

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16TH DAY OF FEBRUARY 2017 AT 8:30 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser. Staff members present were: Chris Godlewski, Plan Director; Liz Gunden, Planner; Mae Kratzer, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Joe Atha, Tony Campanello, Denny Lyon, Randy Hesser.

Absent: Roger Miller.

2. A motion was made and seconded (*Lyon/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19th day of January 2017 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Campanello/Atha*) 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.

**** It should be noted Attorney Duncan came on as the Board's Attorney for this petition.****

4. The application of *Indiana Gravel Inc. (Buyer) & Lavern & Josephine Miller Family Limited Partnership (Seller)* for a Special Use to allow for a mining business for the preparation of dirt, sand, gravel, and stone for sale to the public on property located on the West side of US 33, 2,300 ft. South of CR 40, in Elkhart Township, zoned A-1, came on to be heard.

Mr. Godlewski reminded the Board this is a continuation of last month's hearing to consider the conditions supplied by the petitioner. He continued saying the Staff Report was presented at the previous hearing. He then stated Staff would like the petitioner to expand on reclamation in condition #11. He also added the only issue mentioned in Goshen Airport's memo not covered with the proposed conditions is the dust problem.

Charlie Zercher, Kindig & Sloat PC, 102 Heritage Parkway, Nappanee, was present representing this petition. Mr. Zercher stated Barry Pharis was unable to attend this meeting due to illness, but he did provide a list of proposed conditions to Staff. He explained at that time Mr. Pharis was not aware of the letter submitted by the Goshen Airport. He continued saying after reading the letter they compiled a list of revised conditions, and he then submitted that list [Attached to file as Petitioner's Exhibit #1]. The Board reviewed the conditions, and Mr. Zercher explained the revisions. He stated for condition #3 the word water was added to off-site discharge in order to clarify the meaning. He also stated conditions #11, 12, 13 and 14 were added to address the Airport's concerns. He explained condition #11 deals with the property owner's cooperation with the airport and the Board of Aviation Commissioners. He continued saying condition # 12 addresses the dust concern, and condition #13 covers the owner's obligation to cover reasonable costs associated with #11 and #12. He then clarified condition #14, which states the owner will comply with any laws, ordinances, etc. that apply to this property. Mr. Zercher stressed Devon

Miller, a principle of the petitioner, sent a copy of the conditions to Mr. Sharkey, Manager of Goshen Airport, and he received a response that the proposed conditions were okay. He added the conditions were then forwarded to Mr. Richmond, President of the Board of Aviation, and Mayor Stutzman. He understands Mr. Miller has not received any additional comments from the City of Goshen or the Airport Board. Mr. Zercher mentioned Mr. Pharis also attached a copy of the application in regards to the hours of operation referenced in condition #10. Mr. Campanello questioned if the petitioner has a plan to keep dust under control. Mr. Zercher responded Mr. Weaver has a water truck at his current mining operation, which is used to spray down the driveway. He also added most of the mining/processing of gravel involves the use of water and does not produce a large amount of dust. Mr. Hesser questioned the petitioners' definition of reclamation in condition #15. Mr. Zercher stated the reclamation plan will be put into place when the useful life of the gravel operation ceases, and the cavity is turned into a pond. He continued addressing the acceptable methods of deterring water fowl such as the slopes, rocks, and planting of tall grasses. Mr. Hesser recollected the reclamation plan was very specific at the previous hearing. Mr. Zercher recognized the major concern is water left after the mining operation, but he again stressed water fowl deterrent methods will be put into place. Mr. Atha asked if the petitioner will pay for any additional road work required by INDOT. Mr. Hesser clarified the petitioner is responsible for any cost caused by a condition or commitment. Mr. Zercher addressed this question, and stated Mr. Pharis is consulting with an INDOT engineer to design an access plan based on the requirements imposed by INDOT.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Godlewski explained Staff approves of the proposed conditions. Mr. Campanello stated condition #15 is vague, and he is concerned with a person or animal falling into the pond because of the two ft. drop off. He believes this situation could be very dangerous, with no easy way out of the pond. Mr. Lyon responded he assumed a fence would remain around the property. Mr. Campanello stressed, if houses are built on US 33, this would be an accident waiting to happen. He continued saying he does not believe the reclamation plan will affect the Airport's water fowl issue. He stressed he would like to see the safety measures that will be taken to help people and animals exit the pond if they have fallen in. Mr. Hesser stated he believes that would work against the discouragement of water fowl. Mr. Godlewski stated a perimeter fence is shown on the site plan for safety. Mr. Campanello questioned, if what is shown on the site plan, is in agreement with what has been stated in text. Mr. Godlewski responded yes. It was determined the proposed conditions are actually commitments as they will be in place for the life of the petition, and conditions are temporary.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** Tony Campanello that the conditions and commitments for this request for a Special Use to allow for a mining business for the preparation of dirt, sand, gravel, and stone for sale to the public be approved based on the Findings and Conclusions of the Board 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. No grinding of concrete or asphalt.
2. No loud speakers.
3. No off-site water discharge.
4. Entrance standards will be pursuant to approval by INDOT.
5. Security measures are fencing as shown on site plan and dusk to dawn lighting in the vicinity of buildings and improvements.
6. Buffering will be mounding as shown on site plan.
7. Gravel pit size limitations, mining setback from boundaries, location of stock piles and internal traffic all restricted as shown on the site plan.
8. Buildings and improvements shall be located as shown on the site plan.
9. Wash plant, stock piles and other improvements shall comply with FAA and INDOT height restrictions applicable to the Owner's property.
10. Hours of operation 5:00 a.m. to 10:00 p.m. Monday through Friday, 7:00 a.m. to 12 p.m. Saturday. Public access 7:00 a.m. to 5:00 p.m. Monday through Friday.
11. Owner of the property subject to the Special Use Permit shall reasonably cooperate with the Goshen Municipal Airport and the Goshen Board of Aviation Commissioners in implementing commercially reasonable measures to mitigate water fowl on the Owner's property and other matters which negatively affect the aircraft uses of the Goshen Municipal Airport, including, but not limited to, measures recommended by the Federal Aviation Administration for control of wildlife on the Owner's property that pose a reasonably likely danger to aircraft using the Goshen Municipal Airport.
12. Owner of the property subject to the Special Use Permit shall limit fugitive dust so as not to regularly interfere with the glide slope transmissions associated with the Instrument Landing System in its locations on the Goshen Municipal Airport property as of the approval of the Special Use Permit and not to regularly cause material reduction in the surface visibility measured by the Goshen Municipal Airport's Automated Surface Observation System.
13. In addition to the costs of the other Conditions, Owner of the property shall be responsible for reasonable costs associated with implementing such measures on the Owner's property described in Conditions 11 and 12.
14. Owner of the property subject to the Special Use permit shall comply with all applicable laws, statutes, rules, regulations and ordinances enforceable against the Owner's property, including, but not limited to, any height restrictions on improvements or stock piles.
15. Reclamation plan shall include methods to control water fowl, including, making any permanent pond with slopes and rocks to deter water fowl and planting tall grass in surrounding un-mined areas to deter water fowl. The buffering mounds may be used to provide topsoil for the planting of tall grasses, and thus buffering mounds may be removed. Potential housing lots on south boundary and along US 33. Reclamation plan will consider recommendations of Indiana Mineral Aggregate Association to the extent available.

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

Yes: Denny Lyon, Joe Atha, Randy Hesser, Tony Campanello.

*****It should be noted Attorney Duncan stepped down at this time,
and Attorney Kolbus came on as the Board's Attorney*****

5. The application of **Doug L. & Donna J. Martin** for a 509 sq. ft. Developmental Variance to allow for an accessory dwelling with 1,509 sq. ft. of living area (Ordinance allows 1,000 sq. ft.) on property located on the South side of CR 24, 3,000 ft. West of CR 11, common address of 25538 CR 24 in Concord Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0698-2016*.

There were seven neighboring property owners notified of this request.

Doug Martin, 25538 CR 24, Elkhart, came on representing this petition. Mr. Martin stated he would like to build another house on his property for his wife and him to move into when his son-in-law and daughter move back to the area. He then pointed out the proposed location for the new residence on the aerial. He continued saying his son-in-law and daughter will be purchasing his current home along with the entire property on land contract. Mr. Lyon questioned the width of the property's road frontage. Mr. Martin stated they own 100 ft., and their neighbor owns the other 100 ft., which was common deeded for access and utilities. Mr. Hesser asked what will happen to the second dwelling once he is no longer in need of it. He responded his daughter and son-in-law will move into the accessory dwelling, and one of their children into the primary residence. Mr. Hesser questioned why Mr. Martin cannot build his home within the 1,000 sq. ft. allowed by the ordinance, and he responded he would not like a house that small. He continued saying they have picked out a house, which would meet their needs. Mr. Lyon asked if he would have a problem subdividing the property to allow for a second dwelling. Mr. Martin stated he does not see the need. Mr. Campanello clarified the Ordinance allows 1,200 sq. ft. with 1,000 sq. ft. living and 200 sq. ft. storage. Mr. Godlewski stated this rule has been heard before two different committees which agreed upon the current requirements.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated similar situations have been an issue in the past, but the Commissioners reached this compromise. He continued saying this situation would be different if it was an existing residence, but he does not believe it would be appropriate to go against the Commissioners' decision.

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

Motion: Action: Deny, **Moved by** Denny Lyon, **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 509 sq. ft. Developmental Variance to allow for an accessory dwelling with 1,509 sq. ft. of living area (Ordinance allows 1,000 sq. ft.) be denied.

Vote: Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

Yes: Joe Atha, Denny Lyon, Randy Hesser.

No: Tony Campanello.

6. The application of **Troy M & Kori G. Cripe** for a Special Use for a wedding venue & event center/indoor and outdoor recreational rental facility on property located on the North side of CR 22, 800 ft. East of CR 29, common address of 16263 CR 22 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0017-2017*.

There were four neighboring property owners notified of this request.

Kori Cripe, 16263 CR 22, Goshen, was present representing this petition and stated her family lives on this property. She continued saying the Elkhart County Visitors Bureau and Tourism Bureau have requested multiple times that they open their property to the public due to its historic value. She also added a few small weddings have been held on the property. She stated they realized this would be a lot of work, but hope to boost tourism in our community. Mrs. Cripe went on to say this project would include fixing the L-shaped barn, which she pointed out on the aerial. She continued saying Mark Barr, Barr Engineering, submitted the required information for state approval. She added this property will host around 80 people. She stressed their home will be open for others to enjoy and learn the history of this community. She stated she is trying to go through the proper channels with this petition as she knows of other venues operating without approval. Mrs. Cripe stated they submitted some historic information from the State of Indiana describing the long history this property has hosting community affairs. She went on to explain this property was part of the Crop Christian Rural Overseas Project, where hay and corn were stored to be shipped overseas. She stressed the packets also contain information about her family and what was submitted to state. Mr. Hesser mentioned the site plan shows a general parking area but no individual parking spots. He questioned if parking will be in the grass, and Mrs. Cripe confirmed that. Mr. Campanello asked if Mr. Barr completed a site plan for this property. Mrs. Cripe responded she submitted all of the information he gave her, but she added anything else they need he can give them. Mr. Atha questioned how the additional waste water will be managed, and Mrs. Cripe responded a new septic system will be installed.

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** Denny Lyon, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a wedding venue & event center/indoor and outdoor recreational rental 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. Approved in accordance with the site plan submitted (dated 1/13/17) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Denny Lyon, Randy Hesser.

7. The application of **Brian & Amy Hardy** for a Special Use for a home workshop business for retail sales on property located on the South side of CR 4, East of SR 13, common address of 10272 CR 4 in York Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0023-2017*.

There were 10 neighboring property owners notified of this request.

Amy Hardy, 10272 CR 4, Middlebury, was present representing this petition, and stated she is looking for approval to run a retail store out of their barn. She stressed no improvements need to be made to this property as all sales will take place inside an existing building. She added they will have occasional sales, but she will not be open every day. She explained she did not set hours of operation, because sales are not held on a regular basis. Mr. Hesser clarified if hours of operation are not restricted they would be allowed to be open 24/7. Mrs. Hardy then explained she is requesting to be open three days every month, and the hours for her last sale were 9 a.m. to 5 p.m. However, the hours scheduled for her next sale will be Thursday 2 p.m. to 7 p.m., Friday 10 a.m. to 8 p.m., and Saturday 10 a.m. to 3 p.m. She stated she is not sure how to set regular hours, because her hours are based on the customers' needs. Attorney Kolbus questioned if 9 a.m. to 8 p.m. would cover the various times she is open, and he added she does not have to be open the entire time allowed. Mrs. Hardy agreed 9 a.m. to 8 p.m. would cover the hours she plans to be open. Mr. Campanello clarified this operation will be open once a month for three days. Mr. Hesser added Mrs. Hardy indicated she would operate Thursday, Friday, and Saturday. Mr. Campanello then questioned parking and asked where her goods will be kept. She responded all of her products are kept inside the barn. Mr. Campanello asked if semi trucks deliver to the property. She stated occasionally FedEx will deliver to this location, but her large orders are sent to a different location. Mr. Campanello stressed the Board tries to keep semis from backing on or off of properties.

Candie Miller, 20951 River Blvd., Goshen, was present in favor of this request. Mrs. Miller stated she is a furniture rehabber, and she sells her goods at Mrs. Hardy's barn. She stressed this business is positive for the community of Middlebury and Shipshewana as it attracts many people to the area. She went on to say she sells décor and women love it. She also added Mrs. Hardy helps other area businesses by recommending them to her customers.

Phyllis Miller, 10281 CR 4, Middlebury, the neighbor across the road from the Hardys, was present in support of this petition. Mrs. Miller stated she is retired and likes to spend time at home. She stressed she is normally home during the sales and has had no issues with traffic. She added her driveway has never been blocked nor has the petitioner's. She stated everything was handled very professionally, and someone directs the traffic in their yard.

Mrs. Hardy came back on for this petition and stressed she is trying to help the community of Middlebury. She also added she has collaborated with four other businesses to start a shop-hop. She explained this will happen during the next sale in March and will include The Barn Door, Old Creamery Antiques, Market at the Mill, and The Cinnamon Stick.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop business for retail sales be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 1/17/17) and as represented in the Special Use application.
2. Hours of operation are three days a month from 9 a.m. through 8 p.m.

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

Yes: Joe Atha, Tony Campanello, Denny Lyon, Randy Hesser.

8. The application of *Pardee, LLC* for a renewal of a Special Use for warehousing and storing of commercial trucks and trailers on property located on the West side of CR 31, 2,600 ft. South of CR 36, common address of 64475 CR 31 in Elkhart Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0706-2016*.

There were nine neighboring property owners notified of this request.

Mr. Hesser questioned why this was not brought before the Board three years ago, and if systems are in place to notify petitioners of their upcoming renewals. Mr. Godlewski stated he is not sure, but it could have been a result of the change in ownership. He also added Staff notifies petitioners when their request is up for renewal.

Tim Doyle, 640 S. 7th St., a managing member of Pardee, LLC, was present representing this petition. Mr. Doyle stated Pardee LLC became the owner of this property about a year ago, and they received notification about the need for renewal last fall. He believes the previous owners were notified, but it was either missed or they did not think it was necessary. He stressed it appears Staff did their job and sent notification. Mr. Doyle stated once he received notification of the need for renewal, he came into the office to discuss the situation with Staff. He went on to explain this property is the warehouse aspect of their business. However, he stressed it does not operate like a regular business with trucks coming and going throughout the day. He stated typically a semi comes to the property once a week. He continued saying an interior space on the property is sectioned off for dry goods storage and overflow supply, which the count representative visits once or twice a day. He stressed the daily activity on site is minimal. Mr. Doyle added the beauty shop mentioned in the petition's history is no longer in business. He explained the building was converted into living space a few years ago. Mr. Hesser questioned if the hair salon petition should be terminated, and Mr. Godlewski responded yes. Mr. Doyle stated the building may be used for office space. Mr. Hesser asked if he had any objections to terminating that Special Use, and Mr. Doyle stated he does not. He continued adding he would be happy to come back before the Board, if this building is used differently. Mr. Hesser clarified this business has not changed from what was approved in 2011. Mr. Doyle stated the former beauty shop is currently flex space, but it could be used as office space or an apartment in the

future. Mr. Hesser stated any change in use of the building would need to be approved by the Board. Mr. Campanello agreed, but he added it would not require approval, if it is used as an office for the existing business.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if termination of the beauty shop Special Use could be included in this motion. Mr. Godlewski responded it can all be one motion, and he added any use allowed in the base district will be allowed on this property without an additional Special Use.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a renewal of a Special Use for warehousing and storing of commercial trucks and trailers be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 12/22/16) and as represented in the Special Use application.
2. No more than a combination of four (4) commercial or agricultural trucks and/or trailers to be on the property at any one time.

Further, the motion also included that the Special Use for a beauty shop on this property be terminated.

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

Yes: Joe Atha, Tony Campanello, Denny Lyon, Randy Hesser.

Mr. Doyle asked if this petition will need to be renewed again in three years, and Mr. Hesser responded it does not.

9. The application of *Matthew W. & Amy L. Burridge/ H&W Burridge* for a Special Use for a wireless communication facility and for a 64 ft. Developmental Variance to allow for the construction of said facility 16 ft. from the East property line (Ordinance requires 80 ft./height of the tower) on property located on the West side of CR 43, 2,050 ft. South of CR 10, common address of 54891 CR 43 in York Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0020-2017*.

There were six neighboring property owners notified of this request.

Mr. Godlewski stated the petitioners may be purchasing the adjacent property; then the Developmental Variance would no longer be needed. Mr. Hesser requested the petitioner focus on the Variance aspect as cell towers are a routine request.

Pat McCauley, MapleNet Wireless, 4561 Pine Creek Rd., Elkhart, came on representing this petition. Mr. McCauley stated the property owners approached them, because internet is

needed in this area. He continued saying they would like to construct a small tower on the property, and he pointed out its proposed location on the aerial. He also outlined the neighboring property and explained the Burridges have a land purchase agreement in place for that property. He added it will be purchased by land contract, and he stated their financing is complete. Mr. McCauley stressed the petitioners will own all of the neighboring property. Mr. Godlewski stated a copy of the recorded deed once it has been transferred into their name will need to be submitted to Staff. Mr. Hesser stated according to the purchase document in the file, they will not own the property until next year. Mr. Atha added the petitioners have until March 18th of 2018 to officially purchase the property. Mr. Hesser mentioned the current owners were notified of the hearing and are not present. Mr. Atha clarified, if the tower met the required set back, it would no longer need a Developmental Variance. Mr. Campanello questioned if the back portion of the property is all terrain, and Mr. McCauley responded it is covered with trees and slopes behind the house. Mr. Atha asked if the tower will be constructed at the property's highest point, and Mr. McCauley confirmed. Mr. Hesser also asked if the neighboring property is vacant, and Mr. McCauley replied yes. He went on to say the only building in close proximity to the proposed tower is the petitioners' home, which is not shown on the aerial due to being new construction. Mr. Godlewski suggested this petition be approved, and then rescinded after the neighboring property has been purchased. Mr. Atha stressed the purchase is not official and could fall through. Mr. Hesser asked Attorney Kolbus if a time limit could be imposed on a Developmental Variance. He responded typically no, because the cell tower would already be built at that point. Mr. Atha suggested the petitioners wait until they have purchased the neighboring property to construct the tower. Mr. Hesser clarified the Developmental Variance would then no longer be needed. Mr. Atha stated the owners would have to go without internet for a while, and Mr. Lyon believes that would encourage them to purchase the property. Mr. Campanello stressed he cannot approve this petition until the purchase has been finalized, or the tower location is moved. Mr. Godlewski mentioned if this petition is denied, it would motivate the petitioners to purchase this property.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a wireless communication facility 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. If necessary, a driveway permit is required from the Elkhart County Highway Department.
3. If the proposed tower is relocated, a revised site plan must be approved by Staff.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 1/17/17) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Denny Lyon, Randy Hesser.

Mr. McCauley asked if a changing the tower location to meet the requirements will need to be brought before the Board. He continued saying once the property is purchased there will be no need for a Developmental Variance. Attorney Kolbus clarified if they do not buy the property, the tower will need to be relocated to meet the setback standards. Mr. Hesser stated if the tower is relocated he is okay with Staff approval of the revised plan.

Motion: Action: Deny, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 64 ft. Developmental Variance to allow for the construction of said facility 16 ft. from the East property line (Ordinance requires 80 ft./height of the tower) be denied.

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

Yes: Joe Atha, Tony Campanello, Denny Lyon, Randy Hesser.

10. The application of *Travis S. & Kristina L. Miller* for a Special Use for a home workshop/business for an automotive paint shop and for a 20 sq. ft. Developmental Variance to allow for a 24 sq. ft. sign (Ordinance allows 4 sq. ft.) on property located on the West side of CR 8, 200 ft. South of CR 12, common address of 55277 CR 8 in Middlebury Township, zoned A-1, came on to be heard.

There were 12 neighboring property owners notified of this request.

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

There were no remonstrators present.

11. The application of *Allen D. & Janell M. Martin* for a Use Variance to allow for stockpiling and crushing of concrete and manufacturing of cement/concrete and for a Special Use for resource extraction on property located on the West side of CR 13, 1,600 ft. South of SR 119, in Harrison Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0004-2017*.

There were 11 neighboring property owners notified of this request.

Allen Martin, 65612 CR 13, was present representing this petition. Mr. Martin explained his family lives in the first house to the North across the street from the property. He continued saying he would like to use this property to wash sand/gravel and crush concrete. Mr. Hesser asked if he owns the equipment needed for this operation, and he responded he does not. Mr. Campanello asked if the property to the South was previously part of a gravel operation, and how low they mined the gravel. Mr. Martin responded about 30 to 40 ft. Mr. Campanello mentioned the aerial does not show standing water on the neighboring property, and he asked about the water table in that area. Mr. Martin responded it can be anywhere from 30 to 55 ft. to water. Mr. Campanello also asked the location of the main entrance to the operation, and Mr. Martin pointed out the proposed location on the aerial at the top of a hill for better visibility. He went on to question how Mr. Martin plans to control dust, and Mr. Martin stated he will use a water

wagon to keep dust down. Mr. Hesser mentioned Staff has requested a detailed site plan be submitted and asked if Mr. Martin can provide that. Mr. Martin responded he was waiting for Board approval before purchasing the necessary equipment, and he will submit a site plan once he has figured out where everything will be located. Mr. Atha questioned if he will have a reclamation plan in place, and Mr. Martin asked what the Board would like to see. Mr. Hesser stated frequently a reclamation plan is put into place to restore the property after the mining operation has ceased. Mr. Campanello stressed the reclamation plan is put into place to keep the property from being left with a large, empty hole. Mr. Martin stated the plan will depend on the direction his mining operation takes. He continued saying if he hits the water table, it will then be a lake or pond with sloped banks. Mr. Campanello suggested he submit a reclamation plan with the detailed site plan to Staff. Mr. Campanello also asked how many years he plans on to operating from this location and the size of the operation. Mr. Martin responded he would like to keep this a small operation to provide work for his sons. Mr. Lyon asked if an expert has visited the site to tell him how long he can mine at this location, and Mr. Martin responded he has not. He continued saying he would like to use this location for at least 10 to 20 years. Mr. Lyon also questioned if he is opposed to bringing in a revised site plan, and he requested Mr. Martin show what he intends to use for a buffer around the boundary of the property. Mr. Campanello stressed an architectural firm can help him with the site plan. Mr. Hesser questioned if similar operations are typically enclosed with a fence, and Mr. Campanello responded not necessarily. Mr. Martin pointed out a boarder which will be covered with trees, one that is open, and one that is up against the existing gravel pit.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he would like a site plan/reclamation plan brought in for staff approval.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for stockpiling and crushing of concrete and manufacturing of cement/concrete and for a Special Use for resource extraction be approved with the following conditions imposed:

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

The following commitments were imposed:

1. Approved in accordance with the revised site plan and reclamation plan to be submitted for staff approval and as represented in the Special Use application.
2. Hours of operation 6:00 a.m. to 6:00 p.m., Monday through Saturday. All times to be prevailing local time and provided, further, that nothing shall require the use to remain open during those hours. All gravel loading or equipment producing noise shall cease after 6:00 p.m.

3. The Special Use Permit shall be valid without an expiration date, business conducted on a 12 month basis.
4. Exterior lighting for the Real Estate, if any, shall be restricted to security lighting from dusk to dawn.
5. No exterior loud speakers shall be allowed on the Real Estate.
6. Excavation areas shall be graded in such a manner as to prevent the collection of stagnant water.
7. The Special Use Permit shall be confined to the Real Estate's 32 acre parcel.
8. The gravel mining operation, materials storage and stockpiling, storage of equipment, and the scales shall be located at least 50' from centerline of County Road 13.
9. A collector area shall be provided for off road parking to avoid parking on the county road before the opening of the business with the access to the site controlled by a gate from CR 13.
10. Upon closure of the mining operation, all ponds and/or lakes created by the operation shall be banked and sloped leading to the water's edge with a slope not greater than three to one, and seeded with perennial grasses at the time of grading. Grantor shall establish a fund for such expenses by depositing 10 cents per ton for each ton of resources extracted from the site to the fund.
11. Grantor permitted to stockpile and crush concrete on site.

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

Yes: Joe Atha, Tony Campanello, Denny Lyon, Randy Hesser.

Attorney Kolbus mentioned, if Staff runs across any issues with this petition, it will be brought back before the Board.

12. The application of *Travis S. & Kristina L. Miller* for a Special Use for a home workshop/business for an automotive paint shop and for a 20 sq. ft. Developmental Variance to allow for a 24 sq. ft. sign (Ordinance allows 4 sq. ft.) on property located on the West side of CR 8, 200 ft. South of CR 12, common address of 55277 CR 8 in Middlebury Township, zoned A-1, came on to be heard.

Again, the petitioner was not present.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the request for a Special Use for a home workshop/business for an automotive paint shop and for a 20 sq. ft. Developmental Variance to allow for a 24 sq. ft. sign (Ordinance allows 4 sq. ft.) be tabled until the March 16, 2017, Advisory board of Zoning Appeals Meeting due to the absence of the petitioner.

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

Yes: Joe Atha, Tony Campanello, Denny Lyon, Randy Hesser.

13. The meeting was adjourned at 9:52 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary