

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18th DAY OF JUNE 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. A motion was made and seconded (*Miller/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21st day of May 2020 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Atha/Miller*) 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 *Nicolas J. Hajicek & Daniela A. Hajicek, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the west side of Summer Chase Dr., 875 ft. north of CR 118, west of CR 3, common address of 58333 Summer Chase Dr. in Baugo 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-0356-2020*.

There were 18 neighboring property owners notified of this request.

Nicolas J. Hajicek, 58333 Summer Chase Dr., was present for this request. Mr. Miller asked if the petitioner had any information he would like to add, and he responded no. He then explained they would like the chickens to teach their children responsibility and provide eggs for personal use. He added they will not have any roosters. He noted he is constructing the chicken coop himself, and he will make it aesthetically pleasing. He continued saying it is not a fixed structure. He pointed out he does not have a Home Owners Association. Mr. Atha questioned waste disposal, and Mr. Hajicek responded it will be collected and disposed of at a farm where his father works part-time. Mr. Norman asked if the chickens will be free-range or supplementary fed, and Mr. Hajicek responded they will be fed.

Deborah York, 29336 Summer Field Ln., came on in remonstrance and submitted photos [*Attached to file as Remonstrator Exhibit #1*], a letter from her realtor [*Attached to file as Remonstrator Exhibit #2*], and a copy of the covenants/restrictions for the subdivision [*Attached to file as Remonstrator Exhibit #3*]. She stated the Baugo Community is unique, because all three school buildings are located on the same campus, making it a very family friendly atmosphere and highly sought after by home owners with children. She explained their subdivision is less than a mile from the school campus and lined with sidewalks causing the houses to sell quickly at or above market value. She continued saying residents purchase homes in this specific subdivision, because they wanted safe, family friendly, attractive,

properties that not only hold their value but appreciate. She stressed this request is not consistent with their want/intent for the neighborhood. She went on to say approval of the Special Use runs with the property, meaning the use could continue even after the petitioners move from the property. She noted she spoke to Tracy Jones a realtor with Century 21, who sells a large number of homes in the Baugo community in addition to residing there. She informed her that in her experience buyers looking for an attractive home in a residential subdivision do not want agricultural smells, sights, and sounds. She continued saying it affects the value of homes and can take longer for them to sell. She mentioned she submitted a letter from Tracy, who has experience raising chickens. She stated the letter lists several negative factors including smell, which convinced her family to get rid of the chickens. However, she continued the smell has lingered for over a year, drawing wildlife to her property in hunt for prey. She added the submitted letter includes pictures of various wildlife that has come to her property. Mrs. York stated they understand farms are located in Baugo, but they typically only smell manure being spread on fields a couple days a year. She stressed the proposed agricultural use would be a 24 hours a day, 365 days a year operation. She explained the county requires three acres of land to have chickens which she believes that is reasonable, since chickens bring an odor and other obnoxious factors. She pointed out the petitioner's lot is only .39 acres, less than half an acre, making it 1/10 of the typical land requirement for an agricultural use. She added the request does not serve the public convenience and welfare, because of their proximity to other lots in this densely populated, residential subdivision. She then mentioned the covenants previously submitted, which were drafted and put into effect to restrict this type of activity in their neighborhood. She stressed the covenants were put in place to protect their subdivision. She continued saying the covenants run with the land and are binding on all parties. She also noted they automatically extend for successive periods of ten years, and they have also not been amended or changed. Mrs. York pointed out this request breaks a covenant, which states no noxious or offensive activity should be carried out upon any lot. She added no outside kennels are permitted, and she believes a chicken coop can be classified as a kennel. She then mentioned only one detached building is allowed per lot, and one of the pictures shows a large chicken coop being constructed, which would be the second detached building on the subject property. She then questioned how the chicken waste will be stored/disposed. She stressed the covenants clearly lay out the type of homes/atmosphere they all agreed to uphold. She added the proposed activity is not consistent with the spirit, purpose, or intent of the Zoning Ordinance for residential areas. She went on to say the proposed use is not allowed by their covenants, and it conflicts with the neighbors' expectations of living in an attractive, safe, quiet, and clean residential subdivision. She again mentioned the submitted pictures showing the chicken coop being constructed. She mentioned the petition states that the proposed use will not cause substantial or permanent injury to the neighbors, because they have a privacy fence. However, she explained the petitioners' fence is only 4 ft. tall, and the coop appears to be about 8 ft. tall. She stressed he began construction of the coop before even receiving approval. Mrs. York noted the Special Use does not protect the character of their neighborhood, because their right to peace, quiet, tranquility, and enjoyment of their yards will be effected with approval. She continued saying smells and sounds from the chickens will carry to their property and interfere with her family's enjoyment of their backyard, because it is downwind of the subject property. She pointed out a picture of her backyard was submitted showing the subject property. She noted the application and Staff Report conflict in a few areas. She explained the application

states that the chickens will be for a personal/hobby use, but the Staff Report mentions providing a local source of eggs. She questioned if the petitioner also applied for a Special Use for a home workshop/business to sell eggs in the subdivision. She noted the Staff Report also mentioned that this use will not cause substantial/permanent injury to the use of the neighboring properties, but the Elkhart County Zoning Ordinance requires that the request be compatible with adjacent properties/consistent with the character of the area. She stressed chickens in a large/highly visible chicken coop is not consistent with the use of adjacent properties or the character of their area. She went on to say this Special Use offers no benefit to the public and strictly benefits the petitioners. Mr. Hesser questioned if anyone else in the subdivision owns chickens, and Mrs. York responded she is not aware of any other neighbors applying to have chickens. Mr. Hesser again asked if anyone has chickens in the subdivision, and she responded no. He then asked if anyone in the subdivision owns an above-ground pool, and Mrs. York responded yes. She stressed an above-ground pool is different than chickens, because it is only up for a few months a year and provides enjoyment for children. Mr. Hesser noted the covenants state above-ground pools are not permitted. Mrs. York responded she believes all of the covenants/restrictions could be enforced through a court of law, but most of the mentioned pools are behind privacy fences and do not operate 365 days a year. She continued saying most of the pools are attractive with decks around them. He then asked if any neighbors have a fence taller than 4 ft., and Mrs. York responded just one of the pool owners. He clarified she does not have a problem with that fence. Mr. Norman questioned the average lot size in the subdivision. Mrs. York responded she is unsure, but she believes the petitioners' is consistent with the neighboring properties. She went on to say she would assume it is under an acre. Mr. Hesser noted the subdivision lots appear to be fairly uniform. She then mentioned one of the pictures she submitted shows a large shed on the petitioner's property along with the chicken coop and a trampoline. She noted there is quite a bit in the back yard.

Marilyn Bender, 29314 Summer Field Ln., came on in remonstrance and submitted a petition signed by surrounding neighbors against this request *[Attached to file as Remonstrator Exhibit #4]*.

Linda Snider, 29371 Summer Field Ln., came on against this petition. She explained her back yard butts up against a field as does the petitioners' property, which she then proceeded to point out on the aerial. She added the property behind her residence is wooded, and coyotes frequently roam their subdivision. She then submitted pictures of the coyotes who came right up to her deck that she took from her sunroom *[Attached to file as Remonstrator Exhibit #5]*. She stressed coyotes are already in the neighborhood, and chickens will draw them in even more. She added people walk the neighborhood throughout the day sometimes with their dogs, and little children play in the yards. She stated she believes chickens will create an unsafe environment by drawing in the coyotes. Mr. Campanello pointed out the submitted pictures show the same two coyotes.

Penny Nordman, 29349 Summer Field Ln., came on opposed to this request. She stated she is aware the subject property is located on Summer Chase, but it is just around the corner from her residence. She stressed she shares the mentioned concerns. She added she is also concerned about the affect changing the area from residential to residential/agricultural will have on their property values. She went on to say properties sell easily in this area, because the neighborhood is well kept. Mr. Miller clarified approval of this request does not change the property's zoning. Mrs. Nordman mentioned the petition she saw stated the property was residential/agricultural. Mr. Miller reiterated the existing zoning is R-1, and it will remain that. He continued saying the request

is for a Special Use to keep chickens only on the subject property. Mrs. Nordman questioned who monitors the property to ensure the petitioners do not exceed the number of chickens allowed. Mr. Atha responded it is the neighbors' responsibility to inform staff of any issues. She clarified the neighbors need to call the zoning office anytime they see the petitioners bringing in more chickens or constructing a larger fence, and Mr. Atha responded yes. Mrs. Nordman stated she believes the petitioners will have more than seven chickens, and she questioned if the Board will limit the number of chickens allowed. Mr. Miller responded the proposed limit is twelve chickens, no roosters. Mrs. Nordman clarified the petitioners cannot have more than twelve chickens. She again reiterated her concern about property values decreasing and added a one about the coyotes. She went on to say her neighbors have four small children, and the coyotes have scared her dog.

Brian Bussard, 29362 Summer Field Ln., came on in remonstrance. He stated he is concerned, because his property is located downwind of the petitioners'. He then questioned disposal of manure. He mentioned a concern about the increase of rodents chickens will prompt. He stressed grain feeders or feed spread on the ground will cause an increase in the rodent population, which will then result in more rodents in their homes/garages. Mr. Bussard then noted allowing above-ground pools which goes against the covenants/restrictions does not negate any of the others. Mr. Hesser mentioned his question is if the covenants/restrictions are applied. Mr. Bussard responded the covenants can be applied if anyone chooses to take the issue to court. He again stressed allowing an above-ground pool does not negate the other covenants/restrictions, which he believes is specifically stated in the covenants. He went on to say ten above-ground pools in their subdivision does not negate the covenant restricting chickens. Mr. Hesser responded he believes an argument could be made that the subdivision does not enforce their covenants. Mr. Bussard stated that is not his understanding based on the wording of their covenants. He then questioned if a permit was pulled for the new structure, and if inspections have taken place. He also asked if the building has electric, and he is concerned that it may be a fire hazard. Mrs. Kratzer noted structures under 120 sq. ft. do not require a permit. Mr. Hesser asked if any other properties in the subdivision have more than one detached structure, and Mr. Bussard responded not to his knowledge. He mentioned some residences along CR 118 have chickens that he can hear to the south and west of the subdivision. Mr. Atha then reiterated a structure under 120 sq. ft. does not require a permit. Mr. Bussard then asked if electrical inspections are required, and Mr. Atha responded yes. Mr. Campanello noted an extension cord from the residence would not be inspected. He stated his neighbor has chickens, and he also had concerns when they came to the property. Mr. Bussard mentioned he would like to have a seeing-eye dog, but he is concerned about strays and coyotes in the neighborhood. He went on to say he does not want to risk having a dog and getting attacked by coyotes. He stressed he knows coyotes are in the neighborhood, because he has heard them. He added allowing chickens will only increase the number of coyotes, and decrease his chances of obtaining an animal to assist him.

Charles Nichols, 58297 Summer Chase Dr., was present against this request. He stated he has an above-ground pool, which he was not aware is prohibited by the covenants. He added he also has a small, portable second shed that he purchased to store his pool equipment. He went on to say as a good neighbor he will drain his pool and remove the second shed just to make it right with his neighbors. He stressed he does not want to cause a problem within the subdivision nor would he project something that aggravates his neighbors. He stated he does not believe the petitioners should want to cause an adverse relationship with their neighbors. He stated he will

take down his pool, trampoline, and small shed to prevent causing an issue with his neighbors. He again stressed that he appreciates his neighbors, and it is not worth upsetting them for twelve chickens. He mentioned they all want to have a good community.

Mr. Hajicek came back on to address the concerns. He stated he understands the coyote concern, but they already roam the neighborhood and will continue to after chickens. He also explained that his property is not part of the Home Owners Association, so the covenants do not apply to him. He then noted the field behind their residence is overgrown and unmaintained by the landowner. He went on to say deer, rabbits, and coyotes frequently roam the field and neighborhood, because it is not maintained. Mr. Hesser asked if the petitioner was aware of the covenants, and Mr. Hajicek responded no. Mr. Miller questioned if the petitioner pays an HOA fee, and he responded no. Mr. Norman asked if an HOA exists in the neighborhood. Mr. Hajicek noted he put the walls up for the chicken coop but stopped in case this request was denied. He continued saying the structure can easily be removed. He added no electric will be run to the coop.

The public hearing was closed at this time.

Mr. Miller explained the Board does not have any control over the HOA or covenants/restrictions. He went on to say the Board makes their decision based on land use, and chickens are typically approved. He stressed this petition is not an unusual request, and very few are denied. Mr. Hesser stated the covenants were recorded although not all are enforced, but no other livestock in the subdivision was mentioned. He reiterated the Board is not bound by the covenants/restrictions, and Board approval does not prevent neighbors from pursuing enforcement of them. He added he is not in favor of this request. Mr. Campanello mentioned he previously stated that his neighbors have chickens, and he has no problem with them. However, he went on to say not as many neighbors came to that meeting. He stated he does not believe they will have any problems, but he will vote for denial due to the number of neighbors present.

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 5/18/2020) and as represented in the Special Use application.
2. The use is limited to a maximum of twelve (12) chickens at any one time, no roosters.

Vote: Motion passed (**summary:** Yes = 3, No = 2, Abstain = 0).

Yes: Joe Atha, Roger Miller, Ron Norman.

No: Tony Campanello, Randy Hesser.

5. The application of *Merle D. Miller & Dorida Miller, Husband & Wife* for a Special Use for a home workshop/business for construction and sales of plastic cabinets and trim on property

located on the southwest corner of CR 7 & CR 50, common address of 27012 CR 50 in Union Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0350-2020*.

There were 15 neighboring property owners notified of this request.

Merle Miller, 27012 CR 50, Nappanee, was present for this request. Mr. Roger Miller clarified the petitioner plans to add onto his building. Mr. Merle Miller explained he would like to add onto the shop building, which is reflected on the submitted site plan. Mr. Roger Miller questioned the number of employees, and he responded he currently only has one part-time employee. Mr. Roger Miller clarified the part-time employee is not an occupant of the residence. Mr. Hesser noted the questionnaire mentions UPS and pick-up truck deliveries, and he questioned if any semis also deliver to the property. Mr. Merle Miller stated any semis deliver to a neighbor's property, because he has a larger business with better access. However, he went on to say he plans to make his property more accessible for semis as his business grows. Mr. Roger Miller asked how many hours he works a week, and he responded he works 40 hours a week and his part-time employee works 20. Mr. Hesser then questioned the dimensions of his proposed sign, and he responded 4'x3'. He then asked why he needs a sign that size, because a home workshop/business Special Use only allows a 4 sq. ft. sign. Mr. Merle Miller explained he did not realize he needed a Special Use until he tried to obtain an LLC, so the sign is already on the property. He went on to say he can move the existing sign if needed. Mr. Hesser asked if he has a reason for the larger sign, and Mr. Merle Miller responded he does not need it larger. He continued saying he can always make it smaller if needed. Mr. Roger Miller asked if the sign is illuminated, and Mr. Merle Miller responded no. Mr. Atha questioned if the existing sign is allowed on the petitioner's building by right, and Mr. Hesser responded only one 4 sq. ft. sign is allowed on the property. He went on to say the Board has generally allowed 4 sq. ft. double-sided signs. Mr. Atha noted the proposed sign is 3'x4', which Mr. Hesser pointed out is 3x the allowed sign size. He added the petitioner indicated he has no reason for the larger sign. Mr. Roger Miller noted staff requested a revised site plan showing the sign dimensions. Mrs. Kratzer noted the site plan currently list the sign as 14"x36", and staff request that the site plan reflect the size approved.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha suggested a standard size sign be approved. Mr. Roger Miller noted a commitment should be added restricting the size of the sign. Mrs. Kratzer pointed out the revised Zoning Ordinance allows for an 8 sq. ft. signs for a home workshop/business Special Use. Mr. Hesser asked for clarification, and Mrs. Kratzer responded 8 sq. ft. total is allowed.

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 construction and sales of plastic cabinets and trim 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 sign dimensions.

The following commitments were 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 application.
2. The signage is limited to a total of eight (8) square feet.

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 *Lee D. Gall* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the west side of CR 31, 1,650 ft. north of CR 46, common address of 68549 CR 31 in Jackson Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0286-2020*.

There were four neighboring property owners notified of this request.

Lee Gall, 68549 CR 31, was present online for this request. Mr. Atha stated the pasture on his site plan appears to abut the canal on the west property line. Mr. Gall responded the pasture does not reach the canal. Mr. Atha then questioned the distance between the two, and Mr. Gall explained park property separates the pasture from the canal. He went on to say approximately 25 ft. separates the water and pasture. Mr. Miller asked if the animals will be used for 4-H, and Mr. Gall responded yes. He continued saying they will only be on the property from April until July. Mr. Miller then questioned if he will still own animals once his family members are no longer involved in 4-H. Mr. Gall stated his children are currently school aged and will eventually be done with 4-H. Mr. Miller asked if the petitioner is opposed to a time limit being imposed on the request. Mr. Gall questioned if a time limit would require the barn be demolished. Mr. Miller suggested the petition be approved until his children are no longer involved in 4-H. Mr. Atha questioned if a pond is located in the petitioner's back yard, and Mr. Gall responded no. Mr. Norman asked if the area in question is a group of trees, and he responded yes. Mr. Gall then explained Elkhart County Parks owns the surrounding property to the south, west, and east, and his only neighbor is located to the north. Mr. Atha also questioned the topography of his property and if it slopes towards the canal. Mr. Gall explained his property is flat, and the soil is pure gravel similar to the new gravel pit on CR 33 with no chance of run-off. Mr. Atha then asked his plan for waste disposal. Mr. Gall responded he will use a compost pile then spread it on his garden. Mr. Atha then questioned the location of the compost pile, and he responded the corner of his pasture closest to the garden. Mr. Atha clarified it will be located on the north side of the property. Mr. Gall noted it will be closest to the neighboring property and hundreds of feet from the canal. Mr. Atha also asked if he spoke to his neighbor about the request, and he responded yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he does not believe a time limit is necessary, because no one was present in remonstrance. Mr. Hesser mentioned he was concerned that the request is for a large amount of animals on a small lot, but the petitioner appears to have taken that into consideration. Mr. Atha stated he believes four pigs and two goats will produce a large amount of waste, so he is opposed to allowing that many animals on this property. Mr. Hesser noted he believes a managed compost pile can accommodate the waste. Mr. Atha pointed out the pasture is far enough from the water. Mr. Norman then pointed out the garden in the middle of the subject property where the petitioner plans to spread his compost. He continued saying the park has grass and trees that provide natural filtration to prevent run-off. Mr. Hesser stressed the compost pile will need to be carefully managed.

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 4/27/2020) and as represented in the Special Use application.
2. The use is limited to a maximum of four (4) pigs and two (2) goats at any one time.

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

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

No: Joe Atha.

7. The application of *Indiana & Michigan Electric Company* for a Special Use for an existing wireless communications facility on property located on the east side of CR 21, 300 ft. north of CR 36, common address of 64000 CR 21 in Elkhart 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-0336-2020*.

There were 30 neighboring property owners notified of this request.

Mr. Miller noted the request is for an existing communication facility. Mr. Hesser explained the facility will be replaced.

No petitioner was present in person or online.

Mr. Hesser clarified that the new tower will be the same height as the existing one.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he does not have a problem approving the request without a petitioner present.

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 existing wireless communications facility be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 4/14/2020) and as represented in the Special Use application.

Note: 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 *Neill Kirkwood* for a Special Use for a beauty shop on property located on the south side of CR 54, 1,400 ft. west of CR 9, common address of 26266 CR 54 in Union 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-0361-2020*.

There were 23 neighboring property owners notified of this request.

Neill Kirkwood, 26266 CR 54, Nappanee, was present for this request and stated a new 2,500 sq. ft. residence is currently being constructed on the subject property. He explained his wife has owned a hair salon in Nappanee since 1988, but she would like to down size to a one-chair salon and only operate two to three days a week. He noted their plan is to construct a salon on the east side of their two-bay garage, which will appear from the outside as a third bay with an access door instead of an overhead one. He added parking will be in front of the garage/salon, and most people who drive past the property will have no idea that a salon is located there. He stated his wife will likely retire in the next three to five years, and the salon will then be converted into a third bay for the garage.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for 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 5/19/2020) 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.

9. The application of *Jason A. Campbell & Rachel M. Campbell, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the west side of Towne Rd., 615 ft. North of CR 22, common address of 58895 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-0347-2020*.

There were 19 neighboring property owners notified of this request.

Mr. Hesser noted the Staff Report does not address ducks, and Mrs. Kratzer explained staff's intent was for the limit to include poultry. She added the petitioner requested approval for 15, so the staff report reflects that number. Mr. Atha asked if approving the request for chickens would imply ducks are also allowed. Mrs. Kratzer suggested the wording be changed from chickens to poultry or more specifically chickens/ducks. Attorney Kolbus stated he would prefer the commitment specifically reference chickens and ducks rather than poultry.

Rachel Campbell, 58895 Towne Rd., Elkhart, was present for this request. Mr. Atha clarified the petitioner currently owns chickens and ducks, and questioned waste disposal. Mrs. Campbell explained it is kept outside of the coop to be spread on the garden. She added they do not produce much waste, and it typically just disperses into the ground. She went on to say they spoke to their neighbor to the north who mentioned she did not care for the chickens, because a different neighbor had some that smelled. She added their neighbor did not want chickens roaming the neighborhood, even though none of the other neighbors had an issue with them running around. She stated they enclosed the chickens after speaking to that neighbor. Mr. Atha clarified she currently owns 15 birds. Mrs. Campbell responded she actually has 16, including two ducks. She explained one of the ducks may need to be put to sleep, and she would then rehome the other duck at that time. She continued saying both of her ducks are males, but she would prefer to have a female. She added she was unaware both were males, so she does not have a purpose for them. She stated one of the male ducks protects the rest of the flock. Mr. Atha explained the Board does not typically approve more than twelve poultry on a property, and he asked if she has a problem decreasing the size of her flock. Mrs. Campbell responded yes, because she has found that 14 is the right number of chickens to provide enough eggs for her family. She went on to say she was not aware that she needed a Special Use, so she started with five or six chickens, which she found was not enough to feed her family. She explained she has all boys, and twelve chickens was not quite enough. She stressed she has now found the perfect number, 14 egg-laying, to provide for her family.

Virginia McMillon, 30591 Dunhill Crossing, was present against this request and stated she owns property on Towne Rd. where she intends to construct a residence. She then pointed out her vacant lot on the aerial. She stressed she is opposed to allowing chickens in the neighborhood. She went on to say she was present in remonstrance for a chicken Special Use in Dunhill Crossing, which the Board approved despite their covenants prohibiting them. She explained that petitioner moved, and now she received a letter notifying her of this request. Mrs. McMillon stated she believes chickens draw mice and snakes to the area. She mentioned a comment was previously made that the Board generally hears a few chicken requests a month, which are typically approved.

She then questioned why the Zoning Ordinance requires three acres for agricultural animals, if they approved them on less. She added eggs do not cost much, and she is very against allowing chickens in dense residential areas. She stated she believes her property is approximately 100'x200', and she would not want chickens on it.

Mrs. Campbell came back on and stated she does not feel comfortable purchasing eggs anymore. She stressed she is comfortable feeding her family eggs from their own chickens, and they eat a lot of eggs. Mr. Norman asked if her property is on well and septic, and she responded yes. He then questioned her coop location in regards to the well. She then pointed out the approximate location of her well, septic, and coop on the aerial.

The public hearing was closed at this time.

Mr. Hesser questioned the need for more than twelve poultry, and Mr. Campanello noted they are already on the subject property. Mr. Hesser explained he would not make the petitioners remove the extra chickens immediately, but he questioned the need for more than typically approved. Mr. Atha noted the number of poultry works best for her family, and the property is an acre. Mr. Hesser agreed an acre is larger than most properties approved for chickens. Mr. Campanello suggested the request be approved for 15 chickens now, until the total number is down to 12 where it must then remain. Mr. Norman noted this parcel is 1.2 acres, and the last agricultural request was on 1.8 acres. He went on to say chicken waste can be used on a garden/composted, but the comment about it naturally dissipating is concerning on a property with a well and septic. He stressed it could cause issues with the well, unless it is far enough away. Mr. Atha responded people often spread fertilizer on their lawns, and most wells are deep enough that it has no impact. Mr. Miller pointed out the Board has approved more than 12 chickens in the past, and he recalls approving 20 one time. Mr. Atha added they have also decreased the number requested, because people essentially had chicken farms next to people's swimming pools. He went on to say the petitioner appears to be working with the neighbors, and no longer allows the chickens to roam free. He stated he feels comfortable approving more than 12 chickens. Mr. Norman stressed he believes 12 should remain the standard. He stated the petitioners can butcher three chickens and make do with the remaining.

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 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 5/13/2020) and as represented in the Special Use application.
2. The use is limited to a maximum of fifteen (15) chickens and/or ducks at any one time, no roosters.

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

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

No: Randy Hesser.

10. The application of *Richard J. Miller & Waneda L. Miller, Husband & Wife* for an Amendment to an existing Special Use for a home workshop/business for retail sales to allow for a revised site plan and a larger sign 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 north side of CR 38, 590 ft. west of East County Line Rd., common address of 10097 CR 38 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-0341-2020*.

There were eight neighboring property owners notified of this request.

Richard Miller, 10097 CR 38, Millersburg, was present for this request and stated he would like to construct a new building and larger sign. Mr. Hesser asked what changed since approval in November. Mr. Richard Miller explained they currently operate out of their garage, but they now need more space and would like to expand. Mr. Atha asked if there will be additional employees, and Mr. Richard Miller responded no. Mr. Roger Miller noted the application lists three full-time and three part-time employees, which Mr. Richard Miller pointed out were previously approved. Mr. Atha questioned the need for a larger sign than allowed. Mr. Richard Miller responded better visibility, because CR 38 is a busy road.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus stated any sign approved must be located outside of the right-of-way. Mr. Miller noted the site plan shows the sign 6 ft. from the property line, and Mr. Hesser asked the required setback. Mrs. Kratzer stated the sign can be at the property line but not in the right-of-way. Mr. Hesser questioned the width of the right-of-way, and Mr. Campanello stated it is typically 25 ft. from the centerline of the road to the property line. Mr. Atha clarified the right-of-way setback does not need to be mentioned, if the request for a larger sign is denied. He went on to say he does not want to deviate from the allowed sign size.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a home workshop/business for retail sales to allow for a new building was 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 5/15/2020) 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.

Motion: Action: Deny, **Moved by** Joe Atha, **Seconded by** Roger Miller that this request for an Amendment to an existing Special Use for a home workshop/business for retail sales to allow for a larger sign was denied based on the following findings and conclusions of the Board:

1. The Special Use will not be consistent with the spirit, purpose, and intent of the Zoning Ordinance. Special Uses for home workshop/businesses are limited to an 8 sq. ft. sign.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. This is a 5-acre parcel in a low-density residential and agricultural area, and the parcel will remain residential and agricultural in character.
3. The Special Use will substantially serve the public convenience and welfare by providing for a local source of surplus goods.

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

Yes: Joe Atha, Roger Miller, Ron Norman, Randy Hesser

No: Tony Campanello.

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for 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 5/15/2020) 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.

11. The application of *Town of Bristol* for an Amendment to an existing Special Use for a sewage treatment plant to allow for the construction of a sludge processing building and for a 71 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for the construction of said building 49 ft. from the centerline of the right-of-way on property located on the north side of Vistula St. (SR 120), 4,300 ft. west of Division St. (SR 15), common address of 1300 W. Vistula St. in Washington Township, zoned R-1, R-2, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0360-2020*.

There were 48 neighboring property owners notified of this request.

Michael Mitchel, Town of Bristol representative, 1300 W. Vistula, was present for this request. He explained the subject property is uniquely shaped, which presents challenges dimensionally in addition to the flood plain resulting in unbuildable sections. He went on to say the property serves as the wastewater treatment plant for the entire community of Bristol including residential, commercial, and industrial uses. He added representatives from the Town Council are present including Jeff Beachy, Town President, and Delbert Schrock, Council Member.

Jeff Beachy, Bristol Town Council President, 802 W. Vistula St., Bristol, came on in favor of this request. He stated they would like to improve their wastewater treatment plant by adding

a sludge bagging facility. He went on to say they have been working with Commonwealth Engineering on this project. He explained their current facility utilizes drying beds that have been depleted over the years. He stressed the new sludge bagging system will help improve their process and reduce the amount of time it takes to go through the drying beds. He added this switch will save the town money, because the drying beds need to be rebuilt, which would be a substantial cost. Mr. Beachy stated they used to spread waste from the drying beds on fields with Mills Brother, but it is no longer a viable option. He stressed the sludge bagging facility is a better solution.

Andrew Robarge, Commonwealth Engineers, 104 N. Main St., Crown Pointe, was present for this request as the representative working with the town on this project. He explained most of the property is in the flood plain or wetlands, making the buildable area very small for the large parcel. He then pointed out the drying beds' location on the aerial, and he explained the Developmental Variance for constructing the bagging facility closer to the road is needed due to the location of other equipment. He noted the tank that gets pumped out is located closer to the road, and the force main that pumps the sludge to the beds extends around the front of the property. He continued saying they have issues with the line freezing in the winter down by the drying beds due to the depth it was installed at several years ago. He stressed installing new equipment farther back on the property will likely result in the main continuing to freeze and prevent sludge disposal, which would become an issue for the town. He added the sludge bagging facility is the most cost effective for the community and long term operations. Mr. Miller questioned if this building will replace an existing one. Mr. Robarge explained it is a process change, because the sludge currently is sent back to the drying beds where it dries over time. He continued saying the beds fill up, and the sludge is then disposed of off-site. He stated the new equipment will sit towards the front of the property and dewater the sludge immediately. He noted the sludge is then hauled off-site in dumpsters rather than being dug out with heavy equipment. Mr. Miller questioned if the drying beds be used, once this facility is completed. Mr. Robarge responded their intent is to keep the drying beds as a back-up and use the sludge bagging system as the primary disposal. Mr. Miller asked if rainwater and sewage both use the same system. Mr. Norman stated the storm water system is separate. Mr. Robarge explained the system utilizing this treatment plant is defined as a sanitary only system. Mr. Hesser questioned if the front of the property is screened. Mr. Mitchell responded the property has fencing and landscape, and Mr. Robarge added the fence is chain link.

Mr. Beachy came back on and explained Bristol is in the process of upgrading/improving their town. He continued saying Commonwealth Engineering is submitting USDA Rural Development on behalf of the town, which is a grant for a comprehensive study of their entire wastewater treatment plant. He stated this request is phase one of their improvements, and they will comprehensively review the entire system to make continued improvement for the future. Mr. Atha clarified the new sludge bagging facility will keep up with the town's demands.

Mr. Robarge came back on to address Mr. Atha's question. He explained the system uses two, 30 cubic yard dumpsters, and their intent is to bag all of the sludge produced by the facility. He stated the facility is sized appropriately for the town's needs based on historical flows entering the treatment facility. Mr. Atha questioned if the drying beds will be emptied and then used as a backup. Mr. Robarge mentioned this is an emergency situation due to the capacity of the existing drying beds. He went on to say they will eventually be cleaned out on a rotational basis, and it will be reviewed as part of the comprehensive study. He explained prior to the study their intent

is to rehab two of the beds a year by removing the sludge. He added they will then be a backup rather than the primary facility, partially because the phragmites plant has been deemed an invasive species. He continued saying this plant was typically used in drying beds, but it has now been outlawed. He stressed outlawing it has limited the effectiveness of the current treatment process. Mr. Atha clarified the new system will produce less waste. Mr. Robarge stated less waste will be stored on site for a shorter duration. Mr. Norman questioned if the new two container system is compatible with the current 750,000 gallon plant capacity, and Mr. Robarge responded yes. He then asked if the capacity can be increased if needed, once the south industrial park is developed. He pointed out Middlebury increased their plant two years ago from 750,000 to 999,999 gallons in order to remain below the 1,000,000 gallon requirement for different IDEM permitting. He then asked if the bagging system will need to be reengineered to accommodate that possible increase in flow. Mr. Robarge responded probably not, because they can change the frequency of dewatering the sludge to accommodate an increase. He added there should not be a need to increase the number of dumpsters, but they may need to increase the number of times they switch out the dumpsters. Mr. Norman pointed out they plan to install a structure over the facility. Mr. Robarge explained their intent is to place a structure over the facility to make it fully weather proof and operable year round.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a sewage treatment plant to allow for the construction of a sludge processing 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 6/2/2020) and as represented in the Special Use Amendment application.

Further, the motion also included that a 71 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for the construction of said building 49 ft. from the centerline of the right-of-way be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 6/2/2020) 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.

12. The application of **Jason L. Ward & Deana L. Ward (Buyers) & Louis E. Scott & Virginia H. Scott, Husband & Wife (Sellers)** for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres 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 west side of CR 13, 1,500 ft. north of CR 30, common address of 61693 CR 13 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-0348-2020*.

There were eight neighboring property owners notified of this request.

Jason & Deana Ward, 61693 CR 13, were present for this request. Mrs. Ward stated they would like to have some chickens for eggs along with other animals for hobby purposes and their grandchildren. She continued saying they frequently watch one of their grandchildren and would like to enjoy the animals with them. Mr. Hesser questioned the need for so many animals on a two acre parcel. Mrs. Ward responded she is an old farm kid, and they will all be pets. Mr. Hesser then asked her plans for waste disposal, and she responded a compost pile is already located on the property. She went on to explain they recently closed on the house, and the previous owner left the compost pile behind. She added she plans to use that pile and then spread it on her large garden. Mr. Ward pointed out the compost pile and garden on the aerial. Mr. Hesser clarified the compost pile is in the northwest corner of the property. Mrs. Ward stated the previous owners also owned animals. Mr. Atha questioned the number of animals being requested. Mr. Hesser responded fourteen chickens, one pot belly pig, two goats, one turkey, and one cow for a total of nineteen animals. Mrs. Ward mentioned she can decrease the number of chickens to twelve, because she did not realize there was a standard limit. She explained she was planning on purchasing fourteen, because one or two typically do not survive. She continued saying she would like to end up with twelve chickens. Mr. Miller clarified the building labeled shop on the site plan is only for personal use. Mr. Ward stated he is a retired mechanic, and he has a small shop at his current residence. He went on to say they need the shop for storage of their RV and room to work on his project vehicles.

Ruth Pletcher, 301 N. Riverside Dr., Elkhart, the owner of the woods directly south of the subject property was present with some concerns. She stated people including their neighbors tend to burry things/dump poop in their woods. She stressed she is trying to clean up the woods. She stated she wants assurance that the petitioners will not bury animals or dump anything in her woods, because their request is for a lot of animals on a small lot.

Jason & Deana Ward came back on to address her concerns. Mr. Ward stated he plans to clean up the edge of the woods where people have dumped brush. He noted part of the woods is actually on their property. Mrs. Ward stressed they want the woods to look nice, and she added they always leave their properties nicer than when they purchased them. She went on to say they have no intent to dump anything in the woods and actually plan to clean it up. Mr. Norman request they point out the area on their aerial. Mr. Ward then pointed out a brush pile at the edge of their property, which is unsightly and will be removed. He also pointed out a pile of yard debris that will also be cleaned up. He stressed they plan to clean up the property and increase the surrounding property values. Mr. Hesser clarified the garden location and questioned the location of the compost pile. Mr. Ward pointed it out on the aerial. Mrs. Ward added they will tidy up the

compost pile to be aesthetically pleasing. Mr. Atha clarified the compost pile will be kept off of the neighbors' property. Mrs. Ward explained they own just into the woods. Mr. Hesser asked if the petitioners are in the process of purchasing the property, and Mrs. Ward responded they already own it. Mr. Hesser clarified they closed on the property after the application was submitted. He then noted the staff report no limit on the number of animals allowed. Mrs. Kratzer stated the Board can decide the number of animals allowed, and staff typically recommends the amount listed in the petition. Mr. Ward stated three of their grandchildren live in Indianapolis, and they always enjoyed visiting the five acres they owned in Warsaw. Mrs. Ward added their grandchildren stay with them several weeks during the year, and they love being around the animals.

The public hearing was closed at this time.

Mr. Atha stated the pasture is small, but only the cow and two goats will utilize it. He continued saying the Board has approved horses on similar sized pastures. Mr. Miller stated he does not have a problem allowing the requested amount of animals. Mr. Hesser added he is not opposed to approving fourteen chickens, because the limit of twelve is typically for properties in a residential neighborhood.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 5/18/2020) and as represented in the Special Use application.
2. The use is limited to a maximum of fourteen (14) chickens, one (1) pot belly pig, two (2) goats, one (1) turkey, and one (1) cow at any one time, no roosters.

Further, the motion 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 5/18/2020) 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.

13. The application of *Terry L. Welles, Jr., Terry L. Welles, Sr., & Carolyn S. Welles* for a Use Variance to allow for the construction of an accessory structure prior to the construction of a

residence on property located on the south side of CR 2, 1,910 ft. west of CR 5, 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 #UV-0291-2020*.

There were 15 neighboring property owners notified of this request.

Terry Welles, 29931 CR 2, Granger, was present online for this request. He stated he would like to construct an accessory structure on the three acres prior to the residence for his parents. Mr. Hesser questioned the need to construct the accessory structure first. Mr. Welles responded his parents would like to clean out the storage building where they currently live. He explained they then plan to sell their residence and live in an apartment until the new one is completed, which would not be possible without the proposed building for storage of their items. Mr. Hesser asked if the petitioner has plans for the residence, and Mr. Welles noted house plans are currently being reviewed. Mr. Campanello pointed out staff recommended denial of this request, and a commitment would likely be imposed that construction of the residence be started within a year, if this request is approved. He went on to say the accessory structure would then need to be removed, if the residence is not started at that time. He stressed allowing an accessory structure prior to the residence does not conform with the Zoning Ordinance, and a commitment requiring the house be constructed within a certain amount of time is typical with approval. Mr. Hesser added the Board rarely approves these requests, because they do not want an accessory structure on property where a house is never constructed. He went on to say the Board then requires the accessory structure to be removed from the property in that scenario. Mr. Welles asked why he cannot construct an accessory structure on his three acres. He stressed their plan is to construct a residence in the spring, but it has been delayed due to the current status of things. He again asked why he cannot construct a building on his three acres, and he noted he sees it done frequently. Mr. Hesser clarified an accessory structure is not allowed on property without approval from the Board, which is rarely approved. Mr. Welles stated he is aware of two or three buildings that were recently approved without a residence. Mr. Hesser asked if staff recalled any situations where a similar request had been approved, and Mrs. Kratzer responded no. Mr. Welles offered to obtain addresses for properties he knows only have an accessory structure, but he again stressed they plan to construct a residence in the spring. He added their building is needed for storage. Mr. Miller stated he does not remember approving requests for an accessory structure without a residence. Mr. Hesser explained the Board does typically approve accessory structures on lake properties near the associated residence but not in the country. Mr. Miller mentioned a building the Board recently denied, and Mr. Campanello recalled a few contractors received approval when construction of the residence was planned soon after. Mr. Hesser stated he believes the building permits for a new residence and accessory structure were pulled at the same time for the mentioned situation. Mr. Campanello suggested the petitioner agree to tear the building down, if a residence is not constructed in two years. Mr. Welles stated he would not agree to tear the building down, and he again stressed their plan is to construct a residence on the property. He then asked if he can pull a building permit for the residence at the same time as the accessory structure. Mr. Hesser responded he does not believe Board approval is needed if both building permits are obtained at the same time. Mr. Welles then mentioned the property is also going through a subdivision process to split a 12.25 acre tract into three buildable tracts, which will be heard by the Plat/Plan Commission in July. He continued saying all three lots are part of the Welles Minor Subdivision,

and he asked if he can pull a building permit for the front three acres before that is completed. Mrs. Kratzer responded building permits cannot be pulled until the plat has been approved and recorded, which can take two weeks after the meeting.

Hazen Amos, 29849 CR 2, Granger, was present with some questions and stated he lives across the street from the subject property. He explained he would like to know the type of residence they plan to construct. Mr. Miller explained this request does not concern the residences that will be constructed, and Mr. Atha suggested he bring up his concerns at the subdivision meeting.

The public hearing was closed at this time.

Mr. Hesser suggested tabling this request, because it may not be needed. He explained the petitioner will not need to refile for the request, if the need for it is not eliminated.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for a Use Variance to allow for the construction of an accessory structure prior to the construction of a residence be tabled indefinitely to allow the petitioner time to determine, if this request is necessary.

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

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

Mr. Welles asked if his request will be pushed back another month, with waiting until after the July Plat/Plan Commission meeting. Mr. Hesser stated legal advertisements and neighboring property notice does not need to be resent, but the petitioner does need to inform staff early enough to be placed on the agenda.

14. The application of *Kibbe Properties, LLC* for a Use Variance to allow for the construction of a free standing sign on property located on the northwest corner of Innovation Dr. & Atlas Dr., 1,090 ft. east of CR 15, south of CR 4, common address of 22297 Innovation Dr. in Osolo Township, zoned DPUD E-3, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0340-2020*.

There was one neighboring property owners notified of this request.

Gary Potts, Professional Permits, 58171 Dragonfly Ct., Osceola, was present representing Kibbe Properties and US Signcrafters. He explained the request is to install a monument sign on the subject property's corner. He stated the actual dimensions are slightly larger than those listed on the application, because the sign company gave him an old file. He went on to say the horizontal beam is actually 13 ft. wide not 12 ft. causing the overall length increase to 16.5 ft. from 15.5 ft. He then asked if the Board members have the updated sign drawing, and Mrs. Kratzer responded it was included in the packet. Mr. Potts explained the sign will remain 32 ft. from the road but will move slightly closer to the building. Mr. Miller asked if staff needs a revised site plan reflecting that change, and Mrs. Kratzer responded she already received the needed documents. Mr. Hesser questioned what committee previously approved this request. Mrs. Kratzer responded Elkhart East has their own Architectural Committee who reviews all signs placed in Elkhart East, and they already approved this sign.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if the building is already on the property, and it was found that it is constructed.

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 Use Variance to allow for the construction of a free standing 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 4/15/2020) and as represented in the Use 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 *Timothy Frederickson & Mary Frederickson, Husband & Wife* for a Use Variance to allow for the construction of an accessory structure prior to the construction of a residence on property located on the east end of Lone Oak Dr., east of Old CR 17, north of CR 20, common address of 22131 Lone Oak Dr. in Concord/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-0357-2020*.

There were eight neighboring property owners notified of this request.

Tim Frederickson, 1601 N. US 421, Michigan City, was present for this request. He stated they own six acres, which they plan to retire to and plant an orchard/small tree farm. He went on to say he needs water to irrigate the property, and he found a spot where he can install a well-point at 8 ft. deep. He explained he needs electricity to pump the water, and he was told he needed a building for the electric. He added the property is zoned residential/agricultural, and they currently live an hour away from it. He stated he can only haul so much equipment at a time, and he would like a place to store it on site. He noted he was informed this morning that he can construct a strictly agricultural building without a residence. He continued saying the building will not be used for personal storage until their residence has been constructed. He mentioned they plan to break ground on the residence before fall and have it enclosed by winter. He stressed it is critical that he have water before the residence is constructed to establish the trees. Mr. Campanello question how large of a structure he needs. Mr. Frederickson responded he would like a 50'x60' building, so it is large enough for future uses. Mr. Campanello then asked how large the building would need to be for water, and he clarified they plan to construct the residence soon. Mr. Frederickson stated the residence should be constructed in September, but it is contingent on the sale of their residence in Florida. He continued they have an offer on that residence, and they will start construction in August, if it goes through. He added they will build before fall even if the

other residence does not sell, because they want to move in next year. Mr. Campanello asked if a small shed would be large enough for the electric and water service. Mr. Frederickson stressed he needs the extra room to store his equipment. He stated he only wants to have two structures on his property. Mr. Hesser clarified the petitioner can proceed, if he pulls the residence and accessory structure permits at the same time. Mrs. Kratzer pointed out building permits are valid for an entire year. Mr. Hesser explained the petitioner does not need Board approval, but the residence must be constructed. He continued saying if a residence is never constructed then the building will need to be removed. Mr. Frederickson asked if the residence must be finished within a year, and Mrs. Kratzer responded the permit can be renewed if needed. Mr. Hesser clarified the petitioner is willing to withdraw the petition, since it is no longer needed.

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: Withdraw **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for 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 = 5).

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

16. Deb Britton came on to introduce Edith Lopez as the new Planning Assistant replacing Jane Yoder. She stated she will be the recording secretary for the Hearing Officer, and she transferred from the Records Office.

17. Mr. Auvil came on to address the new Hearing Officer and Board of Zoning Appeals applications. He stated he did not receive any feedback from the Board, and he pointed out staff made one minor change. He explained a disclaimer was added acknowledging that conditions and commitments may be imposed. He stressed people often complain that they did not know a commitment form was required, and the disclaimer will add another layer of communication acknowledging that. He stated with the Board's approval staff would like to proceed with implementing the new forms. Mr. Hesser asked if the electronic copies match the paper copies that were distributed a few months ago, and Mr. Auvil responded yes.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello that the new application forms for the Hearing Officer and Board of Zoning Appeals meetings be approved.

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

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

18. The meeting was adjourned at 10:52 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary