

**BZA MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 15<sup>th</sup> DAY OF JUNE 2023 AT 9:00 A.M.**  
**MEETING ROOMS 104, 106, & 108 – ADMINISTRATION BUILDING**  
**117 N. 2<sup>nd</sup> 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: Mae Kratzer, Plan Director; Jason Auvil, Zoning Administrator; Adam Coleson, Planner; and James W. Kolbus, Attorney for the Board.

**Roll Call.**

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

**Absent:** Roger Miller.

2. A motion was made and seconded (*Norman/Cramer*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18<sup>th</sup> day of May 2023 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Norman/Warner*) 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 *Coleman E. Foley & Marilyn K. Foley, Husband & Wife* for a Special Use for a resort on property located on the South side of CR 2, 1,300 ft. East of CR 39, in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0294-2023*.

There were six neighboring property owners notified of this request.

Marilyn Foley, 11748 CR 2, Middlebury, was present for this request. Mrs. Foley stated she is requesting to have 5 grain bins and turn them into cabins for overnight accommodations. Mr. Warner asked the diameter of the bins. Mrs. Foley responded 21 feet. Mr. Hesser asked if this was formally the site where Patch Work Quilt Inn was located. Mrs. Foley responded yes. Mr. Hesser asked if that had rooms. Mrs. Foley responded yes they had a bed and breakfast, though they have 5 children therefore their family fills those rooms.

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** David Miller, **Seconded by** Deb Cramer 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 resort 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 subdivision is required.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 5/3/2023) and as represented in the Special Use application and at the June 15, 2023, public hearing.

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

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

5. The application of *Carlyle M. Martin & Barbara K. Martin, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the South side of CR 40, 1,045 ft. West of CR 11, common address of 25218 CR 40 in Harrison Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0306-2023*.

There were 12 neighboring property owners notified of this request.

Carlyle Martin, 66227 CR 9, Goshen, was present for this petition. He explained he has a permit for the new building, and a question came up about the use of a horse for transportation. He stressed he didn't know the property wasn't approved to have horses, because his father has had horses on the property since 1959.

Naomi Hoover, 25148 CR 40, Goshen, was present in support of this petition. She stated she has lived next to the subject property for 47 years, and there have always been horses. She stressed there have never been any issues.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Cramer asked if this request was for one horse or multiple horses. Mr. Hesser clarified they are only wanting one horse.

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

**Motion: Action:** Approve, **Moved by** David Miller, **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 an agricultural use for the keeping of animals on a tract of land containing less than 3 acres be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 5/5/2023) and as represented in the Special Use application and at the June 15, 2023, public hearing.
2. The agricultural use is limited to a maximum of one (1) horse and twelve (12) chickens, at any one time, and no roosters.

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

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

6. The application of *The Trustees of the Jefferson Hills School* for an Amendment to an existing Special Use for a school to allow for an addition of land on property located on the South side of CR 18, 1,910 ft. east of CR 29, common address of 16400 CR 18 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0298-2023*.

There were 11 neighboring property owners notified of this request.

Paul Hochstetler, Freedom Builders, 54842 CR 43, Middlebury, was present representing the petitioners. He explained the school started with just a small parcel, and they are buying more land from a surrounding owner. Mr. Hesser asked which parcel is being added. Mr. Hochstetler showed on the aerial the parcel in question. There was discussion as to which parcel on the site plan was being added to the current parcel. Mr. Hesser asked what the total acreage will be after adding the new parcel. Mr. Hochstetler responded it will be a total of 3 acres. It was clarified 1.28 acres is the new acreage being added. Mr. Hesser asked if the Special Use for the agricultural use is being rescinded, due to the property now being a 3 acre parcel. Mr. Auvil responded that is correct. Mr. Warner asked how many horses they will have on site. Mr. Hochstetler responded during the school hours there can be up to 6 horses when the weather is bad, though they will be kept in the barn, as there is no pasture.

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** David Miller, **Seconded by** Deb Cramer 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 an addition of land be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 5/4/2023) and as represented in the Special Use Amendment application and at the June 15, 2023, public hearing.

Further, the motion also included that the Special Use for the keeping of animals on a tract of land containing less than 3 acres be rescinded as the property will now be 3 acres.

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

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

7. The application of **Roy M. Kinsinger** for a Special Use for a home workshop/business for small engine repair on property located on the Northeast side of Nelson Ln., East of Isaac Dr., 750 ft. East of CR 31, common address of 67620 Nelson Ln. in Benton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0249-2023*.

There were 20 neighboring property owners notified of this request.

Roy Kinsinger, 67620 Nelson Ln., Goshen, was present for this petition. He stated his plan is to have a small home business that he loves doing, as well as he can help his neighbors. He stressed he wants to stay small and not grow into a big business. Mr. Hesser asked what the size is of the sign. Mr. Kinsinger responded it is 2 ft. by 2 ft. Mr. Hesser asked if he understands the recommendation from Staff is there not be any outside storage. Mr. Kinsinger asked for clarification about what is considered outside storage. He explained as an example if he were to put up a fence in the back yard and have some mowers back there, would that be considered inside storage. Mr. Hesser responded his understanding is that they would have to be in a building. Mr. Auvil explained the concern for Staff is having lawnmowers all lined up along the property lines, and that was part of the code complaint. Mrs. Cramer asked if it was possible to run the business without having lawn mowers sitting outside. Mr. Kinsinger responded yes, he can make sure they are not sitting outside. He went on to say the ones sitting outside are ones that he and a friend bought together to fix up. Mr. Norman asked if there was room in the existing garage for storage. Mr. Kinsinger responded there is room in the garage, and he has a storage unit also. Attorney Kolbus asked if the request for a new site plan, is in order to remove the outside storage that is shown. Mr. Auvil responded yes, as well as to remove the second sign. Mr. Kinsinger asked why the second sign wasn't allowed. Mr. Hesser responded that with a home workshop it is only permitted to have one sign.

Mr. Auvil read an email that was received in remonstrance. He explained the email didn't give a name or address of the remonstrator. He stated the concern is the business will open the door to others wanting to have home workshops, and this is a neighborhood. He then submitted the email [*Placed in file as Remonstrator Exhibit #1*].

Lyle Garber, 15856 Burtsfield Dr., Goshen, was present in remonstrance. He stated it seems to him that this has already been approved, since Mr. Kinsinger has been running this business for 6 months. He asked if someone can just move in and start a business. Mr. Hesser asked if there are covenants in the subdivision. Mr. Garber responded he isn't sure if there is a covenant in place. He went on to say there were some modular homes that went in years ago that the neighborhood wasn't happy about. He stressed the petitioner could go down the street across CR 31, and go into Fairfield Farms to have his business there. He continued to say these are all half acre lots, and he will start something on his property if this request gets approved.

Kiersti Stutzman, 15888 Isaac Dr., Goshen, was present in remonstrance. She stated there has been more traffic in the subdivision since this business started, as well as a lot of junk in the yard. She stressed this isn't something anyone wants across the street from their homes. She submitted pictures of Mr. Kinsinger's property [*Placed in file as Remonstrator Exhibits #2-#6*]. Mr. Hesser asked if noise is beyond the hours of 3:30 p.m. to 7:30 p.m. Mrs. Stutzman responded not beyond hours, though most people settle down around 8 p.m. She stressed they can hear engines revving up around 8 p.m.

Candy Bartley, 67700 Nelson Ln., Goshen, was present in remonstrance. She stated she agrees with what has been previously stated. She stressed this is a residential area, not for business, and once one business starts then more will start coming in. Mr. Hesser asked if the stuff sitting outside is her primary concern. Mrs. Bartley responded that is a concern as well as the traffic. She stressed the property looks like a dump.

Lyle Garber came back on. He stated the issue isn't just junk sitting outside, the issue is the subdivision shouldn't have to put up with a business. Mr. Hesser stated he is not aware of covenants prohibiting it. Mr. Garber explained there aren't any that he knows of that he can pull up and show the Board. He went on to say that if he needs to get covenants printed to bring to the Board then he will. Mr. Hesser explained the Board doesn't have the authority to change or override covenants in the subdivisions. Mr. Garber reiterated this request has already been approved by the sounds of it.

The public hearing was closed at this time.

Mr. Hesser asked Mr. Kinsinger how many employees he will have. Mr. Kinsinger responded it is just himself. Mr. Hesser stated the prohibition of outside storage and the hours stated in the petition. He stated he is concerned the petitioner may not understand he has to follow what is stated in the application and during the hearing. He went on to say he is a little concerned with the way it sounds the business has been operated. Mrs. Cramer stated it shouldn't be approved without a follow-up to ensure outside storage is cleaned up. Mr. Norman stressed the pictures showed junk being piled up as well as rank vegetation, and the county has Zoning Ordinances in place to ensure that properties don't look like that. He continued to say it shouldn't take a whole neighborhood to stand up together to get the property looking nice again, and if he wants to run a business, then he should do it in a way that the neighbors aren't complaining about the business. There was discussion about putting a time limit on the petition. Mrs. Kratzer explained that if the Board gives him a year, it is more of a trail to see if the petitioner will comply with the conditions and commitments. She went on to say that neighbors can still call in complaints, and Staff will follow their procedures as normal on any complaints.

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

**Motion: Action:** Approve, **Moved by** Ron Norman, **Seconded by** Deb Cramer that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for small engine repair be approved with the following 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 without the sign on US 33 and without the outside storage.
3. Petitioner has ninety (90) days to clean up the yard.

The following commitments were imposed:

1. The request is approved in accordance with the revised site plan to be submitted for staff approval and as represented in the Special Use application and at the June 15, 2023, public hearing.
2. No outside storage is allowed.

3. Only the sign on Nelson Ln. as shown on the site plan is allowed.
4. Approval for a period of one (1) year; any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.

**Motion: Action:** Approve, **Moved by** Ron Norman, **Seconded by** Deb Cramer that the condition giving the petitioner 90 days to clean up the yard in the previous motion be amended to 30 days.

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

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

8. The application of *Southeast & Northeast Clinton Districts of Old Order Amish Churches* for a Special Use for a school and for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the East side of CR 37, 2,495 ft. South of CR 34, common address of 63452 CR 37 in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0322-2023*.

There were five neighboring property owners notified of this request.

Paul Hochstetler, Freedom Builders, 54824 CR 33, Middlebury, was present representing the petitioner. He explained they want to do an addition, and in that process there was no record of an existing Special Use. He went on to say the school has been in operation since the 1970's. Mr. Hesser asked if the previous Special Use grandfathered or if Staff cannot find a previous Special Use. Mr. Auvil responded as far as he knows this has been existing without a Special Use. Mr. Hesser asked what the dimension of the addition will be. Mr. Hochstetler responded the new addition will be 20 ft. by 34 ft.

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** David Miller, **Seconded by** Deb Cramer 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 school and for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 5/15/2023) and as represented in the Special Use application and at the June 15, 2023, public hearing.
2. The agricultural use is limited to a maximum of eight (8) adult horses, at any one time.

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

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

9. The application of *Loveway Projects, Inc.* for an Amendment to an existing Special Use for an indoor riding arena to allow for the placement of a residence, for a Special Use for a mobile home, and for a 515 sq. ft. Developmental Variance (Ordinance requires 900 sq. ft.) to allow for the placement of a 385 sq. ft. residence on property located on the West side of CR 33, 1,090 ft. South of CR 108, common address of 54151 CR 33 in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0320-2023*.

There were 11 neighboring property owners notified of this request.

Andrew Cunningham, Jones, Petrie, Rafinski, 325 S. Lafayette Blvd., South Bend, was present for this petition. He explained he serves on the Board of Directors for LoveWay. He continued to say LoveWay provides equestrian therapy to individuals and students with disabilities. He went on to say part of the keys to success is bringing in the right experts and staff, and part of the challenge has been to find sufficient housing in a nearby proximity. Further, he asked that this request be tabled. He explained they had a septic field study done, and they need to revise their site plan. He stressed they want to set a meeting with at least one neighbor who has voiced some concerns. There was discussion about if the Board should grant the tabling or approve the request with a revised site plan.

Mr. Auvil read an email from John Schwartz, 518 W. 5<sup>th</sup> St., Peru, in remonstrance. They have questions about what the mobile is for. Mr. Hesser asked if the letter states where their property is located near LoveWay. Mr. Auvil responded it is assumed to be within 300 ft. of the property lines [*Placed in file as Staff Exhibit #1*].

Mr. Auvil read an email from Andrew Lambright, 14824 CR 108, Middlebury, in remonstrance. He has concerns about the light from the barns coming into his son's bedroom window, as his son has special needs and it causes issues. He went on to say they do believe in what LoveWay does and they are a great organization, but there are some concerns for water run-off as well from the gully into his yard [*Placed in file as Staff Exhibit #2*].

Mr. Auvil read an email from Jami Packer, 54141 CR 33, Middlebury, in remonstrance. She doesn't have an issue with having the mobile home on the property, though she feels there could be a better placement of the mobile home other than in the front entrance [*Placed in file as Staff Exhibit #3*].

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 an Amendment to an existing Special Use for an indoor riding arena to allow for the placement of a residence, for a Special Use for a mobile home, and for a 515 sq. ft. Developmental Variance (Ordinance requires 900 sq. ft.) to allow for the placement of a 385 sq. ft. residence be tabled at the request of the petitioner.

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

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

10. The application of *Stephen Poyser & Sheila Poyser, Husband & Wife (Lessor) & Towerco (Lessee)* for a Special Use for a wireless communications facility and for a 148 ft. Developmental Variance (Ordinance requires the height of the wireless support structure) to allow for the placement of a 185 ft. tall wireless communications facility 37 ft. from all lease lines on property located on the Southwest end of the easement, South side of CR 14, 1,680 ft. West of CR 8, common address of 13178 CR 14 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0315-2023*.

There were four seven neighboring property owners notified of this request.

Tony Philips, Kendell Communications, 380 Kendell Place, Columbus, Ohio, was present representing the petitioner. He explained they are going to be replacing the existing 120 ft. tower with a newer tower that is more structurally sound. He continued to say that AT&T will be filling a gap in coverage with this tower and will be the primary carrier at the top of the tower with room for 2 more carriers below. He went on to say the area is well screened with natural landscaping of dense trees and barns. Mr. Warner asked the range of the tower for cell communications. Mr. Phillips responded at most, the range is around a mile and half, to fill the gap in coverage in this area. He submitted a photo packet *[Placed in file as Petitioner Exhibit #1]*. He went on to say that this tower will also have FirstNet. He explained FirstNet is for first responders to be able to communicate when the network is being overloaded from people being on the network. Further, he explained he was informed that FirstNet is going to add school principals to the network for them to be able to call for emergency help as well. Mrs. Cramer asked if they are changing the tower from 120 ft. to 185 ft. Mr. Phillips responded correct. Mrs. Cramer asked if that will change the footprint on the ground. Mr. Phillips responded the proposed tower will take up the same space as the current tower, and this tower will be 75 ft. by 75 ft. on the ground. Mr. Norman asked if the tower will be a free-standing structure without down guides. Mr. Phillips responded yes, and it is designed to collapse on itself. Mr. Miller asked if there will be navigation lights on the top. Mr. Phillips responded no, it won't be high enough for navigation lights to be required. Mr. Warner asked how many times per month the tower is maintained. Mr. Phillips responded it is physically checked once a month, but there are monitors on 24 hours a day 7 days per week, if something were to go wrong.

Mathew Harness, 55877 Little Creek Ln., Middlebury, was present online in remonstrance. He stated he just learned about this request this morning, and he would like more time to research this project to be able to make an educated decision on this project. Mr. Hesser asked what the concerns might be. Mr. Harness responded the technology being installed is a concern due to the controversy surrounding the 5G technology. Mr. Hesser asked if he had any other concerns. Mr. Harness responded he doesn't have any other concerns at this time, but that is why he is asking for more time to further understand what is being proposed. Mr. Auvil asked Attorney Kolbus if Mr. Harness was on the notification list. Mr. Harness stressed he was informed by a neighbor of this petition. Mr. Hesser explained the Board cannot deny a cell tower over the fear of technology, and he believes there is a federal law concerning cell towers and technology. Attorney Kolbus stated that if they can show a need to fill in gaps, then by Federal Law, this cannot be denied. He continued to say the issue of technology goes to people worried about radio waves, and he doesn't believe any studies have found that to be accurate or substantial.



Karen Brenneman, 55862 Little Creek Ln., Middlebury, was present in remonstrance. She stated she also owns land across the road from the tower location, and this area is wooded. She stressed the concern is the technology. She asked if this tower will be 5G, and what health hazard will this raise. She went on to say she is concerned about her property value, as she owns a 3 acre lot. Mr. Auvil stated there is an existing tower there now. He then asked if her property taxes have gone down. Mrs. Brenneman responded no one's property taxes have gone down. She stressed the tower has been there many years, but she is concerned about this new tower as it will be taller and in use.

Steve Large, 55862 Little Creek Ln., Middlebury, was present in remonstrance. He stated they own the property across the street and have a residence in Cedar Creek Subdivision. He continued to say many families with small children live in this area, and there is a concern for the general welfare. He stressed studies have been done that prove the microwaves are harmful. He stressed in a five mile radius, after a five year period, health studies were done to show that people are ten times more likely to have cancer than the general population. Further, he explained that the 5G technology is causing a negative effect to people with heart conditions. He stressed it is in the interest of the general population to table this, and allow more time for research in the area of the health effects of the towers.

Josh Van Daele, 13307 CR 14, Middlebury, was present in remonstrance. He asked how the notification process works. Mr. Warner responded everyone within 300 ft. of the property lines are notified. Mr. Van Daele stated he lives within 300 ft. of the property lines, and he, as well as 3 other neighbors, didn't not receive notification about this request. He went on to say that according to the letter he saw, he was under the impression that the tower will be going a lot further south than what is being shown today. Mr. Hesser asked if he was aware of the existing tower. Mr. Van Daele responded he is, and he asked what the current tower is used for. He stressed the current tower is very small. Mr. Hesser stated the new tower will be 60 ft. taller than the current tower. Mr. Van Daele explained he didn't have any concerns when he thought the tower was going to the south of the property, but now that he knows it will be 500 ft. from his house; he isn't okay with that location.

Mr. Phillips came back on to respond. Mr. Phillips stressed the Board is not supposed to listen to concerns about health, because if they deny this due to hearing those concerns, there can be legal actions. He went on to say this is going to help the school principles to have FirstNet in case of emergencies; they can get police or fire to the schools faster. He continued to say that 5G is using a frequency that is older from UHF Channels, which can be sent out for miles. He stressed by the time the frequency gets to the ground it is less than from the top of the tower. He reiterated the Board cannot deny this tower due to health reasons. Mrs. Cramer asked what the current tower was being used for. Mr. Phillips responded the current tower has been decommissioned, and he isn't sure what it used to be used for. He stressed this tower will not have microwaves. Mr. Warner asked how many towers are in Elkhart County. Mr. Phillips responded there are lots of towers; every mile and a half to two miles in order for cell service to work. He explained one cell tower takes the place of 100 telephone poles. Attorney Kolbus explained the deed shows 3 tax code parcels, and the notices only went out to the neighbors surrounding the smallest parcel, where the tower is currently located. He continued saying that is why some people didn't receive notice, because they are not within the 300 ft. of the tower location.

Mathew Harness came back. He stated his concern is allowing more time, as most of the neighbors only heard about this last night to this morning. He stressed he is not concerned about the health factors of 5G, and he would definitely benefit from having more signal. He reiterated the neighborhood didn't have enough time to come to an informed decision.

Mr. Hesser explained since the Board allowed Mr. Harness to speak twice, then they will allow Mr. Van Daele to speak one more time.

Josh Van Daele came back on to speak. He asked if other locations have been proposed on the 3 acres that would be further away from the houses. He noted they own 3 parcels with over 100 acres of land.

The public hearing was closed at this time.

Mr. Hesser stated he understands the concerns that are raised, though the Board is ill-equipped and not allowed to deal with health issues on cell towers. He explained only one time, in his recollection, did the Board ask for a new location to be looked into, due to the petitioner. He stressed that time the petitioner was jamming a tower right in front of a bunch of houses. He continued to say he doesn't know why towers even come in front of the Board, and he feels at some point the Zoning Ordinance will change to where these won't need Board action.

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

**Motion: Action:** Approve, **Moved by** Steve Warner, **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 wireless communications facility be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 5/10/2023) and as represented in the Special Use application and at the June 15, 2023, public hearing.

Further, the motion also included that for a 148 ft. Developmental Variance (Ordinance requires the height of the wireless support structure) to allow for the placement of a 185 ft. tall wireless communications facility 37 ft. from all lease lines be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 5/10/2023) and as represented in the Developmental Variance application and at the June 15, 2023, public hearing.

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

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

11. The application of *Dolco LLC (Lessor) & Melissa Rivera & Lenardo River (Lessees)* for a Special Use for a home workshop/business for an auto body shop, for a Developmental Variance to allow for 3 outside employees (Ordinance allows 2), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the North side of US 20, 2,280 ft. East of CR 21, common address of 19803 US 20 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0324-2023*.

There were seven neighboring property owners notified of this request.

Devon Lehman, 60318 CR 27, Goshen, was present representing the petitioner. He explained they want to run a body shop and car repair business. Mr. Hesser asked if Mr. and Mrs. Rivera own Dolco. Mr. Lehman responded no. Mr. Hesser asked with the home workshop, isn't it a requirement that the land owner also own the business. Mr. Auvil responded no, the operator of business has to live on site. Mrs. Cramer asked if Mr. Lehman lives on site, or if he is going to run the business. Mr. Lehman responded no, the Rivera's will live on site and run the business. Mr. Warner asked if they are looking to allow 3 employees and up to 14 vehicles. Mr. Lehman responded yes. Mr. Hesser stated one of the parcels it has a fence in front. He asked if the fence runs the whole property. Mr. Lehman responded no, the fence ends to the east the fence ends. Mr. Warner stated this operation will not be seen or heard from the neighbors.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Norman stated his concern is there will be painting there, and how that will affect the land. He continued to say he would like to know what the plans are for oil waste. Mr. Warner stated he thinks that is regulated by IDEM.

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

**Motion: Action:** Approve, **Moved by** Steve Warner, **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 a home workshop/business for an auto body shop be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 5/15/2023) and as represented in the Special Use application and at the June 15, 2023, public hearing.
2. The outside storage is limited to the 14 vehicles noted on the site plan.
3. The operators of the business must live onsite.

Further, the motion also included that for a Developmental Variance to allow for 3 outside employees (Ordinance allows 2), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right be approved with the following conditions imposed:

1. Variances from the developmental standards of the Zoning Ordinance are void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 5/15/2023) and as represented in the Developmental Variance application and at the June 15, 2023, public hearing.

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

**Yes:** Deb Cramer, Steve Warner, Ron Norman, David Miller, Randy Hesser,

12. The application of *Wayne E. Miller & Luetta Kaye Miller, Husband & Wife* for a Special Use for a home workshop/business for an aluminum polishing business, for a 49 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for an existing residence 71 ft. from the centerline of the right-of-way, for a 38 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for an existing agricultural barn 82 ft. from the centerline of the right-of-way, and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the West side of SR 13, 800 ft. South of CR 24, common address of 59653 SR 13 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0316-2023*.

There were 18 neighboring property owners notified of this request.

Wayne Miller, 59653 SR 13, Middlebury, was present for this petition. He stated he is requesting a Special Use for his future plans of constructing a new building for his business. Mr. Warner asked if there is adequate room for semi-truck deliveries to pull off of SR 13. Mr. Wayne Miller responded there is a circle drive, so delivery trucks can be off of SR 13. Mr. Hesser asked how long the current buildings have been on the property. Mr. Wayne Miller responded he isn't sure as they moved to the property 3 years ago, and the buildings were already there. Mr. Hesser asked if he is going to put up a new building. Mr. Wayne Miller responded he isn't going to put one up right now, but he wanted to make sure he could build it down the road. Mr. Hesser explained a separate Developmental Variance is needed if he is going to build over the square footage that is allowed. Mr. Auvil explained it depends on the size of the building or an addition, if it is under 10% then Staff can approve, 10-20% it goes to the Board as a Staff item, and over 20% then it is an amendment to the existing Special Use. He went on to say Staff encourages petitioners to put on the site plan any future buildings. Mr. Wayne Miller clarified if he wanted to build again, as long as it is not bigger than what he has, then he wouldn't have to come in and have another hearing. He explained they want to build a house west of the current shop on the property, and then demo the current shop and house and convert the buggy shop to the business. Mr. Hesser asked what kind of chemicals are used in his business. Mr. Wayne Miller responded he only uses lacquer thinner for wheel polishing.

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** Steve Warner, **Seconded by** Deb Cramer 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 an aluminum polishing business be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 5/11/2023) and as represented in the Special Use application and at the June 15, 2023, public hearing.

Further, the motion also included that for a 49 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for an existing residence 71 ft. from the centerline of the right-of-way, for a 38 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for an existing agricultural barn 82 ft. from the centerline of the right-of-way, and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right be approved with the following conditions imposed:

1. Variances from the developmental standards of the Zoning Ordinance are void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 5/11/2023) and as represented in the Developmental Variance application and at the June 15, 2023, public hearing.

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

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

13. The application of *Brookview Farms (Lessor) & Tower North Development, LLC (Lessee)* for a Special Use for a wireless communications facility and for a 145 ft. Developmental Variance (Ordinance requires the height of the wireless support structure) to allow for the placement of a 195 ft. tall wireless communications facility 50 ft. from all lease lines on property located on the West end of the easement, West of CR 127, 1,460 ft. South of CR 146, in Jackson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0256-2023*.

There were five neighboring property owners notified of this request.

Fred Lau, Tower North Development, 216 Barten Ave., Terre Haute, was present for this petition. He stated the tower is being placed within the guidelines of the Zoning Ordinance. He went on to say that they were contacted by Verizon Wireless, and his company gives the radius to where the tower needs to be placed. He continued to say they are looking to install this tower sometime next year. Mr. Hesser asked if the tower will be 195 ft. from the greater property line. Mr. Lau responded that is correct. Mr. Hesser asked if this tower will collapse on itself. Mr. Lau responded yes, all of these towers are designed to collapse on themselves.

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** Steve Warner, **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 a wireless communications facility be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 4/19/2023) and as represented in the Special Use application and at the June 15, 2023, public hearing.

Further, the motion also included that for a 145 ft. Developmental Variance (Ordinance requires the height of the wireless support structure) to allow for the placement of a 195 ft. tall wireless communications facility 50 ft. from all lease lines be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 4/19/2023) and as represented in the Developmental Variance application and at the June 15, 2023, public hearing.

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

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

14. The application of *Joseph L. Miller & Marilyn Miller, Husband & Wife* for a Developmental Variance to allow the total square footage of accessory structures to exceed that allowed by right on property located on the East side of SR 13, 1,745 ft. North of CR 44, common address of 67608 SR 13 in Benton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0319-2023*.

There were seven neighboring property owners notified of this request.

Tony Blunt, 613 Colorado St., Goshen, was present representing the petitioner. He stated that when he applied for this petition, he was told the Staff was supposed to call him and let him know if he needed to apply for the Special Use. Mr. Auvil stated the business there is a contractor business. Mr. Blunt explained they set modular homes, therefore everyone leaves on Monday and comes back after the homes are set. He continued to say they would like to park equipment inside to make the property look nicer. Mr. Hesser asked if this request can be amended. Mrs. Kratzer explained that he would need to file for a Special Use, and the deadline for the July meeting has already passed. She continued saying he would have to file to meet the August deadline. Mr.

Hesser asked if they get denied the Special Use, would they still want the building. Mr. Blunt responded yes, they would still want the building. Mr. Hesser explained the Board shouldn't act upon this, because if it is denied, then he can't come back for 6 months. He further explained, that if the Board tables this petition then they can act upon both at the same time as when the Special Use.

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:** Table, **Moved by** Randy Hesser, **Seconded by** Steve Warner that this request for a Developmental Variance to allow the total square footage of accessory structures to exceed that allowed by right be tabled indefinitely to allow the petitioner time to file for a Special Use.

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

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

15. As a Staff Item Mr. Auvil presented a minor change – Brubacher, Inc. (UV-0913-2019) - request for site plan modification.

Mr. Auvil stated the original Use Variance showed a 15,000 sq. ft. building, however only a 12,000 sq. ft. building was constructed. He continued to say that the property owner would like to build a 6,000 sq. ft. addition for a total of 18,000 sq. ft. He went on to explain that 20% of the original 15,000 sq. ft. what was approved is 3,000 sq. ft. There was discussion about there only being concerns about sand extraction at the last meeting. Mr. Auvil stated this was originally approved January of 2020.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Ron Norman that this request for a minor change be approved.

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

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

16. The meeting was adjourned at 11:09 a.m.

Respectfully submitted,

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Danielle Richards, Recording Secretary

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Randy Hesser, Chairman

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Ron Norman, Secretary