

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16th DAY OF JULY 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: Chris Godlewski, Plan Director; Jason Auvil, Zoning Administrator; Mae Kratzer, Planner; Doug Powers, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

2. Mr. Hesser noted board member Dennis Lyon passed away this past month. He stated he was a board member for a number of years in addition to serving as the Hearing Officer. He extended his sympathies to his family.

3. A motion was made and seconded (*Miller/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of June 2020 be approved as read. The motion was carried with a unanimous roll call vote.

4. A motion was made and seconded (*Atha/Campanello*) 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.

5. The application of *Matthew D. Close* 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 southeast corner of Towne Rd. & Harry St., 100 ft. northeast of CR 22, 1,800 ft. west of CR 3, common address of 58988 Towne Rd. in Baugo Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0365-2020*.

There were 15 neighboring property owners notified of this request.

Matt Close, 58988 Towne Rd., came on for this request. Mr. Miller asked if the animals are already on the property. Mr. Close responded the animals have been there for five years. Mr. Atha asked how many pigs the petitioner owns. Mr. Close responded he owns four miniature, potbellied pigs. He went on to say he currently has no chickens, because something broke into the coop and killed them. Mr. Atha clarified pot belly pigs do not generally travel far. Mr. Close explained they stay in their cage. Mr. Atha then questioned manure disposal, and Mr. Close responded it is spread on his garden. Mr. Hesser noted the Staff Report suggests restricting the request to two pigs, and he noted the questionnaire consistently refers to a single pig. Mr. Close explained the code enforcement inspector only saw one pig, but he has Wilbur, the mentioned pig, and three little ones. Mrs. Britton pointed out the petition does reference four pigs on the top. Mr. Norman asked if the other three pigs are named, and Mr. Close responded they do not have names yet. Mr. Campanello asked how big the pigs get. Mr. Close stated Wilbur is the largest one at a normal size, but he just obtained three babies in the spring that do not get any bigger than a dachshund/chihuahua. Mr. Hesser clarified the pigs stay outside. Mr. Atha asked how long he has

owned the pigs. Mr. Close responded Wilbur is five and the other three are six to eight months old. Mr. Atha asked if the pigs are destructive at all. Mr. Close explained Wilbur used to get out when he first got him, but they now have that under control.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated he does not have a problem approving four pigs. Mr. Miller noted the subject property is large, and no neighbors were present against it. Mr. Atha added pot belly pigs are comparable to dogs, and he would view the request differently, if it was for full-sized hogs. Mr. Campanello again mentioned he would like to allow the petitioner to keep all four pigs. Mr. Miller asked if the three younger pigs count towards the total, since they are not full-grown. Mrs. Kratzer pointed out the younger ones are 6 to 7 months old, which count as full-grown once at six months. Mr. Norman asked the petitioner, if he plans to keep all four pigs, and Mr. Close responded yes depending on the hearing results.

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 5/19/2020) and as represented in the Special Use application.
2. The agricultural use is limited to ten (10) chickens, no roosters, and four (4) "potbellied" pigs (scientific name "*sus scrofa domesticus*").

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

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

6. The application of ***Town of Millersburg*** for a Special Use for a government facility (town hall/police station) on property located on the northwest corner of Washington St. & Clinton St., 2,005 ft. west of SR 13, common address of 201 W. Washington St. in Clinton Township, zoned B-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0407-2020*.

There were 31 neighboring property owners notified of this request.

Rick Pharis, Triad Associates, the town engineer for Millersburg, 805 Lincolnway South, was present for this request. He explained the proposed building will replace the existing town hall that has become inefficient. He went on to say the new building will be 6,000 sq. ft. with a basement under approximately 1/3 of it. He stressed the town is excited about this project. He added he was unaware of the need for a Special Use, since the property was already used for a town hall. Mr. Hesser stated his only question was their plans for the old building, but it was

addressed in the questionnaire. Mr. Pharis responded once the new building is finished and everything is moved over, the existing one will be demolished.

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 government facility (town hall/police station) be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 6/8/2020) and as represented in the Special Use application.

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

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

7. The application of *Seth A. Martin & LaVina I. Martin, Husband & Wife* for a Special Use for a home workshop/business for welding and equipment repairs on property located on the south side of CR 38, 3,230 ft. east of SR 19, common address of 27410 CR 38 in Harrison Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0434-2020*.

There was one neighboring property owners notified of this request.

Adrien Martin, 27410 CR 38, Goshen, was present representing Seth Martin for his request to have a welding shop. Mr. Miller clarified there will be no outside employees, and Mr. Martin responded it is a family business.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser clarified a home workshop/business Special Use implies owner occupied.

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 home workshop/business for welding and equipment repairs 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 6/11/2020) and as represented in the Special Use application.

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

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

8. The application of **Dylan M. Troyer & Michelle K. Troyer, Husband & Wife** for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the east side of Lee Ave., 400 ft. south of Forestview Rd., west of CR 113, common address of 59612 Lee Ave. in Concord Township, zoned R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0374-2020*.

There were 34 neighboring property owners notified of this request.

Mrs. Kratzer submitted a letter received in opposition to this request, which mentioned concerns about roosters and noise *[Attached to file as Staff Exhibit #1]*.

Dylan Troyer, 59612 Lee Ave., was present for this request. Mr. Miller asked if a rooster is on the property, and Mr. Troyer responded no. He explained the chicken coop is up and enclosed. He went on to say before the meeting they were given chicks, but none of them matured enough to even know, if any were roosters before they gave them away. He stressed no chickens are on the property at the moment. He added they will not keep a rooster, because they do not want the noise. Mr. Atha questioned waste disposal. Mr. Troyer stated he will likely bag it and place it in the trash. He noted three to five chickens will not create much waste. Mr. Hesser asked if any restrictive covenants are in place for the subdivision, and Mr. Troyer responded he is not aware of a Home Owners Association or covenants.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller noted the letter submitted in opposition mainly lists concerns about roosters, which will not be on the property.

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 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 5/22/2020) and as represented in the Special Use application.
2. The agricultural use is limited to six (6) chickens, no roosters.

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

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

9. The application of **Nicolas A. Wyse** for a Special Use for a beauty shop on property located on the north side of CR 12, 2,500 ft. west of CR 8, common address of 13551 CR 12 in Middlebury Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0444-2020*.

There were eight neighboring property owners notified of this request.

Nicolas Wyse, 13551 CR 12, Middlebury, was present for this request. He stated they would like to install a one chair, salon for his wife to cut hair at home. Mr. Atha noted the sign location. Mr. Hesser clarified the salon will be limited to the sunporch area. Mr. Wyse explained the structure is existing, but they plan to modify it slightly to make it work better. Mr. Norman asked if the salon will utilize well and septic, and Mr. Wyse responded yes.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a beauty shop 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 6/15/2020) and as represented in the Special Use application.

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

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

10. The application of *Zion Comunidad Cristiana, Inc.* for an Amendment to an existing Special Use for a place of worship to allow for a parsonage on property located on the west side of CR 33, 930 ft. south of CR 52, common address of 71691 CR 33 in Benton Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0442-2020*.

There were 10 neighboring property owners notified of this request.

Mr. Miller asked the need for this request, since it was previously approved in 2000. Mrs. Kratzer responded the parsonage, because it changes the site plan originally approved.

Justin Baugh, 71691 CR 33, was present for this request as a representative/member of the church and contractor. Mr. Campanello questioned how many people attend the church, and Mr. Baugh responded around 200. Mr. Atha then asked the size of the proposed parsonage. Mr. Baugh explained it will be a 3,200 sq. ft. residence for the pastor, his wife, and guest speakers. He noted a three acre garden for Feed the Hungry is located at the back of the property, which the pastor and his wife maintain. He stated they would like to build a parsonage, so the pastor can live onsite. Mr. Norman asked if the parsonage will be a ranch or two-story, and Mr. Baugh responded a ranch.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha asked if a parsonage is classified as an accessory dwelling, and Mrs. Kratzer responded no. Mr. Atha clarified approval of this request is not inconsistent with previous Board action. Mr. Hesser noted the Board has approved several parsonages associated with churches, and he questioned if size is Mr. Atha's concern. Mr. Atha responded yes, because 3,200 sq. ft. is larger than allowed for an accessory structure. He stressed he wants to ensure the Board is not inconsistent with approval.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a place of worship to allow for a parsonage 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 6/15/2020) 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.

11. The application of *Douglas Cuney & Joyce Cuney, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the north side of CR 16, 1,105 ft. west of Nappanee St. (SR 19), common address of 28207 CR 16 in Baugo Township, zoned R-1, came on to be heard.

Mr. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0397-2020*.

There were 26 neighboring property owners notified of this request.

Douglas Cuney, 28207 CR 18, was present for this request along with his wife, Joyce, and great niece, who is often in their care. He went on to say they also care for their mentally challenged sister, Cynthia. He apologized because the chickens have been on their property since 2015, longer than some of the neighbors have even lived in the area. He stressed they were unaware of the need for a Special Use to have chickens, since they live in the county. He then submitted a letter from Cynthia's doctor in support of this request [Attached to file as *Petitioner Exhibit #1*]. He went on to play a video on his cell phone of Cynthia requesting to keep the chickens. The Board explained no further videos could be shown, or the phone would be taken in as an exhibit. He stressed their chickens are only for personal use, and the coop is kept very clean. He stressed they will adhere to all rules and guidelines imposed with approval. Mr. Atha questioned waste disposal, and Mr. Cuney responded it is used on their garden. He went on to stress they no longer own a rooster. He explained their rooster now lives in Ohio with his sister, Jessica, and a bunch of ducks. Leanne Pettit, 28216 CR 16, was present in favor of this request and pointed out she lives across the street from the petitioner. She stressed the petitioners are good neighbors, and the property is kept clean. She added the chickens are contained in a coop and run. She again stressed the petitioners are good neighbors, and she does not want to lose them over this request.

Anna Leal, 28241 CR 16, was present in favor of this request as the petitioners' neighbor. She stressed she does not have a problem with the chickens and her grandchildren love them.

Gary Buss, 28212 Pennsylvania Ave., came on opposed to the request and stated his property joins the petitioners' at the corner. Mr. Campanello clarified his property on the aerial. Mr. Buss stated the east half of his property is lot four of CH Bash Subdivision, which his grandparents established several years ago. He explained covenant/restrictions imposed on the subdivision clearly state that, "no livestock, animals, or poultry shall be raised, bred, or kept on any lot except dogs, cats, and other household pets." He then mentioned a petition in remonstrance signed by several of the neighbors. Mrs. Kratzer submitted the mentioned petition that was received by staff *[Attached to file as Staff Exhibit #1]*. She also submitted a letter received in remonstrance from Victoria, Terry, and Tiffany Fore expressing their concerns about property value and character of the neighborhood *[Attached to file as Staff Exhibit #2]*. Mr. Atha clarified the covenants apply to this neighborhood. Mr. Campanello asked what year the covenants were imposed, and Mr. Buss responded he is unsure. Mr. Campanello also asked if they hold yearly Home Owners Association meetings, and Mr. Buss responded the subdivision does not have an HOA. He continued saying the subdivision is made up of around a dozen lots, and his grandparents donated property for the Pennsylvania Ave. extension. He stated the covenants were created at that time around the late 50s early 60s. Mr. Hesser asked Mr. Buss if he had a copy of the covenants, and Mr. Buss then submitted a copy of them to the Board *[Attached to file as Remonstrator Exhibit #1]*. Mr. Campanello asked if any other properties in the neighborhood have chickens, and Mr. Buss responded the subject property is the only one to his knowledge. Mr. Campanello questioned if the subject property is part of a subdivision. Mr. Miller noted the Board does not enforce covenants. Mr. Hesser asked if anyone in the subdivision has a structure on their property other than a residence. Mr. Buss responded he has a shed on his property, and Mr. Hesser noted sheds are prohibited by the submitted covenants. He went on to read the covenant as follows, "no building shall be erected or placed other than one detached single family dwelling not to exceed 2 ½ stories." Mr. Buss stated he does not believe the shed on his property is part of the subdivision, because his property is only partially located in the subdivision. Mr. Hesser clarified no detached sheds/storage buildings are located in the subdivision. Mr. Buss replied he has a shed on his property. He noted he has two lots, one is in the subdivision and the other is not. Mr. Hesser asked if his shed is located in the subdivision, and he responded partially, yes. Mr. Hesser stressed his shed violates the covenants. Mr. Norman asked if any other lots in the subdivision have sheds, and Mr. Buss responded yes, the lot behind his. Mr. Hesser stated he assumes the covenants are recorded, since the document refers to a plat book. Mr. Campanello stated the Board typically approves chickens on parcels less than three acres. Mr. Hesser explained the Board can approve Special Use requests for chickens, but they cannot overrule the covenants. He went on to say the remonstrator can still sue the petitioner, since the covenants prohibit chickens. He stressed the Board can approve a request, if they do not believe it violates the county ordinances. Mr. Campanello pointed out the covenants have already been violated, and Mr. Hesser noted that is for the courts to decide. Mr. Atha asked if the covenants are signed by new home owners when they move into the subdivision. Mr. Hesser responded the covenants are of record and should show up in the title search, if recorded. Mr. Miller stated he found out after he purchased his home that covenants were in place, because they were not found before. Mr. Atha asked when the remonstrator first noticed the chickens, and he responded several months ago. He went on to say he noticed them when he heard the rooster

crowing. Mr. Campanello stressed no rooster is currently on this property. Mr. Buss responded a rooster is located on the property.

Becky Buss, 28212 Pennsylvania Ave., was also present against this request. She stated none of the neighbors were asked about the chickens. She noted a lot of the chickens run around the yard, and she even though one had gotten over the fence. She added the rooster is still on the property unless it was removed within the last couple of days. She stressed she hears it crow several times throughout the day. Mr. Campanello pointed out the Board typically does not allow roosters. Mrs. Buss stated she is concerned about the number of chickens on the property and the smell. She went on to say she has friends who raise chickens and told her they can be very smelly. Mr. Hesser request she point out her residence on the aerial, and she clarified it is the same as the previous remonstrator.

Heidi Schuller, 28196 Pennsylvania Ave., came on in remonstrance and stated her property is located directly behind the petitioners. Mr. Hesser clarified her property location on the aerial directly north of the subject property. Mrs. Schuller explained her family has lived on the property since 1969. She mentioned she spoke to Joyce Cuney who later told her they had a permit. She added they do have roosters on the property. She went on to say she is concerned, because they purchased several small chickens that then grew and have a hard time moving around inside the enclosure. She then stated she also has some health concerns. She submitted a letter from Victoria, Terry, and Tiffany Fore *[Attached to file as Remonstrator Exhibit #2]*, which was identical to the letter previously submitted by staff.

Mr. Cuney came back on to address the concerns. He stressed Mr. Buss proved how well they keep the chickens, because they have owned them for years. He continued saying the remonstrator just noticed the chickens a few months ago. He stressed they do not own a rooster. He noted someone from the county came out and told him the chickens were well kept. He questioned why the chickens are only now an issue, if they have caused so many problems. He also asked if his property is part of the subdivision with covenants. He noted he could sue Mr. Buss for having a shed, if he sues him for chickens, since both break the covenants. He stressed the chickens are very contained.

The public hearing was closed at this time.

Mr. Miller stated chickens are routinely approved by the Board, but they do not enforce the covenants. Mr. Hesser explained the board's decision has no effect on the covenants, because their ruling is simply based on the County Zoning Ordinance. He went on to say the neighboring property owners can take the matter to court, where it can be decided if the covenants are enforceable or not. Mr. Campanello asked staff's reasoning for recommending approval of twelve chickens on this request but only six on the last. Attorney Kolbus pointed out the previous petitioner only requested six chickens in the questionnaire. Mr. Hesser stated twelve is the Board's standard, but the subject property is small. Mr. Campanello asked if Mr. Cuney plans to have twelve chickens. Mr. Cuney responded he would like to have that option. He explained they plan to raise six cross-breed chickens for two months at a time twice a year to use for meat. He added chicks are kept in their basement. Mr. Atha asked how many other chickens they own. Mr. Cuney responded they have six hens for eggs. Mr. Campanello noted the Board has allowed twelve in the past. Mr. Norman asked if approval for twelve chickens is standard in the Zoning Ordinance. Mr. Hesser explained the Zoning Ordinance does not allow chickens, but twelve is the Board's standard. Mr. Atha stressed twelve keeps the number of chickens in a hobby range not a farm.

Mr. Norman pointed out Goshen and Elkhart both have Ordinances that allow chickens. Mr. Hesser added he is unsure how many chickens the cities allow. Mr. Norman mentioned the city does not allow roosters. Mr. Campanello stated he believes twelve chickens is a lot for the property, but he is okay allowing them in this situation.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres 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 dimensions of structures and their setbacks from the property lines.

The following commitments were 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.
2. The agricultural use is limited to twelve (12) chickens, no roosters.

Vote: 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 *Elwood J. Kauffman & Darlene K. Kauffman as Co-Trustees of the Kauffman Trust Revocable Trust Agreement* for a renewal of an existing Special Use for warehousing and storing of RVs/trailers on property located on the northeast corner of CR 43 & CR 36, common address of 63716 CR 43 in Clinton Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0418-2020*.

There were nine neighboring property owners notified of this request.

Elwood Kauffman, 12571 CR 42, Millersburg, was present along with his wife, Darlene. He stated he drove a truck and owned a small trucking company for over 40 years, but he was looking for something to do throughout retirement. He went on to say farming did not appear to be a good option, because farming technologies have progressed a lot. Mrs. Kauffman pointed out the property is rented out to a farmer. Mr. Kauffman added his father constructed five harvest-store silos on the property to feed cattle, so he decided to call their RV storage company Harvest Storage to show some respect for his father and the silos he constructed. He continued saying the silos are no longer used for feeding cattle, but they make a nice landmark for people traveling from out of state. He stated he is glad he chose to park RVs in his retirement, because it gives them something to do and is manageable. He stressed they do not need to hire employees. He mentioned they have worked with about a dozen RV companies throughout northern Michiana from Goshen, Millersburg, Middlebury, Topeka, Lagrange, Bristol, Shipshewana, Syracuse, Butler, Howe, Wakarusa, White Pigeon, and Centerville. Mr. Kauffman stated it was previously claimed that this operation would cause traffic issues, so they totaled the number of units they stored in the past year. He went on to say the numbers equal out to 1.31 units per day. He stressed the increase in

traffic is very limited. He noted his wife and he are responsible for transporting about 80% of the units brought to the property, and they keep their speeds very low. He explained they like transporting the RVs themselves, because they can control the speed. He noted the transport company they work with utilizes multi-trailer configuration, so three camper-trailers can fit on one truck. Mr. Hesser pointed out the parcel is 120 acres, but the site plan only shows approximately six acres for storage. He then request the petitioner point out the six acre section on the aerial. Mrs. Kauffman then pointed out the six acre tract on the aerial, and she explained the rest of the property is rented out for farming, which they plan to continue. Mr. Hesser reiterated only the six acre tract will be used to store the RVs. Mr. Kauffman responded six acres is enough for the two of them to keep going. Mrs. Kauffman added their drivers are directed to go enter and exit the property using specific drives to avoid headlights shining into the neighbor's residence. Mr. Hesser noted 150 units is the maximum allowed on the property at one time. Mr. Kauffman stressed their drivers are well-aware of the neighbors/surroundings, and they have been advised to keep their speed under 45 MPH. He added they have also been made aware that CR 43 has a significant amount of buggy, bicycle, and walker traffic. Mrs. Kauffman stated a lot of drivers speed by, but theirs do not.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated staff's recommendation is for 25 RVs per acre, which would add up to 3,000 RVs. However, the petitioners appear to be limiting the use to only six acres. He went on to say the size is not clear on the site plan, but the petitioners explained it well. He suggested they submit a revised site plan clearly showing the six acres utilized for RV storage. Attorney Kolbus stated the revised site plan should include the entire parcel and the six acre tract for storage. Mr. Miller noted this request was previously approved, and no complaints have been received.

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

Motion: Moved by Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a renewal of an existing Special Use for warehousing and storing of RVs/trailers 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 entire property and the six (6) acre tract to be used for RV storage.

The following commitments were 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.
2. The use is limited to 25 RVs/acre (based on a 14 ft. x 50 ft. RV).

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

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

13. The application of *Civil Town of Wakarusa* for an Amendment to an existing Special Use for a government facility (town police station) to allow for the placement of a freestanding sign on

property located on the east side of S. Spring St., 200 ft. south of Waterford St. (CR 40), 900 ft. east of Elkhart St. (CR 3), common address of 102 S. Spring St. in Olive Township, zoned R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0412-2020*.

There were 32 neighboring property owners notified of this request.

Gary Potts, owner of Professional Permits, 58171 Dragonfly Ct., Osceola, was present online for this request. Mr. Hesser clarified this request is specifically for the police station signage. Mr. Potts explained the town constructed a new police station on the property, and the existing Special Use does not include the sign. He explained they would like to have their own sign for building identification. He noted the site plan includes two signs, because they thought the police and fire stations would be one submittal. He pointed out sign A2 is the one related to this request. Mr. Hesser asked if the police department is requesting two signs. Mr. Potts explained the police department sign is identified as A2 on the site plan and the fire station sign is identified as A1. Mrs. Britton pointed out the signs on the site plan for the Board. It was found that this request is only for the freestanding, police station sign. Mr. Hesser asked why the police station sign was not included in the amendment filed last September, and Mr. Potts responded he is unsure.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a government facility (town police station) to allow for the placement of a freestanding sign 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 6/11/2020) 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.

14. The application of *The Town of Wakarusa, a Municipal Corporation* for an Amendment to an existing Special Use for a government facility (town fire station) to allow for the placement of an electronic message center and for a Developmental Variance to allow for the placement of an electronic message center within 300 ft. of a residence on property located on the southeast corner of Waterford St. (CR 40) & Spring St., 900 ft. east of Elkhart St. (CR 3), common address of 303 E. Waterford St. in Olive Township, zoned R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0414-2020*.

There were 36 neighboring property owners notified of this request.

Gary Potts, Professional Permits, 58171 Dragonfly Ct., was present online for this request. Mr. Hesser questioned if they have had any issues with the neighbors. Mr. Potts responded he request the contractor, Premier Signs, collect feedback from the neighbors, but he has not heard back from them.

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 an Amendment to an existing Special Use for a government facility (town fire station) to allow for the placement of an electronic message center 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 6/11/2020) 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 center 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 6/11/2020) and as represented in the Developmental Variance application.

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

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

15. The application of **Matthew James Moseng & Jodee A. Moseng, Husband & Wife** for an Amendment to an existing Special Use for warehousing and storage of excavating equipment to allow for a new storage building and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the east side of Old Farm Rd., 395 ft. south of CR 6, west of CR 10, common address of 53076 Old Farm Rd. in Cleveland Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0438-2020*.

There were 14 neighboring property owners notified of this request.

Matthew Moseng, 53076 Old Farm Rd., Elkhart, was present for this request. He asked if the Board has a copy of the building plans, and he then submitted the plans to the Board *[Attached to*

file as Petitioner Exhibit #1. Mr. Hesser questioned if the Zoning Ordinance was changed to allow the total square footage of accessory structures to be 200% the size of the residence. Mrs. Kratzer pointed out 200% of the living area in storage is only allowed on properties that are three acres or more. Mr. Moseng explained they received approval for a building back in 2010, but their business has grown since then. He went on to say the approved building size is no longer adequate, and they would like to increase the size of the building. He pointed out the proposed building is also moved back farther than the original one. He noted the size is increasing from 930 sq. ft. to 1,656 sq. ft. (36'x46'), because all other outbuildings on the property will be removed. He stressed this building will allow him to move items out of the garage and park another vehicle in there. He went on to say they have been operating out of the garage. Mr. Moseng explained their company is essential, and they have been able to help the community during the Covid outbreak. He continued saying their property is located 5 minutes from Granger and the Elkhart Environmental Department, which is their largest customer base. He stressed their septic business has grown over the past four years, and they have won numerous awards from the community and county. He stated some of the projects for their property have been put on hold, such as the privacy fence and grass. He went on to say the delay was caused by the cost of running a business and the proposed building. He mentioned he understands the Developmental Variance is needed due to the size of the building, but it is not as bad if the garage is not counted. He pointed out their residence is 1,433 sq. ft. and the proposed building is 1,656 sq. ft., a difference of 200 sq. ft. He mentioned Cleveland Little League is located behind his property, and their neighbor to the south has pine trees along the property line in addition to a privacy fence. He added the lot north of the subject property also has a privacy fence, and they have no problems with this request. He noted they spoke to all but one of the neighbors, and no one is opposed to it. He stressed their business has been on the property for years, and now all of the equipment can be moved inside a building instead of sitting outside in the driveway.

Mrs. Kratzer submitted a letter in remonstrance from David & Cherie Thompson expressing concerns about the character of the neighborhood *[Attached to file as Staff Exhibit #1]*.

David & Cherie Thompson, 53096 Old Farm Rd., were present in remonstrance. Mrs. Thompson pointed out their property on the aerial, directly south of the petitioner. She expressed their main issue is the size of the building. She explained they support small businesses and are not opposed to a new building. She continued saying it is great that Matt & Jodee's business is expanding. She stated their concerns are that the area remain residential and the size of building proposed. Mr. Thompson pointed out a line extending along the back of the subdivision, which he explained is a natural drain that leads into a creek. He stressed the petitioner filled in the drain along his property, cutting off the water flow from the houses to the north. He went on to say drainage then backs up. He stated he called to report the situation two years ago, but he was told the county cannot do anything unless they have problems. He stressed the proposed building will be constructed over a natural drain. Mr. Thompson added they purposefully purchased their property in a residential area. Mr. Hesser asked when the property was purchased, and Mr. Thompson responded three years ago. Mr. Norman clarified Mr. Thompson's property still drains to the creek. Mr. Thompson mentioned he did have drainage problems, because the previous owner blocked the drain. However, he continued that situation has been resolved. Mr. Thompson again stressed the subject property is in a residential area. He then submitted a letter identical to the one previously submitted but with additional signatures *[Attached to file as Remonstrator Exhibit #1]*.

Mr. Moseng came back on to address the concerns. He stated the area previously mentioned is not a ditch nor will the proposed building cover that area. Mr. Moseng stressed no ditch extends behind the property, but a slope is located at the back. He went on to say it flattens out and floods some of the neighbors' yards farther down. He pointed out his brother's house, two properties south of his that sometimes floods. He reiterated the slope is not considered a ditch, but the property tapers into the little league. He explained his swale is closed off. He went on to say his neighbor to the south has an accessory structure built over the swale with a culvert underneath, causing water to back up. Mr. Moseng pointed out his proposed building is 15 ft. from the rear property line, and it will be farther from the swale than the remonstrator's building. He again stressed the swale was not intended for drainage, because a tile was installed for that. Mr. Hesser questioned the location of the tile, and Mr. Moseng pointed it out on the aerial. He noted basements in the neighborhood drain either into the street or creek. He stated their property remains dry, and none of the neighbors to the north have complained. He mentioned he was not aware that any of the neighbors were opposed to this request, or he would have addressed their concerns before the meeting. He added their proposed building will take up no more room than the Thompsons' swimming pool and storage building. He stressed the proposed building will match the exterior of his residence. Mr. Hesser clarified the Special Use was originally approved in 2010, and he asked if the business has been operating off of the property since then. Mr. Moseng responded yes, but the trailer has been stored off-site. He explained their business has taken time to become successful. Mr. Norman questioned the mentioned trailer. Mr. Moseng responded he has a low-boy trailer that he stores off-site, because he did not have room to store it on his property with the truck. Mr. Norman clarified the septic truck has a tank, and he mentioned a concern about the smell. He asked if he ever parks a loaded septic truck on the property overnight. Mr. Moseng responded it sometimes takes four to six hours before the emergency dumping company can take care of it. He continued saying everything is contained, and the truck is capped. He added they have inspections done annually by the state of Michigan and biannually by the state of Indiana. He stressed the truck will not drip anything, because it is completely sealed off with a valve and cap. He went on to say it will never emit anything. Mr. Moseng asked if the tank is vented. Mr. Norman explained it goes through a pump to the top, and everything is kept sealed inside the pump. He noted the pump will fill up before it ever vents, and the valve is shut. Mr. Miller questioned the use of the low-boy trailer. Mr. Moseng responded it is used for moving the excavator, tractor, and back-hoe loader.

The public hearing was closed at this time.

Mr. Miller pointed out the main concern was the size of the proposed building, which is only 200 sq. ft. larger than the residence. Mr. Hesser stated he has no concerns allowing the storage to exceed that allowed by 200 sq. ft. He also noted one letter submitted in remonstrance mentioned they did not realize the petitioner was operating a business until two years ago, which indicates the petitioner has been respectable. He stressed the current request would allow the petitioner to house his vehicles in a building, out of site. He stated he is not opposed to approving this request.

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

warehousing and storage of excavating equipment to allow for a new storage building 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 6/12/2020) and as represented in the Special Use Amendment application.

Further the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right 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 6/12/2020) and as represented in the Developmental Variance application.

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

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

16. The application of *Daniel E. Wise & John Forster (Lessor) & Earl & Amy Schrock (Lessee)* for a Use Variance to allow for an automotive repair shop on property located on the west side of CR 21, 2,800 ft. south of CR 26, common address of 60541 CR 21 in Jefferson Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0441-2020*.

There were six neighboring property owners notified of this request.

Earl Schrock, 20935 River Blvd., Goshen, was present for this request as the lessee of the building along with Dan Wise, 60541 CR 25, Goshen, the property owner. Mr. Schrock stated he started working for an excavating company on this property back in 2008, but they were unable to provide him with full-time work. He went on to say the owner offered him the use of his shop for automotive repair. He mentioned the automotive aspect of his job has grown to where he can now operate full-time. He noted he is no longer employed by the excavating company and would like approval to operate full-time. He explained he is the only employee, and he has no plans to expand. He stated he spoke to the neighbors, and no one had a problem with it. He pointed out one neighbor asked if his business was permitted, prompting him to ask the county what was required, which resulted in this request. Mr. Hesser asked if Mr. Schrock resides on the subject property, and Mr. Schrock responded no. He then questioned who occupies the residence, and Mr. Wise responded it is a rental. Mr. Hesser then clarified an automotive repair shop and rental house will both operate on the subject property. Mr. Schrock pointed out the property is entirely surrounded by woods, so the shop building is not visible from the road. He stressed he has operated this business for the past eight to ten years, and no one has ever complained. He went on to say he wants to make the property compliant to avoid any future issues. Mr. Campanello asked if Mr. Schrock repairs auto

bodies or paints on the premises, and he responded no. Mr. Hesser clarified the shop is strictly utilized for mechanical work. Mr. Schrock added no junk vehicles are allowed on the property, and Mr. Wise stressed they will not have a scrap yard. Mr. Schrock explained he works on one to two cars a day, and he does not allow them to sit on the property for three to five days. He reiterated the shop is hidden and none of the neighbors have ever complained. He added he even works on a few of the neighbor's vehicles. Mr. Norman then asked if the excavating business still operates off of the property, and Mr. Schrock responded no. He went on to say the excavating business moved two years ago. Attorney Kolbus request the excavation business Special Use be rescinded with approval of this request. Mr. Hesser asked the property owner, if he is opposed to rescinding the excavation business Special Use, and he responded no. Mr. Schrock responded no excavation equipment is stored on the property. Mr. Atha clarified the rescission will prevent the property from having both an excavation business and automotive repair shop. Mr. Norman then questioned disposal of the reclaimed oil. Mr. Schrock explained he utilizes an oil burner to heat the shop in the winter, and it is stored in 300-gallon storage totes with framework.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he understands staff's recommendation, and he would be inclined to deny the request, if anyone was present in remonstrance. Mr. Miller noted the property has been used as a business in the past. He then asked if approval of the automotive repair shop would transfer to future owners. Mr. Hesser responded yes and added the request is not for a home workshop/business. He went on to say he is inclined to impose a two year renewal on the request. Attorney Kolbus stated staff recommends a three year renewal. Mr. Miller mentioned he believes the time limit is a good compromise, because similar request are not typically approved. Mr. Hesser pointed out a residential area is located to the north, but it is less dense by the subject property. Mr. Miller added he does not believe approval of this request will set a precedence for future ones, due to the existing business on the property. He went on to say the use is changing from an excavating business to a repair business. Mr. Hesser asked staff their recommendations for conditions/commitments to be imposed with approval. Mrs. Kratzer responded the standard conditions/commitments. Mr. Hesser added he does not have an issue approving the request for a period of three years. Mr. Atha questioned approval of the request for a specific operator. Mr. Hesser stressed the request is not a home workshop/business. He explained the request cannot be tied to an individual, because a decision is made based on land use. Mr. Miller reiterated a three year time limit will be imposed, and he added the excavating business Special Use should be rescinded. Mr. Auvil added no salvage operations should be added as a commitment. Mr. Norman noted the petitioner has stated they will not allow salvage operations.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a Use Variance to allow for an automotive repair shop be approved based on the findings and conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals, and general welfare of the community.
2. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.

- 3. A need for the Use Variance does arise from a condition that is peculiar to the property involved. The subject property was previously used for an excavating business.
- 4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the subject property.
- 5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was 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 6/15/2020) and as represented in the Use Variance application.
- 2. Approved for a period of three (3) years; any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.
- 3. No salvage operations are permitted.

Further, the motion also included that the Special Use for warehousing and storage for an excavation business be rescinded at the request of the petitioner.

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

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

17. The meeting was adjourned at 10:38 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary