

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16th DAY OF MARCH 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: Chris Godlewski, Plan Director; 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 (*Norman/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 16th day of February 2023 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Norman/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 *Jacob Shaffer & Jessica Shaffer (Buyers) & Jacqueline F. Fioritto (Seller)* 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 North side of River Brook Ln., 1,095 ft. North of SR 120, common address of 20925 River Brook Ln. in Washington Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0068-2023*.

There were 14 neighboring property owners notified of this request.

Jessica Shaffer, 20925 River Brook Ln., Bristol, was present for this petition. She stated they currently have chickens at their other residence, and they use the chickens as a hobby for eggs and 4-H. She continued to say they enjoy taking care of the chickens, and her children help take care of them. Mr. Hesser asked if there was a fenced in run area for the chickens as stated on the application, as it is not on the site plan. Mrs. Shaffer responded they have a run for the chickens at their current home, and the run will be next to the chicken coop area. She added it has a net over the run area so the chickens can't fly out. Mr. Hesser asked if the chickens will be in the coop the whole time. Mrs. Shaffer responded the chickens can get to the grass in the run area. Mr. Norman asked what they will do with the waste. Mrs. Shaffer responded their neighbor uses the waste for their garden.

Randy Osterloo, 21053 River Brook Ln., Bristol, was present in remonstrance. He stated there are 9 conditions and restrictions in the original plat that was accepted by Elkhart County and recorded in book #11 starting on page 34. He read restriction #1 which stated no livestock or animals of any kind, except domestic pets, shall be permitted on the premises of any lot. Mr. Hesser asked how those restrictions get changed. Mr. Auvil responded the restrictions get changed by a vote of all the residences by way of notarized signatures. Mr. Osterloo went on to read restriction

#9, which stated these restrictions and conditions shall be deemed covenants which run with the land and shall be permanently binding of the owners of real estate. He stressed these restrictions are included in the deeds of all the property owners in the subdivision. Mr. Hesser explained that in the recommended approval by Staff, it is required that the petitioner get that restriction changed. Mr. Osterloo then read a petition that was signed by neighbors. Mr. Hesser asked if any other property owner in the subdivision has any livestock. Mr. Osterloo responded no, and the petition was signed by all homeowners except for one. He then submitted the petition and copies of the restrictions *[Attached to file as Remonstrator Exhibit #1]*.

Jessica Shaffer came back up to respond. She stated that clearly the whole neighborhood has an issue, though she doesn't understand why. She stressed she didn't get the plat conditions with the home she just bought in the neighborhood, because she would have looked for that kind of restriction.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Cramer asked if the Board approves this request, would the petitioner be able to keep the chickens. Mr. Hesser responded if the Board approves it with the Staff recommendation, then unless she is able to get 100% of the neighbors to approve the chickens, she wouldn't be able to keep the chickens. Mr. Auvil explained that the restrictions are on the plat, which is why Staff had to add in the restriction being removed as a condition. He continued to say the petitioner would have to replat the property to try and get rid of those restrictions, or have 100% approval from neighbors to keep the chickens. Mr. Miller stated the Board doesn't regulate the governing body of the subdivisions, and he is for approval subject to having the neighbor's approval. Mrs. Cramer stated there are neighbors in attendance saying they are against this petition. Mr. Hesser stated the Board can consider the fact that the covenants and restrictions are there. Mr. Miller explained historically the Board has approved even with restrictions in a subdivision. Mr. Hesser stressed if this were to be approved, he would need to see a new site plan showing the run area. Mrs. Cramer reiterated that even if this is approved, there are already neighbors rejecting this petition.

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

Motion: Action: Deny, Moved by Randy Hesser, **Seconded by** Deb Cramer 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 denied based on the findings and conclusions of the Board:

1. The Special Use will not be consistent with the spirit, purpose, and intent of the Zoning Ordinance.

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

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

No: Roger Miller.

5. The application of *Northwest Syracuse Cemetery (Buyer) & MF Miller Family Farms, LLC (Seller)* for a Special Use for a cemetery on property located on the South side of CR 27, 1,900 ft. South of CR 48, common address of 00000 CR 27 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-0063-2023*.

There were 17 neighboring property owners notified of this request.

Al Kreske, 5724 Deer Hollow Dr., South Bend, was present representing the seller of the petition. He stated they are looking to donate the property to the church, though prior to donating the property they want to be sure the Special Use is approved. Mr. Hesser stated the site plan does not show where parking or setbacks will be located. Mr. Kreske responded the drawing was done by the surveyor who parceled out the new property, and it may have been missed. Mr. Hesser stated the request shows 40 plots. He then asked if that amount is all that is being sought at this point. Mr. Kreske responded yes. He stressed they aren't looking to expand in the future, due to it just being a local cemetery for the community. Mr. Hesser asked if there will be any fencing around the property. Mr. Kreske responded he doesn't know that information, as he is just representing the sellers. Mr. Auvil stated that Staff is not concerned about fencing. Mr. Hesser asked if the accessory structure is permitted without a residence on the property. Mr. Auvil explained that any structure under 120 sq. ft. doesn't require a permit, and this is just for a lawnmower and small tools. Mr. Hesser asked where the church is located. Mr. Kreske responded he isn't sure.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if Staff would like an updated site plan. Mr. Auvil responded yes.

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 cemetery be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The petitioner must provide a revised site plan showing the driveway and parking areas for approval by Staff.

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, Steven Warner, Ron Norman, Roger Miller, Randy Hesser.

6. The application of *Elkhart County Gravel, Inc.* for a Special Use for resource extraction on property located on the West side of CR 21, 1,575 ft. North of CR 104, common address of 52203 CR 21 in Washington Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0073-2023*.

There were 25 neighboring property owners notified of this request.

Charlie Zercher, Kindig & Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. He stated the petitioner has been engaged in the extracting business for over 50 years, and they have multiple processing plants between Elkhart, Kosciusko, and Lagrange Counties. He continued to say that this is especially important as the State Road 120 site is winding down, and there is demand for gravel for residential use, as well as from the county Highway Departments and INDOT. He went on to say that as far as this subject site is concerned, their intent is to start processing on the southeast corner of the property, continue west, and then north as the process progresses. He explained there is a high water table on the property, and they will have to do underwater excavating. He stressed all water will stay on site by pumping it to a pond. Mr. Hesser asked if the processing is just what is mined on site, and nothing will be brought in offsite. Mr. Zercher responded that is correct, though there might be some storage of limestone that is brought in from offsite. He stressed the processing is from what is mined on site, then stock piled around the processing plant as it comes out. Mr. Hesser stated on the application it stated the stockpiling of limestone and other resources, but then it is crossed out. Mr. Zercher responded extraction is permitted use by right in an A-1 zone. Mr. Auvil explained there were some Special Uses that were found to not be needed, which is why there might be some items not listed. Mrs. Cramer asked if the processing of aggregate is the same thing that is happening at the State Road 120 site. Mr. Zercher responded yes. Mr. Hesser asked about signage. Mr. Zercher responded the sign is to be 4 ft. by 8 ft. located south of the driveway and 3 ft. off of the ground from the bottom and 7 ft. off the ground from the top. Mr. Hesser asked if the sign requires a variance. Mr. Auvil responded the sign will be a part of the Special Use petition. Mr. Hesser asked if the Board would be permitting a sign that is beyond what is normally permitted. Mr. Auvil responded no, a Special Use is allowed for this land use, and the sign is incorporated with the Special Use. Mr. Miller asked if extraction is permitted in an A-1 zone, then what is being asked for today. Mr. Auvil responded this is a commercial business application and not for personal use, and that is why the Special Use is needed. Mr. Miller clarified if the landowner was extracting for their own personal use, then a Special Use would not be needed. Mrs. Cramer asked if there are any requirements for when they close up the mining. Mr. Zercher responded Indiana is one of the few states that doesn't regulate the mining of minerals except for coal mining. Further, he explained there is a subgroup, the Environmental Stewardship Council, which puts in standards and procedures for when these locations are coming to an end. He went on to say that Trade Organization will regularly inspect the site, and they will be held to federal regulations of mine safety and standards. Mr. Hesser clarified the petitioner will follow those standards and regulations. Mr. Warner asked what kind of fencing they will have. Mr. Zercher responded there will be a gate and fence for the entrance, but as far as the property as a whole they weren't going to put in fencing all the way around. Mr. Norman asked if the toll road is aware of the project. Mr. Zercher responded he isn't aware, if INDOT knows of the project. Mr. Norman asked if they will comply with MS4 regulations, due to his concern of the ditch that is located close to the subject property. Mr. Zercher responded they

will follow all regulations required. Mr. Miller asked about how many trucks will be coming in and out throughout the day. Mr. Zercher responded the truck traffic will just be customers coming to pick up the materials. He responded there will be roughly 25 trips a day. There was discussion of about the 25 trucks being trips in and out or customers. It was clarified the 25 trucks could make a varied amount of trips per day pending the demand of the customers.

Ryan Beer, Elkhart County Gravel, 19242 US 6, was present for this petition. He stated the trucking will fluctuate depending on the day. He stressed it could be 25-100 trips coming and going depending on the day and what the customer's demands are be at that time. Mr. Norman asked if their preferred route out of the facility will be on CR 2. Mr. Beer responded they will be using the south exit off of CR 6 most often. Mr. Norman asked if they will be coming over Vistula Bridge in Bristol. Mr. Beer responded yes, though it depends on where the customer needs the materials. Mr. Norman asked what their plans are for remediation on the State Road 120 site. Mr. Beer responded there is a plan in place to turn the current location into ponds, though it might turn back into farmland or housing sites. Mr. Norman clarified there will be grasses on site when they leave it. Mr. Beer responded yes, the idea is to return the land back to its normal state. Mrs. Cramer asked if this site will be owned or leased. Mr. Beer responded they own this site. Mr. Zercher explained that if they lease the site, it is up to the owner on how they want the property to be after the excavation is done. Mr. Miller asked how long this site will be in excavation. Mr. Beer responded the estimation is 30 years, though if they hit clay and find the resources aren't there, then that will shorten their time of the site. Mr. Miller asked how far down the water table is on this subject site. Mr. Beer responded the water table is between 10-15 feet, therefore they will be in the water right away. He stressed the positive side of having water is it helps keep the site less dusty. Mr. Miller asked how much noise this site will generate. Mr. Beer responded with respect to their location with the toll road, their noises won't be any louder. He continued to say they will water the road quite a bit, as per the request of the neighbors in the area. Mr. Norman stated that it is a challenge for them to keep the road clean on SR 120, though at this location it should be easier due to having less traffic. Mrs. Cramer asked him to clarify if they are or are not bringing in materials from other locations. Mr. Beer responded the only material being brought in is limestone for retail sales but no other materials will be brought in. Mrs. Cramer asked if them digging into the water table will affect the neighboring property owner's water tables. Mr. Beer responded they have been in the business for 50 years, and they have never had neighboring water tables being effected by their excavations.

Robert Coddens, 52000 CR 21, Bristol, was present in support of this request. He stated he has been a residence of Elkhart County since 1953, and he has worked for Elkhart County Gravel. He went on to say in the 1980's the Board permitted the excavation a quarter mile from the subject property. He added he is happy with how the process was handled, and how it ended with the land being conserved. Mr. Norman asked if the pond on his property was left over from a previous extraction site. Mr. Coddens responded that is correct. Further, he stated the truck traffic is during working hours, therefore it isn't affecting people at their homes. Mr. Miller asked if there is a lot of traffic on the road at this time. Mr. Coddens responded there is farming traffic, and there is some traffic from the trailer factories down on CR 21 to the south. He reiterated the toll road will make more noise than the gravel pit will, and that is all day and night long.

Craig Blough, 57446 CR 29, Goshen, was present representing Bartell and Company. He stated that in 2006 they sold this land to 2 individuals, and it has been operated as a farm. He

stressed there is a long standing relationship with Elkhart County Gravel, and they are proud of having a top notch facility taking over their land. Further, he stated that when this is over, there will be highly sought after properties for ponds, farming, lake front property, and housing. He stressed there is heavy farming traffic along this road, which has caused dust on the roads for years, and the extraction process will cause less dust due to them watering the roads. He explained it is a lake artery during the summer for people driving to the lakes up north, which generates a lot of traffic in the area combined with the farming traffic.

Jessica Alaniz, 19813 CR 6, Bristol, was present in remonstrance. She asked what she will be looking at when she is looking out her back porch, a berm with trees or a bunch of gravel. She stressed they are going to start digging on the south end where she has a clear view to the toll road, and she doesn't want to see gravel. She asked what time of the day they will be digging. Mr. Miller responded they put in their petition operating hours from 7 a.m. to 4 p.m. and the petitioner will be held to those hours. Mrs. Alaniz stated she is concerned about dust, because her mother has health issues. She added if they keep it watered down, that will help ease her concern.

Mr. Zercher came back on to respond. He stated to clarify the hours of operation are actually 7 a.m. to 4:30 p.m. He explained that the toll road is at a higher elevation than the residences and the subject property. Mr. Miller stated the gravel is normally stock piled up to 20-30 feet. Mr. Zercher responded that is correct. Mr. Miller asked if the machinery will be higher than the stock piles. Mr. Beer responded there may be one conveyor that might go slightly higher. He stressed there won't be any towers on site. Mr. Zercher submitted a photo of a conveyor *[Attached to file as Petitioner Exhibit #1]*.

The public hearing was closed at this time.

Mr. Hesser stated he lives south of the processing plant on CR 14, and he knows traffic can sometimes be very inconvenient. Though, he stressed there is never objections from the neighbors. He went on to say there is a need for these resources. Mr. Miller stated there is a need for these resources to be local and not coming from other states.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **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 resource extraction 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 2/13/2023) and as represented in the Special Use application.

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

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

7. As a Staff item, Mr. Auvil presented a minor change request for *Dwayne J. Martin & Elizabeth A. Martin, Husband & Wife* (UV-0722-2022) the request is to change the site plan to allow for a ground-mounted solar array to be greater than 3,000 sq. ft. in panel area.

Rebecca Mitschelen, Solar Energy Systems, 8015 W 1350 N, Nappanee, was present representing the petitioner. She stated the petitioner is looking towards future plans and is asking to move the array. She stressed due to his agricultural grant the arrays have to be moved 50 ft. away from all structures. Mr. Hesser asked if she had something to show the Board where this is going to be moved. Mrs. Mitschelen submitted a new site plan showing where the array will be located [Attached to file as Petitioner Exhibit #1-3]. She clarified the array isn't getting bigger, it is just being moved further south on the subject property. Mr. Hesser stated the new array looks smaller than the approved array.

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 approve the request as a minor change.

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

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

8. As a Staff item, Mr. Auvil presented a minor change request for *Toby & Ruby Borntreger* (991714) the request to allow for an addition to an existing cabinet shop for office and storage space.

There was discussion about where the new addition would be located. Mr. Auvil explained the addition will be a wraparound of the current building.

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

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

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

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

9. The application of *Juana A. Sanchez* for a Special Use for a home workshop/business for a lawn care business, for a Developmental Variance to allow for 5 outside employees (Ordinance allows 2), and for a 33 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for an existing residence 42 ft. from the centerline of the right-of-way on property located on the North side of CR 108, 4,065 ft. West of CR 3, common address of 29499 CR 108 in Cleveland 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-0074-2023*.

There were six neighboring property owners notified of this request.

Mr. Miller asked due to the number of complaints, has there been investigations into these allegations. Mr. Auvil responded that there are a number of open complaints, and Staff is working on resolving these complaints.

Hugh Williams, 903 S. 2nd St., Elkhart, was present representing the petitioner, and Raphael Sanchez, 1714 W. Lusher Ave., Elkhart, was present for this petition. Mr. Williams stated that the petitioner just purchased the property in late fall, and the complaints were already in place. Mr. Miller asked what date in the fall. Mr. Williams responded November 18, 2022. Mr. Hesser asked if the issues are being addressed. Mr. Williams responded yes, Mr. Sanchez is working to resolve the issues by hauling away the trash and the existing mobile homes. He continued to say a building on the property has been remodeled to look better for the neighborhood. He submitted photos of the property from before and then after the clean-up *[Attached to file as Petitioner Exhibit #1-5]*. He went on to say that with winter the progression of the clean-up slowed down, though with spring coming they will be able to get more done. He stressed permits have been pulled to get power installed and to be able to remodel the buildings. Mr. Hesser asked the age of the house. Mr. Williams responded 1929 is when the house was built. Mr. Hesser asked if the house is considered legal nonconforming. Mr. Auvil responded yes. Mr. Miller stated that since February there were complaints of trash in the yard and a landscaping business being run off of the property. He then asked what is being done about these complaints. Mr. Williams responded that they are in the process of picking up trash, though with remodeling the building there is going to be some debris left on the property while the remodeling is happening. Mr. Norman stated he understands, but as Mr. Williams is a contractor he should know a timeline to get this project done. Mr. Williams responded yes, he is thinking 6 months for the remodel of the house. Mrs. Cramer asked if it will be 6 months before someone can live in the house. Mr. Williams responded due to the age of the well and septic systems, there has to be a new one put in, therefore, it could be longer before someone can move into the house. Mr. Hesser asked if Mr. Sanchez intends to move into the house and operate the business. Mr. Williams responded yes with his wife and children. Mr. Hesser asked what size sign will be on the property. Mr. Williams responded there is a temporary sign at this time. Mr. Hesser asked where the permanent sign will be located, as there isn't a sign on the site plan. Mr. Williams responded there isn't a definite decision of where a sign will be placed. Mr. Hesser stressed there will need to be a revised site plan showing the sign location. He asked Staff if there was a concern with the size of the sign. Mr. Auvil responded no, it is part of the Special Use request. Mrs. Cramer asked if they are currently operating the landscaping business off of the property. Mr. Williams responded no, though there is some storage of items in the garage. He continued to say that they have a right to store some of their equipment in the pole barn. He stressed there won't be any chemicals stored on site. Mr. Hesser asked where the trailers and trucks are stored. Mr. Williams responded there are 3 trailers a 2 pick-up trucks, and they are parked outside of the building on the subject property. Mr. Miller asked if the people living in the RVs are still living there. Mr. Williams responded no, they have been moved out. He reiterated that complaint and action was from the previous owner and not from Mr. Sanchez. Mr. Norman asked what is going to happen to the grass clippings and leaves he picks up for his landscaping business. Mr. Sanchez responded he takes them to the landfill. Mr. Williams stressed Mr. Sanchez does beautiful work, and he will continue to make the subject property beautiful. He continued to say that he understands the neighbors may not want to see trucks parked in the area, but he is offering to put up a 6 ft. privacy fence to help it not be as visible. Mr. Miller clarified that anything that is said today in the hearing will be a part of his testimony. Mr. Williams responded he understands, and the fence will go up. He stated the neighbors need to understand this takes time and won't happen

overnight. He stressed as long as they don't run into any material shortages, then they will finish work in 6 months.

Anthony Tweedy, 54448 Kerryhaven Dr., Elkhart, was present in remonstrance. He stated he has talked to many neighbors in the neighborhood, and they are against this being approved. He explained the pole barn is directly behind his house, and it is all that he can see. Mr. Hesser asked how long the pole barn has been on the property. Mr. Tweedy responded it has been there since 2004, but it was originally a 2 stall garage. He continued saying the previous owner added on 30 ft. to the north side. He went on to say there are a lot of concerns due to privacy issues as the business will be in their backyards causing noise and privacy issues. Further, he stated that there are a lot of junk cars on the property currently, and Mr. Sanchez generates a lot of noise all day long with his landscaping business. He reiterated his concern is running the landscaping business from dawn to dusk with the pole barn being where they come and go for equipment and supplies. He asked will there be gravel, rocks, mulch, and sand, and where will that be stored on the property. Further, he stated he is concerned about property values and what this will do to their property values with having a commercial business in their back yards. He continued to say that as of now this is a small business, but in order to do business well it will continue to grow and expand. He reiterated a 6 ft. fence won't be enough to maintain privacy due to elevation.

Don and Sue Morgan, 29472 CR 108, Elkhart, were present in remonstrance. She stated their biggest concern is that no one is living in the house, and there are walls missing inside of the main level. She continued to say that the remodel will take longer than 6 months for the house to be deemed livable. She stressed there hasn't been running water or electricity to this home for years. She went on to say she can email photos of where there is a Joy-John on the property, and all of the shrub trees have been cut down that were on the farmer's property. Further, she stated that there are several vehicles sitting on the property. She stressed there has been a focus on making the barn better, but no work has been done on the house. Mr. Hesser explained that in order for a home workshop/business to be run, the home owner must live on site. Mr. Morgan stated there will be fuel and oil stored in the barn, that is hazardous and a concern as it is flammable. Mrs. Morgan asked if she could email her photos. It was discussed Mrs. Morgan would email the photos to the county email *[Placed in file as Remonstrator Exhibit #1-7]*. Mr. Morgan asked if they will be able to run the business until the residence is allowed to be lived in. Mr. Auvil explained Staff was made aware of this business as a complaint and part of the complaint process is the owner gets ticketed then go to court, if nothing is done, or they submit an application for a home workshop/business. He continued to say that the submittal of the Special Use puts a pause on the complaint, but Staff doesn't generally tell people to stop what they are doing as part of these approval processes. He stressed that is what the conditions and commitments are for, if the Special Use is approved. He went on to say in terms of operations now that isn't something that they would be told to stop doing. Mr. Hesser stated the Board could tell them to stop. Mr. Auvil stressed that is correct, but the county doesn't have the man power to police and monitor all the situations throughout the entire county. Mr. Morgan stated that they can run the business, not live in the house, and keep making excuses as to why the home isn't being fixed due to unforeseen problems. Mr. Hesser stated those are legitimate concerns, and there are ways the Board can address those concerns, if this gets approved. He continued to say that the Board doesn't have to approve Special Uses forever and can approve it for a small period of time to help keep those concerns to a minimum. Mr. Norman stated Mr. Sanchez making improvements on the pole barn first might be him wanting

to have a secure place for the equipment to help deter theft. He continued to say Mr. Sanchez has a right to fix up the building and he has put in the money for a new septic and field system. Mr. Morgan stated he didn't see the field system, but there is a big pile of dirt behind the house. He reiterated the only improvements they have seen is to the pole barn.

Anthony Gaby, 54414 Kerryhaven Dr., was present in remonstrance. He stated he has lived here for 22 years, and he looks out his window to see piles of debris, building trusses, and burning of trash. He stressed the embers from the trash land all over the neighbor's houses. Mr. Hesser asked how long this has been going on. Mr. Gaby responded since Mr. Sanchez took over the property. Mr. Hesser clarified the burning has been happening since last fall. Mr. Norman asked if the burn area is directly behind his property. Mr. Gaby responded that is correct; he is the 4th house in from CR 108. He continued to say that the trusses on site are too big for the house, and he is concerned another building will be built. Mr. Hesser stated they aren't requesting permission for another building at this time.

Francheska Carrillo, 54466 Kerryhaven Dr., was present in remonstrance. She stated she owns the first two lots in the neighborhood. She went on to say she is just as concerned as the other neighbors. She stressed she sees everything that goes on and doesn't like what she sees. She continued to say she is concerned about the road as the road is 1 foot from her fence. Mr. Hesser asked if the access road is next to her property. Mrs. Carrillo responded yes, and she is concerned about them driving on her property. She continued to say that her dog barks at the people coming and going from Mr. Sanchez's property all day long, and that is another concern with having to deal with her dog barking all day.

Mr. Williams came back on to respond. He stated he appreciates the neighbors coming out and bringing their concerns to light. He went on to say Mr. Sanchez has a family also, with kids and grandkids. He stressed he understands safety, and he has put up cameras for security reasons. Mr. Hesser asked what is being burned on the subject property. Mr. Williams responded they live in the county, therefore they are allowed to burn sticks, twigs, and bushes. He stressed that the items that can't be burned are hauled away. He noted there have been conversations with the Fire Marshall on what is and isn't allowed to be burned. Mr. Hesser asked what the trusses are for. Mr. Williams responded they were there prior to buying the property, and they didn't want to throw them away. Mr. Hesser asked if there will be any material stored outside once the construction is done and the business is running. Mr. Williams responded all material will be located and stored in the barn, as it is not good to keep mulch outside exposed to the weather. Mr. Miller clarified he won't have piles of gravel and mulch sitting outside. Mr. Williams responded that is correct. Mrs. Cramer asked if the septic is already installed. Mr. Williams responded yes, the septic and field system have been installed. He continued to say electricity has been turned on for the home, and they are going to get the electricity turned on for the pole barn next. Further, he stated there is a Joy-John on site for them to have a bathroom while they are working. Mr. Norman asked if the 5 ft. setback to property line includes driveways. Mr. Auvil responded no, the setbacks are for structures, and there isn't a setback in place for driveways. Mr. Williams stated the driveway was already an established driveway before Mr. Sanchez bought the property. He went on to say there will be a privacy fence put in place along the driveway, as well as shrubbery and landscaping that will grow tall to help add to the privacy for the neighbors. Mr. Norman clarified they are proposing to put in a privacy fence as well as shrubbery such as Arborvitaes. Mr. Hesser asked how many vehicles and trailers will be stored outside. Mr. Williams responded there will be a vehicle for Mr.

Sanchez's wife, daughter, and son. Mr. Miller asked if the workers will be parking on the property. Mr. Williams responded no, they will go to the work site. Mr. Hesser clarified his question of how many business trucks will be parked outside. Mr. Sanchez responded there will be 2 or 3 trucks and trailers parked outside.

The public hearing was closed at this time.

Mrs. Cramer stated that the conditions state no business operations will start until the house is occupied, but do they understand that driving a truck on and off the property is part of operating the business. Mr. Auvil explained that the building permit has been approved for the house, therefore the condition is intended for vesting of the Special Use, and not for what is currently happening. Mr. Hesser stated that if this gets approved, Staff won't shut down the business as long as they are continuing to work towards fixing the house. Mr. Auvil responded yes, and even if this gets denied, they would be given 90 to 180 days to vacate the business items off of the property. Mr. Miller stated if this is approved the Board would have more control over what is happening than if this gets denied. Mr. Auvil recommended approving this petition for a set time. Mr. Hesser stated a time limit on an approval would give the petitioner time to finish remodeling the house.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a Special Use for a home workshop/business for a lawn care business be approved with the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose, and intent of the Zoning Ordinance. Special Uses for a home workshop/business are allowed in the A-1 zone.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. This is a 2-acre parcel in a moderately dense residential area, and the property will remain residential in character.
3. The Special Use will substantially serve the public convenience and welfare by allowing for a local lawn care business.

The following conditions were 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 vegetation for buffering and the sign location.
3. No business operations may start until the house is occupied by the petitioner.

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.
2. The sign is limited to two (2) foot by three (3) foot in size.
3. Approved for a period of one (1) year; any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.

Further, the motion included that a Developmental Variance to allow for 5 outside employees (Ordinance allows 2) and for a 33 ft. Developmental Variance (Ordinance requires 75 ft.) to allow

for an existing residence 42 ft. from the centerline of the right-of-way 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 revised site plan to be submitted for staff approval and as represented in the Developmental Variance application.

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

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

10. The application of *Kenneth Patterson* for a Special Use for a 2 unit mobile home park, for a 4 acre Developmental Variance (Ordinance requires 5 acres) to allow for a mobile home park on a 1 acre parcel, and for a 5 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for the placement of a mobile home 70 ft. from the centerline of the right-of-way on property located on the East side of CR 13, 2,520 ft. South of CR 4, common address of 52474 CR 13 in Osolo Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0067-2023*.

There were six neighboring property owners notified of this request.

Kenneth Patterson, 81 Brookside Manor, Goshen, was present for this petition. He stated he wants to move his mobile home to his property along with his parent's mobile home. He stressed that mobile home lot rent keeps going up, and it is costing too much money. He explained that his parents are in their 70's and 80's and not paying a lot rent fee will save them \$15-\$25 thousand a year. Mr. Hesser asked if the park model is currently on the subject property. Mr. Patterson responded no, he isn't going to be able to get the park model due to a title issue. He went on to say they will be putting in a 14 ft. by 42 ft. 2 bedroom mobile home and a 14 ft. by 66 ft. 3 bedroom mobile home. Mr. Miller asked if they will be putting in a septic. Mr. Patterson responded he will be putting in a septic, but wanted to wait until this was approved before putting the money into for a septic. Mrs. Cramer asked if there was a house on this property before. Mr. Patterson responded yes, many years ago, and it was removed in 1999. He continued to say there are 2 septic tanks on the property, and those will be removed when the mound system gets installed.

Mr. Auvil read an email from Kelly Amrein, 52473 CR 13, in remonstrance. He then submitted the email *[Attached to file as Staff Exhibit #1]*. Mrs. Amrein stated in her letter she is concerned that one acre isn't big enough, and she feels that two homes will generate a lot of traffic.

John Simcox, 52386 CR 13, Elkhart, was present in remonstrance. He stated his biggest concern is the safety aspect of having mobile homes on this property due to the location of the driveway. He stressed the line of site is not for enough for this location. He stressed the Highway Department sent the petitioners a letter telling them to not use the driveway, and the petitioners have ignored that letter. Mr. Hesser asked for clarification on where the driveway is located. It was shown on the aerial the driveway is in alignment with the guard rail of the overpass. Mr. Simcox went on to say that the police have come out multiple times to monitor the speed of drivers on this road, because people do not go the speed limit. Mr. Hesser asked where Mr. Simcox proposed the driveway should be located. Mr. Simcox responded it should go to the north, but it can't due to

utilities being there. Mr. Hesser asked if his proposal is that no one should ever live on this property. Mr. Simcox responded yes. He continued to say that the variance is for 1.22 acres when 5 acres is required. He asked if that is normal for variances, as he thought variances were for small portions to accommodate homeowners' improvements. Further, he stated that this site plan has changed multiple times already, and he doesn't not know how anyone could get the trailers in this hole. He read a report from 1990 stating that the boring samples show that a septic cannot be done on this property. He submitted the report *[Attached to file as Remonstrator Exhibit #1]*. He reiterated that as far as saving money, that is none of his business, but he has lived here a long time. He stressed the neighbors are all concerned about this petition.

John Turk, 55402 Susquehanna Rd., Elkhart, was present in remonstrance. He stated he owns property on CR 4 east of CR 13. He stressed the over pass over the toll road is a dangerous place, because people drive very fast on this stretch of road. He stated in the future on CR 4 to Cassopolis Street they will be putting in the Jackie Walorski Parkway on CR 17, and that will add more traffic to CR 13 and CR 4.

John Fay, 25711 CR 11, Elkhart, was present in remonstrance. He stated that he has been to Mr. Simcox's residence, and it is difficult to get out of his driveway after the RV factories get out in the afternoon. He stressed the proposed driveway would be very dangerous due to fast drivers.

Cheryl Simcox, 52386 CR 13, Elkhart, was present in remonstrance. She stated that one night when they were coming home; they saw a car on the side of the road. She continued saying it was the petitioners trying to make the quick right into the driveway, and they barely made it.

Teresa Ragsell, 1202 Glenwood Park Dr., came on to respond. She explained she is Mr. Patterson's fiancé. Mr. Patterson stated that anyone who lives in this area has to deal with people driving fast down the road. He stressed he has never had a problem getting in or out of his driveway, and it has been in that location for 65 years. He continued to say he dealt with the Highway Department and didn't ignore any letters, and they are not making him move the driveway. Mrs. Cramer asked if the septic system has been approved. Mr. Patterson responded he is working with someone out of Mishawaka at Hub Septic. Ms. Ragsell stated they had their own drillings done a year ago. Mr. Patterson stressed that the supervisor for the Elkhart County Environmental Health Department has also been out to take samples, and he is working with them on the septic issue. Mr. Hesser asked if the people installing the homes, are aware of the geography of the land. Mr. Patterson responded yes, they are working on how to get them placed on the land. Ms. Ragsell stated they are working on taking out some trees to have better access and more visibility from the road. She went on to say that they won't live there full time.

The public hearing was closed at this time.

Mrs. Cramer asked if the 4 acre Development Variance is in place, because there are two mobile homes being asked for. Mr. Hesser explained this is a mobile home park instead of two residences. He stressed because mobile homes are involved, it has to be in a mobile home park. He continued to explain this request needed to fall within a category within the Zoning Ordinance. He noted Staff has to call it a mobile home park, because it is the closest thing that applies. He stressed the mobile home park will not be any bigger than two mobile homes on the subject property, which is why one acre is deemed sufficient. Mr. Auvil stated that is all correct. Mrs. Cramer asked if a single mobile home could be placed on an acre. Mr. Auvil responded yes. Mr. Hesser explained a 5 acre mobile home park could have several mobile homes. Mrs. Cramer

stressed this area is already zoned for residential, therefore someone else could put in a house with the same traffic and driveway concerns without the Board being involved. Mr. Hesser agreed, and he stated no matter where the driveway is placed there will be safety issues with traffic. Mr. Norman stated the driveway on the property to the west lines up with the subject property's driveway from the south bound lane. He went on to say that everywhere there is RV related business, there is heavy traffic when workers are going to work and then heading home for the day. Mr. Hesser stressed that speed limits and road safety are for the Highway Department to regulate. Mrs. Cramer stated the Board wouldn't be approving a business, as this is only for 2 residences. Mr. Hesser explained the petitioners can't proceed with building permits if the septic permit isn't approved.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **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 2 unit mobile home park be approved with the following conditions imposed:

1. The request is approved subject to Staff renewal every three (3) years and with a one (1) year review to verify compliance with the following:
 - a. The mobile homes shall be adequately stabilized and skirted and have tie-downs installed.
 - b. The water supply and sewage disposal system shall be installed in accordance with County Health Department specifications.
 - c. Adequate provisions for storage shall be provided at all times to eliminate exterior storage of personal property, tools, and vehicles, except licensed motor vehicles.
 - d. At all times, the premises shall be kept free of abandoned junk vehicles and parts thereof as described by Indiana State Law.
2. 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 2/10/2023) and as represented in the Special Use application.

Further, the motion also included that a 4 acre Developmental Variance (Ordinance requires 5 acres) to allow for a mobile home park on a 1 acre parcel, and for a 5 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for the placement of a mobile home 70 ft. from the centerline of the right-of-way 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 2/10/2023) and as represented in the Developmental Variance 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 meeting was adjourned at 11:38 A.M.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary