

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20th DAY OF APRIL 2023 AT 9:00 A.M.
MEETING ROOMS 104, 106, & 108 – ADMINISTRATION BUILDING
117 N. 2nd STREET, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser. Staff members present were: Jason Auvil, Zoning Administrator; Adam Coleson, Planner; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

Absent: David Miller.

2. A motion was made and seconded (*Miller/Norman*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 16th day of March 2023 be approved with the following corrections: on page 2 for the Jacob Shaffer & Jessica Shaffer (Buyers) & Jacqueline F. Fioritto (Seller) petition it states “There were no remonstrators present” and there was a remonstrator, therefore this sentence should be removed. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Warner/Cramer*) 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 **Juan C. Echevarria** for a Special Use for a home workshop/business for a food truck commissary on property located on the Southwest corner of Janiper Dr. & CR 15, common address of 23020 Janiper Dr. in Concord Township, zoned R-1, came on to be heard.

Mr. Coleson presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0076-2023*.

There were 16 neighboring property owners notified of this request.

The petitioner was not present; hearing continued to the end of the 9:00 a.m. petitions.

See item #8 on page 5.

5. The application of **AMMF Trustee Corporation (Land Contract Holder) & Kevin L. Hochstetler (Land Contract Purchaser)** for a Special Use for warehousing and storage of excavating equipment on property located on the West side of CR 9, 1,960 ft. North of CR 52, common address of 00000 CR 9 in Union Township, zoned A-1, came on to be heard.

Mr. Coleson presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0111-2023*.

There were eight neighboring property owners notified of this request.

Kevin Hochstetler, 71182 CR 9, Nappanee, was present for this petition. He stated he is wanting use an existing agricultural building for excavating equipment storage. He went on to say he is going to be building a new shop that will be heated for maintenance work and storage. Mr. Hesser asked if he will be able to store everything inside. Mr. Hochstetler responded yes, this will allow him to store everything inside.

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** Deb Cramer, **Seconded by** Randy Hesser 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 storage of excavating equipment be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 3/6/2023) and as represented in the Special Use application.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

*****It should be noted Mr. Hesser recused himself and stepped down*****

6. The application of *Middlebury Community Schools* for an Amendment to an existing Special Use for a school to allow for a new gymnasium and auxiliary gymnasium on property located on the Northeast corner of CR 35 & US 20, common address of 56779 Northridge Dr. in Middlebury Township, zoned A-1, came on to be heard.

Mr. Coleson presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0118-2023*.

There were 43 neighboring property owners notified of this request.

Andy Beerman, Common Wealth Engineers, 9604 Coldwater Rd., Suite 203, Fort Wayne, was present representing the petitioner. He stated the project is the construction of a new competition and auxiliary gym on the southeast corner of the high school, and it will include an athletic offices, restrooms, locker rooms, concessions, and running track upstairs. Mr. Norman asked if they are following all MS4 rules and regulations. Mr. Beerman responded that is correct, and all of their erosion control is shown in the plans.

Jim Mowat, 509 Westlake, Middlebury, was present in remonstrance. He asked if this project will raise the school tax rate in the area.

Jason Snyder, Superintendent Middlebury Community Schools, 56397 White Pine Ridge, Middlebury, came on to respond. He explained this project will not raise the taxes. He stressed that the tax rate, on the current tax bills that just came out, has slightly decreased. He went on to say they are right in the middle of the county districts as far as current tax rates and it was promised to the community early on that the only way this project would take place is if the tax rates, wouldn't be effected. Further, he stated previous debts have been paid off and they will be able to pay off the project in 8 years.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Deb Cramer, **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 school to allow for a new gymnasium and auxiliary gymnasium be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 4/3/2023) and as represented in the Special Use Amendment application.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller.

Excused: Randy Hesser.

*****It should be noted that Mr. Hesser returned to the Board at this time*****

7. The application of **Zachary M. Beaver & Lauren M. Tavernier, Husband & Wife** for a Special Use for a home workshop/business for a landscaping business on property located on the North side of Heaton Vista, 1,550 ft. West of CR 15, common address of 22799 Heaton Vista in Osolo Township, zoned R-2, came on to be heard.

Mr. Coleson presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0094-2023*.

There were 20 neighboring property owners notified of this request.

Lauren Beaver, formally known as Lauren Tavernier, 22799 Heaton Vista, Elkhart, was present for this petition. She stated they are requesting this in order to run a small landscaping business. Mr. Miller asked how long this business has been going on. Mrs. Beaver responded they have been running the business around 4 years. Mr. Hesser asked what is being stored outside. Mrs. Beaver responded they store a skid steer, a back-hoe, and a loader all outside the pole barn within a fenced in area. She went on to say before they kept everything indoors and they have expanded a little, therefore the county is requiring them to obtain the Special Use. Mr. Hesser asked if they will be needing a sign, and their normal hours of operation. Mrs. Beaver responded they don't need a sign. She continued to say that their employees don't start until 8 a.m. and sometimes they will work until 6 p.m. Mr. Hesser asked if the employees go to their residence first or just show up to the job site. Mrs. Beaver responded only 1 employee drives to work, and the others walk to their home. She added the part-time employees just go to the job site. Mr. Miller asked if the equipment that is parked out back is seen from Ideal Beach or the Toll Road. Mrs. Beaver responded they have one neighbor behind them, and they recently put up a fence. Mr. Norman asked if they own 6 lots. Mrs. Beaver responded 2 of the empty lots are owned by neighbors, and the other 5 lots are owned by them. Mr. Norman asked what they will do, if they grow larger. Mrs. Beaver responded if they get to the point where they are needing to get more space, they will buy a commercial lot and building. Mr. Hesser asked if the current fencing is solid, and how high it is. Mrs. Beaver responded the fencing is solid, and it is 6 ft. tall. Mr. Miller asked

once the statement is made that this will not expand further, then is that a commitment. Attorney Kolbus responded the petitioner is held to the statements and representations that are made in today's hearing. Mrs. Beaver stressed they don't plan to add any further buildings, with the exception of a small lean-too for the equipment. Mr. Miller explained they would have to come back to the Board for permission for the lean-too. He then asked if they have talked to their neighbors about their business. Mrs. Beaver responded yes; they work well with their neighbors, and they all help each other out when needed.

Welsh Walker, 23155 Heaton Vista, Elkhart, was present in remonstrance. He explained there is a landscaping business, but also a tree service and snow removal business that has heavy equipment. He continued to say it was stated this won't change the neighborhood, though it has already changed with the massive building and the noises of the heavy equipment. He went on to say this is a quiet, little neighborhood that the residents like to retire to without hearing the heavy equipment noises. He stressed the Board is to help protect small neighborhoods from businesses, and they are doing more than just landscaping.

Darlene Underwood, 25220 Dunny St., Elkhart, was present in remonstrance. She stated she doesn't live in this area, but her friends live in this area. She went on to say the salt that is being dumped is going into the ground, and this property was given a Federal Water Grant to protect Heaton Lake. She asked if anyone contacted Ideal Beach to ask them about being within the 300 ft. setback for the water lines. She stressed that if the salt gets into the sewer and water of Heaton Lake, then it will cause a lot of problems for people. Mr. Hesser asked if the salt being dumped on the ground is occurring on the subject property. Mrs. Underwood responded that is occurring on this property, and the lake is not 300 ft. away from the homes. She submitted a petition of signatures of people who are not residents of the area but are concerned for the area *[Attached to file as Remonstrator Exhibit #1]*. Mr. Norman asked if Ideal Beach is still a public beach. Mrs. Underwood responded it is a public beach, but the City of Elkhart runs the beach. Mr. Miller stated the petition she turned in doesn't have addresses, just phone numbers. Mr. Norman stated she mentioned the petition isn't from people who live in the area.

Lauren Beaver came back on to respond. She stated they do lawn and landscaping which also includes snow removal in the winter. She continued to say they have a large freight deliver the salt onto a concrete slab, then the salt is moved into the shipping container. Mr. Miller asked how much salt is delivered at a time. Mrs. Beaver responded a semi-load at a time. Mr. Norman asked if the salt is contained or sitting in the elements. Mrs. Beaver responded once it is delivered, the salt gets moved into the storage container same day. Mr. Hesser clarified they are not burying salt in the ground and covering it with concrete. Mrs. Beaver stressed the salt is not being put into the ground or sitting in the weather to be washed into the ground. Mr. Miller asked Staff if storage of salt is under the jurisdiction of the Board. Mr. Auvil responded he isn't aware of any rules or regulations for salt. He continued to say it is his understanding that most of these properties are on the sewer conservancies, and salt isn't an issue in the neighborhood. Mr. Norman asked if the shipping container is an enclosed container. Mrs. Beaver responded that is correct, and there is nothing that could leak into the container to melt the salt to cause it to go into the ground. Mr. Warner asked if there is room for the semi to be off the road when delivering. Mrs. Beaver responded yes. Mr. Miller asked if they are operating tree removal services. Mrs. Beaver responded they do not do tree service. She stressed she believes her neighbor is confusing them with Eager Beaver, who is behind them off of CR 4, as they do tree service.

The public hearing was closed at this time.

Mr. Hesser stated as far as landscaping and snow removal is concerned, that generally is done together as a business. He went on to say he would like Staff to get a revised site plan showing where the storage container is located.

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

Motion: Action: Approve, **Moved by** Deb Cramer, **Seconded by** Randy Hesser 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 landscaping business 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. A replat or a separate recorded instrument removing restriction 4 from the subdivision plat must be completed.
3. The petitioner must provide a revised site plan showing the location of the salt container for approval by Staff.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 4/20/2023) and as represented in the Special Use application.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

8. The application of *Juan C. Echevarria* for a Special Use for a home workshop/business for a food truck commissary on property located on the Southwest corner of Janiper Dr. & CR 15, common address of 23020 Janiper Dr. in Concord Township, zoned R-1, came on to be heard.

No petitioner eight was present at this time.

Mr. Hesser stated the Board will hear the remonstrators at this time, though if this petition gets tabled, they are still welcome to come to that meeting as well. He explained everything that is stated today will be on the record and taken into consideration at the next meeting.

Dane Peterson, 60330 Frederick Circle, Elkhart, was present in remonstrance. He stated this intersection is very busy due to the Target that is just to the north, and there are bushes that make it hard to see when turning. He continued to say this is a food business where they will need trucks coming in and out for deliveries. He stressed he feels they will not be going to Gordon's for the food they need, and there is no room for truck deliveries. He went on to say they have vehicles parked there all the time in the driveway. He submitted a petition of people in the neighborhood against this request [Attached to file as Remonstrator Exhibit #1]. Mr. Peterson asked why he didn't get a notice of the hearing, because he didn't receive a notice. He stressed only 6 people who live in the neighborhood received a notice of public hearing letter, and that isn't enough people to be notified. Mr. Auvil responded everyone within 300 ft. of all property lines is sent a notice. Mr. Miller explained that it is a State Law that states 300 ft. from all property lines. Mr. Peterson reiterated he doesn't feel this is safe and shouldn't be allowed in this area.

Michael Robinson, 60243 CR 15, Elkhart, was present in remonstrance. He explained everything that was previously mentioned, is true. He asked if this operation will be family only

or will there be employees, because there is no place to park. He stressed the intersection is very busy and will cause safety issues.

Jerry Hay, 60329 CR 15, Elkhart, was present in remonstrance. He stated he lives 2 properties to the south of this location and has lived there for 50 years. He explained everything has remained residential, and they would like to keep it that way. He stressed CR 15 has lots of traffic, and he has been hit backing out of his driveway. He asked if this will lead into retail sales with the trailer being on the property. He also asked if the food will be prepared on site and taken to another location for sales. He reiterated traffic is dangerous in this area. Mr. Norman asked if the petitioner's added on a second driveway recently. Mr. Hay responded no, it has been there for a while.

Dane Peterson came back on for another comment. He stated from CR 15 turning onto Janiper Dr., they have to stop when trucks make that turn, due to the intersection being too narrow.

Michael Robinson came back on for a further comment. He asked if the Special Use will go with the property, and not with who owns the property. Mr. Hesser explained that is correct, but the Special Use is still subjected to the same conditions and commitments.

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

Motion: Action: Table, **Moved by** Deb Cramer, **Seconded by** Ron Norman that this request for a Special Use for a home workshop/business for a food truck commissary be tabled until the May 18, 2023, Advisory Board of Zoning Appeals meeting, due to the absence of the petitioner.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger, Miller, Randy Hesser.

9. The application of *Edgar Rodriguez* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres on property located on the West side of CR 9, West end of CR 22, common address of 58975 CR 9 in Concord Township, zoned R-1, came on to be heard.

Mr. Coleson presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0090-2023*.

There were eight neighboring property owners notified of this request.

The petitioner was not present; hearing continued at the end of the meeting.

See item #12 on page 11.

10. The application of *Stephen A. Nauman & Ruth A. Nauman, Husband & Wife* for a Special Use for a ground-mounted solar array on property located on the South side of CR 126, 1,430 ft. West of CR 19, common address of 20808 CR 126 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Coleson presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0120-2023*.

There were 45 neighboring property owners notified of this request.

Ryan Lengacher, Well Springs Solar, 1085 N 850 W, Shipshewana, was present representing the petitioner. He submitted photos of the property and the solar array [*Attached to file as Petitioner Exhibit #1*]. Mr. Hesser asked how many panels are in the array. Mr. Lengacher responded there are 60 panels. Mrs. Cramer asked in terms of feet, how many feet big is this array. Mr.

Lengacher responded they are approximately 105 feet in length, 6 feet in width, and 13 feet tall. He continued to say the petitioners are looking to reduce their electric bill as well as adding batteries to their system in order to store the extra electricity without having to send it directly to the electric company. He explained the second photo shows the array will be 300 feet from the road to the south, and this location helps give the Nauman's more yard space for their family activities. Mr. Hesser asked if the building on the photo was an example. Mr. Lengacher responded that is an example photo, and there will not be a building where they are placing the solar arrays. He went on to say there will be a slight visibility of the solar arrays from the house to the east of the subject property. He stressed they agree with the Staff Report, and this is consistent with the Zoning Ordinance. Mr. Warner asked if technology is bringing the size of the solar panels down with allowing the same amount of energy. Mr. Lengacher responded the same size panel is holding more wattage than what was allowed 5 years ago.

Steve Nauman, 20808 CR 126, Goshen, was present for this petition. He stated the panels have a reflective backside to help them get more sun light. Mr. Hesser asked if he spoke to his neighbors. Mr. Nauman responded yes, they are okay with the solar arrays going on his property.

Stanley Baer, 21040 CR 126, Goshen, was present in favor for this petition. He stated he is in favor of allowing Mr. Nauman to have the solar array.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Norman asked Mr. Lengacher, if the battery back-ups were the connections labeled C on the schematics. Mr. Lengacher responded those are the invertors. He went on to explain this is a hybrid/hybrid system, where one inverter is a hybrid inverter that the batteries attach to, and the second inverter will just exchange electricity with Nipsco and will not have batteries attached. He continued to say that the batteries and invertors are contained in the house in the basement.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Steve Warner 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 ground-mounted solar array be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 3/8/2023) and as represented in the Special Use application.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

11. The application of ***Brubacher Holdings, LLC*** for a Special Use for resource extraction on property located on the South side of CR 38, East side of CR 15, 3,200 ft. East of SR 19, common address of 00000 CR 38 in Harrison Township, zoned A-1, came on to be heard.

Mr. Coleson presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0135-2023*.

There were 28 neighboring property owners notified of this request.

Crystal Welsh, Abonmarche, 303 River Race Dr., was present representing the petitioner. She stated that the intent is not to create a big gravel pit, but to shave off a mound that is currently on the property. She continued to say the entire site will not be used for extraction, and the remaining land will continued to be used as agricultural. She stressed as they are trying to flatten the site not create a hole. Mr. Hesser asked how many years this will be extracted. Mrs. Welsh responded she is unsure as it depends on how long the material is available. Mr. Hesser asked what will happen, if this becomes a larger extraction site, and if Staff will be able to enforce what is being represented. Mr. Auvil responded yes and no, as to the scope and scale that is being represented today is hard to investigate and set limitations on. Mr. Hesser explained they would have to come back to the Board, if they were to grow and change substantially. Mr. Auvil responded that is correct, and generally that is triggered by a complaint that comes in from the public. He went on to say once a complaint is received then Staff would do the investigation as to what is going on. Mrs. Welsh explained they have worked with the Elkhart County Highway Department to help keep the site safe with the entrance off of CR 15, which is a much lower volume road. Mr. Norman asked if they will set up a portable scale for them to know the tonnage of what is being driven on county roads. Mrs. Welsh responded no it will just be truck size loads.

Jacqueline Watkins, 22544 CR 38, Goshen, was present representing her mother who lives at the address given in remonstrance. She explained her mother, Marge, is 91 years old. She explained they are concerned with what happens to her drainage, noise level, dust, and traffic. She continued to say this is for a gravel pit, and what will happen to the property values. There was discussion on where the mother lives on CR 38. Mrs. Watkins stressed this is a residential and agricultural area. Mr. Miller stated this is a permitted use in the agricultural zone.

Fred Messerle, 22284 CR 38, Goshen, was present via WebEx in remonstrance. He stated he would like to raise several concerns. He noted his first concern was that they live in Oregon, and they didn't get the notice until late last week. He noted he filed an information request with the Department of Public Service on the previous Monday. He continued to say he hasn't had a lot of time to deal with this yet, though the concern is there isn't a project time line or end time. He stressed this could go on for generations. He went on to say they have not been able to see any kind of work plan or site plan, and the public should have a say on the revised site plan that is turned in to the Staff. Further, he stated according to the Staff Report, they won't have any input or comment on the revised site plan, there is no agricultural farm land, or a recovery plan turned into Staff for consideration. He asked are they going to be following the Farm Land Protection Act, and what are the impacts going to be on property values. He stressed impact on property values is a long term issue without having a timeline on this project. Further, he continued to say he understands there are three other gravel pits within a 5 mile radius. He asked what are the permitting requirements for the perimeter of the gravel pits being so close to one another. He stated he doesn't see where the impact on wildlife and fishing is mentioned, and the impact on endangered plants and animal habitats. He asked if there are requirements for removing material

from the aquifer. He asked are there EPA or US Army Corps. Of Engineers considerations for Wetland impact, or the ground water impact. He asked if the ground water assessment has been done. He asked what the impact will be on domestic water-wells and the vibration impacts on existing buildings. He stressed there is no pollution or spill plan in place, nor is there a storm water management plan in place. He went on to say there is a wetland and sanitation impact that could take place. He asked if there have been an Archaeological and Tribal studies done on this site, as there have been arrow heads found in this area. Mr. Hesser stated that the Board is only here to act upon the land use, and the Federal and State laws are for the petitioner to comply with through the appropriate organizations. He continued to say the petitioner will have to get other permits to comply with those laws. Mr. Messerle asked if there is any provision within the County that is conditional to the approval of the Board, that the petitioner get the approvals of the other State Departments first before starting the excavation. Mr. Hesser responded no, but the Board doesn't exempt the petitioner from complying with those other permits and laws. Mr. Messerle asked has there been a traffic study done for CR 38, CR 15, or SR 119. Mr. Hesser responded those are appropriate things for the Board to consider, but the roads are not the Board's jurisdiction. Mr. Messerle stressed then those are concerns that need to be dealt with by other departments. He went on to say the environmental impact and climate change impacts are handled by other departments as well. It was clarified that the Board will only act upon the land usage. Mr. Messerle stated as an adjoining property owner, they would expect to be notified by all the other departments in the course of them dealing with their regulations on this property. Mr. Hesser explained he is unsure to the laws and regulations of the other departments.

Glen Geiser, 22284 CR 38, Goshen, was present in remonstrance. He showed on the aerial where his property is located. He pointed out that every other application that was brought to this Board, the Board asked if the petitioner had talked to their neighbors. He continued to say the organization and the petitioner did not talk to any of the neighbors about this application, and this is a community that needs to respect each other with communication. He went on to say every single home is on a well, and they have not seen or heard anything ensuring their water quality won't deteriorate and their home foundations won't be affected. Further, he stated there are scientific studies done proving, that dust has a negative impact on Type One Diabetics. He stressed his daughter has Type One Diabetes, and they don't want to have to move. He reiterated there is no regard for the families on this road, and the petitioner needs to sit down and discuss the implications to the neighborhood. He asked what is the point of the hearing, if this is allowed in the agricultural zone. He stressed there will be negative impact, on the habitat of the land. Further, he stated he has had less than 2 weeks to look up information on this land, and there is a natural spring fed pond. He asked what will happen if they dig too deep. He reiterated if the Board is going to worry about the health and welfare from chickens then, maybe, they should worry about health and welfare of extraction.

Crystal Welsh came back on to respond. She stressed the petition doesn't ask for deep pit extraction, as they are only asking for surface extraction. She went on to say that if this is approved they will still need to get a permit from the Highway Department for the driveway, a Storm Water permit from the county, and a Storm Water plan from the State of Indiana. She continued to say they cannot disturb natural water areas, and they will not have wash bays or sorting on site. She stressed they will load the dump trucks, and it will be taken offsite. Mrs. Cramer asked what the hours of operations. Mrs. Welsh responded 7:30 a.m. to 3:30 p.m. and only between April and

October. Mr. Hesser asked if this was primarily for road projects. Mrs. Welsh responded road and general construction projects. Mr. Warner asked what the elevations are from where they are starting to the base they will be digging, and are they going to be saving the top soil from the entire area.

Troy Brubacher, 24712 CR 40, Goshen, was present for this petition. He explained they have done soil borings and there isn't any gravel on site. He continued saying there isn't any opportunity for mining. He continued to say the water table is about 40 ft. below at the highest elevation, and he will not get to close to that water table. He explained he is not trying to create a gravel pit, as he is just trying to get the top nodes off the land. He apologized for not getting around to talking to all the neighbors, as this is his first time doing a petition like this. Mr. Warner asked what the elevation he plans on taking out will be. Mr. Brubacher responded it is going to be an average of 15-20 foot elevation. Mr. Warner asked if they will be saving the top soil. Mr. Brubacher responded they will be saving most of the top soil, but he will bring in more if needed. He stressed the property will continue to be farmed throughout the process and after the digging is done. Mr. Warner asked how many loads they are estimating. Mr. Brubacher responded it is hard to say how many, but after 5 years it will be hard to tell that any work was done on this land. Mr. Miller stated this will cause less damage to the land than if a hog farm was placed on the property. Mr. Warner stated he agrees with the dust concern as the biggest issue. Mr. Brubacher explained he can't say there won't be dust, but they will do their best to keep it at a minimum. Mrs. Welsh stated there won't be any more dust than what a normal farm field kicks up. Mr. Norman asked where the wetland is located on the subject property. It was clarified on the aerial where wetlands and pond are located on the property.

The public hearing was closed at this time.

Mr. Hesser stated there is a gravel pit opening close to his home, and there is a law in Indiana that states unless the gravel pit is within a quarter mile of an urban area, then it is allowed by right without permission. He went on to say everything mentioned today is all a part of the record, and if they go beyond the scope, then a complaint can be made to rectify the issue. He stressed the Board's approval does not exempt the process from following the laws and regulations of other organizations and departments. Mr. Norman stated MS4 was created in 2005 that has guide lines that have to be followed if someone is disturbing more than 1 acre of land.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Ron Norman 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 resource extraction 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. A revised site plan must be submitted for staff approval showing extraction sites, stockpiling locations, and/or staging areas to include material-sorting equipment and parking area.

The following commitment was imposed:

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

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

- 12. The application of *Edgar Rodriguez* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres on property located on the West side of CR 9, West end of CR 22, common address of 58975 CR 9 in Concord Township, zoned R-1, came on to be heard.

No petitioner was present at this time.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Ron Norman that this request for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres be tabled until the May 18, 2023, Advisory Board of Zoning Appeals meeting, due to the absence of the petitioner.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

- 13. The meeting was adjourned at 10:55 A.M.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary