

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16TH DAY OF AUGUST 2018 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; Matt Shively, Planner; Mae Kratzer, Planner; Duane Burrow; Planner, Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

Absent: Tony Campanello.

2. A motion was made and seconded (*Lyon/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19th day of July 2018 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Atha/Lyon*) 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 **Brett L. Haines** for a Special Use for a kennel on property located on the North side of CR 26, 2,340 ft. West of CR 13, common address of 24437 CR 26 in Concord Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0476-2018*.

There were 20 neighboring property owners notified of this request.

Mr. Godlewski mentioned Staff received two letters in remonstrance that he will submit after the petitioner speaks.

Alex Hoover, Mr. Haines' attorney, was present on behalf of this request along with the property owner, Brett Haines. Mr. Hoover stated Mr. Haines would like a Special Use to exceed the number of dogs allowed. He mentioned this property has been the subject of several complaints, which Mr. Haines is working with the county to rectify. He explained Mr. Haines has an agreement with the courts to move his equipment to the back yard and finish constructing a storage building before January 1st. He continued saying both goats mentioned in the complaint have been removed, and he stressed the only problem left to handle is the number of dogs. Mr. Hoover stated the only outside dog left is a german shepherd named Thor who is kept in a kennel. He went on to say the red tick hound was removed from the property, because he was causing too much noise. He added the petitioner also keeps twelve dogs inside his residence that he lets outside for 15 minutes to an hour to use the restroom and exercise. He stressed each dog is under 20 lbs., and he clarified Mr. Haines owns one large dog and twelve small dogs. He added the smaller dogs are rarely seen, and they never leave them outside unattended. He mentioned Mr. Haines purchased a bark collar for the larger dog, and he believes it is showing improvement. He stressed the amount of noise was drastically reduced when the red tick hound was removed and the german shepherd started using a shock collar. Mr. Hoover stated he

understands the next door neighbor erected a privacy fence, and he communicated to the petitioner that he no longer hears any noise. He then submitted pictures of the kennel the german shepherd is currently kept in to the Board *[Attached to file as Petitioner Exhibit #1]*. He stated they agree with the Staff Analysis, and he believes this request will have no impact on the neighboring properties since a majority of the dogs are kept inside. He added he understands the only neighbor that was complaining, no longer has a problem with the request. Mr. Campanello asked which neighbor complained, and he responded Jeff Chupp, the neighbor to the east. Mr. Lyon clarified the property is fenced in, keeping the dogs inside the yard. Mr. Hesser asked if the inside dogs are kept as pets or used for breeding. Mr. Hoover responded pets, and he stressed seven of the dogs are 10+ years old. He continued saying Mr. Haines does not plan to acquire any more dogs. Gertrude Calhoun, 60027 Circle R Ln., came on with questions. Mrs. Calhoun asked if a kennel will be placed in the back yard similar to the existing one. She also asked if the dogs will be kept outside, susceptible to the weather.

Mr. Godlewski then submitted two letters in remonstrance. The first letter was from Jeff and Leah Jossely at 24391 CR 26 *[Attached to the file as Remonstrator Exhibit #1]*, and the second was from Gynelle Slayton, 24406 Lynn Dr. *[Attached to the file as Remonstrator Exhibit #2]*.

Mr. Hoover came back on and clarified the request is not for a second kennel. He explained the smaller dogs are kept inside the residence, and only the german shepherd is kept outside in a kennel. Mr. Miller asked if the plan is for a front and a rear kennel, and Mr. Hoover stressed all he needs is the existing kennel. Mr. Hesser stated Mrs. Calhoun assumed a new building was part of the request for a kennel. He continued saying a Special Use for a kennel does not always include a new facility, and it is often simply to have more dogs than allowed. He again stressed a new building is not part of this request. Mr. Hesser stated the Staff Report mentioned kennels are allowed subject to limitations, and he asked why no limitations were listed. Mr. Godlewski responded the Board can add limitations as Conditions or Commitments. Attorney Kolbus pointed out the petition is granted in accordance with the application, including the questionnaire, which asks for fifteen dogs. He added the Board can limit approval to less than fifteen, if they do not feel comfortable approving that many. He mentioned the questionnaire also states that only one dog will be kept outside. Mr. Hesser stated the property appears to be in a subdivision, and he asked about covenants. Mr. Haines responded he is not aware of any. Mr. Lyon mentioned it is an older subdivision, and Attorney Kolbus suggested the covenants are probably no longer enforced. Mr. Miller stated both letters in remonstrance complain about the noise, and Mr. Hoover suggested they may have been written before the red tick hound was removed from the property. Mr. Hesser asked how long he has owned the dogs, and Mr. Haines responded it varies. Mr. Atha asked how long he has had ten or more dogs, and he responded around five or six years. Mr. Miller mentioned a lot of equipment is parked outside with small a few buildings in the back, and he is now seeking approval for a kennel. Mr. Hoover stated the only kennel on the property is for the german shepherd. Mr. Hesser stressed the oral presentation is also part of the Special Use Conditions.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated Mr. Haines is requesting a lot of dogs. However, he continued he has owned them for a while, and they typically stay inside. He continued saying, if this request is approved, he would remove the second sentence from Finding #2, because he believes it is an

argument against the request. Mr. Miller mentioned the property is very un-kept. Mr. Godlewski stressed the complaint is in the process of being rectified, and Mr. Miller responded a court order was needed to clean up the property. He stressed this is in a residential neighborhood. Attorney Kolbus clarified the court order was an agreement between the petitioner and the county, and a majority of the mentioned equipment is classic tractors that will eventually be stored inside. Mr. Miller pointed out an old truck in the pictures, and he clarified the county worked with the petitioner to construct a building for equipment storage. Mr. Atha pointed out a Special Use for a kennel runs with the property. Mr. Hesser mentioned a time limit could be added to the request. Attorney Kolbus stressed approval of this request is in accordance with the application, which holds them to 15 dogs and the site plan. Mr. Miller asked if the Board can restriction approval to the current dogs only, and prohibit any additional dogs. Attorney Kolbus responded it is an option, and it should be added as a commitment. Mr. Atha stressed it should be approved for personal use only. Mr. Hesser mentioned pet boarding opportunities should also be removed from Finding #3, since it is not part of the request. He also suggested stopping Finding #3 at welfare and removing the second sentence from Finding #2. Mr. Miller added he would like to add a commitment restricting approval to the dogs currently on the property. Mr. Godlewski pointed out after the existing animals pass the petitioner is allowed to have a maximum of five dogs by right.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** Roger Miller that this request for a Special Use for a kennel be approved in accordance with the Staff Analysis and the following Findings and Conclusions as amended by the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance. Kennels are allowed by Special Use, subject to limitations, in the A-1 zoning district.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will substantially serve the public convenience and welfare.

The following condition was imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 7/12/18) and as represented in the Special Use application.
2. Petitioner is limited to the thirteen (13) dogs that are currently on the property, any additional dogs are prohibited.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

5. The application of *Curtco, LLC* for an amendment to an existing Special Use for warehousing and storing for a mini storage facility to allow for the construction of an additional

building on property located on the East side of SR 13, 410 ft. South of CR 42, common address of 216 S. Benton St. in Benton Township, zoned A-1, B-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0473-2018*.

There were 22 neighboring property owners notified of this request.

Curt Haberstich, 68530 US 33, was present for this request and stated he would like to construct a new storage building. He continued saying his current building is full, and he has started turning people away on a regular basis. He stressed the additional building is needed. Mr. Lyon asked if 133 ft. meets the setback requirements, and Mr. Godlewski responded yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the Staff Report lists the proposed improvements as a single family residence and existing land use as residential. He pointed out no residence is proposed, and the current use is commercial not residential. Mr. Godlewski responded the Staff Report is incorrect. Mr. Hesser stated the surrounding land use is also commercial, and the buildings to the north and west appear to be used for business or manufacturing. He then clarified the request is for a stand-alone storage facility. He asked if any complaints were received against the existing facility, and Mr. Godlewski responded no.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **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 an amendment to an existing Special Use for warehousing and storing for a mini storage facility to allow for the construction of an additional 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. Approved in accordance with the site plan submitted (dated 7/12/18) and as represented in the Special Use Amendment application.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

6. The application of *John A. & Rebecca S. Bender* for an amendment to an existing Special Use for a home workshop/business for small pet grooming to add outside employees and increase the number of dogs groomed on property located on the East side of CR 9, 450 ft. North of CR 126, common address of 60418 CR 9 in Concord Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0464-2018*.

There were 18 neighboring property owners notified of this request.

Becky Bender, 60418 CR 9, owner of Concord Custom Clips Dog Grooming was present for this request. Mrs. Bender explained she would like permission for two more employees than

previously approved to allow her to step back. She continued saying the extra employees will add about six to seven more dogs groomed per day. She added they work three days a week sometimes four. She explained they installed a turn-around to prevent customers from backing out onto CR 9. Mr. Miller mentioned the property is well kept. Mr. Hesser stated the questionnaire does not address sign size. Mrs. Bender responded the sign is existing, and it conforms to what was allowed when it was constructed. Mr. Hesser asked why this petition requires an amendment when she is only asking for two employees. Mrs. Bender mentioned staff informed her she would not need to go before the Board, but she was later told the Board decided a hearing was required. Attorney Kolbus clarified the request was brought before the Board as a minor change, and it was determined to be major. Mr. Hesser asked if original approval allowed for any outside employees. Mrs. Bender stated she believes the concern was the increased number of dogs groomed per day, and the possibility of increased traffic. She went on to say some owners have more than one dog and bring them in together.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the Board sometimes determines a request a major change to give the neighbors an opportunity to voice their concerns. Mrs. Bender mentioned she has not heard any complaints. Attorney Kolbus pointed out the petition was originally approved in 2005.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **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 small pet grooming to add outside employees and increase the number of dogs groomed 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 7/9/18) and as represented in the Special Use amendment application.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

7. The application of *Ana L. Santiago Martinez* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres located on the East side of Donna St., 420 ft. South of Treva St., West of CR 5, common address of 50648 Donna St. in Cleveland Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0475-2018*.

There were 18 neighboring property owners notified of this request.

Miguel Quiroz, 50648 Donna St., came on as the owner of the chickens. He stated raising the chickens was his wife's idea. He explained about four years ago he worked as a maintenance manager for a company, but he was fired, which caused him to become depressed.

He continued saying his father then passed away causing his depression to worsen, and his wife decided he should raise chickens at that time. Mr. Miller clarified his chickens are therapeutic, and he asked how he ended up with so many. Mr. Quiroz responded they really help him, and he is aware someone complained about the number of chickens. He continued saying he spoke to his neighbors before he started raising chickens, and they did not express any concerns. Mr. Miller stated the petitioner would like permission to keep forty of his chickens, and he asked about the turkeys mentioned in the questionnaire. Mr. Quiroz responded he is not asking for approval for the turkeys, because several wild ones frequent the area. He then submitted his Mexican Engineering License *[Attached to file as Petitioner Exhibit #1]*. He also submitted some of his medical records *[Attached to file as Petitioner Exhibit #2]*. Mr. Lyon pointed out the staff recommendation is for twelve chickens, but Mr. Quiroz would like permission to keep more.

Ralph Ortiz, 50672 Donna St., one of the adjoining neighbors was present in favor of this request. He stated his son also lives in his residence, and he is not opposed to the chickens. He added they receive eggs for a good price, and they do not have any problems with the request.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he is leaning towards approval of this request for forty chickens, because all of the neighbors are in favor of it. He pointed out the application included letters from all of the neighbors in support of this request. Mr. Hesser asked if the back section of the property is fenced in, and if the Mr. Quiroz lives in this residence. Mr. Quiroz responded yes to both questions. Mr. Hesser stated he agrees with Mr. Miller since all of the neighbors are in favor of this request. He asked if any letters were received in opposition, and Mr. Godlewski responded no. Mr. Hesser stated this is a small piece of property, but several chickens can be kept in a small area. Mr. Atha asked how he plans to dispose of manure. Mr. Quiroz stated he collects it to use as fertilizer on his garden and tree line. He stated his wife also had the idea to plant a garden. He then pointed out the tree line on the aerial, along with the fenced-in area for the chickens, which is approximately 2/3 of his property. Mr. Atha stated his initial thought was that this was a farm not a hobby due to the number of birds on the property. Mr. Hesser mentioned the petitioner had 184 chickens, and Mr. Lyon added no remonstrators are present. Mr. Atha stated the request is for forty chickens. Mr. Hesser asked about adding a time limit to revisit this request. Mr. Miller responded he agrees adding a time restriction in case the area changes, and the neighbors are no longer in favor of this request. He suggested a five year time period. Mr. Hesser clarified the motion should be for forty chickens, no roosters. He also suggested the second sentence of Finding #2 be removed.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Denny Lyon that this request for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres be approved in accordance with the Staff Analysis and the following Findings and Conclusions as amended by the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance. Agricultural use for the keeping of animals (chickens) on a tract with less than three (3) acres is allowed by Special Use in the A-1 zoning district.

2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will substantially serve the public convenience and welfare by providing for local sources of food and hobby/recreational opportunities.

The following condition was imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 7/12/18) and as represented in the Special Use application.
2. Limited to a maximum of forty (40) chickens at any one time, no roosters.
3. Approved for a period of five (5) years with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

8. The application of ***Richard J. & Julie D. Bontrager*** for a Special Use to allow for the placement of ground-mounted solar panel arrays on property located on the South side of CR 28, 450 ft. West of CR 33, common address of 15346 CR 28 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0490-2018*.

There were 12 neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 8015 W. 13 N., Nappanee, was present representing Richard Bontrager. Mrs. Salyer stated the solar array will be placed 10 ft. from the rear property line to be less visible. Mr. Miller asked what the system will power, and she responded the residence to the north. She stated the petitioners' son is purchasing the entire property. Mr. Miller clarified the petitioners do not want the solar panels close to their residence.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser mentioned the petitioners want to keep the solar array out of sight, but they moved it closer to some of the residents to the south. However, he continued saying no neighbors are present in opposition.

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 to allow for the placement of ground-mounted solar panel arrays 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 7/16/18) and as represented in the Special Use application.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

9. As a staff item, Mr. Godlewski presented the request to change the addition size shown on the site plan for **John L. Miller** (SUP-0331-2018). He explained the request is to change the size of two additions from ~~36x44~~ & ~~10x16~~ to one ~~36x56~~ addition. He continued saying the addition will be used for a home workshop Special Use for a cabinet manufacturing business. He stated the request is to increase the approved square footage by 272 sq. ft., because a tree was removed from the property making room for the addition. He added the letter and site plan are attached. Mr. Hesser stated the site plan is unclear, and he questioned the original site plan. He mentioned the request references two separate additions, but the new site plan only shows one. He asked where the ~~10x16~~ addition was originally placed, and Mr. Godlewski responded he would assume it remains. Mr. Hesser pointed out the request is to change the addition from a ~~36x44~~ and ~~10x16~~ to ~~36x56~~. He asked where the ~~10x16~~ addition was located on the original site plan. Mrs. Britton presented the Board with the approved site plan from the file. Mr. Hesser clarified the request is to add a ~~36x56~~ addition to the existing ~~24x36~~ building. He clarified the ~~10x16~~ addition was removed from the site plan. He also mentioned the new addition will not be any closer to the neighboring property.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha that the Board approve the request as a minor change.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

10. Mr. Godlewski presented the request for a minor change for **Howard M. & Ida A. Yoder** (SUP-0223-2018). He explained the request is to change an addition on the site plan from ~~26x32~~ to ~~30x32~~ for a bakery home workshop business. He added the change is an increase of 128 sq. ft. He continued saying the letter and site plan are attached. Mr. Atha stated the addition will not move any closer to the road.

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 approve the request as a minor change.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser

11. Mr. Godlewski mentioned Jason Auvil completed his two year long managers training, which was held on the third Thursday of every month. He continued saying he will start running the meetings again next month.

12. The application of *Elwood J. Kauffman & Darlene K. Kauffman as Co-trustees of the Kauffman Trust Revocable Trust Agreement* for a Special Use for warehousing and storing of RVs/trailers on property located on the North side of CR 36, just East of CR 43, common address of 63716 CR 43 in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0489-2018*.

There were nine neighboring property owners notified of this request.

Elwood Kauffman, 12571 CR 42, was present for this request along with his wife Darlene Kauffman. Mr. Kauffman stated he grew strawberries for 4-H at a young age. He continued saying as he began thinking about retirement some stone became available, and he thought it could be used as driveways for a u-pick strawberry patch. He stated as he was planning for the patch, rumors started that he was going to operate an RV storage lot. He added he thought that would be a good use of the property, since strawberries take two years to grow. Mr. Atha asked if the u-pick strawberry patch will be in the same place as the RV storage lot. Mr. Kauffman clarified the strawberries will be planted in a different area of the farm. Mr. Atha then reiterated stone will be laid down for the RVs. Mrs. Kauffman added the driveways will also be used as parking for the u-pick strawberry patch. She continued saying only a portion of their 120 acres will be used to park RVs; the remaining property will remain farm land. She went on to point out, which area they plan to use for parking on the aerial. She explained it is difficult to fit into the smaller section of ground due to the size of farm equipment. She also stressed only dealers will use the lot. Mr. Lyon asked if the parking area is fenced in. Mr. Kauffman responded it is not currently, but one requirement for RVs is that they be inside a fence. Mr. Hesser stated the proposed location for the fence is on the site plan. Mr. Kauffman responded the entire area will be fenced in. Mrs. Kauffman added they plan to construct a mound between the RVs and the road. Mr. Miller pointed out the Staff Report limits approval to 25 RVs per acre, and he asked how many acres will be used for storage. Mr. Kauffman responded the proposed parking area is approximately six acres, and Mr. Godlewski clarified 150 RVs is the maximum allowed on the property. Mr. Miller asked where the strawberries will be planted, and Mr. Lyon pointed out the patch will be on a different part of the property. Mr. Miller stated he is concerned about traffic on CR 43. Mr. Kauffman stated he contacted all of his neighbors on the north side of CR 43, and he has a list of the neighbors in favor of this request. He continued saying the RVs will travel 450 ft. of driveway after exiting CR 43 to reach the storage area, and he stressed that should prevent any traffic from being stopped on the road. Mrs. Kauffman then pointed out the gate location, off of the driveway, and she explained the direction trucks will exit the property to avoid shining their lights onto the neighbors' property. Mr. Miller asked if the lot will be available 24/7, and Mr. Kauffman responded he does not believe so. However, he continued they do not know the details or requirements of the operation yet. Mrs. Kauffman stated the dealers will need to communicate with them their drop off and pick up times. She stressed operations typically take place between 7 a.m. and 5 p.m. Mr. Hesser stated the application lists the hours of operation as 24/7. Mrs. Kauffman clarified they requested permission to operate 24/7 in case a pick-up or drop-off takes place outside of the previously mentioned hours. Mr. Atha asked if the Board can restrict hours of operation, and Mr. Hesser responded yes. Mr. Miller asked how that restriction would be enforced, and he mentioned a hauler will not wait until 8 a.m. to drop off an RV. Mr. Kauffman then request the

county install speed limit signs on that road, because he sees around ten vehicles an hour fly up and down the road. Mr. Hesser stated the Board does not have jurisdiction over speed limit signs, and he should speak to the Highway Department. Mr. Atha asked how long he intends to store RVs before turning that area into a parking lot for the strawberry patch. He also asked if both operations will take place at the same time. Mr. Kauffman stressed RV storage and strawberry patch parking will not be in the same area, because they do not want the RVs accessible to the public. He continued saying any parking for the strawberry patch will be outside of the fenced-in area. Mr. Miller again mentioned his concern about traffic on CR 43, and Mr. Kauffman stated it is not as busy as CR 38. He explained people use it as a connector road from CR 34 to CR 38, and he added some younger drivers use it as a drag strip. Mr. Lyon clarified CR 38 is south of the subject property, and he believes RV traffic will travel to/from that road. Mr. Miller asked about the signs mentioned in the questionnaire. Mr. Kauffman responded signs will be used to direct drivers through a one way entrance/exit to avoid traffic issues.

Kathryn Meranda, 63199 CR 43, a property owner ¼ mile north of the subject property came on in remonstrance. Mrs. Meranda submitted a petition in remonstrance signed by the surrounding property owners *[Attached to file as Petitioner Exhibit #1]*. She also submitted two letters in remonstrance from Glen & Jamie Reimer *[Attached to file as Petitioner Exhibit #2]* and Vernon & Leona Fry *[Attached to file as Petitioner Exhibit #3]*. Mrs. Meranda stated she moved to this area twenty-six years ago for its agricultural environment, because she was raised on a family farm in Ohio. She continued saying she wanted her children to be involved in livestock and 4-H clubs. She mentioned they trusted the agricultural zoning to protect them from commercial uses. She explained Mr. Kauffman started improving this property before requesting a Special Use, and she does not believe he will follow through with the strawberry patch. She stressed approval of this request will put residents who ride bikes, drive carts, and ride horse-back in danger. Mrs. Meranda explained Sweet Corn Charlies employs several younger Amish people who bike down CR 43 to work. She stressed they moved to this area for the county atmosphere, not for an industrial use, and she hopes the zoning laws will protect them. She went on to say this operation will cause their property values to decline. Mrs. Meranda stressed she enjoys sitting on her porch listening to the birds and horses, but large diesel trucks will pollute their family, friendly environment. She added Mr. Kauffman owns over ten acres in Millersburg, and she asked why this operation is not taking place on that property. She mentioned CR 43 has existing parking areas that are all grown up and unbecoming. She again stressed this is a bad idea, because it goes against zoning laws, which were put in place to protect the neighboring property owners. She continued saying this operation will endanger their children and decrease their property values. She added it will be unbecoming in addition to the noise, air, and land pollution it will produce. She stressed this operation will change the neighborhood culture and destroy the surrounding wildlife.

Allen May, 64582 CR 43, came on in remonstrance and stated he has lived on his property for about fifteen years. He stressed they moved to this location for the quiet, agricultural area. He explained he has worked in the RV industry his entire life, and he drives by storage lots every day. He continued saying most lots are currently at 25% capacity, and he questioned the need for another storage lot in a quiet, residential area. He added everyone in the neighborhood knows who is coming by the sound of the vehicle or horse, and he moved to this area for that reason. Mr. May stressed every unit on the property requires four truck trips,

because the truck has to travel to/from the lot to bring the RV and then again to remove it. He went on to say he would live on US 33 or US 20, if he wanted to see or hear the large trucks. He asked who will pay the depreciation of his residence.

Eric Bontrager, 64445 CR 43, Goshen, came on opposed to this request. Mr. Bontrager stated his wife signed the paper in favor of this request, but she was only told about the strawberry patch, not RV storage. He stressed his family is against storing RVs on this property. He continued saying this area is quiet and peaceful, and this operation will endanger his children. Mr. Hesser asked about cars speeding up and down the road. Mr. Bontrager responded it is not too bad, but during the evening a few vehicles speed through this area. He added most people know that a lot of bikes and buggies travel this road.

Mr. Atha asked for a show of hands from those present in remonstrance, and several hands were raised in the audience.

Mr. Kauffman came back on and stated he understands a lot of the concern is due to the extra traffic this operation will create. He continued saying the opposition stated only one or two vehicles speed by in the evening, and he does not believe that is a huge number. He added increased traffic from the RVs will not make a huge difference. He mentioned when he lived on this property only three other houses were on this road, and now at least eight houses are located north of the property. He stressed a lot of the increased traffic in this area is from Amish buggies and bikes, that cannot travel very fast down the road. Mr. Lyon asked about truck noise, and Mr. Kauffman responded he cannot control that. He stated the trucks are loud, but they will travel about 400 ft. off the road to the gate. He went on to say he believes the noise should be kept off of the road, and the trucks also have to leave the property a certain way to prevent the lights from shining into the neighboring residences. He stressed increased traffic is part of progress, and he remembers riding his bike down CR 38 to get to school. However, he continued he would not feel safe riding his bike down that road anymore. Mr. Hesser asked what company will store their RVs on this property, and what roads they will travel. Mr. Kauffman responded Dutchman, and he believes they will travel CR 38. Mr. Hesser also asked who lives on the property, and he questioned the existing buildings. Mrs. Kauffman then pointed out the vacant residence on the aerial in addition to five silos and a barn. Mr. Kauffman explained the property was used for raising feeder beef cattle until it became unprofitable. Mr. Lyon asked who will operate the gate, and Mr. Kauffman responded his wife or him. Mr. Hesser pointed out a mound is proposed west of the property, and he asked about screening to the north. Mr. Kauffman responded no screening will be placed to the north since a corn field is located there. Mr. Atha mentioned a fence will be installed on the north side of the property, and Mr. Hesser mentioned that is not a visual screen. Mr. Kauffman stated the birds have plenty of places to perch in this area, and the operation will not endanger them. He also mentioned he approached his neighbors with the primary purpose of starting a strawberry patch, but he received a complaint about stone being brought in. He continued saying at that point people believed he was starting an RV storage lot, and he thought it was a good idea. He explained he told his neighbors their desire to start a strawberry patch, which takes two years, and their plan to park RVs in the meantime. Mr. Miller asked if the RVs will only be parked on this property for two years, and Mr. Kauffman responded no. He continued saying he is hoping to make this a retirement income. He added he did not receive a letter with the Board's position, but he did get one announcing the date and time of the hearing. Mr. Godlewski clarified the petitioner receives a letter with details about the

hearing prior to the meeting, but the Board does not make a decision until that day. He continued saying he will receive a Result Letter after this.

The public hearing was closed at this time.

Mr. Lyon stated he has some concerns regarding the RV storage lots, and he has not seen any at capacity. He continued saying the only one he has seen fairly full is on SR 15. Mr. Atha stated he believes SR 15 is the proper location for a storage lot. Mr. Hesser stated he does not believe trucks from CR 38 will gain very much speed before pulling into the driveway. He continued saying the Board has approved several similar requests, but since the RV industry cannot continue being this successful forever, he would prefer a time limit be added. He went on to suggest a time limit of two to five years, with renewal before the Board. Mr. Miller mentioned zoning allows RV storage lots in an A-1 zone with a Special Use. Mr. Hesser stated he understands the concerns, and he would not expect to live next to an RV storage lot in the country. Mr. Atha stated he is inclined to deny this request due to the amount of remonstrators present, and Mr. Lyon agreed. Mr. Miller stated he does not like the idea of having RVs on CR 43 close to CR 38 due to traffic. Mr. Atha added he liked the idea of storing RVs on the property for two years, and then using that area as a parking lot for a strawberry patch. However, he continued he is not comfortable approving this request indefinitely. Mr. Miller suggested approving the request for two years, and Mr. Lyon stated he would agree to that. Attorney Kolbus explained approval of the request for a period of two years should be a commitment.

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 warehousing and storing of RVs/trailers 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 7/16/18) and as represented in the Special Use application.
2. Limited to twenty-five (25) RVs per acre.
3. Approved for a period of two (2) years with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

13. The application of *Wendy L. Silver & John L. Curtis* for a Special Use for a kennel on property located on the Southeast side of CR 29, 490 ft. West of CR 33, common address of 51078 CR 29 in York Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0484-2018*.

There were eight neighboring property owners notified of this request.

Mr. Hesser stated the Staff Report does not restrict the number of dogs allowed, and Mr. Godlewski responded the Board can set a number.

Wendy Silver, 51078 CR 29, Bristol, was present requesting permission to have a six stall kennel. She explained her father gave her property to build her home on due to her health. She continued saying she believes this permit is only needed, because she only owns half an acre, and her neighbors own around five acres. Mr. Godlewski clarified the request is needed since the property is less than three acres, and she plans to have a capacity of more than five dogs. Mrs. Silver stated she currently grooms dogs in a shop on her father's property, but she is unable to continue this business due to her hands. She continued saying she has been attending vocational rehab, and they have looked for ways she can live without being on disability. She explained the plan is to construct a five or six dog, handicap accessible kennel for boarding. She added she currently boards dogs in her residence through an app called Rover, but she only can only work with one family at a time. She went on to say she would like to expand her business to help her make a living. Mr. Miller asked how she handles the dogs that constantly bark. She responded any dogs that keep barking will have to stay inside the kennel. She explained she cannot keep them from barking inside the kennel, but she can prevent them from barking outside. She added each kennel will have a run where the dogs can be inside or outside with a door that shuts in between in addition to an area where they can play together. She then pointed her property out on the aerial. Mr. Atha asked if she spoke to the neighbors. Mrs. Silver responded yes, and she mentioned the neighbor across the street is okay with it.

Edward Eggleston, 51241 CR 33, came on in remonstrance and pointed out his residence on the aerial. Mr. Eggleston stated he did not know about this request until he received notice on Friday. He continued saying he is concerned about dogs getting loose, and he mentioned the petitioner's father shot his dog when it was on his property. He added he believes six dogs on a half acre is too many, and he does not want to live next to a kennel. He went on to say this is a commercial use in a residential area.

Dan Magyar, 51195 CR 33, came on in opposition and pointed out his residence and his parents' residence on the aerial. He stated he has lived in this area for 50 years. He mentioned he understands times are hard, but he does not want to hear dogs barking at all hours of the night. He went on to say he owns two dogs that he tries to keep in his yard and quiet. He stated his dogs run around his yard and sometimes bark at people, but he keeps them inside when he is not home. Mr. Magyar stated he has no interest in having a six dog kennel behind his house.

Dolly Magyar, 51022 CR 29, came on in remonstrance and pointed out her property on the aerial. She stressed she has lived on her property for 50 years, and she does not care to listen to dogs barking when she is enjoying the outside.

Ralph Silver, 51144 CR 29, came on in favor of this request, and stated he gave Mrs. Silver the property to build her residence. He clarified he shot the neighbor's dog, because it was on his property attacking his family.

Mrs. Silver came back on and stated she has gathered that barking is the main concern. She stressed, if a dog is barking, she will keep them inside. She continued saying she cannot guarantee they will not be heard outside, but that is her plan. She added the Frosts own a kennel located south of her property. Mr. Hesser asked how many dogs it serves. She responded maybe seven or eight and added they breed labradoodles. She went on to say that kennel is on over three acres, and she cannot hear the dogs at her residence. Mr. Lyon asked if she wants

permission to board more than five dogs, and Mr. Hesser responded the request is for six. Mrs. Silver clarified the kennel will have five or six stalls, but they may not all be full at the same time. Mr. Lyon asked, if a kennel is allowed by right for only five dogs. Mr. Godlewski pointed out a Special Use is required regardless of the number of dogs since the request is for a boarding business. Mr. Atha clarified five pet dogs would be allowed by right. Mrs. Silver stressed she loves her neighbors and has known them for 30 years. She continued saying she does not want this to ruin her relationship with them, because she believes her neighbors are more important than operating a kennel. Mr. Miller asked if she would like to withdraw her petition. Mrs. Silver responded she does not want to follow through with this, if her neighbors are against it. She continued saying the neighbor across the street does not care. Attorney Kolbus explained she can either withdraw her request or allow the Board to make a decision. Mr. Miller suggested tabling the request to allow the petitioner time to consider her options, and Mrs. Silver agreed. Mr. Miller suggested the request be tabled until the September Board of Zoning Appeals Hearing. Mr. Godlewski clarified re-advertisement is not needed. Mr. Hesser mentioned the public hearing will remain open.

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

Motion: Action: Table, **Moved by** Joe Atha, **Seconded by** Denny Lyon that this request for a Special Use for a kennel be tabled until the September 20, 2018, Advisory Board of Zoning Appeals Meeting at the request of the petitioner.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

14. The application of *LaVern & Sue Graber* for a Special Use for a home workshop/business for a retail store and for a 36 sq. ft. Developmental Variance to allow for the placement of a 40 sq. ft. sign (Ordinance allows 4 sq. ft.) on property located on the Southeast corner of CR 16 & CR 116, common address of 11634 CR 16 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0487-2018*.

There were nine neighboring property owners notified of this request.

Mr. Godlewski stated last month it was determined that a sign over the square footage allowed can be included in the Special Use without a Developmental Variance. Mr. Hesser clarified a separate Developmental Variance is no longer required. It was found the request was advertised with a Developmental Variance, and Attorney Kolbus suggested it be acted upon since it was advertised. Mr. Hesser clarified the sign can be approved as part of the Special Use, and the Developmental Variance can then be dismissed as not needed. Attorney Kolbus stated the Board has done that before.

Harley Bontrager, 57342 CR 116, Middlebury, was present as the contractor representing the petitioners. Mr. Bontrager stated he understands a Developmental Variance is no longer needed, and Mr. Godlewski clarified approval of the Special Use is still required. Mr. Hesser asked why the petitioner needs a larger sign than allowed. Mr. Bontrager responded only a 2x2 sign is permitted under a Special Use, and they would prefer a larger sign. He added customers come to the property to pick up their product, and the petitioners do not deliver. Mr. Miller

asked how feed is delivered to the property, and Mr. Bontrager responded typically a straight-truck. He added they may have a semi delivery once a week. Mr. Hesser asked if the property has room for a semi turn-around, and he responded yes. Mr. Atha pointed out the aerial is not up to date, and Mr. Miller added the turn-around is on the site plan. Mr. Godlewski clarified the aerial is older. Mr. Bontrager stated the shop will have feed, trinkets, and some sprayers, and he stressed the store will be smaller. He then pointed out the proposed location for the store on the aerial. Mr. Lyon asked if the Highway Department has a problem with the driveway location so close to the intersection. Mr. Bontrager responded he has not applied for a driveway permit yet. Mr. Miller stated he is concerned about the 40 sq. ft. sign, because he believes it is too large. Mr. Hesser agreed and stated he did not hear a reason for the larger sign. Mr. Bontrager explained he is not sure a smaller sign will work. Mr. Miller stressed he is concerned about a 40 sq. ft. sign placed so close to the intersection, and its potential to block the line of site. Mr. Bontrager stated the petitioners are willing to work with the Board. Mr. Lyon pointed out a 10x4 sign is 40 sq. ft., and Mr. Godlewski pointed out the proposed sign is a 5x4 double-sided sign for a total of 40 sq. ft.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated this is a large lot, and he does not believe this operation will draw a lot of traffic to the area. He continued saying his only concern is the sign size. Mr. Hesser added he does not have a problem with a 4 sq. ft. per side double-sided sign, but he believes a 5x4 sign is too large. He went on to say he has not heard an argument for the larger sign. Mr. Hesser suggested the commitment be worded as a 4 sq. ft. per side sign.

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

Motion: Action: Approve, **Moved by** Joe Atha, **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 Special Use for a home workshop/business for a retail store 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 7/13/18) and as represented in the Special Use application.
2. Limited to one (1) double-sided sign four (4) square feet per side.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

Motion: Action: Dismissed, **Moved by** Joe Atha, **Seconded by** Randy Hesser that the request for a 36 sq. ft. Developmental Variance to allow for the placement of a 40 sq. ft. sign (Ordinance allows 4 sq. ft.) be dismissed.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

15. The application of *AMMF Trustee Corporation (Land Contract Holder) & John Kuhns (Land Contract Purchaser)* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage allowed by right located on the Southeast corner of CR 46 & CR 9, common address of 25948 CR 48 in Union Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0486-2018*.

There were seven neighboring property owners notified of this request.

Mr. Hesser pointed out the Staff Report and Agenda refer to CR 46 when they should reference CR 48, and Attorney Kolbus responded the correct address is listed.

John Kuhns, 25948 CR 48 was present for this request and stated he would like to construct a new barn. He continued saying the current one is not worth repairing, and Mr. Hesser clarified it will be torn down and replaced with the proposed building. Mr. Kuhns explained part of the building will be used for shop storage and the rest for agriculture. Mr. Lyon asked if he discussed the new building with his neighbors, and he responded no. Mr. Lyon mentioned the neighbor immediately east of the property. Mr. Atha asked how many chickens the petitioner would like, and he responded six for eggs. Mr. Atha also questioned the location of the horse pasture, and Mr. Kuhns pointed it out on the aerial. He then asked about manure disposal, and Mr. Kuhns responded they use it on the garden.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller pointed out the petitioner is requesting six chickens, and Mr. Atha added the chickens were not on the Staff Report. Mr. Miller suggested approving twelve chickens. Mr. Hesser agreed since twelve is standard.

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 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 7/12/18) and as represented in the Special Use application.
2. Limited to a maximum of two (2) adult horses and twelve (12) chickens at any one time, no roosters.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage allowed by right 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. Approved in accordance with the site plan submitted (dated 7/12/18) and as represented in the Developmental Variance application.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

16. The application of *Jerry O. & Grace Ann Hochstetler* for a site plan amendment to an existing Special Use for a construction storage yard for excavating equipment to add a building addition and new storage building and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage allowed by right on property located on the East side of CR 33, 500 ft. South of CR 34, common address of 63082 CR 33 in Clinton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0474-2018*.

There were 10 neighboring property owners notified of this request.

Mr. Hesser mentioned a building was noted on the site plan as not included in original approval, and he asked if this request will bring the property into compliance. Mr. Godlewski responded yes, and the mentioned building is included in the square footage. He also clarified the request came before the Board as a Staff Item and was determined to be a major change. He added both additions were included in that request.

Paul Hochstetler, Freedom Builders, 54824 CR 33, Middlebury was present representing Jerry and Grace Hochstetler. Mr. Hochstetler explained three changes are evident on the new site plan. The first he stated is the duck barn on the original site plan burnt down, and he added the 1,400 sq. ft. building was then constructed but not included on the original plan. He continued saying the last change is a 20x50 proposed building, that he will use for tile part storage for his excavating business. He stressed the idea is to keep all of the parts under a roof. Mr. Hochstetler stated the business was originally approved to be 1,200 sq. ft. over the storage allowed. However, he continued since the Zoning Ordinance changed to allow 200% of the living area in personal storage, the request is now only for 264 sq. ft. over the allowed. He added the request was originally a minor change, but it was determined to be major. He explained the proposed addition will be a three-sided, cold storage building, and Mr. Hesser clarified it will be open on the east side.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** 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 site plan amendment to an existing Special Use for a construction storage yard for excavating equipment to add a building addition and new storage building be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 7/12/18) and as represented in the Special Use application.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage 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 taken out within 180 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 7/12/18) and as represented in the Developmental Variance application.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

17. The application of **Loren D. Beachy & Regina A. Yoder** for a Special Use for a home workshop/business for a real estate office, for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage allowed by right, and for a Developmental Variance to allow for three outside employees (Ordinance allows two) on property located on the East side of Bristol Ave., 1,226 ft. North of CR 14, common address of 614 Bristol Ave. in Middlebury Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0460-2018*.

There were eight neighboring property owners notified of this request.

Loren Beachy, 614 Bristol Ave., was present with his wife Regina. He explained they placed a mobile office on their property that is about 12~~x~~36~~ft~~ on wheels with skirting around the bottom. Mr. Miller asked if the office will go to the auctions or stay on the property. Mr. Beachy responded it will stay on their property, and he added they own a separate mobile trailer for the auctions that is kept off site. He stated this request will not disrupt the residential area where they live, because it looks similar to a glorified storage shed. He continued saying his neighbors have sheds, and this looks like a residential structure. He added the building is used as an office and does not produce a lot of noise. Mr. Hesser clarified the real estate business will operate out of the mobile office, and he asked about the existing shop. Mr. Beachy explained the existing shop is used to store a few business items, but it is mostly his personal storage. Mr. Atha mentioned the questionnaire states he has one full-time employee and two part-time employees, and he clarified the petitioner lives in the residence. Mr. Hesser asked how often each part-time employee works. Mr. Beachy responded one employee works three days a week, and one works the other two days. Mr. Hesser pointed out that is the equivalent of one full-time employee.

Mary Cripe, Middlebury Town Manager, was present on behalf of the Town Counsel with a request. She explained the Town Counsel supports businesses, but they request no signage be allowed at this location since it is in a residential area. She stressed the counsel is not opposed to this request. Mr. Hesser asked about approving only the minimum signage allowed for a Special Use, and she responded the Town Counsel request no signage be permitted. Mr. Atha asked if the petitioner is asking for a sign, and Mr. Hesser pointed out the request includes a 3x4 sign.

Mr. Beachy came back on and explained the office is difficult for customers to find. He continued saying closings are held at their office to prevent customers from having to drive to Elkhart or Goshen, because Middlebury does not have a title office. He stated they looked at signs for a while with no luck, and they eventually placed one of their auction signs that says home office on the property. Mr. Hesser asked the sign size without the added home office section, and Mr. Beachy responded 3x4 for a total of 12 sq. ft. on each side. He went on to say more people have stopped by since they placed the sign, but they will respect the Board's decision. He added they would like a sign, but they will not insist on one as large as the current sign.

Mrs. Cripe came back on and expressed their concern that a sign that size will block the line of sight for the neighboring property owners.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he is not opposed to a sign limited to 4 sq. ft. per side, and Mr. Atha agreed as long as it meets the setback requirements. Mr. Miller pointed out the existing sign does not meet the setback, and Mr. Hesser added a row of trees makes it difficult to see the other side of the sign.

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 a home workshop/business for a real estate office 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 7/3/18) and as represented in the Special Use application.
2. Limited to one (1) double-sided sign four (4) square feet per side.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage allowed by right, and for a Developmental Variance to allow for three outside employees (Ordinance allows two) 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 180 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 7/3/18) and as represented in the Developmental Variance application.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

18. The application of *Eldin Jr. & Pam Lovely* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage allowed by right located on the East side of Bradley St., 500 ft. South of Sonny St., East of CR 1, common address of 54820 Bradley St. in Cleveland Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0411-2018*.

There were 21 neighboring property owners notified of this request.

Eldin Lovely Jr., 54820 Bradley St., was present for this request. Mr. Hesser clarified the petitioner resides on the property. Mr. Miller asked if he currently has chickens on the property, and he responded yes. Mr. Hesser pointed out the questionnaire requests twenty chickens, and he asked how he came to that number. Mr. Lovely responded he chose a number. Mr. Hesser asked if he needs more than twenty chickens, and he responded no. Mr. Atha asked if he is okay with approval for twelve chickens, and he responded yes. Mr. Lovely explained the chickens are kept in a coop, and that is fenced in to keep them contained. Mr. Miller stated the request is for a large building, but it is also a big piece of property.

Rebecca Leach, 54803 Bradley St., was present in remonstrance and pointed out her residence on the aerial. Mrs. Leach stressed approval of this request will decrease her property value, and she asked who will monitor the property. She added this is not an agricultural area. Mr. Hesser asked if she is opposed to the chickens or the building. Mrs. Leach asked who will prevent horses and cows from being kept on the property. Mr. Hesser stated a complaint should be filed with the county, if any problems arise. He also asked if she has any objections to the proposed building. Mrs. Leach stated she can hear a rooster, but she was not aware any chickens being kept on the property. However, she continued she can see what appears to be a hut with plastic over the top, and she asked if that is the chicken coop. Mr. Hesser asked her if she is opposed to the chickens, and she responded no. She continued saying she believes this request will grow out of control if not regulated. She again stressed this is a residential area where several animals already run wild. Mr. Lyon asked if she spoke to any of the other neighbors, and she responded she was not aware of the request until she received the letter a few days ago. Attorney Kolbus stressed if the Board approves this request they will only allow a certain number of chickens, no other animals. Mr. Atha added the request is only for chickens. Mr. Hesser asked if the subject property is in a subdivision with covenants, and she responded she is not aware of any.

Mr. Lovely came back on and stated the mentioned building covered in plastic is used to grow vegetables. He continued saying it is PVC pipe with plastic on top. He added he is only asking for permission to keep chickens. Mr. Atha asked how he plans to dispose of waste. He

responded they place it in a compost bin, and then use it as fertilizer for their vegetables. Mr. Hesser asked how many chickens he owns, and he responded twelve. Attorney Kolbus asked if he owns any roosters, and he responded no. Mr. Lovely added one of the neighbors has a rooster that he hears frequently.

The public hearing was closed at this time.

Mr. Hesser asked if anyone has a problem with the building, and Mr. Lyon responded no. Mr. Hesser suggested approving this request for either twelve or twenty chickens, and he would not grant twenty-four. He mentioned the Board approved forty chickens on a smaller parcel earlier in the hearing. He added the petitioner has indicated that he is okay with approval for only twelve chickens. Mr. Miller stated all of the chickens are kept in a pen. Mr. Hesser asked if the Board has a problem approving twenty chickens, and no concerns were raised.

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 Special Use for an agricultural use for the keeping of animals 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 6/19/18) and as represented in the Special Use application.
2. Limited to a maximum of twenty (20) chickens (no roosters).

Further, the motion included that a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage 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 taken out within 180 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 6/19/18) and as represented in the Developmental Variance application.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

19. The application of *Alvin R. Fry and Arlene E. Fry as Trustees of the Fry Family Revocable Living Trust* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the South side of CR 42, 1,800 ft. East of CR 43, common address of 10592 CR 42 in Benton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0485-2018*.

There were five neighboring property owners notified of this request.

Paul Hochstetler, Freedom Builders, 54824 CR 33, was present representing the petitioners. Mr. Hochstetler stated the petitioners currently live in the shop house, which they will convert into personal storage once the new residence is completed. Mr. Hesser asked what all that entails. Mr. Hochstetler responded a bathroom is allowed in a garage, but the kitchen and bedrooms will be dismantled. Mr. Hesser asked how long it will take to dismantle the shop house, and Mr. Hochstetler responded around ninety days after the Certificate of Occupancy is issued. Mr. Hesser asked if the time restriction should be added as a Commitment, and Attorney Kolbus responded yes.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel 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 existing residence must be dismantled and converted into an accessory structure within ninety (90) days of the issuance of the Certificate of Occupancy for the new residence.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 7/13/18) and as represented in the Use Variance application.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

20. The Staff Item for John L. Miller (SUP-0331-2018) was previously heard as item #9 on page 8.

21. The Staff Item for Howard M. & Ida A. Yoder (SUP-0223-2018) was previously heard as item #10 on page 8.

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

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary