

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17th DAY OF DECEMBER 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; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Joe Atha, Tony Campanello, Ron Norman, Randy Hesser.

Absent: Roger Miller.

2. A motion was made and seconded (*Atha/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19th day of November 2020 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Campanello/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 *Alyssa M. Williams, now known as Alyssa M. Sauer* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the west side of Frances Ave., 960 ft. south of Hively Ave., east of Prairie St. (CR 9), common address of 57705 Frances Ave. 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-0844-2020*.

There were 22 neighboring property owners notified of this request.

Alyssa Sauer, 57705 Frances Ave., was present for this request and stated she would like permission to keep her chickens. Mr. Hesser questioned why the Commitment was not filed from previous approval. Mrs. Sauer responded she has no reason for not filing. Mr. Hesser clarified she received the Commitment last time and stressed it needs to be completed, if this request is approved. Mr. Atha questioned manure disposal. Mrs. Sauer responded her father has a compost pile, and they do not live far from him.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for 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 10/26/2020 and as represented in the Special Use application.
2. The agricultural use is limited to a maximum of eight (8) chickens at any one time, no roosters.

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

Yes: Joe Atha, Tony Campanello, Ron Norman, Randy Hesser.

5. The application of *Henry Yoder, Jr. & Ruby H. Yoder, Husband & Wife (Buyers) & Alvin J. Miller & Marcella Miller, Husband & Wife (Sellers)* for a Special Use for a school on property located on the east side of CR 33, 515 ft. north of CR 42, in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0885-2020*.

There were three neighboring property owners notified of this request.

Harry Troyer, 14739 CR 42, was present as a representative for Henry Yoder, Jr. He explained the property is in the process of being sold to the Yoders from the Millers. He went on to say they would like to construct a school on the subject property. He added the schools their children currently attend are full, and they have several young families in the area, which will increase the number of students over the next few years. Mr. Atha asked if they spoke to the neighbor directly south of the subject property. Mr. Troyer responded he owns the property directly to the south. He explained the Millers sold all ten acres, and they split five acres off for the school. He added he also owns property to the east.

Daryl Bontrager, 66780 CR 33, Goshen, was present in favor of this request as the owner of the property directly north of the subject parcel.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a school 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 11/13/2020 and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Ron Norman, Randy Hesser.

6. The application of *Kathleen S. Overholt, a Married Woman* 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., 530 ft. northeast of CR 22, west of CR 3, common address of 58912 Towne Rd. in Baugo 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-0846-2020*.

There were 15 neighboring property owners notified of this request.

Kathleen Overholt, 58912 Towne Rd., Elkhart, was present for this request. She stated the chickens are used by their daughter who is a 4-H member in Elkhart County. She noted her husband and her are also 4-H leaders. She stressed the chickens give her daughter the opportunity to learn animal science and provide sustenance for their family. Mr. Atha pointed out the location of the coop on the aerial. Mrs. Overholt explained their neighbor to the south also has ducks and chickens, and they share eggs. Mr. Atha questioned disposal of manure. Mrs. Overholt responded it is composted, and she pointed out the compost pile in the far, back corner of the property. She added it is contained with a retaining wall.

Lloyd Overholt, 58912 Towne Rd., Elkhart, also came on for this request. He stated he is his daughter's 4-H leader, and he has been a leader for 39 years. He stressed they wanted the opportunity to teach their daughter animal science. He noted several of their neighbors own chickens so they assumed they were allowed. He went on to say they received a letter explaining chickens were not permitted, which resulted in this hearing. He mentioned they will follow all rules and regulations. He stated their compost pile has a retaining wall, and they use the compost on their raspberry and grape plants. He stressed it is not close to the septic system. Mr. Overholt mentioned he is unsure who filed the complaint, but they try to be friendly to all of their neighbors. He noted they have lived on the subject property for around 1½ years, and he has not met the property owners towards the end of their road. He stressed the neighbors closest to them do not have a problem with the chickens, and they share eggs/tips. He continued saying they get along with all of their neighbors. He apologized for not filing for the request sooner, but he was unaware of the need for a Special Use.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for 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 10/27/2020 and as represented in the Special Use application.

2. The agricultural use is limited to a maximum of eleven (11) chickens at any one time, no roosters.

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

Yes: Joe Atha, Tony Campanello, Ron Norman, Randy Hesser.

7. The staff item for the 2021 agreement for legal services for Attorney Kolbus was presented by Mr. Godlewski.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board approve the 2021 agreement for legal services for Attorney Kolbus as presented by staff.

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

Yes: Joe Atha, Tony Campanello, Ron Norman, Randy Hesser.

8. As a staff item, Mr. Auvil presented the request to withdraw a Use Variance for the construction an accessory structure prior to the construction of a residence for **Terry L. Welles, Jr., Terry L. Welles, Sr., & Carolyn S. Welles** (UV-0291-2020). He explained the petition was previously tabled indefinitely, and the petitioner request the Use Variance be withdrawn.

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

Motion: Action: Withdraw, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the request to withdraw a Use Variance to allow for the construction of an accessory structure prior to the construction of a residence be withdrawn at the request of the petitioner.

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

Yes: Joe Atha, Randy Hesser, Ron Norman, Tony Campanello.

*****It should be noted Roger Miller joined at this time*****

9. The application of **Cleveland Township** for a Special Use for a wireless communications facility and for an amendment to an existing Special Use for a government facility (fire station and township hall) to allow for a taller wireless communications facility on property located on the north side of CR 6, 1,735 ft. east of CR 10, common address of 29515 CR 6 in Cleveland Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0878-2020*.

There were 13 neighboring property owners notified of this request.

The petitioner was not present.

Mr. Hesser stated the request appears to be straight forward. Mr. Norman added he assumes the tower is in compliance with all regulations due to its close proximity to the airport.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a wireless communications facility and for an amendment to an existing Special Use for a government facility (fire station and township hall) to allow for a taller 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 11/12/2020 and as represented in the Special Use Amendment application.

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

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

10. The application of *Justin Campbell* for a Special Use for a home workshop/business for an excavating business on property located on the west side of Riverdale Dr., 1,000 ft. south of Lexington Ave. (Old US 20), common address of 55765 Riverdale Dr. in Cleveland Township, zoned R-1, came on to be heard.

Due to the large number of remonstrators present: hearing continued after the Raymond H. Yoder & Esther H. Yoder, Husband & Wife petition.

See item #12 on page 6.

11. The application of *Raymond H. Yoder & Esther H. Yoder, Husband & Wife* for an amendment to an existing Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres to allow for an accessory structure addition and for a 35 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for the construction of an accessory structure addition 40 ft. from the centerline of the right-of-way on property located on the west side of CR 133, 3,000 ft. north of SR 4, common address of 61097 CR 133 in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0863-2020*.

There were five neighboring property owners notified of this request.

Raymond Yoder, 61113 CR 133, was present for this request. He stated he would like to add onto the existing barn for when company is over. He stressed they only have two horses for their own use. Mr. Atha questioned if water runs across a particular area on the property. Mr. Yoder responded there is no moving water, but it is a lowland, swampy area. He continued saying water does pool at the edges for about half of the year. Mr. Atha pointed out the pasture on the aerial. Mr. Hesser clarified the Special Use was previously approved, but the site plan was changed requiring approval. He noted the requested setback will be in line with the existing building, but the building is expanding. Mr. Yoder explained the addition will be 24'x24'.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha request a revised site plan showing the pasture fence.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres to allow for an accessory structure addition be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The petitioner must provide a revised site plan for approval by staff showing the fenced in pasture for the horses.

The following commitment was imposed:

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

Further, the motion also included that a 35 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for the construction of an accessory structure addition 40 ft. from the centerline of the right-of-way be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan to be submitted for staff approval and as represented in the Developmental Variance application.

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

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

12. The application of *Justin Campbell* for a Special Use for a home workshop/business for an excavating business on property located on the west side of Riverdale Dr., 1,000 ft. south of Lexington Ave. (Old US 20), common address of 55765 Riverdale Dr. in Cleveland Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0874-2020*.

There were 21 neighboring property owners notified of this request.

Gary Layton, 55319 Cedar Ridge Rd., Elkhart, was present as Justin's step-father, since he was unable to attend the hearing. He explained the petitioner applied for a building permit, and he told staff the addition was to store his excavator and associated equipment/trailer. He stressed the permit was approved, and he constructed the building at a considerable expense. He noted the only excavating that took place on the subject property was for the addition and driveway. He stated Mr. Campbell operates his business from his phone and the front seat of his truck. Mr. Hesser asked if equipment is stored outside. Mr. Layton responded equipment is occasionally kept outside when working on the shop or rearranging vehicles. He stressed the purpose of the addition

was to store all equipment inside. He noted Mr. Campbell spent extra on the pole barn to ensure it was aesthetically pleasing. Mr. Hesser questioned if the permit refers to the additions use as business or personal storage. Mr. Layton stated the building was constructed to store his excavating equipment, but he is unsure if that was conveyed when the permit was obtained. Mr. Hesser asked when the permit was issued. Mrs. Britton responded early 2020, because the permit number is BR-0039-2020. She pointed out the permit was issued as an addition to an existing attached garage. Mr. Campanello asked what size truck the petitioner uses to haul his equipment. Mr. Layton responded a ¾ ton. Mr. Campanello clarified he pulls the long trailer with his pick-up.

Steve Pugh, 55835 Riverdale Dr., Elkhart, was present in favor of this request and lives two houses down from the petitioner. He stated the neighbors had problems with the addition that was permitted. He added Mr. Campbell spent \$3,500 to \$4,000 to make the building aesthetically pleasing, and it now matches the neighborhood. He stressed the petitioner does not park his equipment outside, and he has only seen it out when he has a job in the neighborhood. He went on to say it is all stored inside the garage. He noted the petitioner spent several thousand dollars updating/improving the property. He continued saying other houses in the neighborhood have issues that have not been addressed. He stressed updates to the subject property have increased the neighbors' property value. He pointed out this operation has not caused any traffic issues. He mentioned he is not aware of any extra people/vehicles on the property. He added the excavator is small and fits inside the building. He stressed the petitioner takes care of his property.

Mr. Hesser asked those present opposed to the request for a show of hands, and several hands were raised in the audience.

Beverly Philips was present and request that she be permitted to speak, since she lives directly across from the subject property. She went on to say she believes she has witnessed more than the other remonstrators due to her location.

Mr. Auvil submitted a packet of letters/emails he received in remonstrance over the past several days *[Attached to file as Staff Exhibit #1]*. He then proceeded to read the names and addresses, if provided, from the letters/emails submitted in the packet; Deb Osza, Marc & Kathleen Nelson – 55884 Oak Manor Pl., Maureen Cleveland, Eric Mishler, TW Cataldo – 28972 Ella Dr., Fred & Judy Bechtold – 28971 Ella Dr., Patricia West – 28930 Ella Dr., Julie Manfredi – 55957 Kathryn Dr., Dick & Louise Jones, Ben & Beverly Phillips – 55780 Riverdale Dr., Richard & Kathryn Kallenberg – 55805 Oak Manor Pl., Lynnette Fitzsimmons, John Hemminger, Carol Benscoter, and Debra Chilcott. He explained all documents received were against this petition and included concerns about setting a precedent in the neighborhood, adverse effects on property value, traffic, and noise.

Beverly Phillips, 55780 Riverdale Dr., was present against this request. She stated the petitioner has a loud pick-up truck that pulls the equipment and deliveries are made throughout the day of piping and materials. She continued saying employees come to the property every morning and park their vehicles at the subject property. She noted the employee washes down equipment in the driveway on days they do not have a job off-site. She pointed out a dump truck has been parked on the street and in the driveway. She stressed a lot of activity takes place on the subject property that does not belong in a residential neighborhood. She stated excavating does not take place on the subject property, but a lot of business activity does take place there. She stressed the petitioner not only stores equipment on the property but also operates his business there. She

mentioned she does not wish the petitioner any ill-will, but this operation has disrupted their peaceful neighborhood where her parents have lived for almost 60 years. She went on to say the neighborhood is no longer peaceful and quiet. She stressed this operation impacts their quality of life. Mrs. Phillips then stated in her opinion the new storage building is disproportionate to a residential home, and she does not believe anything can be done to make it aesthetically fit the neighborhood. She then mentioned she is woken up in the morning due to noise caused by this business. She added cars parked on the side of the road cause traffic issues. She noted the large size/nature of the equipment is also a concern. She reiterated she wishes the petitioner the best, but this operation is negatively impacting many of the neighbors. She questioned who would want to purchase a residence located across the road from an excavating business.

Mr. Miller questioned the number of people present in remonstrance, and Mr. Hesser responded thirteen in person and seven online.

Martha Scholfield, 55898 Kathryn Dr., was present against this request. She stated she has lived in the neighborhood for 25 years, and prior to that she lived in a semi-business area. She stressed she moved to this area for the strictly residential use. She mentioned the petitioner's excavator was parked in his driveway all weekend long in addition to the motor home and boat that remain there. She went on to say the petitioners business does not belong in a residential area. She stressed she has nothing against the petitioner, but she wants to live in a residential area not a business area.

Robert Roche, 56187 Riverdale Dr., was present opposed to this request, and he noted his mother-in-law, Sharon Delucenay, resides at 29078 Danielson Dr., which is within the 300 ft. notification area. He stressed 158 residences make up the subdivision, and this operation puts the safety and property values of the entire neighborhood at risk. He questioned how the building was approved without notifying the neighborhood, because they would have opposed it. He stated he believes everyone in the neighborhood should have received notice of the request, because those outside of the 300 ft. had to be made aware of the request by their neighbors. He mentioned the petitioner did put money into improving the property. He added he has seen cars parked on the road by the subject property. He stressed the subdivision is located in a good school district, and it is a nice place to live. He went on to say he has lived in the subdivision for 50 years. He explained they have seen several people remodel their homes, because they like the neighborhood. He reiterated this subdivision is a great place to live, and it is zoned residential. Mr. Hesser clarified the Board is not dealing with the building, but the use. He continued saying the building was approved and properly permitted.

Romie Zanetti, 28859 Oakwood Place, was present in remonstrance and agreed with the previous remonstrators. He stated he constructed his residence in 1974 and has lived there ever since. He explained they have approximately 174 residences in the subdivision, all of which are nice and well maintained. He stressed the area is all residential, and he does not believe any commercial or industrial uses should be allowed in the neighborhood.

Carol Roach, 56194 Riverdale Dr., was also present against this request and stated she has lived on her property for almost 20 years. She stressed she does not believe the building or business is in character with the neighborhood. She noted it is an eyesore. Mr. Hesser clarified the Board does not have jurisdiction over the building. Mrs. Roach responded large pieces of machinery and cars parked in the driveway and road are not in character for the neighborhood.

She stated she believes the operation is negatively impacting their property values. She reiterated she is opposed to this request.

Debra Osza, 56111 Riverdale Dr., was present opposed to this request. She expressed a concern about the narrow streets. She went on to say mowing crews park along the street during the summer, and she is worried about the effects of additional traffic from this operation.

Terry Roach, 56194 Riverdale Dr., was present with a question. He asked if the petitioner's trailer fits inside the building. He noted the trailer and excavator sat outside all day last Sunday.

Tab Stump, 29172 Frailey Dr., was present in remonstrance. He explained the subdivision has two entrances, and the petitioner lives off of the main one. He went on to say traffic is heavier in the morning from people going work. He stressed cars are almost constantly parked on the street in front of the subject property. He stated the petitioner wanted to live on the river but has too much stuff. He continued saying he parks a motor home and pontoon on the driveway/yard in addition to operating his business. He noted the subject property has not improved property values in the neighborhood, because it is an eyesore. He stressed their neighborhood is not suited for a commercial business, and he has lived there for 30 years. He explained he lived in his first residence in the neighborhood for twenty years before moving down the road to a house on the river. He continued saying they worked a long time to increase their property value. He noted he had to get rid of three cars when he moved to his property, since they did not have the room. He stressed he does not personally have anything against the petitioner, but this operation does not belong in the neighborhood. Mr. Norman clarified vehicles park on the side of the road in front of the subject property, and he questioned if the vehicles are from employees or visitors. Mr. Stump responded he is unsure, but the subject property is constantly in a state of activity. He added the roads are not very wide, so vehicles parked on the side of the road are hazardous. He mentioned their road is a sheet of ice, and accidents do happen.

Mr. Hesser asked staff if street parking is permitted by the Zoning Ordinance, and Mrs. Kratzer responded yes. He then asked if the subdivision has a Home Owners Association, and one of the remonstrators responded yes. Mr. Hesser then asked for a representative from the HOA.

Martha Scholfield, 55898 Kathryn Dr., came back on and stated the HOA is informal, but Deb Osza is the head of it. Mr. Hesser noted the application states the HOA approved the request. Mrs. Scholfield responded the request was not brought before the dues-paying members. Multiple HOA members stated they were unaware of the request.

Eric Mishler, 55916 Jayne Dr., was present in opposition as the Treasure of the HOA. He stressed the roads are narrow, and it can be tight passing another vehicle even with a small SUV. He went on to say wide equipment travelling the roads is a concern. He mentioned he has been told that employees park on the street/grass in front of the subject property. He explained he understood the request was only to store his equipment in the building, and he questioned if employees coming to the property would require separate approval. Mr. Hesser asked if other vehicles are parked on the street. Mr. Mishler responded not very many but occasionally during a get together. He stressed parking cars on the street is not typical except on weekends.

Steve Pugh, 55835 Riverdale Dr., came back on and stated off-street parking is located in front of the petitioner's residence. He stressed the petitioner has repaired/installed several driveways and septic systems in the neighborhood. He noted he keeps the equipment at his residence instead of parking it on the streets while working in the neighborhood. He reiterated the petitioner worked on several properties in the neighborhood, which made him more seen in the

subdivision. He added he even offered to pump septic systems in the neighborhood. He mentioned several people in the subdivision have boats or other objects in their yard, because they live on the river.

Gary Layton came back on to address the concerns. He stated the neighbor directly across the street from the petitioner has off-street parking where she has allowed Mr. Campbell to park his equipment/vehicles. He stressed the equipment/vehicles are completely off of the road. Mr. Layton mentioned he and his wife are often at the subject property and park on the road/grass. He noted Mr. Campbell only has one employee. Mr. Atha questioned the number or outside employees, and Mr. Layton responded he only has one regular employee. Mr. Atha then clarified the employee drives to the subject property and then leaves with Mr. Campbell. He then questioned how often they wash off equipment in the driveway. Mr. Layton responded he takes the equipment to a carwash, because it is difficult to wash. However, he continued he does wash his pick-up truck. Mr. Atha asked the hours of operation. Mr. Layton responded he does not have any set hours. He explained he may leave early in the morning, and his diesel truck that pulls the trailer is loud. He added he often works past dark. Mr. Atha questioned the sign pictured in the front yard. Mr. Layton stated it is a temporary sign like he had in his yard after Mr. Campbell resurfaced his driveway. He added other signs may also be in the neighborhood where he has completed jobs. Mr. Atha clarified the sign is not permanent. Mr. Layton mentioned the trailer fits in the building, and it is inside now with the doors closed.

The public hearing was closed at this time.

Mr. Miller stated he believes the board should focus on the request for a home workshop/business, because the building has already been permitted. Mr. Hesser noted he is concerned, because the questionnaire appears to be misleading. He went on to say he assumes the petitioner was referencing the building when he states it was approved. He noted more people present in opposition than in favor does not necessarily mean a request should be denied. However, he stated he is concerned about how this operation will fit into the neighborhood, because the Special Use should be an accessory use. He stressed the residential use should remain the primary use of the property. He added this neighborhood is very condensed, so he is inclined to deny the Special Use. Mr. Campanello stated it is nice to have an excavator in an old neighborhood, but he agrees the proposed use does not fit in the area. He went on to say the residences are close together, and the streets are narrow. He stressed he is pro small businesses, but he does not believe this is the right area for this operation. He added he believes a time period should be given to allow the petitioner time to find another location for his business, if this request is denied. Mr. Hesser questioned how long the petitioner should be given to move his business. Mr. Norman pointed out the building has already been approved, and Mr. Hesser responded the building can stay. Mr. Atha added he believes the purpose of the building was to store the business equipment. Mrs. Kratzer then submitted a copy of the building permit *[Attached to file as Staff Exhibit #2]*, and she noted it does not mention the use of the building as equipment storage. Mr. Campanello mentioned the petitioner has other items he could store inside the building. Mr. Atha stated he believes home workshops/businesses approved in similar areas do not have outside employees and all work takes place inside. He stressed he does not feel that this operation fits the neighborhood. Mrs. Kratzer reiterated the building permit does not document what will be stored inside the building. Mr. Norman noted the addition was 24'x30', and he questioned how a 32' trailer fits inside the building. Attorney Kolbus pointed out the building was added onto an existing attached garage.

Mr. Norman asked Mr. Layton how the trailer fits inside the building. Mr. Layton responded the trailer fits inside the building, so it may not be as long as he thought. Mr. Miller stated he agrees this use does not fit the neighborhood. He questioned if the petitioner can continue to store his equipment in the building with denial of this request, since it was permitted for that use. Mr. Hesser clarified the building was not permitted for a business use but as an addition to the attached garage. Mr. Atha stressed the building permit does not mention excavating equipment. Mr. Hesser noted the petitioner can store equipment in the building as long as he is not operating a business off of the property. Mr. Norman stated he is a small business owner and parks two trailers at his residence in a subdivision. He went on to say his equipment is not stored inside a building, but it is kept clean. He noted the petitioner is just trying to operate a small business. Mr. Campanello stated he understands, but he is voting for denial due to the type of equipment. He added a concern about potential leeching off of the equipment/trailer, if it is not cleaned properly.

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

Motion: Action: Deny, Moved by Randy Hesser, **Seconded by** Tony Campanello that this request for a Special Use for a home workshop/business for an excavating business be denied based on the findings and conclusions of the Board:

1. The Special Use will not be consistent with the spirit, purpose, and intent of the Zoning Ordinance.
2. The Special Use will cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will not substantially serve the public convenience and welfare.

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

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

13. The staff item for approval of the 2021 agreement for legal services for Attorney Kolbus was previously heard as item #7 on page 4.

14. The staff item for Terry L. Welles Jr., Terry L. Welles, Sr., & Carolyn S. Welles (UV-0291-2020) was previously heard as item #8 on page 4.

15. The meeting was adjourned at 10:05 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary