

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 19<sup>th</sup> DAY OF SEPTEMBER 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: Jason Auvil, Zoning Administrator; Mae Kratzer, Planner; Doug Powers, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

**Roll Call.**

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

2. A motion was made and seconded (*Campanello/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 15<sup>th</sup> day of August 2019 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Lyon*) that the Board accepts the Zoning Ordinance and Staff Report materials as evidence into the record and the motion was carried with a unanimous roll call vote.

4. The application of *A.J. Lane Trustee of the A.J. Lane Trust & Gayle A. Lane Trustee of the Gayle A. Lane Trust* for a Special Use for a ground-mounted solar array on property located on the North side of CR 146, 1,765 ft. West of SR 15, common address of 19593 CR 146 in Jackson Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0572-2019*.

There were 12 neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 8015 W. 1350 N., Nappanee, was present representing A.J. Lane. Mrs. Salyer pointed out the proposed location for the solar array west of the tree line just south of the residence.

There were no remonstrators present.

The public hearing was closed at this time.

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

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

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 8/9/19) and as represented in the Special Use application.

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

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

5. The application of *Samuel L. Sheets & Jack A. Sheets* for a Special Use for a ground-mounted solar array on property located on the North side of CR 52, 1,760 ft. East of CR 9, common address of 25673 CR 52 in Union Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0584-2019*.

There were 11 neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 8015 W. 1350 N., Nappanee, was present representing the petitioners. She pointed out the proposed location for the solar array just south of the existing building and north of the tree row. Mr. Atha asked how long a solar array will last. Mrs. Salyer explained their solar panels are warranted to produce 80% of the original output in thirty years, and it could last forty to fifty years past that. Mr. Campanello questioned their plan for disposing of the solar arrays once they stop working, and Mrs. Salyer responded they recycle them. Mr. Hesser asked the owner of the parcel surrounded by the subject property, and Mrs. Salyer stated the petitioner's sister-in-law owns it. Mr. Hesser pointed out the proposed solar array will be located close to their sister-in-law's property line, and Mrs. Salyer responded she is in favor of the request.

There were no remonstrators present.

The public hearing was closed at this time.

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

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

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 8/12/19) and as represented in the Special Use application.

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

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

6. The application of *Devon R. Hochstetler & Wilma A. Hochstetler, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the West side of CR 37, 3,845 ft. South of CR 28, common address of 60735 CR 37 in Middlebury Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0551-2019*.

There were three neighboring property owners notified of this request.

Mrs. Kratzer noted the property owners should be John H. Hochstetler & Mary Ellen Hochstetler, as Co-Trustees for the Hochstetler Trust Revocable Living Trust Agreement.

Clayton Bontrager, 13838 CR 34, Goshen, was present as the petitioners' contractor. He explained he plans to construct a building for the horses that the petitioners use for transportation. Mr. Miller questioned a comment on an attached building permit, and Mr. Bontrager explained that was a building permit for an addition to the residence. Mr. Atha asked the location of the pasture, and Mr. Bontrager responded it is on the west side. He then pointed out the residence, proposed barn, and pasture on the aerial. He also explained the neighboring property is owned by a family member.

There were no remonstrators present.

The public hearing was closed at this time.

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

**Motion: Action:** Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of animals 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. The request is approved in accordance with the site plan submitted (dated 8/2/19) and as represented in the Special Use application.
2. The use is limited to a maximum of three (3) adult horses at any one time.

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

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

7. The application of *Gerald Knepp & Lisa Knepp, Husband & Wife (Lessor) & PI Tower Development, LLC (Lessee)* for a Special Use for a wireless communications facility on property located on the South end of the easement, South of CR 40, 1,730 ft. West of CR 33, in Clinton 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-0564-2019*.

There were 10 neighboring property owners notified of this request.

Derek McGrew, 103 Wilshire Ct., Noblesville, was present representing AT & T Wireless for a new wireless communications facility. Mr. McGrew explained the request is for a 150 ft. mono-pole tower, and it will exceed all setback requirements in an A-1 zoning district. He pointed out no towers or structures of a significant height are located within a mile of the proposed site. Mr. Hesser asked if the owner of the surrounding parcel has any objections to this request, and Mr. McGrew responded he is not aware of any. Mr. Campanello clarified the proposed tower will be collapsible, and he asked if any other carriers will share the tower with AT & T. Mr. McGrew explained AT & T, Verizon, Sprint, and T-Mobile no longer build their own towers. He continued saying the provider completes the process to the point of construction, and then hands the project over to a tower building company, who will lease out the space. He mentioned AT & T wants better coverage, but the tower company will work to have as many providers on the tower as possible.

David Garber, 66495 CR 33, the neighbor directly south of the Knepps' property came on with some concerns. He explained he is not opposed to the tower, but he would like to protect his rights. He continued saying a large county regulated tile runs through the property, and he does not want it damaged. He stressed he would like to know the tower's location in regards to the tile, he helped install in 1970. He added he farms his property and uses aerial application at times. He went on to say he wants to ensure they can access the property for aerial chemical application. Mr. Hesser asked what property Mr. Garber owns, and he pointed it out on the aerial. Mr. Hesser clarified the tile runs across the subject property, and he pointed out its location on the aerial. Mr. McGrew came on to show Mr. Garber the proposed access and tower location a distance away from the county drain.

Mr. McGrew came back on and stressed the tower will not be close to the drainage tile. He went on to address the aerial application concern, and he stated it is occasionally a concern with towers. He explained they cannot be concerned about what the neighbors do on their property. He continued saying they have no way of knowing where towers can be placed, if they were only constructed where no aerial application is used. He stated this site was picked, because it is far enough from the nearby airport's flight paths. He stressed not many locations can meet the required setbacks, in addition to being away from residential areas and flight paths. He again mentioned this location is between the two legs of the flight path for the nearby airport. Mr. Hesser asked if a flashing light will be required on the top of the tower, due to its proximity to the airport. Mr. McGrew responded it has not yet been determined. He explained a 150 ft. mono-pole tower does not typically required a light, but it may need one due to its proximity to the airport. He went on to say the light, if required is typically white during the day and red at night. Mr. Hesser questioned who determines the need for a light on the tower, and Mr. McGrew responded the FFA. Mr. Hesser clarified lighting on towers is not a county ordinance. Mr. Campanello asked if they will speak to the FFA after gaining approval from the Board. Mr. McGrew responded they filed with the FFA, but it is not yet completed.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha request the aerial be zoomed out. He stated an aerial application plane has multiple flight path options that will not interfere with the tower. He continued saying the most likely path is not close to the tower, and he does not believe aerial application will be affected by this request.

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 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 8/7/19) and as represented in the Special Use application.

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

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

8. Mr. Auvil presented the Certification of Residency for Mr. Ronald Norman, and it was submitted for the record.

***\*\*It should be noted that Mr. Hesser recused himself and was replaced by Mr. Norman.\*\****

9. The application of ***Mary E. A. Swihart*** for a Special Use for resource extraction of sand and gravel on property located on the North side of US 20, 2,200 ft. West of CR 23, common address of 19370 US 20 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-0582-2019*.

There were 19 neighboring property owners notified of this request.

Blake Doriot, P.O. Box 465 New Paris, was present representing the owner, Mary Swihart, and the operator, Duane Bontrager, Spring View Excavating, along with Geissinger Trucking. He explained Spring View Excavating uses loaders, excavators, and dump trucks to haul material out of the pit. He stressed no crushers, classifiers, or conveyors are on site, and the impact of this operation is much less than a typical gravel pit. He continued saying the gravel pit is not as large as the one on US 33 by the airport, and this operation is simply digging a hole. Mr. Doriot added the Erosion Control Plan was filed, and neither the owner nor the operator was aware of the need for a Storm Water Pollution Prevention Plan. He went on to say the Post Construction Plan is holding it up, but he is working to rectify that. He then pointed out the site and excavated area on the aerial. He explained they plan to continue excavating for a while, and usage could be anywhere from one to fifteen loads a week, depending on the local demand for aggregate. He mentioned a grass area will be maintained as requested by Jim Hess from Soil and Water Conservation, and the surrounding property is grated inwards to prevent any water with sediment from running into the wetland area. He added the gravel pit intercepts a large amount of drainage from the property to the west. Mr. Doriot pointed out the aerial is not updated, and a few of the neighbors to the north purchased part of the Elcona Country Club property directly to the west. He stressed all operations will take place during the day, and they will rarely work on Saturdays. He continued saying when they operate on Saturdays it will only be during the morning not the afternoon. He added Duane Bontrager also farms the property, and he discovered the pit area was more suited for gravel than crops. He then pointed out trees surrounding part of the gravel pit, and he mentioned a pipeline also runs through the property. He explained they will ensure the pipeline company marks the line to prevent any accidents, and he stressed Mr. Bontrager does not want to damage a high-pressure gas line. He then went on to address access, and pointed out the drive on the aerial, which is made of recycled asphalt pavement. He continued saying the semi-hard surface is an adequate distance to eliminate any tracking onto US 20. Mr. Campanello questioned the approach onto the property off of US 20, and Mr. Doriot responded it is four lanes of traffic with a wide shoulder. He continued saying it is difficult at times to enter/exit the property, but the number of trips per day does not justify an acceleration/deceleration lane. Mr. Campanello asked about the approach from the property onto US 20. Mr. Doriot explained it is recycled asphalt pavement that has been dumped and spread. He added there is a small apron from INDOT, but the rest is recycled asphalt. Mr. Miller questioned how long they expect the gravel pit to remain operable. Mr. Doriot

responded it could be exhausted next year or in fifteen years, depending on the use. Mr. Campanello questioned birms around the pit, and Mr. Doriot explained it is grated towards the pit. He continued saying the side slopes will be grated close to a 3 to 1 slope. He added they will also meet with NRCS to ensure they obtain the proper seeding mixture after the operation is closed. Mr. Campanello asked if he has any concerns about erosion occurring on the neighboring property as a result of this operation. Mr. Doriot stressed water from the neighboring property drains onto the subject property. Mr. Norman asked if Mr. Doriot is aware of any field drainage tile in the neighbors' field causing run-off. Mr. Doriot responded he doubts the field has any tile, since it is very sandy. Mr. Atha clarified he would expect very little tile in this area due to the sand. Mr. Miller pointed out a water from the north runs towards this property, and Mr. Doriot explained the run-off runs into the wetlands area. He continued saying they cleaned up some erosion problems by grating and stabilizing around the pit, and the amount of run-off into the wetlands has been reduced. Mr. Miller clarified the gravel pit does not hold water. He added he believes water could be pumped into the gravel pit for a while, and it still would not fill with water. Mr. Atha asked if they have any concerns about water from the wetland filling the pit, and Mr. Doriot responded no. He explained Mary Swihart inherited the entire parcel from her mother, and this operation helps her afford the property and her college. He stressed she is very ecologically minded, and she has no desire to disturb the wetlands. Mr. Campanello clarified IDEM will also review this property, and Mr. Doriot responded he spoke to Beck at IDEM to ensure the correct SWPPP is submitted. He continued saying due to the size and intensity of this project the typical construction site SWPPP is fine. Mr. Atha asked what approval they need from the NRCS, and Mr. Doriot responded the SWPPP, which has been filed. He continued saying Jim Hess from the Soil and Water Department was okay with the initial filing, but John Heiliger with MS4 requested some revisions to the Post Construction Plan. He continued saying he was given three weeks to file the requested paperwork. Mr. Atha questioned their plans for the property after operations cease. Mr. Doriot responded the side slopes will be grated, and no trash, debris, or fill will be hauled in to fill it. Mr. Atha clarified the pit will remain a hole. Mr. Doriot stressed he is aware of dozens of holes in the county, including one at CR 31 & CR 36 that the nearby houses love. Mr. Norman asked how far extraction has gone below the surface in regard to elevations. It was found that the wetlands are believed to be at 840, and Mr. Doriot responded this is a high location. He added no fuel will be stored onsite, and all refueling will be done from a pick-up truck. He stressed there is no potential for a major fuel spill.

Randy Barden, 19518 CR 16, a property owner to the north of the subject property, was present against this request and pointed out his property and the gas line on the aerial. He stated a mound of dirt is located no more than 30 or 50 ft. from the gas line, and he submitted some pictures of the subject property *[Attached to file as Remonstrator Exhibit #1]*. Mr. Barden stressed water does not run onto the subject property from the field to the west, and he is unsure of what runoff was mentioned. He pointed out a waterway behind his property that drains into the marsh area. He stressed the submitted pictures were taken a week ago, and erosion is already visible on the sides of the walls. He stated his biggest concern is the risk of explosion due to this operations proximity to the gas line. He explained his neighbor and he called the gas company out twice, because equipment was sitting over the gas line. He continued saying the petitioner was instructed to move the dirt off of the gas line, and it was moved. He mentioned the gas company informed him his barn would likely be destroyed, if the gas line exploded. He added his house should be okay since it is farther

away, but damage to the gas line could cause a major explosion. Mr. Barden then mentioned his concern about property values. He stated some people see the gravel pit as an asset, and it may be when it is completed. However, he continued it is currently a large hole in the ground that sometimes causes a lot of dust. He stressed they were mining more than five to fifteen loads a week. He added another concern is the impact of this operation on their water table, the wetlands, and the protected forest area. Mr. Barden stated he walked off the area used for the mining operation, and he believes it is 2.4 to 2.7 acres at 800 ft. long and around 100 ft. wide. He continued saying he believes trees on the east and south side of the pit would need to be removed in order to expand the operation to 7 acres. He also mentioned noise and dust issues. He then suggested a bright orange snow fence be installed marking the gas line for the excavator, because hitting it would cause serious repercussions. He added he would also like to see a berm with trees installed along the north and west side property lines, because it is currently visible to his neighbors and himself. He also mentioned a concern about the depth of the hole. He noted he believes it is currently 25 ft. deep, and he asked how far down they plan to go.

April Wyngarden, 56797 CR 23, was present in remonstrance and pointed out the wetlands owned by the petitioner along with her property. She stressed she spoke to all of the neighbors who own part of the wetlands, and they were all opposed to this request. She continued saying their concern is the wetlands, because it makes their property value unique. She stated she believes this could be handled better, and she just became aware last week that the gravel pit had been operating since 2017. She explained her husband and her are pro-business as they have owned businesses themselves. She went on to say they understand the importance of permits and cooperation with neighbors. She added they were denied a request, because the neighbors did not agree. She stressed this situation should be handled in a responsible way that is considerate of the neighbors' interest in addition to being reasonable and honest. She continued saying an established excavator should be aware of the need for permits. Mrs. Wyngarden then addressed the wetlands, and she noted she contacted the Army Corps. of Engineers, who held them accountable when they cut down a tree on their property. She continued saying they sent her an email stating the IDEM Wetlands Program and Army Corps of Engineers require permits for any discharges of dredged or fill material into the wetlands. She noted Mr. Doriot indicated runoff would be reduced, and she stressed there cannot be any runoff. She went on to say land disturbing activities greater than one acre require a permit under section 327, and once operational the gravel pit would also require a permit. She added gravel pits next to wetlands have a high potential of draining the wetlands. She stressed they enjoy the wetlands, and they canoe, ice skate, and hunt on their property. She mentioned her children take frogs down to the water when it rains, and turtles lay eggs in their yard every spring. Mrs. Wyngarden pointed out the Army Corps of Engineers suggest the gravel pit may drain the wetlands by lowering the ground water table, altering surface waters, and changing the contributing water shed that feeds the wetlands. She added wetlands have their own water cycle, and any disruption could be detrimental to the wetlands system. She noted according to the wetland map anywhere from 25 to 50 ft. of fall, a contour of 850, and sandy soils will start removing water from the wetlands with any excavation bellow that level. She added other neighbors have stated they believe the pit is already at 20 to 25 ft. Mrs. Wyngarden brought up a concern that the application states no extra traffic will be generated by this request, and she questioned how traffic will not increase. She continued saying she drives her children to Middlebury Community Schools every morning, and it is heavily traveled by gravel trucks, semis,

Amish buggies, teenage drivers, and double-wide trailers. She stressed traffic on US 20 is awful. She noted she contacted the bus department for the schools, because her children cross a lane of traffic to get onto/off of the bus. She continued saying she request they come from a different direction to keep her children from crossing a lane of traffic, but they would not accommodate. She stated she believes they denied her request, because they do not want to turn left onto US 20. She added the bus also does not want to come down CR 23 due to a large hill, where they got stuck last year in the winter. She stressed she has seen gravel trucks flipped over on the hill, and it is very dangerous. She also mentioned she will have two teenage drivers next year and is against to any additional traffic. She went on to say US 20 is a US Highway, but it appears as a county road with only two lanes from CR 15 to Northridge. Mr. Wyngarden stressed they are not in favor of this request and will continue to fight it.

Ed Gerwels, 56452 Whispering Hill Dr., was present against this request and pointed out his property on the aerial. He stated the previous remonstrators addressed most of his concerns. However, he added he is concerned about the aquifer, and the well for his residence is 260 ft. deep. He continued saying his property is significantly higher than the marshland. Mr. Campanello clarified his well is 260 ft. deep, and he noted a backhoe cannot reach that depth. Mr. Gerwels questioned the affect this operation will have on his water supply, and he suggested a professional determine that it will not affect his water supply. He added he is unsure how deep the gravel pit will go, and he does not believe it can go down very far and still accommodate a 3 to 1 slope. He again stated most of his concerns have been addressed. He also stressed the trucks and loaders will cause extra noise. He also asked how the entrance to the property will handle dump trucks full of sand and gravel, when it was constructed for cars. Mr. Campanello asked if Mr. Gerwels would be opposed to approval of the request for a year or two, and he responded no. He continued saying he sees the petitioner's reasons for this request, because he was also a businessman. He stressed he would like to hear from someone with a knowledge of aquifers and ensure the proper process/rules are followed.

Linda Clark, 19620 CR 16, came on opposed to this request and submitted a packet of information *[Attached to file as Remonstrator Exhibit #2]* and a copy of staff's file for this request *[Attached to file as Remonstrator Exhibit #3]*. She pointed out her residence and the new property they purchased in July on the aerial. She explained Elcona Country Club applied to rezone part of their property to a commercial/industrial use, and it was unanimously denied by the Plan Commission. She pointed out the surrounding properties are residential/rural, and the requested use is commercial. She stressed the neighbors do not see a difference between calling this a gravel or sand pit, because they believe it can be used for either along with accessory buildings, utilities, and outside storage once a Special Use is acquired. She stressed the neighbors see no distinction between sand excavation, barrow pit, and small gravel pit. She stated she spoke to DNR, and it was not clear, if the subject property and wetlands are on the same or different aquifers. She continued saying the neighbors have not seen the 3:1 slope or erosion control. She continued saying the Storm Water Pollution Prevention Plan has been returned to the petitioner several times, and it does not show the pipe line. She stated she request a copy of the SWPPP. However, she continued saying she was unable to receive one, because it was not available yet. Mr. Campanello clarified the SWPPP is still being revised, and she responded yes. Mrs. Clark then went on to read her submitted letter. She stressed she does not believe the Comprehensive Plan would be upheld with approval of this request. Mr. Campanello asked the zoning of her property, and Mrs. Clark responded A-1. She



continued saying a map and April 10<sup>th</sup> appraisal of her residence are included in her packet, and she then picked up reading section two of her letter. She went on to mention the access road, and her belief that it was installed for a long term operation. Mr. Campanello pointed out the road serves as the entrance to their property. She responded they also have a lane to their residence, and she is unsure if it is paved. However, she continued the mentioned access road is a surface that can handle dump-truck traffic. She added it is in very good condition and probably expensive to install. She then picked up reading section three of her submitted letter. Mr. Campanello stressed the Board is not involved with the SWPPP, and he guaranteed MS4 and along with the Soil and Water Department will watch this property. He request that subject not be mentioned again unless she has proof it will not be monitored by the correct departments. Mrs. Clark pointed out the neighbors do not have access to the SWPPP to make an informed decision, and Mr. Lyon added the SWPPP will be available once it has been finalized. Mrs. Clark stressed the neighbors were denied that right for two years by the petitioner. She then read her last two points from her submitted letter. She mentioned a timber contract that was cancelled on the property. Mr. Campanello stressed the Board does not need to know about previously considered uses for the property.

Mr. Campanello asked for a show of hands for those present against this petition, and around 15 hands were raised.

Kay Mabie, 316 W. Douglas St. Goshen, was present in favor of this request. Mrs. Mabie stated she lived on US 20 for several years, and her grandfather owned 120 acres west of the subject property. She mentioned a gravel pit was located in the field west of the property back in the 50s. She also pointed out the location of her grandparents' residence and CR 23 on the aerial. She went on to say her grandparents then purchased the subject property, which only had a small marsh and three fields in the late 30s and early 40s. Mr. Campanello stated he appreciates her family history but request she address the request. Mrs. Mabie responded she is attempting to explain how the water ended up in the wetlands. She pointed out a residence on US 20 that had a pond, which regulated the water flow across US 20. She explained the pumping house for the pond was destroyed by the Palm Sunday tornado, and the owner did not rebuild it. Mr. Campanello questioned how this information pertains to the request, and Mrs. Mabie responded it shows how the water came into the wetlands. She then pointed out several residential properties that were developed after the tornado, and where the county altered CR 23. She continued saying water from CR 23 and the new residential uses formed a large wetland area. She stressed the water covered hills that were in this area, and Mr. Campanello clarified the wetland is a man-made. Mrs. Mabie stated it started as a natural wetland, but it has become a man-made problem from the new residences and changes to CR 23. She noted they used to drive around the property where it is now under water. She again stressed the wetland was man-made by the county. She added two pipelines cross through the property, and a yellow sign on CR 16 marks where it crosses. Mr. Campanello summarized the expansion in this area created the marsh, and he asked if the proposed gravel pit will make the situation better or worse. Mrs. Mabie responded she is unsure, but it will be worse, if the pipeline is hit. Mr. Campanello asked her concerns about this request. Mrs. Mabie stressed the value of the subject property has greatly decreased due to drainage into the wetlands. She continued saying the neighbors are concerned about their assets, but the subject property has been taking on extra water since the 70s. She added around 40 acres was originally classified as wetlands, and it has probably increased to about 80 acres now. Mr. Campanello asked if the

proposed operation as regulated by the Soil and Water Department will increase or decrease the problem. Mrs. Mabie responded the situation will become worse as more residences are constructed, because the new subdivisions do not provide a place for drainage. She stressed the water is killing the trees, that are keeping the water inside the wetlands. She added she also has pictures of the pipelines going through the property.

John Nussbaum, 56467 Whispering Hill Dr., came on against this request and pointed out his residence on the aerial. He stated he does not have anything new to add, but he is also concerned about the risk to the pipeline, impact to the wetlands, and the aquifer. He stressed he is opposed to this request.

Pat Blakesley, 19620 CR 16, was present opposed to this request. He stated the size of the wetland should not be an issue, because it is delineated wetlands. He continued saying they know where the delineation is located and if it has changed.

Blake Doriot came back on to respond to the concerns raised. He addressed land use and stated Indiana is a right to mine state. He continued saying the property is zoned A-1, and gravel pits are allowed by Special Use. He explained this operation will allow Miss Swihart to keep her property that once belonged to family. He stated a chicken house could be constructed on the subject property to raise 36,000 chickens, and he clarified with Mr. Auvil that it would be allowed by right. He added they could also subdivide the property into around 20 different residential lots, which would be allowed by right. He stressed Miss Swihart has no desire to do either of the mentioned options, because she does not want to destroy this ecosystem. He went on to say he sees this property as a duck rotary, and he does not want to see it destroyed. He stressed the gravel pit is a way for her to keep her property as taxes and living expenses rise. Mr. Doriot then addressed the SWPPP, and he noted he only became involved with this project the second week of July. He continued saying he was informed that a stop work order was issued, but the letters were not forwarded to Mr. Bontrager, the operator. He stated Miss Swihart is a timid person, and she was too terrified to speak at the first storm water hearing. He continued saying she should have spoken, but they were able to work everything out with the Storm Water Board. He stressed similar operations exist throughout the county, and he could name five that did not have a SWPPP. He went on to say in the past they did not typically use the proper process, but they will work to make this right. He noted the operation will be closed as directed, and he used the Bureau of Land Management Manual as his guide. However, he continued John Heiliger from MS4 was not in agreement, and he gave him another two to three weeks to submit the changes he requested. He stressed the corrections will be filed, and they will then move forward. Mr. Doriot went on to address the pipeline. He pointed out he was not aware of the pipeline, because it was noted in a separate document not the deed. He stated the pipeline will be marked, and the operator is the last person who wants to hit it. Mr. Campanello asked their plan to prevent the operators from hitting the pipeline. Mr. Doriot responded they plan to have the pipeline company mark it, and several posts will be installed to delineate it. He continued saying he did not see it, because the area is grown up with tall grass and trees. He then added the site is stable, and they do not have three to one slopes yet. He noted Jim Hess from the Soil and Water Department visited the site and determined it to be stable with no erosion leaving the site. He stressed they do not want erosion to leave the site, and they plan to intercept any. He then addressed the aquifer is at 160 ft. He pointed out the remonstrators are worried about water pollution from the sand and gravel, but every residence in the area has a septic system. He also stated golf courses are one of the biggest

chemical users per acre of any operation, and the neighbors are worried about water quality being harmed by the gravel pit. He stressed this operation will not pollute the water. Mr. Doriot stated the gravel pit will remain a hole after it is closed, but the next property owner may like it. Mr. Campanello asked who determines when it is time to close the pit. Mr. Doriot responded it will close when the operator decides the aggregate is no longer worth mining. He continued saying they will not dig down as far as the wetland, and the pit will start taking on water, if they reach that depth. Mr. Miller asked about tree removal. Mr. Doriot responded they do not plan to remove any trees, but a few may be taken down in order to grade the side slopes. He added all operations will stay outside of the wetlands. He pointed out Miss Swihart has the right to log the property, which would not require a SWPPP. Mr. Campanello questioned the SWPPP perimeter, and Mr. Doriot responded the highlighted box. He clarified with Mr. Bontrager that they do not plan to remove any trees. Mr. Norman mentioned it was stated that when water is hit they will know the water table has been reached. Mr. Doriot responded he will check the water table and run the elevations. He continued saying he is familiar with water tables, because he was the Elkhart County Surveyor for 24 years. He added Mr. Lyon also understands water as he has been involved with the Drainage Board since 1980. He stressed they made a mistake, but he guarantees others have also made mistakes. He continued saying mistakes are slowly being corrected across the county. Mr. Miller questioned the property entrance off of US 20. Mr. Doriot responded he can speak to someone at INDOT, but there is very little truck traffic. He added truck traffic on US 20 was a mentioned concern, but this operation will mostly serve the local community. He continued saying without this operation Mr. Bontrager would actually need to travel farther to pick up the needed materials for a local job. He stressed in the long run this operation will reduce millage, because the longer materials are on the truck the more money it costs. He also mentioned within the next four years \$44,000,000 will be used to expand US 20 into four lanes to Middlebury. He added all of Mr. Bontrager's drivers have a CDL and experience.

The public hearing was closed at this time.

Mr. Lyon stated he surveyed this area in the 1970s and the wetland was there then. He continued saying it fluctuated, but he believes that is due to the natural processes. He stressed it has been a wetland for a while, and he believes it will remain that way. Mr. Atha stated the SWPPP should address his concerns about the wetlands, and Mr. Campanello stressed the Soil and Water Department will closely monitor this property. Mr. Miller clarified the Board makes their decision based on land usage. Mr. Campanello mentioned he has worked in construction around wetlands for a long time, and he can guarantee the county will watch this property closely.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for resource extraction of sand and gravel 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 8/12/19) and as represented in the Special Use application.

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

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

***\*\*It should be noted that Mr. Norman stepped down, and Mr. Hesser returned to the Board at this time.\*\****

10. The application of ***Scott R. Kempf & Kathryn E. Friesen, Husband & Wife*** for a Special Use for a home workshop/business for a commercial greenhouse and retail sales on property located on the South side of Elkhart St. (CR 44), 1,075 ft. East of US 33, in Benton 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-0581-2019*.

There were 19 neighboring property owners notified of this request.

Kathryn Friesen and Scott Kempf, 1910 Woodward Place, Goshen, were present for this request as the operators of Single Tree Farm. She explained they operate a small cut flower farm that grows flowers for local florists in town. She continued saying they hope to move to their new residence this spring, and she pointed out its approximate location on the aerial. She added they plan to grow flowers in a greenhouse towards the front of the property. She explained the greenhouse will be a seasonal extension greenhouse to help extend the time amount of time they can grow flowers in their front yard. She mentioned they would also like to have an annual farm flower sale, where people come to their property once a year to have a party and purchase flowers. She then addressed parking for the event, and she mentioned their neighbors are friends who have agreed to let people park on their property. She added they attend a church approximately three minutes away that has also approved allowing people to park in their lot. Mr. Kempf pointed out the church on the aerial. Mrs. Friesen stated daily traffic will be their van sized delivery vehicle going into town and back. She stressed they do not plan to have people on their property every day. She mentioned they would like to host five farm tours a year for around 20 people, who can park on their neighbors' property. She continued saying traffic will occasional increase, but not much. She stated they value beauty as a flower farm, and they desire to keep the property looking nice as their future home. She added she sprayed the poison ivy on the property, and they plan to plant some flowering shrubs and trees to deflect any potential glare from the greenhouse. She continued saying they do not plan to have any signs or additional lighting.

Scott Kempf came on and stated they spoke to all of their neighbors and no one was opposed to their request. Mr. Atha asked how long the greenhouse lights will stay on and their brightness. He questioned if they will affect the neighbors. Mrs. Friesen responded they do not plan to have any lights in the greenhouse. She explained it is a hoop house to allow sun light inside, and they do not plan to work at night. Mr. Atha asked if their plants require longer light, and she responded no. She continued saying the greenhouses will have irrigation and electric for fans.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello mentioned the petitioners have the support of their neighbors and a good plan. Mr. Atha questioned plant waste disposal, since the property is located next to the river. Mrs. Friesen responded all plant material will be composted, and she pointed out a few potential

locations for the compost pile. Mr. Atha clarified the compost pile will be enclosed. Mrs. Friesen added they have an application with the NRCS for the greenhouse, and their lot is pure sand, which drains well. She continued saying the NRCS is working with them in regards to drainage.

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 a home workshop/business for a commercial greenhouse and retail sales 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 8/12/19) and as represented in the Special Use application.

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

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

11. The application of *Civil Town of Wakarusa* for a Special Use for a government facility (town police station) on property located on the East side of S. Spring St., 190 ft. South of Waterford St., common address of 102 S. Spring St. in Olive Township, zoned R-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0583-2019*.

There were 32 neighboring property owners notified of this request.

Mr. Hesser clarified the parcel has no history.

Craig Kil, Kil Architecture & Planning, 1126 Lincolnway East, South Bend, was present for this request along with Matt Moyer, Town of Wakarusa Council. He stated the new police station will replace a former residence that was used as the police station. He stressed the current facility is inadequate, and it does not meet the requirements for the town and police staff as far as vehicle storage, meeting rooms, and evidence rooms. He continued saying the new police station will be 3,800 sq. ft. single story with a full basement. He stated this project will serve the community of Wakarusa for decades, and approval of this request will allow it to move forward. Mr. Atha clarified the current police station is operated out of a residence. Mr. Kil pointed out the existing building on the aerial and noted it is under 1,000 sq. ft. He went on to say the new building will provide vehicle storage and staff rooms that the current one lacks. Mr. Hesser clarified this project will be a new building.

Matt Moyer, Town of Wakarusa Council President 303 E. Wabash Ave., Wakarusa, was present in favor of this request. He thanked the Board for their consideration of this request. He explained the police station was in an 800 sq. ft. residence for 25 years that was meant to be a temporary situation. However, he continued it was put off for a while, and the town is now trying to make it right. He mentioned the town request the new station be designed to appear residential in look and appeal, and it will match both the fire station and surrounding residences in the area. He stressed this project will serve the police station, neighbors, and community well. He added the single stall detached garage currently used to store materials will be replaced by a garage

attached to the new station. He mentioned the officers are excited, and he again thanked the Board for their consideration.

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 government facility (town police station) 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 8/12/19) and as represented in the Special Use application.

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

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

12. The application of *Bashor Orphanage Methodist Episcopal Church* for an Amendment to an existing Special Use for a social service establishment to allow for the construction of a residential/activity addition on property located on the Southeast corner of CR 15 & CR 30, common address of 62226 CR 15 in Harrison Township, zoned A-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0585-2019*.

There were 15 neighboring property owners notified of this request.

Don Phillips, President & CEO of Bashor Children's Home, 58673 Ox Bow Dr., was present for this request. Mr. Phillips stated their facilities are expanding due to children's needs in this facility and region. He continued saying they need larger residential space, support buildings, food service, recreation, and classroom space. He pointed out the project's proposed location on the aerial near an existing building. He stressed it is a distance away from the neighboring properties, which are corn fields. Mr. Campanello pointed out this is a large project. Mr. Phillips responded it is a roughly \$6,000,000 project, and they have confidence the needed funds will be received within the next year or two. Attorney Kolbus asked the number of beds this project will add, and Mr. Phillips responded thirty-seven. He added the addition will be a maximum of 25,000 sq. ft. including a gymnasium.

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** 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 an Amendment to an existing Special Use for a social service establishment to allow for the construction of a residential/activity addition 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 8/12/19) and as represented in the Special Use Amendment application.

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

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

13. The application of *Wilmer J. Yoder, Trustee & Elsie M. Yoder, Trustee of the Yoder Family Revocable Living Trust* for a Use Variance to allow for the construction of a second dwelling on a parcel and for a 59 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for an existing residence 61 ft. from the centerline of the right-of-way located on the West side of SR 13, 1,275 ft. South of CR 42, common address of 67253 SR 13 in Benton Township, zoned A-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0561-2019*.

There were eight neighboring property owners notified of this request.

Attorney Kolbus noted Finding #4 states accessory dwellings are allowed by right in an A-1 zoning district, and he clarified the proposed structure is larger than allowed for an accessory dwelling. Mr. Hesser pointed out the request is for a second residence. Attorney Kolbus mentioned a residence 1,000 sq. ft. or under can be classified as an accessory dwelling. Mr. Hesser noted staff recommended approval for a Developmental Variance for the existing residence that is currently a legal nonconforming structure. He continued saying the Developmental Variance is not associated with the proposed residence. Mr. Powers reiterated the Developmental Variance is for the existing residence, and the Use Variance is for the second dwelling.

Wilmer Yoder, 67253 SR 13, Millersburg, was present for this request. Mr. Hesser clarified the request is to construct a second dwelling on the property for his son, and he explained the Zoning Ordinance allows a second dwelling on a parcel, if it is less than 1,000 sq. ft. He continued saying another alternative would be to create a second parcel through in a Minor Subdivision. He then asked why the petitioner did not pursue one of the options presented. Mr. Yoder responded he was not sure what a subdivision required. Mr. Hesser clarified approval of a Minor Subdivision would allow for two buildable parcels, and he added both parcels would require road access. He continued saying a Minor Subdivision is heard by the Plat & Plan Commission, and it would allow for a residence of any permissible size on its own parcel. He explained in order to place two houses on one parcel, the Zoning Ordinance requires the second one be under 1,000 sq. ft. Mr. Campanello questioned the square footage allowed for an accessory dwelling, and Mr. Auvil responded 1,000 sq. ft. of living area. Mr. Campanello pointed the 1,000 sq. ft. limit does not include storage. Mr. Yoder explained he has two daughters living with him, and the youngest is in a wheel chair. He continued saying the dwelling needs to be over 1,000 sq. ft. to be handicap accessible. He added he would like to construct the residence close to the railroad tracks, and Attorney Kolbus pointed out the proposed location on the aerial. Mr. Hesser stated a Minor Subdivision would require an access easement. He then asked where the petitioner planned to have access for the second dwelling, and Mr. Yoder pointed out his proposed access on the aerial. Mr. Lyon asked if an easement could be placed along the north property line. Mr. Yoder pointed

out his proposed location for the residence on the aerial, and he explained an easement along the north property line would divide his son's property. Mr. Lyon recommended the petitioner hire a private surveyor to subdivide the property. Mr. Yoder responded he hired Blake Doriot, but he was not sure how to properly split the property. He added he does not have enough road frontage for a second parcel. Mr. Atha mentioned the property cannot meet the required road frontage for two parcels, and Mr. Campanello noted that makes the property peculiar. Mr. Atha then asked the size of the proposed residence, and Mr. Yoder responded around 2,200 sq. ft. He continued saying some of the square footage is storage, but he does not know the exact numbers. Mr. Campanello clarified 1,000 sq. ft. living area with 200 sq. ft. storage is not large enough for the petitioners' son. Mr. Yoder explained his son will move into the existing residence that is two stories with a full basement making it over 1,200 sq. ft.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser suggested Mr. Yoder work with the Planning and Development Department to find an alternative process that will allow for the proposed residence.

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

**Motion: Action:** Denied, **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 denied.

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

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

**No:** Denny Lyon.

**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 moped that this request for a 59 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for an existing residence 61 ft. from the centerline of the right-of-way 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 issued within 180 calendar days from the date of the grant and construction work completed within 1 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 8/6/19) and as represented in the Developmental Variance application.

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

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

Mr. Hesser stated the existing residence is approved, but the petitioner will need to speak to staff about options for the proposed residence.

14. The meeting was adjourned at 10:47 a.m.



Respectfully submitted,

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Laura Gilbert, Recording Secretary

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Randy Hesser, Chairman

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Tony Campanello, Secretary