property owners time to come to an agreement. Attorney Kolbus suggests the Board hear any comments from those present for this request before making a decision.

David Harter, 29050 Hillary Ln., was present and stated he is willing to work with Mr. Bergan to rectify the situation.

Baana Veen, Mr. Bergan's realtor, 945 E. Beardsley Ave., came on for this request. Mr. Veen stressed a pending real estate transaction and septic installation are waiting for the Board's decision. Mr. Lyon asked which property is for sale, and it was found to be Mr. Bergan's.

There were no remonstrators present.

The public hearing remained open.

Mr. Godlewski stressed any new information on a petition must be placed in the file ten days prior to the meeting. Attorney Kolbus mentioned Staff should be aware of the setback needed, if additional property is acquired.

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

Motion: Action: Table **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 10 ft. Developmental Variance to allow for an existing residence 0 ft. from the North property line (Ordinance requires 10 ft.) be tabled until the December 21, 2017, Elkhart County Advisory Board of Zoning Appeals meeting, to allow the petitioner time to come to an agreement with the neighboring property owners.

Further the motion included that a 5 ft. Developmental Variance to allow for an existing accessory structure 0 ft. from the South property line (Ordinance requires 5 ft.) be withdrawn at the request of the petitioner.

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

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

23. The application of *Larry D. & Mona L. Shafer* for a 50 ft. lot width Developmental Variance to allow for the construction of a residence on proposed lot 3 of Jefferson Meadows with 50 ft. road frontage (Ordinance requires 100 ft.) on property located on the East side of Jefferson Dr., 565 ft. South of CR 18, East of CR 23, in Jefferson Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0738-2017*.

Tonya Miller, Progressive Engineering, was present representing the petitioners. Mrs. Miller explained they would like permission to use 50 ft. of land owned by Jefferson Ridge Subdivision for access to proposed lot 3 of their minor subdivision. Mr. Campanello pointed out the property in question on the aerial. Mrs. Miller stated after the last hearing Mr. Shafer obtained an agreement with the homeowners association to use that piece of property. Mr. Hesser clarified the proposed lot is not part of Jefferson Ridge Subdivision. Attorney Kolbus explained Jefferson Ridge is west of the subject property, and the proposed lot is part of a three lot minor subdivision known as Jefferson Meadows.

Arthur Shafer, 19056 CR 18, was present as the power of attorney for his mother, Mona Shafer. Mr. Shafer stated the subdivision started in May, and he was advised by Stephanie from Progressive Engineering to contact the neighboring property owners. He continued saying he spoke to all nine neighbors; seven were okay with the subdivision and two refused to comment. He added at last month's Board of Zoning Appeals hearing, the Jefferson Ridge Home Owners Association Attorney voiced some concerns with the proposal. He mentioned his concerns involved property value and cost sharing for property maintenance. He went on to say he agrees the owners of lot 3 should pay HOA dues, because they will use the subdivision amenities. He explained he reached out to the president of Jefferson Ridge HOA and also attended one of their meetings. He stated they came to an easement agreement, and the owner of lot 3 will be a

member of the Jefferson Ridge HOA, binding them to the covenants and restrictions. Mr. Lyon asked if the lot will be added to Jefferson Ridge subdivision, and Mr. Shafer clarified it will remain in Jefferson Meadows subdivision. However, he continued it will be part of the Jefferson Ridge HOA. He then submitted a copy of the easement agreement to the Board *[Attached to file as Petitioner Exhibit #1]*. Mr. Hesser asked if the 50 ft. strip will be part of lot 3, and he questioned why it is considered an easement. Mr. Shafer responded the 50 ft. strip is not part of lot 3, and he explained the easement was recorded on the original plat. He continued saying the attorney last month had some questions about using the easement as a driveway. Attorney Kolbus stated the plat description reads future 50 ft. roadway access contingent on approval by the county authorities. Mr. Hesser asked if this request should be for access by an easement. Mr. Godlewski responded no, and he explained the plat has already approved access. Attorney Kolbus clarified the easement took affect once the plat was approved. Mr. Shafer mentioned they now have a good neighbor policy between the subdivision and the proposed lot, which addressed the subdivision's concerns.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked why this request is not for a parcel served by an easement. Mr. Godlewski explained the plat is not clear, but he believes it refers to the 50 ft. strip as a future roadway. He stressed it was difficult to interpret, but Staff chose this approach. Attorney Kolbus added the plat wording implies the 50 ft. is a road. Mr. Hesser clarified the 50 ft. area is considered a road way. Mr. Godlewski compared the area to a stub street.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 50 ft. lot width Developmental Variance to allow for the construction of a residence on proposed lot 3 of Jefferson Meadows with 50 ft. road frontage (Ordinance requires 100 ft.) be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 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 9/18/17) and as represented in the Developmental Variance application.

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

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

24. Mr. Godlewski expressed concern with the Bergan petition, because the December Board of Zoning Appeals Meeting deadline was November 13th. He explained an updated request is needed, and he is not sure all of the internal processes can be completed on time. He asked if the petition should be heard in January. Mr. Campanello mentioned he did not believe 30 days was enough time. Attorney Kolbus clarified the Board cannot approve a larger Variance than requested, but they can approve anything smaller. Mr. Godlewski suggested leaving the petition as is and approving it for less than requested.

- 25. The Staff item for Steven A. & Waneta Lea Borkholder (72990CR 101-13102-1) was previously heard as item #7 on page 5.
- 26. The Staff item for Board of Commissioners of the County of Elkhart Indiana (21968CR 38-130225-1) was previously heard as item #8 on page 5.
- 27. 2018 changes to the Zoning Ordinance previously discussed as item #14 on page 11.
- 28. The meeting was adjourned at 11:54 A.M.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary