

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 21<sup>ST</sup> DAY OF JULY 2016 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; Liz Gunden, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

**Roll Call.**

**Present:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

2. A motion was made and seconded (*Miller/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.

3. The application of **Daryl Bontrager** for a Special Use for a home workshop/business for small engine repair on property located on the East side of CR 33, 1,135 ft. North of CR 42, common address of 66780 CR 33 in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0239-2016*.

There were four neighboring property owners notified of this request.

Clayton Bontrager, 13838 CR 34, Goshen, came forward representing the petition. Mr. Bontrager stated this is an addition to an existing building including a showroom for lawn mower sales. Mr. Hesser asked about the variances for accessory buildings within the request. Mr. Bontrager stated there would be a 40x60 addition added on to an existing 40x40 building. Mr. Hesser questioned if the accessory structure verses home square footage requirement was being exceeded. It was found that the property is within the accessory verses residence square footage requirement and does not require a variance.

There were no remonstrators present.

The public hearing was closed at this time.

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

**Motion: Action:** Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for small engine repair 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. Approved in accordance with the site plan submitted (dated 5/17/16) and as represented in the Special Use application.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

4. The application of *Lee A. Grove and Janice K. Grove* for a Special Use for a Bed-and-Breakfast Inn on property located on the West side of Riverdale Drive, 2,300 ft. South of Lexington Avenue, common address of 56003 Riverdale Drive in Cleveland Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0256-2016*.

There were 19 neighboring property owners notified of this request.

Lee Grove, 56003 Riverdale Drive, Elkhart, was present on behalf of this petition. He stated he wanted to open up his home for Notre Dame games. Friends suggested they open their home as their children are gone and they have four bedrooms. Mr. Grove stated he looked into “airbnb”, and found over 300 “airbnbs” in platted subdivisions without permission from the zoning commission. Mr. Grove also stated prior to coming before the board he spoke with many of his neighbors and the president of his HOA and received no objections. Speaking with staff, Mr. Grove mentioned existing B & B’s in subdivisions and questioned why they were being run without permission. Mr. Grove suggested he be allowed to try this for one year, if there arise complaints, he will discontinue the business. Mr. Grove stated there would be no parties held at the residence, and it would only be for Notre Dame games not year round. Mr. Lyon suggested a time frame from September to November to see if there are any issues. Mr. Grove agreed with Mr. Lyon’s request.

Eric Mishler, Treasurer of Oakdale Subdivision Neighborhood Association, 55916 Jayne Drive, Elkhart, was present in remonstrance. Mr. Mishler stated the majority of the HOA just learned of this petition a few days ago. He went on to say the HOA issued a flier regarding the petition to the neighbors. He noted the HOA had 24 hours to disperse and collect responses to the fliers. Mr. Mishler went on to say around a third of the neighbors had responded in opposition to the petition. He voiced a major concern is the petition has no constraints. As a residential area, if one special use is permitted, what prevents another request from being granted going forward. He stated the association produced a good showing in 24 hours, even with the limited time. Mr. Mishler also noted in the amended subdivision restrictions recorded in 2002, the first restriction lists use of the property solely for single family residence. He stated that he understands the petitioners’ idea of an “airbnb”, but stated that it is a new idea and the Association does not know enough yet in terms of what limits they could put on it. He stated the Association needs more time to think about the restrictions on “airbnbs”. Mr. Hesser asked about any other businesses being operated in the subdivision, and Mr. Mishler responded saying he had just been made aware of a nursery being operated in the neighborhood. They were not aware of the nursery, and the Association will look into this. He stated other neighbors may know of other businesses that he is not aware of at the moment. Mr. Hesser questioned whether the subdivision has allowed allow any businesses. Mr. Mishler replied they do not, and this is the first time this type of situation has been brought up. He stated he has only been in the subdivision since 2003, but that Doug Weaver has been there since 1992 and may have further information to answer that question.

Doug Weaver, 56003 Jayne Drive, Elkhart, was also present in remonstrance. Mr. Weaver thanked the staff for their report and agrees with staff’s recommendation of denial for good reasons. He stated there had been a group home about five years ago on the main street in

the subdivision. He stressed that the home has not recovered from being trashed as a group home. Mr. Hesser questioned if the HOA had taken any action to stop the group home. Mr. Weaver stated he was not with the HOA when the group home came into the subdivision, but he said they were told that the State allows group homes to exist in neighborhoods. He stated the home still sits empty today and is an eyesore. Mr. Weaver brought up the fact the subdivision is very peaceful with children and walkers, and that Notre Dame fans come into town as a different crowd of people who like to blow off steam. He stated he does not want that activity in a peaceful neighborhood. He also believes this alters the intent of the neighborhood and the 173 other homeowners. In addition, he stated other homes are also very suitable for the same use and questioned where this would stop. Mr. Weaver asked the Board for complete denial of the petition. He stated it is a bad idea, bad business, and bad for the neighborhood. Mrs. Weirick asked for the location of the group home on the aerial. Mr. Weaver indicated the group home was on Oak Manor, and pointed out a general area.

Mr. Auvil counted hands in the audience against the petition – 24 individuals were against the petition. Mr. Hesser asked about any other known businesses in the subdivision.

Julie Manfredi, 55957 Kathryn Drive, came forward in remonstrance. Mrs. Manfredi stated there is a nursery directly across the street from her property. She informed the board they had tried to stop the nursery from being approved. She believes someone from the board came out and talked to the nursery owner. Mrs. Manfredi's husband has counted at least 15 cars from 5 a.m. to 6 p.m. coming and going from the property. She stated it causes a lot of traffic and noise. When the member of the board came out to investigate, the nursery owner stated all the vehicles belonged to her relatives. Mrs. Manfredi does not believe the nursery owner has any kind of license, but she has a lot of kids on the property every day.

The treasurer stated the HOA will be looking into this situation.

Tom Danielson, 56057 Rio Lindo Drive, Elkhart, came forward in remonstrance. Being with a volunteer fire department in the county, he expressed concern that with excess traffic, it can be hard for the fire trucks to get through. He brought up one instance where cars lined up to watch a fire and one car was hit by a fire truck because the driver was not available to move it. He also stated that an "airbnb" will cause more traffic in the area. He questioned whether the petitioner would pay extra money to the volunteer fire department for their services. Mr. Danielson stated it is a 20 minute drive to the subdivision, and they use city water from out on Old US 20, which is not part of their subdivision. He went on to say that a car dealership around the corner already results in many people test driving their cars through the neighborhood. He believes it is a bad idea for any business to be in this location due to all of the dead ends and amount of children walking around.

Tab Stump, 29172 Frailey Drive, came forward in remonstrance. Mr. Stump stated his parents lived in the neighborhood for a long time, and he has also lived there for 25 years. He went on to say it is a very peaceful neighborhood, and there has never been anything like this in the neighborhood before. He does not believe anything good can come from this petition being passed. Mr. Stump stated he agrees with the staff and believes they brought up some good points in suggesting denial of this petition.

Janice Grove, 56003 Riverdale Drive, came forward to speak as the petitioner. Mrs. Grove stated she believes this situation is being blown out of proportion. She went on to say they are only looking to rent out two bedrooms, which means only two extra cars, possibly three. She

stated it would not cause a traffic jam, and there would be no alcohol allowed. They plan to fix the game goers breakfast, let them go to the game, and then come back for the night. She stressed it is simple, and not bad for the neighborhood. Mrs. Grove also brought up that they have neighbors who are in support of their petition. Mrs. Weirick questions if Mrs. Grove has any letters from their neighbors in support of the petition. Mrs. Grove stated that Linda Niespodziany said she sent a letter to the zoning board. Mr. Hesser questioned where Mrs. Niespodziany lived in relation to Mrs. Grove. Mrs. Grove pointed out the neighbor directly to the south of her property and the neighbor directly to the north. Mr. Grove reported he had contacted all of the neighbors within 100 yards. Mrs. Grove stated they have two neighbors on each side, a neighbor across the street, and the neighbor on the corner who they talked to about their proposal. She went on to say the neighbors they talked to did not have any objections.

Richard Jones, 55791 Riverdale Drive, Elkhart came on to be heard. He reported that the house on corner of Riverdale and US 20 is a bigger problem than the petition being discussed. He went on to say they are having garage sales frequently. Mr. Hesser pointed out this was not relevant to the petition being discussed.

Patricia West, 28930 Ella Drive, Elkhart, came on in remonstrance, and stated she just purchased her home on May 2<sup>nd</sup> of this year. She went on to say she had purchased this home because of the quiet neighborhood. She stated she feels safe in the neighborhood. Mrs. West previously lived on CR 13 in Elkhart and moved to her home for a quiet area where she could feel comfortable by herself. She went on to say she would like to keep the neighborhood quiet and safe for residents. She also mentioned many elderly live in the area, and she does not want the quiet neighborhood to change.

Suzie Heart, 55970 Riverdale Drive, Elkhart, came on to be heard. Mrs. Heart stated she lives caddy corner from the petitioners and is the president of the HOA. She went on to say they just bought their home in the subdivision last fall. Mrs. Heart stated she had met the petitioners when Mr. Grove came to them in the spring and mentioned a possible B & B. She reported she assumes Mr. Grove got a positive vibe from them when her husband, Mr. Heart, mentioned he had no problem with the B & B. However, she told Mr. Grove she did not know how the HOA would feel about a B & B in the neighborhood. Mrs. Heart stated she had just met Mrs. Grove last night, because of the petition. She went on to say she received a notice last week but was out of town for work. She stated she is familiar with the Board and did not see all the detail on the petition they were required to have when she went before the Board for a separate issue. She also stated she felt the entire neighborhood needed to know about the petition and sent out an email to the homeowners to make them aware of the situation. Mrs. Heart said she appreciates that the Groves have gone about this in a legal manner but, she has conflicted feelings on the issue as their neighbor and also an officer of the HOA. She went on to say she would want very specific, fine-tuned details if the petitioners are allowed to have a B & B such as: no alcohol and no partying on the river. However, as an officer of the HOA, she recognized it is in the covenants that home businesses are not to be in the subdivision.

Mr. Mishler stated it is the official position of the HOA that they want this petition denied. He also clarified the garage sale issue mentioned before is not part of their jurisdiction. Mr. Hesser questioned if they consider a garage sale a business. Mr. Mishler responded not if it is only once or twice a year. He also mentioned they have a petition signed by 55 people in the subdivision against the proposed B & B, which can be submitted.

In response, Mr. Grove stated he meant no ill will, and if the request does not work out that is fine.

The public hearing was closed at this time.

Mrs. Weirick agrees with Mrs. Grove, stating her new neighbor just went from one car to six cars. She also thinks this request is interesting, as it is not an everyday B & B with the rooms always being rented out. She believes if this request did move forward they could put special requests or conditions on it. However, it is in the covenants of the subdivision that businesses are not allowed. Mr. Hesser said the BZA does not overrule neighborhood covenants and, if approved, it becomes a breach in contract with the subdivision. Mr. Hesser believes the concerns are overblown and the B & B would cause an extremely minimal impact. Mr. Hesser believes if the covenants are consistently enforced in the subdivision, he respects the wishes of the HOA. If approved, Mr. Campanello would put conditions on request, such as no one staying at the house without the homeowners present. Mrs. Weirick believes the classification of B & B may be overstated. If the request is denied she believes there may be other legal ways to rent a room that is not breaking the covenant. She went on to say the remonstrance towards this request has been blown out of proportion and wishes consideration to logic in future similar requests. If approved, Mr. Auvil requested clarity as the questionnaire lists four rooms and the petitioner indicated only two.

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

**Motion: Action: Deny, Moved by Roger Miller, Seconded by Suzanne Weirick** 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 Bed-and-Breakfast Inn be denied.

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

**Yes:** Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

**No:** Tony Campanello.

In addition to his vote, Mr. Hesser reported disagreement with the recommended findings and stated his finding would be that it violates the covenants which deserve some deference in this case. He voted yes for the resolution of the request as a denial.

5. The application of **Barry W. Marshall** for a Special Use for an agricultural use for the keeping of ducks on a tract of land containing less than three acres in an R-1 district on property located on the North side of Rebecca Drive, 400 ft. East of Sherwood Drive, 300 ft. South of CR 28, 80 ft. East of CR 113, common address of 23285 Rebecca Drive in Concord Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0292-2016*.

There were 29 neighboring property owners notified of this request.

Barry Marshall, 23285 Rebecca Drive, Elkhart, was present on behalf of this petition. He stated his family adores nature, and they grow and raise their own food. They are petitioning for ducks because they can provide a food source, to share eggs with their neighbors, and they have several food allergies within the family. As their children are home schooled, they hope to educate them. In addition, ducks help with mental health, they are pets, they invite community, and they provide fertilizer for the garden. The ducks also help with pest control and are good for

the garden and lawn because they eat the pests which eat plants. Mr. Marshall also stated they had spoken with their bordering neighbors, and none of them foresee any inconvenience. He has researched and allowed for the proper square footage for the duck coop and pen. He stated domestic ducks do not need a pond, but they will provide a small pool for them. He went on to say the ducks are quiet and, they have found no evidence of contamination to ground or water with duck manure. Mr. Marshall also added they have worked to make sure the pen and coop will not be an eyesore. When Mr. Hesser questioned if Mr. Marshall already has ducks on his property, Mr. Marshall stated they currently have three ducks. Mr. Lyon questioned if Mr. Marshall is opposed to limiting the number of ducks to six, and Mr. Marshall responded they are not opposed to the restriction.

Lisa Chaney, 23271 Rebecca Drive, Elkhart, came on to be heard for the petition. Mrs. Chaney stated she was happy to have the Marshalls and their ducks as neighbors. She went on to say they have never had an issue with the ducks. She stated there is never an odor and, the ducks do quack but other neighbors' dogs are louder. She went on to say they have a special needs child and the ducks have helped her with her agitation and communication skills.

Ruth Lee, 4318 Midway Road, Elkhart, came on to be heard. Mrs. Lee stated she is backyard neighbors to the Marshalls. She went on to say they are good with the ducks. She has four children who love the ducks. She also brought up that her dog is louder than the ducks.

Eileen Shank, 4328 Midway Road, came on in opposition. Mrs. Lee submitted paperwork including a petition with 11 neighbors signatures [*attached to file as Remonstrator Exhibit #1*]. Mr. Miller questioned where she lived in relation to the Marshalls. Mrs. Shank pointed to the location of her property on the aerial. She stated after researching ducks she found they are extremely messy, and need a body of water. She went on to say the duck pen is up against the Goshen City limits. She wishes the board to take a look at the size of the lot and number of ducks. She stated she would want a minimum of two or fewer ducks, because they attract wild animals. Mrs. Weirick questioned if Mrs. Shank has noticed an issue with the ducks that are currently on the property, and Mrs. Shank stated she had not noticed the ducks currently on the property.

Sally Good, 23266 Rebecca Drive, came on in remonstrance. Mrs. Good stated she has lived there since 1971. She went on to say she knew they had the ducks on their property. She is against the ducks and, believes farm animals do not belong in a subdivision. She believes only dogs, cats, and rabbits should be allowed. Mrs. Good also questioned how the board planned to enforce the limit of six ducks. Mr. Campanello stated he lives in Goshen and Goshen City allows chickens. Mrs. Good questioned how having farm animals in the subdivision will affect property values. Mr. Miller stated they are not arguing about how it will affect property values.

Mr. Auvil noted this petition would be allowed by right in Goshen City without any Board of Zoning Appeals action.

Betty Huffman, 60070 Sherwood Dr., came on in remonstrance, and stated she lives across the street from the petitioners. She believes ducks are dirty animals and does not appreciate having them there. She went on to say she has been told ducks can contaminate a well. Mrs. Huffman also stated she had a number of people against the petition who could not make it to the meeting.

Bill Lantz, 23255 Rebecca Drive, came on in remonstrance. Mr. Lantz stated he is opposed to having ducks in the area. He also questioned how many neighbors were notified of

the petition. Mrs. Britton noted 29 neighbors were notified within 300 ft. of the property. He went on to say it is not an agricultural area, and he is against having ducks in the area.

In response, Mr. Marshall stated society is taking the direction of urban farming. He went on to say people geared towards urban gardening would value a home or neighborhood where the keeping of ducks or like animals is allowed. Mrs. Weirick stated “argiburb” is the term used to describe what the petitioner is saying.

The public hearing was closed at this time.

Mr. Hesser commented he is concerned the petitioner is not experienced in raising ducks. He went on to suggest a time limit in order to see how the petitioner is doing. He suggested the landowner needing a renewal after a year or two. Mrs. Weirick stated she is ok with the added constriction. She also mentioned she has had roommates with rabbits and turtles which smell worse than ducks. She went on to stress that Elkhart County promotes 4-H and agriculture. Mr. Miller stated he does not see the need for a time limit. He went on to say he has witnessed the interaction of children with special needs and farm animals and says they provide incredible results. Mr. Campanello stated, if no time limit is imposed and a problem arises, people will come in to complain.

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 ducks on a tract of land containing less than three acres in an R-1 district 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. Approved in accordance with the site plan submitted (dated 6/10/16) and as represented in the Special Use application.
2. Limited to six ducks at any one time.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon.

**No:** Randy Hesser.

6. The application of *Evan Stutzman and Natalie Stutzman* for a renewal of an existing Special Use for a home workshop/business for a fish farm on property located on the East side of South Main Street, 346 ft. South of Spring Street, common address of 416 South Main Street in Middlebury Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0293-2016*.

There were 29 neighboring property owners notified of this request.

The petitioner was not present.

Mark Salee, Town Manager of Middlebury, appeared neither opposition nor approval, but to request another one year restriction if the petition is approved. He believes they have not

started production at all in the facility. He also stated he does not know how the board can approve it without the restriction because; they still do not know how the fish farm will affect the neighborhood.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser agrees with the time limit requested by Mr. Salee. He stated he does not have a problem with it, and noted Mr. Stutzman will have to pay another fee next year. Mrs. Weirick stated she approves with the additional commitment of a one year restriction.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a renewal of an existing Special Use for a home workshop/business for a fish farm 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. Approved in accordance with the site plan submitted (dated 6/10/16) and as represented in the Special Use application.
2. Approved for a period of one year with renewal before the Board.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

7. *Logan Rees and Lisa Rees, Husband and Wife (Lessor) and States Tower (Lessee)* for a Special Use for a wireless communications facility on property located on the East side of CR 19, North of CR 8, common address of 53792 CR 19 in Washington Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0303-2016*. He added an additional commitment that a drive way permit be obtained from Elkhart County Highway if a driveway is necessary.

There were five neighboring property owners notified of this request.

Brian Donley with Insite, 660 Midwest Rd. Oakwood Terrace, IL, was present representing the petitioners, and stated the residence of Elkhart County have requested improved wireless coverage in their area. He went on to say the lack of coverage has been a frequent source of customer complaints in this area. Mr. Donley stated at this point the amount of towers in Elkhart County cannot provide the quality of service Verizon strives to provide. He also added at some point the only way to improve the coverage is to install more equipment in the air. He went on to say this tower will help to improve coverage for both Verizon and any collocation in the future. Mr. Donley shared that 97% of Americans have mobile phone, 40% of homes only use their cell phones for communication, and 70% of 911 calls are made with a cell phone. He continued to say the towers can provide a location and a call back number for the 911 dispatchers. He stated it also routes the call to the closest emergency responders.



Tiffany Nead, 53830 CR 19, came on to be heard in remonstrance. Mrs. Nead stated she has Verizon cell service, has never dropped a call, and has perfect service. Mrs. Nead is opposed to the tower because of health issues and resale value of her property. She went on to say the Rees' own a large piece of property and she wishes the tower not be placed next to her house. Mrs. Nead questioned what the laws state about the location of cell towers next to historic sites. Mr. Hesser responded that the Board does not know the answer to that. Mrs. Nead stated she has tried to research it and, believes it's a mile distance restriction.

Babbette Slaughter, 20911 CR 8, was also present in opposition. Mrs. Slaughter inquired about the number of letters sent to neighbors. Her main concern was that an alternate property was not considered. While gaining signatures for a petition the main complaints heard were from East View subdivision, which is at a lower level. She went on to say the tower site is at a higher elevation than the subdivision. She then proceeded to show an aerial of 4G services for Verizon that showed the whole area being covered. Mrs. Slaughter stated she asked Mr. Donley how the location had been chosen, to which he stated in this case, the landowner contacted him about a tower. She then asked how the location on the Rees' 60 acre property was chosen. Mr. Donley responded saying the location was chosen by the owner. Mrs. Slaughter would request the Board consider other locations to determine, if that is the best location to help those in need of better service. She went on to say she had looked for other towers in the area and found two by the Toll Road and RV museum, one on County Road 21 by the factories, and one at Pine Creek on 17 right off of the bypass. Mrs. Slaughter stated those towers are not by residences. She went on to suggest placing it in the woods away from their two houses. She submitted pictures and views out of her windows and back porch. [attached to file as Remonstrator Exhibit #1] Mrs. Slaughter also mentioned her daughter is a 911 operator, and has had no issues or complaints with service in this area. She also asked the 911 administrator who agreed with her daughter. She went on to say she has no cell phone but has a land line. Mrs. Slaughter stated she has a problem with that exact location. The tower is 20 ft. from the power lines, and she is concerned the tower might bring down the power lines. Mr. questioned if she was aware there is a 50 ft. easement on that site. Mrs. Slaughter responded saying she understands they are in cooperation with the standards, but does not understand why they have a choice to meet the maximum standard and are not doing so. She went on to say the land owners reside in Chicago and not in the area. She also stated she is concerned about the tower not being inspected yearly after the initial inspection. Mrs. Slaughter asked Mr. Donley how he monitors the towers. He told her the tower is monitored by remote, and if they see something happen they are to call the local authorities. Mrs. Slaughter then questioned if they will be required to have liability insurance and what amount. She went on to say this will destroy her ability to enjoy her home. She also wishes they deny the petition because Cressy & Everett told her property values generally go down 10% when a tower is put up near a property. She also stated she has a fire pit, a swimming pool, and spends a lot of time outside. Mrs. Slaughter stated she wants proof that other locations were researched and why this location was chosen. She recognized the tower is meeting the minimum standard, but believes with all of the Rees' property they should be going above the minimum standard. She also brought up the fact that the drawings in the file only showed 3 electric towers when there are actually 6 towers. The drawings on the location of the cell tower also do not match. She also went on to state that she went to nearby homes, with a petition which she submitted and all but 2 neighbors were opposed to the location. [attached to file as Remonstrator Exhibit #2]

In response, Mr. Donley stated the tower is also proposed for not only coverage issues but also capacity issues during peak times. He went on to say in terms of being located by a historic site the towers are approved by the FAA, FCA, and designed with Zoning Ordinances in mind. Mr. Campanello questioned if the property is a residence or just an open field. Mr. Donley stated the property is an open field. He went on to say he is often asked about the locations they chose to place the towers. He also stated it ultimately comes down to where someone agrees to lease them space. He brought up the original proposed placement of the tower was within the trees. However, the location in the trees would interfere with the property owner's future plans for the property. Mr. Hesser asks about Mr. Donley's authority to offer a different location. Mr. Donley replied he had tried to either move it to a different location on the property or to move it to another location all together. He also stressed they are almost twice the requirements by Elkhart County. Mrs. Weirick asked how likely the tower is to fall on the neighbor's fence. Mr. Donley stated the tower is not even tall enough to fall onto anyone else's property. Mr. Campanello questioned whether the tower collapses on itself rather than falls over. He responded the drawings submitted show that. Mrs. Weirick also asked about ability to place greenery that matches the landscape better. He responded they can have a revised landscaping site plan made up.

The public hearing was closed at this time.

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

**Motion: Action:** Approve, **Moved by** Denny Lyon, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a wireless communications facility be approved. **None seconded.** Motion dies for lack of a second.

Mr. Hesser stated he finds ground for denial based on the location. Mr. Campanello questioned whether the land owner receives compensation for the tower being on their property. Mr. Donley stated there is a lease agreement in place where they receive money. Mr. Campanello questioned if the land owner could move the location. Mr. Donley stated they can move it. Mrs. Weirick made it clear they are not denying it to be against the land owner. Mr. Hesser stated they rarely deny cell towers, but the owners need to make an effort to keep it away from the neighbors. He went on to say it almost spites the neighbors.

Attorney Kolbus noted Board has to list negative findings of fact.

**Motion: Action:** Deny, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for a Special Use for a wireless communications facility be 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.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. This is a large, 58-acre parcel and all property line setback requirements are met.

3. The Special Use will substantially serve the public convenience and welfare by providing wireless communication services to the area

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Randy Hesser.

**No:** Denny Lyon.

8. The application of *Vincenta Aguilar* for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing less than three acres on property located on the North side of Sunset Strip, 400 ft. West of CR 5, 4,600 ft. North of Bristol Street (CR 10), common address of 27251 Sunset Strip in Osolo Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0298-2016*.

There were 16 neighboring property owners notified of this request.

Vincenta Aguilar, 27251 Sunset Strip, came on to speak for the petition and was translated. Mrs. Aguilar stated she does not believe the chickens hurt anyone, she takes care of the chickens, and she keeps the area clean. She went on to say she does not agree with the letter she received which stated the chickens makes the neighborhood look ugly. She also mentioned she believes her house is one of the better kept houses in the neighborhood. Mr. Hesser questioned how many chickens the petitioner already has on the property. Mrs. Aguilar stated she has three chickens currently on the property, and she agrees with restriction of six chickens. Mrs. Weirick questioned if the petitioner was ok with the restriction of no roosters. Mrs. Aguilar responded she will find a new home for the rooster in a few weeks.

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** Suzanne Weirick, **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 chickens on a tract of land containing less than three 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. Approved in accordance with the site plan submitted (dated 6/10/16) and as represented in the Special Use application.
2. Limited to six chickens at any one time: no roosters.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

9. The application of *Waypoint Community Church* for an amendment to an existing Special Use for a church to include outdoor recreational uses; playground, soccer fields, softball

fields, and other recreational areas on property located on the West side of CR 29, 600 ft. North of US 20, common address of 56893 CR 29 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0309-2016*.

There were 15 neighboring property owners notified of this request.

Blair Carlstrom, 56893 CR 29, came on representing the petition. Mr. Carlstrom stated they would like to act on two projects. He then showed an existing pavilion, a proposed playground, and a proposed utility field on the aerial. He stated they do understand their neighbor to the west would have the most impact, and they plan to place a berm and trees along that part of the property. Mr. Carlstrom also stated the plan is two to three years down the road and would be done sequentially according to use and need. He included based on use they may also extend the soccer field and add a softball field, which they added into the plan to show their long term goal. Mr. Miller questioned if the church had considered putting in lights in that area. Mr. Carlstrom stated they do not plan to put in any lights, because they do not want anyone to have to be on the property late at night. However, he did state they have lights on the back parking lot, but they are intended for security purposes only. When Mr. Miller questioned if there would be any restrooms, Mr. Carlstrom responded there would be no restrooms installed, but they will provide a porta-potty. Mr. Campanello questioned if there would be any additional parking added. Mr. Carlstrom stated they have over four hundred people for a weekend service, and he believes there would be enough parking. He also added there may be a future donation of land for possible parking, but more parking is just a conversation at this time. Mr. Campanello questioned the main goal for approval now. Mr. Carlstrom stated at this point they are seeking approval for the playground and auxiliary field not the soccer fields at this time.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the pavilion was a minor change, but this is an amendment. Mr. Campanello stated he would like to approve the plans at this time, but have the church come back when they are ready for the soccer fields. Mrs. Weirick questioned if Mr. Campanello is worried about parking. He responded saying that is one concern, but he is also concerned with approving the soccer fields since they are still future plans. Mrs. Weirick stated she does not see a need for them to come back later, because the neighbors have already been notified. She also noted that the existing parking for 400 is a sufficient amount of parking for what they are proposing.

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

**Motion: Action:** Approve, **Moved by** Suzanne Weirick, **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 church to include outdoor recreational uses; playground, soccer fields, softball fields, and other recreational areas 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. Approved in accordance with the site plan submitted (dated 6/17/16) and as represented in the Special Use application.

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

**Yes:** Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

**No:** Tony Campanello.

10. The application of *Helena Chemical Company* for an amendment to an existing Special Use for an agri-business in an A-1 zoning district on property located on the West side of SR 13, .24 mi. South of CR 34, common address of 63239 SR 13 in Clinton Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0316-2016*.

There were nine neighboring property owners notified of this request.

Dustin Miller, DJ Construction, 3414 Elkhart Rd., Goshen, was present representing the petitioners who were also present. Mr. Miller stated an old farm house is currently being used as their office. They are planning to build a new office structure and remove the old structure. He went on to say the existing office structure is old and rundown, because of this renovation of the building was not an option. Mr. Hesser questioned if they are already selling lawn care products. Mr. Miller stated the business is already doing some retail sales.

Mr. Miller requested a condition instead of any commitment. He went on to request the process be sped up and to obtain the foundation release/permit prior to the commitment. Mr. Auvil agreed they can pull a foundation permit before the commitment is returned. However, if the commitment is not returned, the permit will be revoked.

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** Suzanne Weirick, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for an agri-business in an A-1 zoning district 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. Approved in accordance with the site plan submitted (dated 6/21/16) and as represented in the Special Use application.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

11. The application of *Gary A. Miller and Cynthia K. Miller, Husband and Wife* for a Use Variance to allow for the construction of an accessory structure without a residence on property located on the South side of Cornwall Road, 1,300 ft. North of CR 2, 1,700 ft. West of CR 23,

common address of 50770 Cornwall Road in Washington Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0277-2016*.

There were 19 neighboring property owners notified of this request.

Cindy Miller, 50770 Cornwall Road, Bristol, was present on behalf of this petition. Mrs. Miller stated they would like to build 30'x48' pole barn on the property right across the street from their residence. The property is currently vacant. Mr. Miller questioned if they were planning on joining the two properties together on the deed. Mrs. Miller agreed to the deed restriction.

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 Use Variance to allow for the construction of an accessory structure without a residence 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. Approved in accordance with the site plan submitted (dated 6/6/16) and as represented in the Use Variance application.
2. The Real Estate must be tied together with Grantor's Lot 4 in Cornwall's First Addition with a deed restriction.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

12. The application of *Merle D. Schwartz and Jolene K. Schwartz* for a Use Variance to allow for the construction of a second dwelling on a parcel and a 25 ft. Developmental Variance to allow for the replacement of the primary residence 50 ft. from centerline of the right-of-way of CR 56 (Ordinance requires 75 ft.) on property located on the South side of CR 56, 2,300 ft. West of CR 17, common address of 22464 CR 56 in Union Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0301-2016*.

There were four neighboring property owners notified of this request.

Joas Miller, 4085 W 1350 N, Milford, was present representing the petitioners. Mr. Miller stated they want to tear down the old home and build the new home in the same spot. Mr. Hesser questioned why this petition did not fall under the dawdy house rule. Mr. Miller replied it does not qualify as a dawdy house, because they are making the house larger. Mr. Hesser questioned if the people living in two houses on one parcel need to be related. This was confirmed. Mr. Hesser then questioned if homes grandfathered into this rule were allowed to be

rebuilt. Mr. stated they do allow the dawdy house with an agreement. Mr. Miller brought up the fact that it is not the dawdy house being rebuilt, but the main house, and the dawdy house will be used for the petitioners' in-laws to live in. Mr. Hesser questioned if Mr. Miller was against limiting the dawdy house to family members. Mr. Miller agreed to the new restriction. Mr. Auvil brought out the fact the house was not safe to live in and has to be rebuilt. Mr. Hesser stressed he does not want this house to be rented out to non-family members in the future.

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** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel 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. Approved in accordance with the site plan submitted (dated 6/13/16) and as represented in the Use Variance application.
2. The second house, referred to as the dawdy house, will be restricted to family members only of the owners/occupiers of the primary residence on the Real Estate.

Further, the motion also included that a 25 ft. Developmental Variance to allow for the replacement of the primary residence 50 ft. from centerline of the right-of-way of CR 56 (Ordinance requires 75 ft.) 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 taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the Building Permit (where required).
2. Approved in accordance with the site plan submitted (dated 6/13/16) and as represented in the Developmental Variance application.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

13. The application of *Jesse L. and Rebecca M. Denlinger* for a 20 ft. Developmental Variance to allow for the construction of an accessory structure 55 ft. from centerline of the right-of-way of CR 30 (Ordinance requires 75 ft.) on property located on the North side of CR 30, 5,025 ft. West of CR 15, common address of 61964 CR 13 in Harrison Township, zoned A-1, came on to be heard.

Mr. Auvil stated that the petitioners have requested this matter be tabled.

The public hearing was closed at the previous meeting.

There were no remonstrators present.

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

**Motion: Action:** Table, **Moved by** Randy Hesser, **Seconded by** Suzanne Weirick that this request for a 20 ft. Developmental Variance to allow for the construction of an accessory structure 55 ft. from centerline of the right-of-way of CR 30 (Ordinance requires 75 ft.) be tabled until the August 18, 2016, Elkhart County Advisory Board of Zoning Appeals meeting at the request of the petitioner.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

14. The application of *Matthew Burkholder (Buyer) and Hochstetler Family Limited Partnership No. 2 (Seller)* for a Special Use for home workshop/business for machine repair, for a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of workshop building, and for a Use Variance to allow for the construction of a second dwelling on a parcel on property located on the North side of CR 50, 1,355 ft. East of CR 3, common address of 28609 CR 50 in Locke Township, zoned A-1, came on to be heard.

Mr. Auvil reported the petitioner submitted a request to withdraw.

The public hearing remained open at the previous hearing.

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 Special Use for home workshop/business for machine repair, for a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of workshop building, and for a Use Variance to allow for the construction of a second dwelling on a parcel be withdrawn at the request of the petitioner.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

15. There were no items transferred from the Hearing Officer.

16. As a staff item, Mr. Auvil presented the request for a minor change to an existing Special Use for Glen Fry (SUP 2015-15472) Mr. Auvil stated this is a request to change the dimensions from 60'x100' (6,000 sq. ft.) to 75'x80' (6,000 sq. ft.) and to move the building 20' back from the property line from the original site plan. Mr. Hesser questioned if there were any objections by neighbors to this request. Mr. Auvil responded there have not been, the reason this is before the board is because he is moving the building more than 10ft.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Suzanne Weirick that the board approve the request as a minor change.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.



17. The meeting was adjourned at 11:17 a.m.

Respectfully submitted,

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Laura Gilbert, Recording Secretary

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Randy Hesser, Chairman

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Tony Campanello, Secretary