

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16th DAY OF MAY 2019 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; Jason Auvil, Zoning Administrator; Duane Burrow; 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/Hesser*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of April 2019 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Lyon/Atha*) 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 **Brookins Farms, LLC** for an Amendment to an existing Special Use for a ground-mounted solar array to allow for additional solar arrays on property located on the West side of CR 121, 1,320 ft. North of CR 142, common address of 67261 CR 121 in Jackson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0281-2019*.

There were 23 neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 8015 W. 1350 N., Nappanee, was present representing the petitioners. Mrs. Salyer explained their request to install two solar arrays in addition to the existing six. She continued saying the new panels will be located north of the existing, identical size and footprint.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a ground-mounted solar array to allow for additional solar arrays 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. The request is approved in accordance with the site plan submitted (dated 4/15/19) and as represented in the Special Use Amendment application.

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

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

5. The application of *Phillip R. Kilmer & Arleta C. Kilmer, Husband & Wife (Lessor) & Central States Tower (Lessee)* for a Special Use for a wireless communications facility on property located on the 650 ft. North of Franklin St., 700 ft. East of US 33, North of CR 44, in Benton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0223-2019*.

There were seven neighboring property owners notified of this request.

Judd Chaille, 28602 CR 50, Nappanee, was present representing Central States Tower, the company who will construct the structure under contract with Verizon Wireless. He explained the packet before the Board outlines the project, and it will be a monopole, solid steel structure standing on its own foundation without guy wires. He continued saying it will stand on a single foundation with bolts around the base. He added everything will be contained within a fenced compound on leased land. Mr. Miller asked the distance from the tower to the closest building, and Mr. Chaille responded 490 ft. to one residence and 500+ ft. to another. He went on to say an agricultural building for tractor storage is closest to the tower.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a 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. The request is approved in accordance with the site plan submitted (dated 3/29/19) 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.

6. The application of *Steven Lehman* for a Special Use for a school on property located on the North side of CR 4, 3,200 ft. West of CR 39, common address of 12593 CR 4 in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0254-2019*.

There were nine neighboring property owners notified of this request.

Steven Lehman, 11522 SR 120, Middlebury, was present for this request. Mr. Miller asked if he will construct the school. Mr. Lehman clarified he currently owns the property, but the school will purchase it from him.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated this appears to be a great location for a school.

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 school 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 filed.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 4/9/19) 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.

7. As a staff item, Mr. Auvil presented the request for a minor change to the site plan for an existing Special Use for *RYMC, Inc. (Buyer) & Nelson J. & Laura M. Ramer (Sellers)* (SUP-0734-2017) represented by Frank Martin from Countryside Christian School. He continued saying they would like to amend approval of a Special Use for an athletic field/school. He explained the request is to move the addition's location and increase its size from 9,800 sq. ft. to 11,200 sq. ft. He mentioned the minor change request, email, existing site plan, and amended site plan are included in the Board's packets. He added the letter was received May 6, 2019, and staff recommends approval as a minor change.

Mr. Hesser stated he was confused by the submitted drawings. He explained the site plan following the handwritten letter shows a proposed school, and he asked if that has been constructed. He also asked if the second site plan was previously approved by the Board. Mr. Auvil pointed out the aerial stamped 9/19/17 is the approved site plan, and the engineered drawing reflects the requested change. Mr. Hesser stated the revised site plan depicts a building similar in size to what was previously approved. He mentioned it appears the size of the building is doubling rather than increasing by 20%. He added he believes the proposed building on the original site plan has been constructed. He continued saying the addition to the north seems to double the size of the building. Mr. Auvil responded the Board approved a 9,800 sq. ft. building, and the minor change is to construct an 11,200 sq. ft. building. Mr. Miller clarified the proposed building is also moving locations. Mr. Hesser asked if the building labeled existing is actually on the property. Mr. Auvil responded he is unsure without looking at the file. He continued saying it was submitted as a minor change, and he again reiterated the square footage difference. He stressed the request is to change the location of the building and increase its size. He added the original site plan is not clear. Mr. Miller noted this property is in the middle of nowhere, and

he does not remember there being any concerns at the last meeting. Mr. Auvil pointed out the original Special Use was only for a recreational field, and the school was added later. He explained the increase is 19% of the approved site plan, and he only has the authority to approve 10% or below. He continued saying the Board can approve a change between 10% and 20% as a Staff Item, but anything over 20% requires a full hearing. Mr. Hesser stated he does not see a 9,800 sq. ft. addition on either site plan. Mr. Miller stated he believes the black outline on the approved site plan to be the existing building. Attorney Kolbus then pointed out the existing building is a recreational facility, not a school. Mr. Atha noted the roof line is faintly shown on the original site plan, and Mr. Hesser then clarified the proposed school will move to be connected to the existing recreational building.

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 approve the request as a minor change.

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

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

8. Mr. Godlewski came on to say Mr. Auvil, Attorney Kolbus, Mr. Burrows, and himself have crafted a few changes to the Zoning Ordinance. He continued saying they set up a committee that will meet the second Wednesday of June, July, and August to discuss the changes. He explained a few proposed changes deal with Use Variances for a second residence and signs for Special Uses. Mr. Atha asked if solar arrays will be part of the changes. Mr. Godlewski responded they plan to increase the square footage allowed by right, but the feedback they received suggested large solar arrays still require Special Uses. Mr. Miller stated the Board did have an array proposed close to a neighboring property, and they denied it. Mr. Godlewski responded a square footage threshold will remain in place for solar panel arrays. Mr. Hesser pointed out some ground-mounted solar arrays will be allowed by right with the changes. Mr. Godlewski responded that is already in place, but they plan to increase the threshold.

9. The application of *Tomas Cuellar & Maria Cuellar, Husband & Wife, Alejandro Cuellar* for a Special Use for warehousing and storage of RVs on property located on the West side of CR 117, 1,830 ft. South of CR 18, East of CR 17, common address of 57855 CR 117 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0238-2019*.

There were five neighboring property owners notified of this request.

Tomas Cuellar, 57855 CR 117, came on and request permission to store RVs on his property. He explained they began storing RVs, because the property was sitting vacant. He continued saying he did not realize a Special Use was required for RV storage.

Sonya Cuellar, 57855 CR 117, came on and stated they did not realize they needed permission to store RVs. She went on to say they allowed a friend use the land, since it was vacant. Mr. Miller asked if they use it for business purposes. Mr. Cuellar responded it is not a business; their friend just needed a place to park RVs. He continued saying it is not permanent and will probably only take place for another year. He added it is okay, if their request is denied.

Mr. Miller asked if their friend stores his personal RVs on the property. Mr. Cuellar responded his friend transports RVs. Mr. Lyon asked the number of RVs he anticipates storing on the property, and he responded around 50 to 60. Mr. Miller pointed out the application states no more than 80 RVs. Mr. Cuellar responded he told his friend he could not store any more than 80, and he stressed it was not their intention to operate a business.

Mr. Atha asked the number present in remonstrance, and most hands in the audience were raised. He then asked if anyone was present in support, and no hands were raised.

Bruce Rogers, 58046 CR 117, was present in remonstrance and stated he has lived in the neighborhood for 40 years. He stated a few weeks ago he left his house between 7 and 8 a.m. He continued saying three trucks pulling RVs were on the road in front of him, and two others were on the property waiting to pull out. He explained they appeared to be on their way to the Loves Gas Station for fuel, which means they crossed two lanes of traffic within a quarter mile to reach the stop light. He stressed that is a safety issue. He added he drove down CR 18 towards CR 117 this morning, and pine creek runs through that area with dips in the road. He stressed a vehicle only has a ten second window to stop from the top of the hill to the intersection. He went on to say figuring a three second reaction time only leaves seven seconds to stop. He stated that may not be a problem now with clear roads and high visibility, but seven seconds is not a lot of time to stop even when driving the speed limit. He again stressed the safety issue, and the frequent use of the road by children, walkers, bikers, and dog walkers. Mr. Hesser questioned the traffic signal at the corner of CR 18 & CR 117, and Mr. Rogers responded it is a two way stop. He then clarified CR 117 stops, and CR 18 is a through road. He continued saying rerouting truck traffic is not a good option, since CR 117 T&E, has a smaller turning ratio, dips in the road, and frequent flooding. He stressed wildlife also frequently crosses the road including deer, pheasant, and quail. Mr. Rogers added he is concerned approval of this request will open the door for a business on the property. He continued saying a business will increase traffic, signage, deliveries, and employees. Mr. Miller pointed out this request is for a Special Use, which restricts the use of the property to what the Board approves. Mr. Hesser mentioned the petitioners are required to return to the Board, if they decide to open a business. Mr. Rogers stated a few neighbors operate businesses such as dog grooming, dog/horse boarding, and car detailing, and one also sells eggs, which fit into the community. He stressed the existing businesses have not increased traffic or caused any problems in the community. He went on to say RV storage does not fit into this area, and he moved here for a community of family, friends, and neighbors. He pointed out the CR 117 was dirt when he moved to the area, and it took years for it to be paved.

Mr. Auvil submitted a letter in remonstrance that did not have a name or address attached *[Attached to file as Staff Exhibit #1]*. He added he also received a packet from Mike Anderson, and he invited him to the podium to submit it and present his case.

Mike Anderson, 58482 CR 117, came on in remonstrance and submitted a packet to the Board *[Attached to file as Remonstrator Exhibit #1]*. Mr. Anderson stressed an RV storage lot does not fit in their community, and several neighbors are present to inform the Board how this will impact their lives. He listed some concerns are heavy trailer/truck traffic, excessive speed, road hogging ect. He stated his wife has been pushed to the side of the road twice by RV units. He added the truck/trailers produce noise at all hours of the night and are an eyesore. He stressed the petitioners are not impacted by this request, because they do not reside on the property. He then

went on to address some issues not mentioned in his letter, and he submitted a few pictures of the road condition/no truck signs *[Attached to file as Remonstrator Exhibit #2]*. He stated CR 117 was originally gravel, then chip-n-seal, and finally blacktop a few years ago. He continued saying the county recognized it as a light duty road, and posted "No Truck" signs at each end of the road. He stressed the road is in a state of deterioration, and it is cracking, breaking down, and crumbling. He mentioned the county patched the road last week by blowing gravel/tar on it, but that will not last. He stated their road, peace, and quiet are in peril, if this request is approved. Mr. Anderson pointed out this is also a land use conflict. He continued saying combining both numbers listed on the application brings the total to 95 RVs. He explained the petitioners own 5.396 acres, but the application states 3.5 acres will be used for RV storage. He argued that leaves less than two acres for their pony and horses, which does not meet the county's requirement of three acres. He stated the petitioners purchased the property nearly two years ago but have not moved into the house. However, he continued this year and last they operated a commercial landscaping business from the property without a Special Use. He stressed the neighbors filed a complaint a few months ago when the trailers were brought to the property. He went on to say the county investigated and allowed the petitioners 20 days to remove them. He stated the petitioners evaded that order by applying for a Special Use, and the neighbors request this application be denied, commercial activity ceased, and the RVs be removed within 20 days.

Tim Weadick, 21289 CR 18, came on opposed to this request. Mr. Weadick stated his family has owned the majority of land on the east side of CR 117 near the subject property for nearly 50 years, and it is a registered national wildlife habitat with the state of Indiana. He stressed wildlife is prevalent in this area. He continued saying they invested several resources into preserving the wildlife habitat, and truck traffic does affect it. He added the corner of CR 117 & CR 18 is not designed for truck/trailer traffic, and he pointed out the trucks are digging a hole in the yard on the southeast corner. He stressed a lot of traffic travels to/from the subject property, tracking dirt onto the road. He mentioned two companies in the Maple City Industrial Park rent transportation lots from him, so he is very familiar with transportation. He stressed a transportation company is hauling units in/out of the subject property, and he does not believe it belongs in the area.

Dick Keen, 57259 CR 117, was present against this request and stated he has lived in the area about 35 years. He stressed he walks this road almost every day, because it dead ends at US 20 and CR 20, without much through traffic. He continued saying he feels relatively safe walking this area, and he frequently sees children riding their bikes and even a woman riding her horse on the road. He stressed this area is not conducive to truck traffic. He added he understands the petitioners are not responsible for the truck drivers, but they blow up and down the road. He continued saying some acknowledge walkers/riders, but the majority get in/out as quickly as possible. He mentioned a neighbor who was unable to attend the meeting today, told him they frequently wake up between 12 and 3 in the morning to trucks trying to get out of the mud. He stressed this is not a good fit for their neighborhood.

Eric Williams, 57347 CR 117, just north of the CR 117 & CR 18 intersection, came on in remonstrance. Mr. Williams stated he is the father to one of seven neighborhood kids that play on the road. He mentioned CR 117 has no posted speed limit, and a blue truck was driving fast enough yesterday that it scared the kids. He stressed the proposed use is not consistent with the

neighborhood from a safety stand point. He added his children play in this area, and he would appreciate denial of this request.

Lad Letherman, 57955 CR 117, came on in remonstrance and attempted to submit a picture on his cell phone. Mr. Miller informed the remonstrator that the Board would need to keep his phone in order to submit a picture on it. Mr. Letherman mentioned his concern is the noise. Mr. Hesser mentioned the Board is required to keep his phone for 30 days, if he submits the picture.

Chelsea Russo, 57811 CR 117, the neighboring property owner, came on opposed to this petition and submitted a picture taken from their property of the RVs *[Attached to file as Remonstrator Exhibit 3]*. She stated RVs pull into their driveway mistaking it for the entrance to the storage lot. She continued saying they then pull back out onto CR 117 to reach the correct entrance due to a fence between their properties. She stressed they have small children, and the RVs cause a safety concern. She added RVs entering/exiting the property late at night causes their dog to bark. She explained the submitted picture shows the view from their property, and it is an eyesore. She added she also has a picture of an RV right outside their driveway waiting to pull into the RV storage yard.

Mr. Anderson came back on and submitted a few additional pictures *[Attached to file as Remonstrator Exhibit 4]*.

Lupita Cuellar, 57855 CR 117, came on in favor of this request. Mr. Miller asked if the petitioners live on the subject property, and she responded yes. Miss Cuellar stated she believes weather also affects road conditions, and RVs are not completely responsible for the damage. She then questioned the difference between RV traffic and horse trailers from a safety standpoint. She stated traffic is everywhere and normal, and she does not feel it will damage the surrounding property owners. She added people frequently travel this road with heavy trucks and horse trailers. She then addressed the noise and argued traffic is 24/7.

Sonya Cuellar returned to the Board and clarified they do not currently reside on the property. She explained they have younger siblings in elementary school, and they would like to finish at their current school. She continued saying they plan to move when they transfer to middle school so they can keep their friends. She added they would like to move onto the property soon, but the residence needs renovated first. She then stated they do not expect the Board to approve their request, but they wanted the chance to present their proposal and listen to their neighbors' concerns. She mentioned they understand their concerns, and she apologized for the irresponsible drivers. Miss Cuellar stated she understands their request will probably be denied. Mr. Miller asked if the petitioners would like to withdraw their request, and she responded yes. Mr. Miller asked Attorney Kolbus if the petitioners can withdraw the request. Miss Cuellar stated they feel this is a waste, if it will be denied, but they understand if it cannot be withdrawn. Attorney Kolbus pointed out the petitioners can re-apply tomorrow if their request is withdrawn, but the Board can deny the request making them wait a year to re-file. Mr. Hesser asked how soon the RVs can be removed from the property, if the request is withdrawn. Miss Cuellar responded they need to speak to their friend who parks the RVs there. Mr. Atha explained the Board can impose a time period to remove the RVs before enforcement with denial of the petition. Mr. Miller asked if the petitioners know how long they need to remove the RVs.

Tomas Cuellar came back on and stated only eight to ten units are currently on the property. Mr. Miller asked if 30 days would be enough time to remove them, and he responded yes. He stated will store tractors then, because the property should be used for something. Mr.

Hesser asked if the withdraw request needs to be approved, and Attorney Kolbus responded yes. He continued saying the Board could not accept the withdrawal and act on the petition. Mr. Auvil pointed out staff has an active code enforcement case, and he needs a denial with a time limit. Mr. Miller clarified staff would prefer the Board deny the request with a 30 day time limit to remove the RVs. Mr. Cuellar stated the RVs can be removed within 30 days, but they will then keep tractors and cows on the property. Mr. Atha responded both tractors and cows are allowed uses on the property.

The public hearing was closed at this time.

Mr. Hesser asked how withdrawing the request will adversely affect code enforcement procedures. Mr. Godlewski responded denial of the request with a time period to remove the units is cleaner. Mr. Lyon pointed out the petitioners can re-file for this request next month, if it is withdrawn. Mr. Auvil pointed out that would move the code enforcement case back a few months. Mr. Hesser stated applying for a request does not allow that use while the application is pending, and he stressed everyone would be in agreement with a withdrawal. He stated he believes enforcement would be easier with a withdrawal, since it is not subject to appeals. Mr. Miller pointed out an enforcement case is currently active against this property, and he questioned how long it had been in effect. Mr. Auvil explained the petitioners were given the opportunity to apply for the Special Use, and enforcement depends on the outcome of the request. Mr. Miller clarified the time limit for enforcement should start today. Mr. Hesser stated he would prefer the petition be withdrawn, but that does not mean he will vote against denial. However, he believes it is easier for staff to enforce this issue, if the petitioners agree to remove the RVs. Mr. Miller pointed out denial would allow 10 more days for removal than the original 20 imposed. Mr. Auvil stressed code enforcement does not have a set number of days for a withdrawal.

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

Motion: Action: Deny, **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 warehousing and storage of RVs be denied.

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

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

The petitioner has thirty (30) days to remove the RVs from the property.

10. The application of *Travis Hamel (Buyer), Kunisch Revocable Trust (Seller), Richard W. Berkey & Vada J. Berkey, Husband & Wife (Sellers), Martin J. Meyer & Joann Meyer, Husband & Wife (Sellers)* for an Amendment to an existing Special Use for a Bed and Breakfast Inn and Wedding Venue to add property for parking located on the Southeast corner of CR 2, 4,500 ft. East of CR 37, common address of 11748 CR 2 in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0260-2019*.

There were three neighboring property owners notified of this request.

Travis Hamel, 2801 S. Michigan St., South Bend, was present for this request. Mr. Hamel stated a bed/breakfast and wedding venue are currently on the subject property, but Grand Design purchased their parking last year. He added Martin Meyer is also present, and he has agreed to sell Mr. Hamel a few acres for venue parking. Mr. Atha questioned the future parking area, and Mr. Hesser believed the entire parcel would be used for parking. Mr. Hamel then pointed out the previous parking location, and the property he plans to purchase from Dick Berkey and Martin Meyer for parking. Mr. Hesser clarified this request is to expand the approved site plan. Mr. Hamel responded yes, and he pointed out the property purchased by Grand Design.

Carl Kunisch, 53202 Monticola Ln., was present as the current owner of the bed/breakfast and wedding venue. He stated they purchased the property seven years ago and came before the Board at that time. He continued saying the property directly east of the subject property has changed hands a few time, and it is currently owned by an Amish family. He added the property to the south was owned by Edgar Miller, and they used it for parking. However, he stated it was sold to Grand Design, who stated they would sell them some property after the hearing. He went on to say that did not happen, and they now do not have any parking. He explained the venue is too much, and they would like to sell it. He mentioned the barn has been a wedding venue for six years, and it is doing well. He also pointed out the section labeled M-1 on the aerial is incorrect, and he clarified the property owned by Martin Meyer is not zoned M-1. Mr. Kunisch explained Mr. Berkey owns the ditch, and Mr. Meyer owns the property beyond that. He continued saying they both offered to sell property for parking. He stressed they would like to see this property continue to be used as a wedding venue, and he added Mr. Hamel owns a venue in South Bend. He stated he is in favor of this request. Mr. Atha clarified two different owners are selling property for parking. Mr. Kunisch responded yes, and he added Dick Berkey owns a lot of the property in the area, and Martin Meyer owns five acres.

Martin Meyer, 11830 CR 2, was present as one of the owners selling property for parking. He explained he is selling approximately two acres, and he will keep three acres.

Mr. Hamel came back on and asked if the parking area can remain grass. He stressed it will primarily be used on Saturdays during the warm season. Attorney Kolbus stated staff can address any questions after the hearing. Mr. Atha mentioned CR 2 is a low traffic road. Mr. Hamel stated he hopes he is not required to install a shoulder.

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** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a Bed and Breakfast Inn and Wedding Venue to add property for parking 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. The request is approved in accordance with the site plan submitted (dated 4/10/19) 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.

11. The application of *Donald M. Thomas & Darcey L. Thomas, Husband & Wife* for a Special Use for a ground-mounted solar array on property located on the East side of Thrash Ln., 230 ft. South of CR 108, common address of 54540 Thrash Ln. in Cleveland Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0252-2019*.

There were 17 neighboring property owners notified of this request.

Mr. Godlewski stated due to a miscommunication of the hearing time, the petitioner will not be present. He asked the Board to take testimony from anyone present for or against this request and also possibly act on it without the petitioner present. No one was present for this request neither for nor against.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if staff feels comfortable approving this request without the petitioner present, and Mr. Godlewski responded yes. Mr. Hesser also mentioned similar requests are routinely approved.

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 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. The request is approved in accordance with the site plan submitted (dated 4/9/19) 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.

12. The application of *Dennis J. Chupp & Carol I. Chupp (Owners/Buyers), Fernbrooke, LLC (Seller), & Brookins Farms, LLC (Seller)* for an Amendment to an existing Special Use for a home workshop/business for piano rebuilding and sales to add property and an addition located on the West side of SR 15, 1,300 ft. North of CR 142, common address of 67267 SR 15 in Jackson Township, zoned A-1, R-1, GPUD B-3, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0280-2019*.

There two were neighboring property owners notified of this request.

Mr. Auvil added an application has been filed to rezone the property in order to rectify the multiple zonings. He continued saying the petition is to rezone the entire property to A-1.

Dennis Chupp, 67267 SR 15, New Paris, was present for this request. Mr. Chupp stated their operation moved here in 2000, when they purchased 1.25 acres from Brookins Farms. He went on to say they now own around 4.58 acres. He stressed they have not received any complaints, and it is evident from the aerial that they do not have many neighbors. He mentioned their operation is very quiet and highly specialized. He explained the reason for this request is to add storage, because a piano is 7~~0~~10~~0~~. He added a majority of their sales take place online, and their company is well known around the country. He stressed their property is well-groomed, and they receive frequent compliments. Mr. Lyon asked if the new addition will meet the required setback to the north. Mr. Chupp responded they purchased an additional 90 ft. to the north, and the addition will only be 60 ft. long, leaving 40 ft. between it and the new property line. Mr. Hesser asked the reason for rezoning to A-1, and Mr. Chupp responded his residence is also on the property. Mr. Hesser asked if residences are allowed in B zones, and Mr. Godlewski clarified residences are prohibited in a GPUD B-3 zone.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser questioned the number of employees and the sign size originally approved, because two increasing to eight outside employees is a substantial deviation. He added the sign will also increase from 4 sq. ft. to 42 sq. ft. He continued saying he is okay with it, if that was previously approved. However, he believes this may not qualify as a home workshop depending on how much it grows.

Mr. Chupp came back on to help answer the question. He stated the original approval limited him to a very small sign, but he was told not to worry about it. Mr. Hesser clarified a home workshop/business generally only permits a 4 sq. ft. sign. Mr. Hesser asked if the petitioner would like to enlarge his sign, and he responded it is not imperative. Mr. Hesser also asked the number of employees originally approved, and he responded two outside employees. He continued saying they currently have two outside employees. He explained it is highly specialized work that does not require a large number of employees, but it is time consuming. Mr. Hesser mentioned the petition request permission for eight outside employees. Mr. Chupp responded he does not anticipate employing that many people, but he wanted to allow for future employees. He again stressed their work takes a lot of time, and they could sometimes use extra hands. He continued saying he would like the possibility to grow, but they have kept the business small due to it being highly specialized. He explained he knows companies all over the country that lost their quality once they expanded. Mr. Atha asked if more part time employees are allowed. Mr. Chupp stated his current employees are part time, and only work three to four days a week. He added a lot of the work is farmed out like refinishing, sound boards, ect. Mr. Hesser explained he has no problem with this request, but he does not believe the expansion of employees/sign is needed without a reason. He stressed both requests are substantial deviations from the home workshop standards, and he does not see a reason to approve them at this point. He continued saying they may be able to expand down the road without an impact, but there is no reason offered now. Mr. Lyon asked if the petitioner can return to the Board for eight employees at a later time. Mr. Hesser responded yes, and he clarified two outside employees and a four square foot sign are standard for home workshops. Mr. Miller pointed out the Board

typically stays within the standards for other home workshop/businesses. Mr. Hesser responded the Board has deviated from the standard when provided with a reason.

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 an Amendment to an existing Special Use for a home workshop/business for piano rebuilding and sales to add property and an addition be approved with the following conditions imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 4/15/19) and as represented in the Special Use Amendment application.
2. Limited to two (2) non-occupant employees.
3. Approved for the existing sign.

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

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

13. The application of *Cleveland Township* for a Special Use for a government facility to allow for the construction of a Fire Station and Township Hall on property located on the North side of CR 6, 1,735 ft. East of CR 10, common address of 29515 CR 6 in Cleveland Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0269-2019*.

There 14 were neighboring property owners notified of this request.

Rich Newman, 51233 CR 5, the Cleveland Fire Department Chief, was present for this request. He stated the property was approved for a fire station, but they would now also like to include the Township Trustees' office here. He stressed combining the departments will centralize the township government and eliminate the rent currently paid for the trustees' building. Mr. Hesser asked if the fire station is existing, and Mr. Newman responded no. He went on to say the property received approval for a fire station on the property, but it was not constructed. Mr. Hesser clarified the property has not been approved for a fire station, and Mr. Auvil responded this is a new petition.

Stacy Peek, 29451 CR 6, located just east of the subject property was present in remonstrance. She stated she has lived there for 26 years next to the woman who previously owned the subject property. She continued saying the property was sold, because her parents needed to be placed in a nursing home. She explained the property is currently residential/agricultural, and she does not see the need for a fire station at this location. She mentioned existing fire stations on CR 5, CR 10, and CR 6. She stressed this is a residential area, and she believes traffic to/from the property will be steady, especially if it is also the township trustees' office. Mr. Hesser clarified the request is for a fire station/township hall. She

questioned what takes place at a township hall. She stressed she is against this request. She also asked the size of the proposed building, and their plan for the ten acres.

Mr. Newman came back on and stated the ten acres was purchased in 2006, and the building will be set back 180 ft. from the center line of CR 6. He continued saying they plan to have a pond at the back of the property for ice rescue, water rescue, and pump test training. He explained the township hall is for poor relief and assistance, and this would allow the trustee to be centrally located. He stated the fire station on CR 6 belongs to Elkhart City, and they currently operate out of two stations. He went on to say the first station was constructed in 1956, and the other one is a pole barn. He stressed having two stations is a financial strain, and they would like to combine them into one.

Miss Peek came back on and request the Board take into consideration the ten acres. She pointed out a pond behind her residence that was purchased by a firefighter, and she believes he had special interest in acquiring the property. Mr. Lyon stated that has no affect on this request. Miss Peek mentioned a fire station or pond will be the view out her back window, and she stressed this is a residential area. She asked why an existing fire station cannot be remodeled instead of inconveniencing the residents in this area. She added some neighbors were unable to attend the meeting due to work, but she can have a petition signed by the residents in the area opposed to this request. She stated she does not see the need for a fire station in a residential area. Mr. Lyon pointed out this property is located in an A-1 zoning district.

The public hearing was closed at this time.

Mr. Miller expressed his concern that neighbors are opposed to this petition.

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 a government facility to allow for the construction of a Fire Station and Township Hall 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. The request is approved in accordance with the site plan submitted (dated 4/12/19) 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: Roger Miller.

14. The application of *Erin E. Yoder & Kimberly K. Blaha, a Married Couple* for a Special Use for a ground-mounted solar array on property located on the West side of CR 21, 990 ft. North of CR 138, common address of 65315 CR 21 in Elkhart Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0272-2019*.

There were five neighboring property owners notified of this request.

Erin Yoder, 65315 CR 21, Goshen, was present for this request. Mrs. Yoder stated she installed an off-grid, pole-mounted solar array in 2000, before any regulations, and she decided to upgrade this year. She explained she has been hooked on to Nipsco for a number of years, but they do not produce as much electricity as they use. She continued saying she hired Photon Electric to replace her system, and she has a net-metering agreement with Nipsco. She stressed they do not make as much as they use, but it helps with their energy needs. She added the new array has the same size and appearance to what was there for 20 years. She clarified this request is to ask permission for an existing solar array. Mr. Hesser stated he is not familiar with post-mounted solar arrays, and site plans typically show rectangle arrays. Mrs. Yoder pointed out the solar array can be seen in Staff's picture of the subject property. She explained it is on a post and can be tilted. Mr. Miller clarified they plan to replace the existing panels. Mr. Hesser asked the size of the solar array, and she responded approximately 9.5x10.5. He also asked its height, and she responded the panels start at a little over 5' tall. Mr. Lyon mentioned the panels are buffered by the foliage. Mrs. Yoder pointed out their property is surrounded by fields to the north, west, and east, and her parents reside to the south.

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** 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. The request is approved in accordance with the site plan submitted (dated 4/12/19) 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.

15. The application of *Trustees of the Maple Grove Church of the Brethren, New Paris, Indiana* for a Special Use for a church and for a 25 ft. Developmental Variance to allow for the placement of an electronic message center 30 ft. from the centerline of the right-of-way (Ordinance requires 55 ft.) on property located on the South side of CR 46, 1,050 ft. West of CR 21, common address of 20430 CR 46 in Jackson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0257-2019*.

There were nine neighboring property owners notified of this request.

Todd Lehman, Signtech Sign Services, 1508 Bashor Rd., Goshen, was present for this request. He stated it has become common to change out older, manual copy signs that churches used for basic information, with electronic message centers. He continued saying it is more convenient to program and send out messages, especially during adverse weather. He explained they have found churches to be community centers with several activities going on, and

electronic signs allow them to promote everything on a continual basis, rather than a stationary message. Mr. Lehman explained the setback variance is needed in order to use the existing columns. He continued saying the sign was built a while ago, and it was not permitted. He added the existing columns will be used to support the new sign. Mr. Atha clarified the sign location is not changing. Mr. Hesser stated the county regulates electronic message centers. Mr. Lehman explained electronic message centers now automatically dim. He added they brighten during the day to be seen in sunlight, and then dim in the evening.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the sign has been at this location for a while.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a church 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. The request is approved in accordance with the site plan submitted (dated 4/10/19) and as represented in the Special Use application.

Further, the motion also included that a 25 ft. Developmental Variance to allow for the placement of an electronic message center 30 ft. from the centerline of the right-of-way (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 grand and construction work completed within one year from the date of the issuance of the Building Permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 4/10/19) 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.

16. The application of *Andrew L. Yoder Trustee & Norma Jean Yoder Trustee of the Yoder Family Revocable Living Trust of July 16, 2007* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the South side of CR 48, 2,025 ft. East of CR 133, common address of 14104 CR 48 in Benton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0275-2019*.

There were nine neighboring property owners notified of this request.

Mr. Auvil stated two houses on a property during construction of the new residence will be addressed in the Zoning Ordinance updates. Mr. Hesser asked staff their recommended time

frame to demolish the existing residence once the Certificate of Occupancy has been issued on the new one. Mr. Auvil responded he believes six months is the standard being discussed, and it will be allowed by right.

Andrew Yoder, 14104 CR 48, Syracuse, was present for this request and stated they would like to construct a new residence. Mr. Hesser asked if six months is long enough to remove the existing residence after the new one is completed. Mr. Yoder responded they plan to construct it themselves, and they would like to complete it by October. Mr. Hesser clarified the six month time limit takes effect after the new one is completed.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser suggested adding a six month time limit to demolish the existing residence after the Certificate of Occupancy is issued. Mr. Godlewski mention staff is discussing a nine month time limit.

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 residence must be removed from the property within ninety (90) days of the issuance of the Certificate of Occupancy for the new residence.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 4/15/19) 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 meeting was adjourned at 10:21 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary