

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16th DAY OF APRIL 2020 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; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

Absent: Denny Lyon.

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 19th day of March 2020 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/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 *William J. Knapp & Rosalea Marie Knapp, Husband & Wife as Joint Tenants with Right of Survivorship* 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 south side of SR 120, 500 ft. east of CR 19, common address of 20932 SR 120 in Washington 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-0146-2020*.

There were 12 neighboring property owners notified of this request.

Megan Knapp, the representative for William & Rosalea Knapp, 20932 SR 120, Bristol, came on for this request. Mr. Miller noted the request was previously approved. Miss Knapp stated they received approval two years ago for six adult goats and two horses, which they would like renewed. She continued saying they currently have four adult goats and two horses. Mr. Hesser asked why the staff recommendation is for five goats, when the request was previously approved for six, and she only has four. Mr. Atha noted the questionnaire states that they may keep a baby goat in addition to the four. Miss Knapp responded the questionnaire is from when they filed in 2018, and they now have four adults. Mr. Hesser asked if approval for five goats is sufficient, and she responded she would prefer approval for six. Mr. Hesser then explained that baby goats do not count towards the number allowed. He then asked staff their reason for reducing the number of goats to five. Mr. Auvil responded their recommendation is typically based on the application. Miss Knapp pointed out she believes she request five in the application from 2018, but she received approval for six. Mr. Hesser then asked if staff has any objection to allowing six goats, and Mr. Auvil responded no. Miss Knapp then noted that their original approval was for miniature horses, which was incorrect in 2018, because the horses are full-sized. Mr. Miller noted the request was approved in March of 2018, and a complaint was then filed February of 2020.

Miss Knapp responded she believes the code complaint was actually filed in 2018, because she is not aware of a complaint from 2020.

Doug Clark, 20950 SR 120, the neighbor directly to the west came on to say that he has no problems with the current use of the property. However, he continued saying he is against allowing more animals, because the horse pasture is small. He noted he is not opposed to chickens just additional large animals. Mr. Miller pointed out the request is for the same number of animals as previously approved. Mr. Clark reiterated he has no problem with the request as long as no more animals are added.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha stated he has no problems with the request.

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 3/4/2020) and as represented in the Special Use application.
2. The use is limited to a maximum of six (6) adult goats and two (2) adult horses at any one time.

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

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

Mr. Miller pointed out the request no longer has a time restriction on the request.

5. The application of **Jackson Ridge School** for a Special Use for a school on property located on the east side of CR 19, 750 ft. north of CR 50, in Jackson 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-0155-2020*.

There were seven neighboring property owners notified of this request.

Keith Miller, 19610 CR 146, New Paris, was present for this request as the trustee for Jackson Ridge School. He pointed out the highlighted location on the aerials included in his packet was incorrect, and he was told by Doug Powers that it would be corrected. He explained the subject property is the next parcel to the north, not the highlighted portion. Mr. Miller asked if the incorrect parcel was a staff error, and Mr. Powers responded yes. He went on to say the information was filed correctly, but the wrong location was highlighted on the aerial. Attorney Kolbus noted the legal notice was sufficient, and the directions match the actual parcel. Mr. Hesser

clarified the subject property is actually the northwest not the southwest corner of the larger parcel. He then questioned the needed subdivision referenced in the Staff Report, and he asked if it is a separate step the petitioner needs to complete. Mr. Auvil responded the subdivision is being processed. Mr. Hesser also asked what staff needs on the revised site plan, and Mr. Auvil responded staff will discuss the details with the petitioner later. He went on to say standard information including missing. However, he noted all of the missing information will be addressed with the Administrative Subdivision.

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 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. The petitioner must provide a revised site plan for approval by staff which meets the Administrative Subdivision requirements.

The following commitment was imposed:

1. The request is approved in accordance with the revised site plan to be submitted for staff approval and as represented in the Special Use application.

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

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

6. The application of *Cheryl L. Yoder & Steven L. Wagner, Trustees of the Jane M. Wagner Testamentary Trust (Lessor) & South Bend Mishawaka MSA Lt. Ptr. Verizon Wireless (Lessee)* for a Special Use for a wireless communications facility on property located on the south side of CR 48 & north side of CR 50, 1,450 ft. west of CR 9, common address of 26260 CR 48 in Union 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-0174-2020*.

There were 13 neighboring property owners notified of this request.

Mr. Steve Carr, 2894 Aldersgate Dr., Greenwood, was present online representing the parties involved. Mr. Carr requested approval of this petition in accordance with the site plan submitted.

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 3/11/2020) and as represented in the Special Use application.

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

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

7. The application of *Daryl Chupp & Nadine Chupp, Husband & Wife & Paul Chupp & Loretta Chupp, Husband & Wife* for a Special Use for a home workshop/business for a drive-in restaurant on property located on the south side of CR 20, 2,000 ft. west of CR 35, common address of 14350 CR 20 in Middlebury 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-0179-2020*.

There were 9 neighboring property owners notified of this request.

Paul Chupp, 14408 CR 20, Middlebury, was present for this request. He explained they would like to open an ice cream shop that would also serve some other foods like soft pretzels by window service only. He added their property is located near the bicycle trail, and he believes their shop will provide a good service for it. Mr. Hesser clarified the subject property is actually two separate parcels with the shop on one parcel and the drive on the other. He also noted the ice cream shop will be operated jointly by the two property owners.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha asked if the restaurant will be restricted to serving ice cream, pretzels, and similar foods. Mr. Auvil responded no, and he explained the petitioner can serve any food approved by the Environmental Health Department. Mr. Atha questioned if a McDonalds could be constructed on the property, since the request is for a drive-in restaurant. He went on to say he would not want a restaurant of that scale on the property, but he is not opposed to an ice cream shop. Mr. Auvil stressed the request is approved in accordance with the site plan submitted, which does not represent a McDonalds scale facility. Mr. Hesser noted no indoor seating is proposed, and Mr. Chupp responded it will be strictly a drive-in operation. Mr. Campanello asked if this property should have a DPUD, because he has concerns about what restaurant will be constructed there. Mr. Godlewski stressed the petitioner is held to the site plan submitted. Mr. Campanello mentioned he does not believe the site plan includes all of the details typically required. Mr. Godlewski stated this request does not appear to be much different than most home workshop/businesses. He continued saying it could have gone as a DPUD, but the use is also allowed by Special Use. Mr. Hesser noted he does not recall any requests involving two separate properties owned by different individuals.

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 home workshop/business for a drive-in restaurant 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 3/13/2020) and as represented in the Special Use application.

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

Yes: Joe Atha, Roger Miller, Randy Hesser

No: Tony Campanello.

8. The application of *Jennifer A. Martin & Michael L. Martin, Wife & Husband* 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 east side of Towne Rd., 360 ft. northeast of CR 22, common address of 58938 Towne Rd. in Baugo 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-0182-2020*.

There were 19 neighboring property owners notified of this request.

The petitioner was not present in person or online.

Jack Parkers, the owner of the property across from the petitioner was present in remonstrance. He stated he has lived in Cleveland Township his entire life, and his current residence for over 32 years. He then mentioned paperwork he has from the Wayne Meadows Home Owners Association dated 2/2/90. Mr. Godlewski informed the remonstrator that he was speaking for the wrong petition. Mr. Hesser pointed out the current request is for Jennifer & Michael Martin, and the remonstrator stepped down.

Mr. Atha asked if the Board should act on this request now. Mr. Godlewski suggested moving this request to the end of the time slot and proceeding with the next petition. Attorney Kolbus mentioned the Board can act on this request without the petitioner present, if they do not have any questions. Mr. Miller stated he is okay acting on the request without the petitioner present.

Mr. Powers explained three complaints were filed regarding chickens, ducks, and pigs in this neighborhood around the same time. He continued saying the chickens on the subject property were fenced in, but a neighboring property had animals wondering the neighborhood. He explained the petitioner is trying to remedy the complaint. Mr. Atha noted another property in the neighborhood has pigs. Mr. Powers stated one house has pigs and chickens, and another one has chickens and ducks that roam the neighborhood. Mr. Atha clarified this property has not caused any issues, and Mr. Powers responded they have the proper fencing. Mr. Hesser noted the application requests approval for a flock of 19 chickens and ducks. He then questioned why the staff report only refers to chickens. Mr. Powers stated the petitioner has chickens, but he was not aware that they currently had any ducks. He explained the petitioner lived on a larger property where they raised more animals. However, he is not sure her plans, since she is not here to speak.

Mr. Atha suggested approving the request for twelve agricultural birds, no roosters. Mr. Hesser stated he believes the request should specify ducks or chickens with a total flock of no more than twelve and no roosters.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha noted the request should be approved for a total of twelve birds (ducks & chickens), no roosters.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 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 3/13/2020) and as represented in the Special Use application.
2. The use is limited to a maximum of twelve (12) birds (chickens and ducks) at any one time, no roosters.

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

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

9. The application of *Cristina Giles & Evan Giles, Husband & Wife* for a Special Use for a home workshop/business for a carpentry/home improvement business and for a Special Use for warehousing and storage of a mill trailer on property located on the northwest side of Glenmoor St., 370 ft. northeast of Dover Ct., north of Tulain, north of CR 1, common address of 52933 Glenmoor St. in Cleveland 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-0181-2020*.

There were 38 neighboring property owners notified of this request.

Kevin Giles, 52933 Glenmoor St., Elkhart, was present for this request. He came on to clarify the request. He explained he is a small business owner who acquired the subject property 11/8/19 or 11/9/19, but he had not fully moved into the residence when the complaint was filed. He continued saying he is here to bring his property into compliance with the Zoning Ordinance, because he was not aware he needed approval. He clarified he is licensed and registered as a landscaping service not a saw mill or industrial operation. He stressed he is the only employee, and he does not plan to add any more in the near future. He noted the complaint was filed, because he has a portable saw mill on the property. He then mentioned a few articles he obtained about the use of sawmills on a private/hobby basis. He stressed the saw mill he owns is not classified as industrial, and it is not the primary function of his business. He explained he is a service based business with 90% or more of his operations being conducted off-site. He pointed out a pole barn on the west side of the property, which he intends to store everything inside or outside to the rear

of the property. He went on to say the building has substantial structural issues, prompting a complaint to be filed, since everything was left outside. He stressed the building is at risk of burning down, and he does not want all of his equipment destroyed in a fire. He mentioned the logging equipment is a hobby for personal gain and a supplementary part of his business. Mr. Miller asked if he spoke to the Home Owners Association about his plans. Mr. Giles responded he was told the neighborhood the neighborhood has no HOA when he purchased his residence. He added the previous owner of the subject property operated a construction business there for over 30 years and stored more equipment onsite than he owns. He continued saying his employees also occasionally met him on the property in addition to storing his material there. Mr. Hesser questioned how he knew no HOA existed, and Mr. Giles responded it was stipulated on his real estate documents. Mr. Hesser asked who disclosed the information, and he responded the previous owner and realtor. He added his paperwork stated there was no HOA. Mr. Hesser then asked if he confirmed it with title work. Mr. Giles stated the title company told him no HOA existed. Mr. Godlewski asked if Mr. Hesser is trying to find out, if covenants and restrictions exist, and Mr. Hesser responded yes. He then asked the petitioner, if he checked for covenants and restrictions. Mr. Giles responded he is not aware of any, and he believes the property only needs to be in compliance with the Zoning Ordinance. He continued saying he is here to seek approval of a Special Use for a home workshop/business. He stressed the primary function/goal of the property is to be his primary residence and personal storage. Mr. Hesser then questioned the exhibits previously mentioned by the petitioner, and Mr. Giles submitted the information to the Board *[Attached to file as Petitioner Exhibit #1]*. Mr. Campanello asked what size log in diameter the sawmill can handle, and Mr. Giles responded it can support up to a 52 in. log and mill up to 20 ft. long. Mr. Campanello then questioned how a log that size could be brought into the subdivision without disturbing neighbors, and he noted large equipment would likely be needed to place the log on the mill. Mr. Giles responded he does not currently process any wood onsite, and he only operated the mill onsite one time when a friend was there from out of town. He stressed it has only been used for personal means not his business. He added he has not operated his business on the property in any way besides storage. Mr. Atha clarified the plan is to store equipment inside of the existing shed/pole building. Mr. Giles reiterated he plans to store everything inside the pole building or at the rear of the property as reflected on the site plan. He noted he will install fencing and buffering around the outside storage, if the Board deems it necessary. Mr. Hesser then explained the exhibit submitted to the present Board members, and Mr. Godlewski stated he sent pictures of the exhibit to them. Mr. Hesser pointed out the use highlighted is for building supplies/home improvement. Mr. Giles explained if he ever has retail sales at this location, which is not his short term or primary goal, he will only sell building materials specifically lumber. He noted the Zoning Ordinance lists that as an allowed use with a Special Use permit in an A-1 zone. Mr. Campanello asked if the petitioner will operate the saw on the property or just store lumber there. Mr. Giles responded his primary customer base would be hobbyist, carpenters, etc. He added he will saw material onsite, but the goal is to operate inside the building. He stressed he has not sawed wood on the property yet. Mr. Atha asked if he will sell lumber out of the building, and Mr. Giles responded not at this time. He explained he would like approval to sell it at a later time in compliance with the Zoning Ordinance. He again stressed he has not sold a single piece of lumber besides gifts and favors to friends, which are not part of the company inventory. He mentioned his sawmill was constructed as a trailer with the intent of being portable/mobile. He

continued saying his primary purpose was to purchase a saw mill that could be moved around instead of a more commercial, stationary, set-up. He stated when he initially researched purchasing a sawmill, he found an article that states most top of the line, high-end production saw mills come with complete hydraulic and electronic operations for greater production/custom sawing related to commercial lumber manufacturing. He noted manual saw mills can be used for commercial cutting but are better suited for personal use on farms and small acreages. He stressed the majority of the functions on his sawmill are manual. Mr. Hesser questioned his timeline for repairing the building. Mr. Giles responded he is currently in the process of legal proceedings against the previous homeowner as well as the inspection company. Mr. Hesser clarified he does not have a timeline, and Mr. Giles responded he hopes within 3 months. He continued saying at this time he has not completed much work on the building, due to his timing of acquiring the property. He mentioned their primary goal is to complete some cosmetic work on the house, since they will live there. He also noted they obtained the property during winter. He stressed the entire roof structure on the building is bad. Mr. Hesser pointed out the saw mill and truck will be stored outside until work on the building is completed. Mr. Giles explained he uses his F-250 to pull the saw mill trailer. He went on to say the trailer is stored outside, but he could move it off-site if needed. He stressed this is his property, and he would like to keep the mill there. Mr. Hesser asked if the saw mill will be operated onsite. Mr. Giles responded its primary function is offsite, but he will also use it onsite inside of the building. Mr. Atha reiterated Mr. Giles is in the middle of legal proceeding with the person from whom he purchased the residence and pole barn. Mr. Giles responded multiple issues were not disclosed at the time of purchase, and he would not have purchased it, if he was made aware of them at the time of purchase. Mr. Atha questioned if the petitioner will be able to repair the pole barn, if the legal action is not settled. Mr. Giles responded the overall structure of the building is sound, but it has multiple roof leaks. He continued saying one of the leaks is right over the main breaker box to the building, which could allow it to burn down at any time. He stated he has tarped everything and turned off power to the building in an effort to prevent that from happening.

Brent Longbrake, 52960 Glenmoore St., the property directly across the street from the pole barn, came on in favor of this request. He stated he spoke to the petitioner, and he believes he understands his intentions. He went on to say he believes the neighbors have villainized him, because they did not give him a chance to restore the property to usable condition. He stressed the petitioner is currently trying to move into the house, after he has completely redone the flooring, carpentry, cabinetry, etc. He added the petitioner assured him that the equipment will be stored in the pole barn, and the lumber will be stored in or behind the pole barn. He noted the property will no longer be an eyesore once everything is completed. He explained the property appears different than it did under the previous owner, which he believes worries the neighbors. He stated he has lived on his property since 2001, and the previous owner of the subject property operated a construction business out of the building. He mentioned he is not aware of the neighbors having any problems with the previous owner operating a business on the property. He stressed no complaints or hearings took place for that business. He stressed he believes the petitioner is being singled out as a new owner who is trying to move onto the property. Mr. Longbrake explained he completed extensive research to see if an HOA existed for the neighborhood when he purchased his property in 2001, but the HOA at that time had not held any annual meetings or collected dues for several years. He continued saying the HOA is no longer valid by their own regulations,

because they did not maintain it. Mr. Hesser questioned covenants and restrictions for the neighborhood. Mr. Longbrake responded the subdivision had covenants and restrictions when it was created that he was provided when he purchased his property. However, he continued several of the covenants and restrictions have been broken over the years by other property owners in the neighborhood. He mentioned one restriction states that vehicles, campers, and trailers cannot be parked in driveways for extended periods of time. He stated the covenants and restrictions are likely still on file, but several properties in the neighborhood have broken them. He noted none of the other issues have been addressed, because there is no HOA to enforce them. He added he believes all of the covenants and restrictions are void, since no one has enforced them for years. Mr. Longbrake mentioned some of the neighbors are actively trying to stir up conflict/hatred against the petitioner for trying to operate a small business. He reiterated he believes the petitioner has a good plan in place and is trying to do this the right way. He added the petitioner lives in the residence on the property, and they seem like a nice family. He continued saying the petitioner is trying to be neighborly which goes a long way with him. Mr. Miller clarified he previously stated the property does not appear as it did when the previous owner lived there, and he questioned if it looks better or worse. Mr. Longbrake responded the previous owner did not store anything in the driveway, so the accessory structure appeared unused. He continued saying the petitioner stores logs and his mobile saw mill in the driveway, because he cannot use the building at this time.

Jack Parkhurst, 52948 Glenmoor St., across the street from the petitioner was present against this request. He stated he has a copy of the subdivision covenants and restrictions, which may or may not be active. He also had letters from a few neighbors who were unable to attend the meeting due to their age. He stressed that he has lived on his property for 32 years, and the previous owner did not use the subject property for his business. He went on to say he stored a travel trailer, work truck, three antique cars, and his personal tools in the accessory structure. He explained the previous owner stored all of his tools in his large work truck, which was kept inside the building. He mentioned the only time he worked in the garage was when he had flooding issues in the basement. Mr. Parkhurst then went on to say that their neighborhood is similar to a park setting, because several people from the surrounding area walk there with their dogs and families. He added children frequently learn to ride their bikes on the roads, and it is not just used by people who live on the road. He noted their subdivision is maybe 1,000 yards from Cleveland Elementary School, and young children from the area walk to school. He went on to say their road is narrow, and the saw mill trailer is too wide for it. He stated he is fortunate to have a drive he can turn around on, but other neighbors do not have a turnaround. Mr. Parkhurst then addressed the accessory structure, but he does not believe the petitioner is ready to operate inside it. He went on to say the building does not have an overhead sprinkler system or a dust collector. He stressed the building needs to be brought up to code, but he does not see that happening at this time. He suggested the request come back before the Board, once the building has been brought up to code. Mr. Hesser brought up the previously mentioned documents and asked if he would like to submit them to the Board. Mr. Parkhurst then submitted a copy of the subdivision covenants and restrictions *[Attached to file as Remonstrator Exhibit #1]*. He also submitted a few letters from surrounding neighbors the first was from Ronald & Linda Groulx, 53021 Glenmoor St. who were unable to attend the hearing due to being in their mid-80s *[Attached to file as Remonstrator Exhibit #2]*. He stated they request the area remain the same. The other letter submitted was from Nicholas & Jamie Corpe, 52930 Glenmoor St. *[Attached to file as Remonstrator Exhibit #3]*, and he then proceeded to read it. Mr.

Parkhurst stated he spoke to about fourteen people on Glenmoor St., not including neighbors who live on other roads and received notice, and they were opposed to the request. He continued saying they all agreed this operation does not belong in a residential area, and he submitted a list of fifteen concerns *[Attached to file as Remonstrator Exhibit #4]*. He again mentioned several people walk through the neighborhood, and several children in the neighborhood walk to school on the narrow roads. Mr. Hesser questioned the comment made by Mr. Longbrake that other properties in the neighborhood have trucks, RVs, and cars stored outside, and he asked about other businesses in the area. Mr. Parkhurst responded no other businesses are located in the area, and he is only aware of one RV stored outside. He added a property around the curve has a boat sitting outside. He explained some restrictions have been broken but not unsightly ones. He stressed this is a clean neighborhood. He mentioned he witnessed the saw mill in operation, and he did not have a problem with the sight of it. However, the cleanup caused some concern, because the wood chips went everywhere causing air pollution. He noted air pollution is not good for people with asthma or chronic lung conditions. He questioned how this operation will affect the surrounding neighbors, since the proper ventilation has not been installed. He added his wife and daughter both have asthma.

Mark Bralick, 52955 Glenmore St., was present opposed to this request and stated he has lived on his property for less than two years. He noted he agrees with staff's recommendation, because he does not believe the Special Use permit fits the spirit of this area. He stressed approval of the Special Use permit would cause permanent and substantial injury to their neighborhood. He also mentioned he is unsure how this request would substantially serve the public convenience and well-fare. Mr. Atha noted the petition includes two Special Use request, and he asked to which one he is opposed. Mr. Bralick responded both, but mostly outside storage of the trailer and logs. He stressed this is residential not a business area, and it is a subdivision with multiple streets and homes. He then addressed the covenants and restrictions, which he is unsure why it matters in this discussion. He reiterated he is against this request. He stated he does not believe the petitioner is being vilified, but he is concerned about his property value. He explained he drove past the house earlier, and the property was a little cleaned up. However, he noted 3' logs and 3" to 4" thick/24" wide slabs of wood are stored in the driveway. He stressed this operation goes beyond a hobby. Mr. Bralick stated he is unsure the petitioner's intentions for the building, but he believes this operation will require an alarm system that should be monitored. He added a collection system is needed, and he questioned what fuels, oils, and chemicals will be stored onsite. He stressed this property appears as a business in a residential neighborhood. Mr. Campanello stated he does not believe a sprinkler system is required, because the building is under 12,000 sq. ft. Mr. Atha then asked if Mr. Bralick would be opposed to allowing storage of the trailer inside the building with business operations and outside storage prohibited. Mr. Bralick responded large logs were brought into the neighborhood, and he is unsure how that conforms to the spirit of the Zoning Ordinance. Mr. Atha suggested storage of just the saw mill trailer, not logs, and he asked the difference between storage of a trailer or a boat. Mr. Bralick responded storage of the trailer would not be much different, but he questioned how logs will be brought there to be milled. Mr. Atha pointed out the saw mill can be operated off-site. Mr. Bralick stressed it has not been operated off-site since it was brought to the property. He added he would want a guarantee that logs would not be milled or stored on-site. Mr. Atha asked if storage of the saw mill only not logs or use of the mill on the property would better fit in the neighborhood. Mr. Bralick then stated he would like to see

the code that states a sprinkler system is not required in the building before his previous comment is removed. Mr. Hesser clarified his comment was not stricken, a Board member just disagreed with it.

Mr. Auvil submitted two emails received by staff in remonstrance. The first one was from Stephen & Cindy Gard, 52950 Glenmoor St. *[Attached to file as Staff Exhibit #1]*. He explained the letter shares the same concerns as mentioned by the previous remonstrators. The other email was from Greg & Cheryl Akin, 53012 Tulain St. *[Attached to file as Staff Exhibit #2]*, and they also share the same concerns. He added they provided two pictures showing the trailer/lumber in the driveway and the trailer with a large log.

Mr. Giles came back on and stated he was not aware of the mentioned concerns. He admitted he had not gone out of his way to introduce himself to the entire neighborhood, but he had taken the opportunity to explain his situation to a few. He stressed storage of items outside of the accessory building is temporary, and he will address that situation as soon as possible. He continued saying he was unable to fix the roof, because it was wintertime. He then addressed operating the saw mill, which he has only done once since purchasing the property. He noted he cleaned it up right after using it. He mentioned it creates a substantial amount of dust, but not enough to form a cloud. He added a collector/deflector is attached to it that causes as much dust as possible to fall down to the ground. He explained contrary to the neighbor's belief, he does have dust collection equipment that he can implement. He went on to say ventilation is also installed in the building. He noted he is unaware of any requirements for a sprinkler system in a storage building even one for a business. He stressed the previous owner informed him that he operated his business out of the building for over 30 years. He continued saying it was very obvious that the previous owner operated a business when he entered the building due to the number of tools. Mr. Miller pointed out he understands the previous owner did not store items outside. Mr. Giles responded his items are currently stored outside, but that is not his goal or intent for the property. He went on to say he believes he could store his personal property inside the building without a Special Use. He stressed he is asking for approval, because a home workshop/business is allowed by Special Use. He noted he does not want to alter the neighborhood. Mr. Miller pointed out the petitioner is comparing his business to the previous owner, but he did not operate outside of the building. He stressed the petitioner has already operated outside of it, and he believes that prompted the neighbors' concerns. Mr. Giles responded he has only operated his equipment for personal use on the property, and no business transaction occurred at that time. He explained a friend spent the weekend with them, and they also went out for lunch the next day. He asked if that appears to be a typical business situation, and Mr. Miller responded it would to a neighbor. Mr. Hesser questioned the petitioner's mentioned contracting business. Mr. Giles stated he is primarily a landscaping contractor not a logging or sawmill business. He continued saying it would be difficult to have a one-man logging business, and his only equipment is the saw mill and some chainsaws. Mr. Hesser asked if he plans to store equipment for his landscaping business inside the building, and Mr. Giles responded yes. He added he is primarily service oriented and typically operates off-site. He continued saying he is requesting a Special Use for the flexibility to conduct his business onsite in the future, which has not happened yet besides storage. He expressed he believes he is allowed to store whatever he would like inside the building as personal storage, and he has explained why the items cannot be inside the building at this time. He stressed he is trying to address the outside storage problem as

soon as possible. Mr. Miller questioned the petitioner's intent for the building in the future, and if he plans to cut wood/mill logs inside. Mr. Giles responded he would like approval to mill logs inside the building, but he will not operate the saw mill for hours every day. He added he works at job sites a majority of the time between April 1st and December 1st. He continued saying his specialty is patios with natural stone and brick pavers, and all work is done at the job site. He mentioned his saw mill is on four wheels with a hitch, so it can be pulled to a job site. He stressed it is plated and identified as a trailer by the police officer who inspected it. Mr. Campanello asked if he would agree not to operate the saw mill on his property but find another location to operate it. He suggested the lumber and saw mill could then be stored inside the building. He went on to say he is in favor of approving a home workshop/business for a landscaping business on the property, but he does not believe operating a saw mill is an appropriate use here even for hobby due to the proximity of his neighbors. He continued saying he believes the petitioner has the right to operate a home workshop/business for landscaping. He then questioned how loud his saw is compared to a 15" power planer. Mr. Giles responded he owns a 12" bench top planer, and his saw mill is not substantially louder than it when operated inside. He stressed his goal is to only operate the saw mill inside the building and not for extended periods of time. He added it is no louder than a large riding lawn mower when operated outside. Mr. Miller asked if the saw mill is electric powered, and Mr. Giles responded it is gas powered. He went on to say it is compliant with the most recent EPA and Emissions regulations in addition to being a high efficiency engine that is rated for next to zero emissions. He mentioned he can list at least nine neighbors within 300 ft. of his residence that operate a business off of their properties. He went on to say he does not want to throw them under the bus, because he has no problems with them. However, he continued he could point them out on the aerial. He added at least two are within the confines of his subdivision. He explained one person operates a lawn service, and occasionally stores a large utility trailer and three commercial lawn mowers in his driveway. He went on to say another neighbor located within his neighborhood is either a painter or carpenter and has two trailers. He stressed other neighbors have company trucks parked in their driveways that are larger than his, including a B/W Cook Air Conditioning truck that remains there overnight. Mr. Miller asked how the logs to cut will reach the property. Mr. Campanello then questioned how long it will take the petitioner to repair the roof and start storing his equipment inside. Mr. Giles responded he is unsure, since he is in the middle of legal proceedings. He continued saying he would address it immediately, if it was up to him. However, he explained it is difficult to have everything legally paid for after the proceeding have ended, if the building is already repaired. Mr. Miller then asked if he can limit the size logs he brings onto his property. Mr. Giles responded he does not have the ability to purchase larger equipment in the near future. He also noted he has never parked in or obstructed the road, and his trailers are all legally allowed on the roads. He then stated a good portion of the wood stored outside is uncut and designated as firewood. He went on to say he supplies wood to heat his elderly father's and his neighbor's houses. He added he supplied their wood before moving to this property.

The public hearing was closed at this time.

Mr. Atha asked staff if the petitioner is allowed to store wood for personal use in his shop for personal use, and Mr. Auvil responded yes. However, he added they sometimes run into scope and scale issues. Mr. Miller noted one of his friends owns a comparable saw mill to this one, and it does not make much more noise than a planer. He went on to say it is not a noisy operation nor

does it cause a large amount of dust. He explained the logs being cut are often green, which cuts down on the amount of dust produced. He mentioned he agrees that the building does not need a sprinkler system. He stated he is not opposed to the petitioner operating within the confines of the building. He suggested the petitioner be given time to repair the structure to a usable condition after his legal proceedings. Mr. Campanello and Mr. Atha both agreed. Mr. Campanello pointed out home workshop/businesses for landscaping services are frequently approved, and he believes the scale of the proposed operation has been blown out of proportion. He stated he understands the neighbors concern about decreased property values, but their value should not be affected. He stressed the Board needs the means to keep an eye on this property and make sure he is not operating outside of approval. Mr. Miller asked if the request can be approved for a period of time, and Attorney Kolbus responded yes. Mr. Hesser expressed concern about the items currently stored in the driveway, and he stressed it cannot remain that way. He stated he is not comfortable allowing an indefinite time period to finish the building and move everything inside. He continued saying he does not want to operate saw mill operations at all until the building is completed. He stressed items stored in the driveway need to be moved within a reasonable amount of time. He mentioned he understands it will take some time to move the items, but they cannot remain there. He pointed out dust removal and sprinkler systems are not under the Board's jurisdiction, and the petitioner will be required to meet regulations imposed by that authority. He stated he is not opposed to the operation as long as everything is kept inside the building, but everything is very speculative at this point. He added he is not comfortable allowing all of the proposed future operations and approval should be very specific/limited. He also suggested they set a very specific lists of conditions/commitments including a time restriction, if the request is approved. Mr. Miller stated he agrees a more accurate list of the petitioner's intentions is needed, and Mr. Giles responded he is willing to amend anything in the petition to make it clearer. Mr. Atha suggested tabling the request until a more detailed plan is provided. Mr. Campanello responded he does not believe tabling the request is necessary, because the petitioner's legal matters need to be rectified before he can move items inside. He continued saying his legal proceedings should not delay approval or denial of his home workshop. Mr. Godlewski stressed legal proceedings have no bearing on land use. Mr. Hesser explained the Board cannot overrule HOA covenants/restrictions, and the neighbors can pursue enforcement of the covenants/restrictions even if the Board approves this request. He then noted whether the covenants/restrictions have been abandoned is a legal matter, which is not determined or affected by the Board. Mr. Hesser stated he believes tabling the request would allow time to establish the proper conditions, commitments, and other limitations. He added the public hearing will need to be re-opened at a later meeting, if they request additional materials be submitted. Attorney Kolbus clarified the Board does not need to re-open the public hearing to debate conditions/commitments. Mr. Atha asked if conditions/commitments can be approved by staff, and Mr. Hesser responded he is not comfortable with staff approval. Mr. Godlewski added conditions/commitments need to be established at a public hearing. Mr. Miller suggested the petitioner provide a list of proposed conditions/commitments, but Mr. Hesser pointed out that would require the public hearing be re-opened. He noted staff should provide the conditions/commitments. Mr. Miller responded he would like a clearer list with exactly what he plans to do on the property submitted by the petitioner for approval at a public hearing. He stressed his concern is that the request is not very specific, and he does not feel comfortable approving multiple operations the petitioner may do in the future.

Mr. Atha clarified a home workshop/business is not allowed any outside storage, and approval would require everything be stored inside the building unless otherwise stated. Mr. Godlewski responded yes, but the petitioner is also requesting a Special Use for warehousing and storing. Mr. Campanello stated the Board can impose a condition or commitment prohibiting outside storage. Attorney Kolbus clarified no outside storage would be a commitment. Mr. Campanello stated the Special Use will serve the public, because they will benefit from his operation. He noted the subdivision already has several businesses in operation without approval. Mr. Atha questioned if the request addresses the landscaping business, and Mr. Campanello responded it is the petitioner's main business. Mr. Atha added a local landscaping business will benefit the public. Mr. Campanello explained he believes the lumber portion of the business will benefit the community by supplying lumber to local craftsmen, because he will not be selling it to large supply stores. He stressed the petitioner will likely sell lumber to hobbyist. Mr. Atha clarified the petitioner cannot add onto the existing structure without approval. Mr. Campanello expressed concern that the neighbors will complain about logs being stored outside before the petitioner has a chance to place them inside the building. Mr. Hesser questioned the logs, lumber, and equipment currently stored in the driveway. Mr. Campanello responded he believes the Board should consider the legal proceedings, because the petitioner wants to repair the building. Mr. Godlewski stressed legal proceedings are not land use issues. Mr. Miller reiterated the legal issue cannot have an effect on the Board's decision. Mr. Atha noted the petitioner is storing items outside, against the proposed approval, because of the legal proceedings. Mr. Hesser suggested imposing a time period to remove the items from the premises or store them inside. Mr. Campanello explained the petitioner could store everything inside for the time being, if he takes action to prevent water from reaching his panel box. He stated the petitioner needs to remove the lumber or store it inside until the building is habitable. Mr. Godlewski suggested adding that as a condition. Mr. Hesser added a time period to move the items should be imposed, and Mr. Campanello suggested 30 days. Attorney Kolbus stated the standard condition and commitment should also be imposed. Mr. Miller asked if the request should only be approved for a period of time. Mr. Atha responded yes for one year. Mr. Bralick request the petition be restated due to confusion. Mr. Godlewski explained staff will answer his questions in the hall after the hearing is completed. Mr. Hesser pointed out the public hearing is closed, and only the Board is permitted to speak at this time. He then recapped that a motion was made for approval of the request with a condition that all items stored outside either be removed or stored inside within 30 days and a commitment that approval be for a period of one year. Mr. Atha added other proposed commitments include no outside storage, and no operations outside the confines of the building. Mr. Hesser clarified the proposed motion is only for approval of the home workshop/business Special Use not the warehousing and storage one. Mr. Atha reiterated approval would allow the petitioner to store items inside his building, but not outside.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Tony Campanello that this request for a Special Use for a home workshop/business for a carpentry/home improvement business be approved based on the findings and conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose, and intent of the Zoning Ordinance. Home workshop/businesses are allowed by Special Use.

2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. All equipment/operations will be contained within the accessory structure.
3. The Special Use will substantially serve the public convenience and welfare by supplying local craftsman with a source of locally milled lumber.

The following conditions were 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. All outside storage (lumber and equipment) must be stored inside the accessory structure or removed from the property until the accessory structure is habitable within thirty (30) days.

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 3/13/2020) and as represented in the Special Use application.
2. All operations related to the home workshop/business must take place within the confines of the accessory structure or off-site.
3. No outside storage related to the home workshop/business is permitted.
4. Approved for a period of one (1) year, any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.

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

Yes: Joe Atha, Tony Campanello, Roger Miller.

No: Randy Hesser.

Mr. Hesser stated he does not believe the request is specific enough, and he would have liked to see a revised site plan and list of conditions/commitments. He mentioned outside storage of the mill trailer was part of the warehousing and storage request, but he believes inside storage of it was approved as part of the home workshop/business request. Mr. Godlewski responded that is correct, and he clarified all operations must take place inside. Mr. Hesser reiterated inside storage of the mill trailer was approved as part of the Special Use, and denial of the warehousing and storage request does not prevent that. Mr. Atha stressed denial of the warehousing and storage request is meant to prohibit outside storage. Mr. Hesser noted no outside storage was also included in the home workshop/business motion. He added the trailer can still be stored inside with denial of the warehousing/storage Special Use. Mr. Campanello clarified the petitioner can still do hobby work inside the building.

Motion: Action: Deny, **Moved by** Joe Atha, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and conclusions of the Board, and based upon these further moved that this request for a Special Use for warehousing and storage of a mill trailer be denied.

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

Yes: Joe Atha, Roger Miller, Randy Hesser.

No: Tony Campanello.

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

10. The application of *Concord Community Schools Building Corporation* for an amendment to an existing Special Use for a school to allow for a new electronic message board and for a Developmental Variance to allow for the placement of an electronic message board within 300 ft. of a residence on property located on the northeast corner of CR 45 & Mississippi St., 1,900 ft. southeast of CR 13, common address of 23525 CR 45 in Concord 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-0178-2020*.

There were 35 neighboring property owners notified of this request.

Mr. Auvil disclosed that his wife, Melisa is the president of the Ox Bow PTO and utilizes the sign frequently.

Todd Lehman, Signtech Sign Services, 1508 Bashor Rd., Goshen, was present for this request representing the petitioner. He stated the entire sign will be 4'x8', half of which is the electronic message center and the other half the identification portion. He added Concord East Side Elementary recently received approval for an EMC, and they have become very attractive to the other schools. He continued saying the EMC's appeal is flexibility and functionality. Mr. Atha clarified the actual EMC is half of the proposed 4'x8' sign, and it will be double-sided.

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 school to allow for a new electronic message board 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 3/13/2020) and as represented in the Special Use Amendment application.

Further, the motion also included that a Developmental Variance to allow for the placement of an electronic message board within 300 ft. of a residence be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is 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 3/13/2020) and as represented in the Developmental Variance application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller.

Abstain: Randy Hesser.

11. The application of *Concord Community Schools Building Corporation & Indiana National Bank as the Trustee* for an amendment to an existing Special Use for a school to allow for a new electronic message board and for a Developmental Variance to allow for the placement of an electronic message board within 300 ft. of a residence on property located on the northeast corner of Mishawaka Rd. (CR 20) & Benham Ave., 900 ft. west of CR 9, common address of 230 W. Mishawaka Rd. in Concord 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-0180-2020*.

There were 46 neighboring property owners notified of this request.

Todd Lehman, Signtech Sign Services, 1508 Bashor Rd., Goshen, was present representing the school. He explained the proposed sign will be identical to the one just approved for Ox Bow just higher. He stated Concord East Side has an electronic message center, and Concord Ox Bow was just approved for one. Mr. Atha clarified this sign is taller than the previously approved signs. Mr. Lehman responded they typically replace the sign in the same location as the existing one, and this particular sign has bushes about 8 ft. tall to the bottom of it. He continued saying they would like to keep the sign at the same height for clearance purposes. Mr. Atha reiterated the new sign is the same size as the existing one but with the EMC.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a school to allow for a new electronic message board 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 3/13/2020) and as represented in the Special Use Amendment application.

Further, the motion also included that a Developmental Variance to allow for the placement of an electronic message board within 300 ft. of a residence be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is 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 3/13/2020) and as represented in the Developmental Variance application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller.

Abstain: Randy Hesser.

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

1 2. The application of ***Leanna Miller (Land Contract Holder) & Kevin Gingerich & Loretta Gingerich, Husband & Wife (Land Contract Purchasers)*** for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres, for a 1 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for the construction of an accessory/agricultural building 4 ft. from the north side property line, and for a 4 ft. lot-width Developmental Variance (Ordinance requires 100 ft.) to allow for an existing residence on property located on the west side of East County Line Rd., 1,100 ft. north of CR 26, common address of 59791 East County Line Rd. in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0184-2020*.

There were three neighboring property owners notified of this request.

Kevin Gingerich, 59791 East County Line Rd., Middlebury, was present for this request. He stated he has an existing barn that he would like to replace closer to his property line due to the septic tank location. Mr. Hesser then questioned the need for animals on less than three acres, and he asked if they will be used for transportation purposes. Mr. Gingerich responded he has two horses and a pony for transportation purposes. He added he does not need any additional horses. Attorney Kolbus asked if the petitioner needs approval for four horses. Mr. Gingerich responded he only has two, and he intends to keep it that way. Mr. Hesser added he also owns a pony. Mr. Atha questioned if baby animals are allowed by right, because the Board typically only allows two large animals on a property this size. Mr. Hesser noted a pony would be smaller than the full grown ones. Mr. Atha asked if the third horse is a miniature horse, and Mr. Gingerich pointed out its approximate height on himself. Attorney Kolbus noted the horse is approximately 32" tall. Mr. Campanello asked if the pasture is large enough. Mr. Atha responded it appears small, but it has been established for a while. He went on to say the Board typically approves two horses on a pasture this size. He added he does not see any water sources or heavy slopes in the surrounding area. He explained he does not believe water quality is an issue in this case. He continued saying four horses is too many for this property, but he is not opposed to allowing two full size and one miniature horse. Mr. Hesser asked if approval of two full size and one miniature horse is acceptable to the petitioner, and Mr. Gingerich responded yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha suggested limiting approval of the agricultural animals to two full size and one miniature horse.

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 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 3/13/2020) and as represented in the Special Use application.
2. The use is limited to a maximum of two (2) adult horses and one (1) miniature horse at any one time.

Further, the motion also included that a 1 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for the construction of an accessory/agricultural building 4 ft. from the north side property line, and for a 4 ft. lot-width Developmental Variance (Ordinance requires 100 ft.) to allow for an existing residence be approved with the following conditions imposed:

1. Variances from the developmental standards of the Zoning Ordinance are 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 3/13/2020) and as represented in the Developmental Variance application.

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

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

13. The application of *Jerold Miller & Alesha Miller, Husband & Wife* for a Use Variance to allow for two existing dwellings on a zoning lot located on the south side of E. Lincoln St. (CR 42), 180 ft. east of SR 13, common address of 518 E. Lincoln St. in Benton Township, zoned B-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0185-2020*.

There were 26 neighboring property owners notified of this request.

Jerold Miller, 13520 CR 42, Millersburg, was present online for this request. He stated he would like permission to use an existing single-wide location behind the primary dwelling. He explained it was occupied during the previous ownership, and they purchased it as an investment property with the intent to rent it out. He continued saying the mobile home has been remodeled including the installation of a new roof and windows. He stressed it was occupied before they purchased the property, and they would like to continue using it. Mr. Campanello asked if the petitioner will reside in the primary dwelling on the property, and Mr. Jerold Miller responded no. Mr. Campanello clarified the petitioner plans to rent out both residences. Mr. Jerold responded that is correct, and he understands the previous owners also used both as rentals. Mr. Campanello pointed out it was rented illegally, and Mr. Jerold Miller responded he was not aware it was illegal. He continued saying he was informed of the problem when he tried to pull a permit for reconnecting electric to the mobile home. Mr. Hesser clarified the mobile home is currently vacant, but the primary residence is occupied. Mr. Hesser questioned if utilities are connected to the mobile home, and Mr. Jerold Miller responded the utilities are not currently turned on. Mr. Campanello asked if the trailer can be removed from the premises without encroaching on the

neighbor's property. Mr. Jerold Miller stated he would need to cross over the neighbor's property to remove it through the side driveway. Mr. Campanello stated there appears to be a storage building behind the subject property. Mr. Hesser asked if Mr. Campanello believes the mobile home could be used for something other than a residence, and Mr. Campanello responded yes. He continued saying the existing use is nonconforming, and he does not believe he can vote for approval of it. However, he is not sure how the mobile home could be removed from the property. Mr. Hesser clarified the bathroom would need to be removed from the mobile home to no longer be considered a residence, but it is a feasible solution. Mr. Auvil pointed out altering the structure may cause complications, since it is a mobile home. Mr. Jerold Miller explained the residence was constructed in the 80s, and the previous owner remodeled the mobile home. He went on to say part of his argument is that there is a need for affordable, in-town housing for people.

Mr. Auvil submitted two emails received by staff in remonstrations to this request. The first was from Jaren Vest 545 E. Lincoln St., Millersburg, *[Attached to file as Staff Exhibit #1]*, and his concern was that allowing rental properties in this area will affect their property values. He added another concern is the adverse effect it could have on safety and security in the neighborhood. He then submitted an email from Jeff & Becky Siegel, 535 E. Lincoln St., Millersburg, *[Attached to file as Staff Exhibit #2]*. He stated they shared similar concerns that approval could cause adverse effects on their properties and the town as a whole. They stressed that Millersburg was designed to be single family residences, and they believe this request is outside of the spirit of their intent. Mr. Campanello asked if the county created this problem by allowing a residence to be constructed in front of the mobile home. Mr. Joe Miller stated he receives a tax bill for both residences. Mr. Godlewski responded he is unsure, because he has not researched it. Mr. Auvil stressed the structure is illegal, and no permit was found. Mr. Roger Miller noted the mobile home was placed in 1980. Mr. Godlewski clarified the property is not compliant even if staff allowed it by accident years ago.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Roger Miller asked if rental properties are allowed in this area. Attorney Kolbus responded the Zoning Ordinance does not regulate rental properties, but it regulates multiple residences on one parcel. Mr. Atha pointed out the mobile home does not meet the required setbacks, even if this request is approved. Mr. Hesser suggested the Board impose a deadline to remove the mobile home from the property. He asked the petitioner how long he needs to remove the mobile home from the property. Mr. Godlewski suggested 90 days. Mr. Jerold Miller questioned removing the mobile home from the property, because he pays taxes on it. Mr. Hesser again asked how long the petitioner needs to remove it, and he asked if 60 days is enough time. Mr. Jerold Miller responded no. Mr. Hesser then suggested giving the petitioner 90 days to remove the mobile home from the property. Mr. Jerold Miller asked the Board to reconsider his request. Mr. Hesser pointed out the Board has not voted yet.

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

Motion: Action: Deny, Moved by Randy Hesser, Seconded by Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for two existing dwellings on a zoning lot be denied.

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

Yes: Joe Atha, Roger Miller, Randy Hesser.

No: Tony Campanello.

The mobile home must be removed from the property within ninety (90) days.

Mr. Hesser stated the petitioner can appeal the Board's decision, and staff can answer any of his questions.

14. The application of *Clifford A. Dittman & Mary K. Dittman, Husband & Wife* for a 16 ft. Developmental Variance (Ordinance requires 50 ft.) to allow for the construction of an addition to an attached garage 34 ft. from the centerline of the right-of-way of Arrowwood Dr. on property located on the northwest corner of Basswood Ct. & Arrowwood Dr., 900 ft. west of CR 15, 2,400 ft. north of CR 10, common address of 22975 Basswood Ct. in Osolo Township, zoned PUD R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0177-2020*.

There were seven neighboring property owners notified of this request.

Mr. Hesser asked if the replat is being pursued, and Mr. Auvil responded that needs to be filed.

Clifford Dittman, 22975 Basswood Ct., was present online for this request. He stated they would like to add another stall to their existing attached garage to make it a three car garage. Mr. Hesser clarified the petitioner has a two car garage and would like to add a third stall. He then questioned traffic volume and visibility on Arrowwood Dr. Mr. Dittman responded traffic is minimal, because this is a rural neighborhood. He noted Arrowwood is a little busier, because it connects several streets in the subdivision. He continued saying 10 to 15 cars may go by within a 5 minute period, but Basswood Ct. only serves about six houses. Mr. Hesser asked if adding on closer to Arrowwood Dr. will cause visibility problems. Mr. Dittman responded his neighbors and he do not believe it will cause any issues, and the residence to the south, directly across Basswood Ct. from him added on a third stall in a similar location. Mr. Hesser pointed out the subject property is on a curve, and he wanted to ensure visibility will not be an issue.

Mary Dittman, 22975 Basswood Ct., Elkhart, came on for this request. She stated both their neighbors and them have large trees on the corner. She stressed the trees are more likely to block visibility than the garage addition. She added the addition will be just to the west and behind the tree. Mr. Hesser asked if the trees cause visibility issues on Arrowwood, and Mrs. Dittman responded it does not cause any issues. Mr. Campanello asked if the property is flat where the addition will be constructed, and he questioned if a drainage swale is along the road. Mr. Dittman responded their road does not have drainage of any kind. Mr. Atha then clarified the dotted line on the submitted site plan is his property line. Mr. Hesser asked if any other approval is needed to build in the right-of-way. Mr. Auvil responded the addition will not be constructed in the right-of-way, but a replat is needed to change the platted setback. He went on to say the surveyor who platted this subdivision is no longer in business, and the right-of-way shown on the plat does not match what is recorded. Mr. Hesser clarified the proposed addition will not be within the right-of-way.

There were no remonstrators present.
The public hearing was closed at this time.

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

Motion:, Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 16 ft. Developmental Variance (Ordinance requires 50 ft.) to allow for the construction of an addition to an attached garage 34 ft. from the centerline of the right-of-way of Arrowwood Dr. be approved with the following conditions imposed:

1. Variances from the developmental standards of the Zoning Ordinance are 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 (3/13/20) and as represented in the Developmental Variance application.

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

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

15. The application of *Thomas J. Wagler & Jeri L. Wagler, Husband & Wife* for a 4,065 sq. ft. lot-area Developmental Variance (Ordinance requires 15,000 sq. ft.) to allow for the construction of a residence on proposed lots 1, 2, 3, & 4 on the east side of CR 9, 1,350 ft. north of CR 20 (Mishawaka Rd.), in Concord Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0193-2020*.

There were eight neighboring property owners notified of this request.

Thomas Wagler, 56271 CR 23, Bristol, was present for this request and stated he would like to construct some affordable houses on this property. He first addressed finding #2 in the Staff Report which states approval would have an adverse effect on the neighboring property due to the proposed lots not being large enough for well and septic. He noted he has completed soil borings, and it is good soil. He added he has a report from the Environmental Health Department stating he can install conventional septic systems, which are the smallest systems allowed for two to three bedroom houses. He then asked if the Board has copies of the site plan, and Attorney Kolbus answered yes. Mr. Wagler explained his copy of the site plan is in color, which makes it easier to understand the different boxes. He stressed he proposed small three bedroom houses, or they could be made two bedroom if needed. He stated he was able to fit a residence, well, septic, and reserve on each lot meeting all of the required separation. He added there is more than the required setback between the proposed and the neighbors' septic systems and wells. Mr. Wagler stated he intended to talk to his neighbors about the request, but he did not feel like he should have that much contact with people when the virus hit. He stressed the residences will meet all of the required county setback. He added he spoke to the Highway Department, and they did not have any issues with the proposed drives off of CR 9. He reiterated the lots can meet all Health Department and setback requirements. He then explained each lot will be 81 ft. wide by 135 ft. deep, which is not out of character for the neighborhood. He went on to say this area is on the edge of Elkhart City between Mishawaka Rd. & Hively Rd. He pointed out the neighborhood

consists of around 125 lots, and he found that about 1/3 of the properties are the same size or smaller than the proposed lots. He noted a parcel close to the subject property is only 50 ft. wide with a single family residence, and a few others nearby are 60 ft. to 66 ft. wide. He stressed roughly 35 of the total 125 lots in the neighborhood are smaller than the ones he proposed. He added a few of the existing lots appear to be two smaller ones combined, but even 100 ft. by 135 ft. is under the required square footage for a buildable lot in the Zoning Ordinance. He stated 75% or more of the existing lots in the subdivision are less than the required 15,000 sq. ft. Mr. Wagler then explained approval of this request will not cause an adverse effect on the neighboring properties, because there is adequate room for wells and septic systems. He then added he believes his proposal will enhance and improve the neighborhood. He explained it is a relatively nice, older neighborhood, but some of the properties are not well kept. He mentioned investing money into this area will benefit it, because he has not seen many new houses being constructed despite the empty lots in the neighborhood. He stressed it would be good for someone to fill in the empty lots to make the neighborhood look complete. He added he has been asked multiple times over the years why he has not constructed houses on his property. He clarified he has been in the construction business for several years, and he believes now is a good time to build there. Mr. Hesser asked if this area has access to city water and sewer. Mr. Wagler responded it is nearby but not available on this property. He went on to say he approached the city about hooking up to water and sewer, but their official position is that no city utilities will be extended unless the property annexes into the city. Mr. Hesser then noted several smaller lots than those proposed exist in this neighborhood with residences on them, and he questioned the age of those homes. Mr. Wagler responded most of the residences were constructed in the 40s or 50s. He stressed this is a very pleasant area located near Concord Westside School in the county not the city, which he believes is more desirable. He continued saying the demand is high for affordable housing in this area. He explained he plans to construct basic houses without a bunch of frills to keep the cost down. He then addressed finding #3, and stated denial of this request will not cause a hardship to him. However, it will cause a hardship for the community and neighbors, because he will be unable to construct affordable housing. He stressed larger lots mean larger houses with accessory buildings and a higher price. He again mentioned he is willing to invest in this neighborhood. Mr. Wagler pointed out the lots will not require any new streets, which means no additional street costs/drainage issues for the county. He added gas and electric are available onsite, and the amount of traffic in the area will not greatly increase. He then stated from a tax standpoint, his proposal will add \$400,000 to \$500,000 of value to the area, creating \$8,000 to \$10,000 in tax revenue. He emphasized this is an opportunity to fill in lots throughout the county with affordable housing, which he believes a few non-profits are currently working on. Mr. Atha questioned if he will leave enough room on the lots for a truck to reach the septic system, if it needs repaired. Mr. Campanello responded the trucks have hoses and do not need to reach the back of the property. Mr. Wagler added they would not drive across the yard anyways, because septic systems cannot be driven across. He then summarized that denial of this request would prevent improvement to the neighborhood in a manner reasonable, customary, and consistent with neighboring properties in addition to increasing the cost of the proposed residences. He again stressed approval will not alter the character of the neighborhood, because the lots fit in with existing ones. He added his proposal will not harm or be detrimental to the public safety or good. He mentioned it will not infringe on the neighboring properties, because there will be plenty of room between them. He

continued saying approval will preserve, enhance, and improve property values, along with providing affordable housing. Mr. Wagler then stated he has an alternative three lot plan, if this request is denied. However, he continued the houses would not be as affordable. Mr. Hesser pointed out two residences could be constructed on the property without Developmental Variances. Mr. Wagler responded yes and noted the property is zoned R-1. Mr. Godlewski mentioned Developmental Variances will be required for three lots.

Mr. Hesser asked staff for any comments. Mr. Roger Miller stressed he does not remember the Plan Commission ever approving any lots this small.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha stated he does not have a problem approving the request, if he meets all of the setback and Health Department requirements. He continued saying the proposed residences are not mobile homes, and the lot size fits into the surrounding neighborhood. Mr. Hesser questioned if all four septic tanks in close proximity to each other causes any concern. Mr. Atha responded the Environmental Health Department will not permit them, if they do not meet the requirements. He added the site plan shows the septic systems 100 ft. from any surrounding wells, but he is not sure if being next to existing septic tanks causes problems. Mr. Campanello stressed the wells and septic systems are likely close to each other throughout the entire neighborhood. Mr. Miller pointed out the neighborhood is older, and the proposal does not fit the rules and regulations compiled by the county for buildable lots. He went on to say he does not believe lots allowed in the past should impact buildable lots now. He explained the rules and regulations were compiled by several people including realtors and members of the public. Mr. Campanello stated he does not believe 15,000 sq. ft. lots are large enough for new subdivisions, but this is in an existing neighborhood. He added the proposed lots are larger than some of the existing ones in the area. He mentioned he believes this is a good plan, because it fits in the existing subdivision. He stressed he would not be in favor of approval, if this was a new subdivision with less than 15,000 sq. ft. lots. He reiterated he is leaning towards approval of this request, because of the existing lots. Mr. Miller stated he is also concerned that future owners will want to construct accessory structures on the lots, and then cars will be parked in the driveway without them. He stressed he does not believe it is conducive to the neighborhood. Mr. Campanello added he agrees with Mr. Miller's comments, but he believes it does conform to the neighborhood. He went on to say it appears to meet the Health Department's requirements. Mr. Hesser mentioned the petitioner will be required to obtain permits through the Health Department. Mr. Atha asked if the Board wants to deviate from the Zoning Ordinance, and he questioned if the existing residences will be allowed to rebuild by right. Mr. Auvil responded yes. Mr. Atha clarified denial of this request would not affect the surrounding neighborhood, but it does fit with the area. Mr. Hesser stated he was inclined to agree with the staff report when he first reviewed the petition, but the petitioner did a good job of addressing his concerns and explaining the neighborhood. He went on to say he may have been opposed to the request, if remonstrators had been present, but the proposed lots appear to be consistent with the existing neighborhood. He added the petitioner appears to have done his research, so he is inclined to vote for approval. He then asked if any conditions/commitments should be added, and Attorney Kolbus responded the standard conditions should be imposed.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha that this request for a 4,065 sq. ft. lot-area Developmental Variance (Ordinance requires 15,000 sq. ft.) to allow for the construction of a residence on proposed lots 1, 2, 3, & 4 be approved based on the findings and conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals, or general welfare.
2. Approval of the request will not cause substantial adverse effect on neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The following conditions were imposed:

1. Variances from the developmental standards of the Zoning Ordinance are 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 3/16/20) and as represented in the Developmental Variance application.

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

Yes: Joe Atha, Tony Campanello, Randy Hesser.

No: Roger Miller.

****For the record, Mr. Auvil did not hear from any of the parties involved in the following Show Cause Hearings. No one was present in the audience or online****

16. The application of *Indiana Michigan Power Company (Lessor) & Kenneth Jerome (Lessee)* for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the northwest side of Melody Ln., 660 ft. southwest of CR 5, common address of 28833 Melody Ln. in Cleveland Township, zoned A-1, came on to be heard.

Mr. Auvil stated the request to be rescinded is for warehousing and storage of a semi-truck. He noted the petitioner is often away from home, since he is a truck driver. He explained he also had some problems receiving the appropriate title to the land from Indiana Michigan Power Company. However, he is aware that the petitioner has been contacted several times and received the proper notice. He continued saying he was given time to address the problem or inform staff the status of his title situation, but they have heard nothing from him. Mr. Hesser clarified the petitioner received proper notice of the hearing, but he is not present in person or online. He then asked when the petition received approval, and Mrs. Gilbert responded in 2017. Mr. Hesser clarified the petitioner has had two plus years to return the commitment.

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

Motion: Action: Rescind, **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 requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

17. The application of *Scott & Karrie Clark* for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the south side of CR 36, 1,540 ft. east of CR 11, common address of 24600 CR 36 in Harrison Township, zoned A-1, came on to be heard.

Mr. Auvil stated this Special Use is for a gravel pit, and Planners have been in contact with Mr. Clark. He continued saying the petitioner said he would bring in the commitment form, but it never happened. He noted staff contacted him again and gave him proper notice of this hearing, but no response was ever received. Mr. Hesser asked when the request was approved, and Mr. Godlewski responded 2017.

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

Motion: Action: Rescind, **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 requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

18. Mr. Auvil stated the Board members should have received a packet for review containing revised BZA applications. Mr. Hesser responded he received them, but he has not had a chance to review them. Mr. Auvil explained staff's intention is for the Board to review the applications and provide feedback. He pointed out he is not expecting an action today or even next month, but he request they review them when time is available. He stressed staff believes they make sense, and he mentioned the current forms are very outdated. He explained the revised petitions were compiled with input from the Planning Assistants and Planners to see what information is needed in the documents. He went on to say some existing questions did not make sense, and an effort was made to incorporate some of the Board's frequently asked questions. He noted Doug Powers collected the Planners' comments to create a rough template using as many check boxes as possible to simplify it. He added Danny Dean and Laura Gilbert collected feedback from the Planning Assistants and combined them with the Planner comments to make the drafts before the Board. He reiterated the goal was to make the applications easier and more efficient. He again request the Board review the forms and return any feedback/comments to staff. He explained the forms are part of the Board of Zoning Appeals Rules of Procedure, so Board approval will be needed to utilize the forms. Mr. Hesser clarified the Board members can directly contact staff, and he asked who they should contact. Mr. Auvil responded any feedback and questions can be sent to him. He pointed out Attorney Kolbus has already reviewed the forms and provided input.

19. The meeting was adjourned at 11:54 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary