

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 10TH DAY OF JULY 2008 AT 9:00 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Plan Commission was called to order by the Chairperson, Jeff Burbrink, with the following members present: Tom Holt, Roger Miller, Meg Wolgamood, and Dennis Sharkey. Staff members present were: Robert Watkins, Plan Director; Mark Kanney, Planning Manager; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Dan Piehl, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Miller/Sharkey*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 12th day of June 2008 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Sharkey/Miller*) that the legal advertisements, having been published on the 28th day of June 2008 in the Goshen News and on the 30th day of June 2008 in The Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Holt/Miller*) that the Elkhart County Zoning Ordinance and Elkhart County Subdivision Control Ordinance be accepted as evidence for today's hearings. With a unanimous vote, the motion was carried.

* (*It is noted that Steve Warner arrived for the meeting at this time.*)

5. The application for Primary approval of a two lot commercial subdivision to be known as **REPLAT LOT 6 OF MARVEL TERRACE**, for Harlan P. Marvel, Jr. represented by Wightman Petrie, Inc., on property located on the North side of Old US 33, 2,800 ft. East of SR 219 in Baugo Township, zoned B-2, was presented at this time.

* (*It is noted that Tom Lantz arrived for the meeting at this time.*)

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082167*. He reports that corrections were submitted and they are in compliance with the ordinances. The only thing he is waiting on is for the petitioner to work with the Health Department on sizing the septic systems; however, he said the properties are already built on so they are just preparing in case the one property has addition construction in the future. He then indicated that they are moving the existing driveway to the center so both lots are served by that driveway.

Ken Jones, Jr. of Wightman Petrie, Inc. 4703 Chester Dr., Elkhart, was present on behalf of this request. He explained that his client is trying to take a previously platted commercial subdivision lot and cut it up the middle. The building to the west is an existing mini-storage facility that he is going to partially convert to office space, and then he will sell the existing building and its parking lot on the other side.

Mr. Jones said they have no issue with any of the Tech Committee or staff comments. He reported that they have a sub-consultant working closely with the Health Department on the septic system for the office space constructed within the existing mini-storage building. Soil borings were

taken, and because this is a commercial site, he said they had to get their design criteria for the septic system from the State Board of Health. It took longer to get than what they anticipated, but he said they now have that in hand. Their sub-consultant has indicated that all issues and criteria were discussed in more detail with the Health Department and they are working on final septic system design now, which they should have completed within the next couple of days.

There were no remonstrators present.

A motion was made and seconded (*Miller/Lantz*) that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that this request be approved by the Advisory Plan Commission in accordance with the Staff Analysis and comments of the Technical Advisory Committee with the following conditions imposed:

1. Septic systems may require a pressure distribution due to poor proximity and depth of fill limitations.
2. Show details for two (2) septic systems at 300 GPD / .6 LR for lot 6A. Show reserve area (450 GPD) / .6 LR for lot 6B.
3. A SWPPP is needed for total land disturbance of one (1) acre or more.
4. Need to show restrictions and general soils information.
5. Need to include the drainage/utility easements from the original plat.

The motion was carried with a unanimous roll call vote.

6. The application for an amendment to a Site Plan / Support Drawing to be known as a ***PARTIAL REPLAT OF LOT 10 – CLAYRIDGE SQUARE FIFTH***, for Christopher Harwell represented by B. Doriot & Associates, on property located on the North side of CR 42, 800 ft. West of SR 19 in Olive Township, zoned DPUD-M-1, was presented at this time.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082175*. He then read a letter from Daniel E. Hershberger who expressed concerns that the chain link fence on the west property line has never been installed; the existing drainage is not containing the water run-off from Lot 10; and the required buffer along the west property line is not established. A letter from Tom Roeder, town manager of Wakarusa, was also read. This letter indicates that the town is not opposed to an additional curb cut on the north side of CR 42, and that the buffer seems to be adequate and reasonable. Both letters are in the file for review.

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, was present on behalf of this request. He noted that Chris Harwell and his daughter, Andrea, are also present who own ElectriCorpe, an environmentally friendly production of chlorine treatment for municipal water services and swimming pools.

Mr. Doriot said they would agree to a condition of approval that they build a chain link fence on the west property line before a building permit is issued. With regards to the entrance on the road, he said he had a meeting with Tom Roeder and what's happening on this property has been discussed amongst the board members. Mr. Roeder states in his letter that an additional curb cut is fine with them as long as the road construction plans are reviewed by James Emmons, their town engineer.

A reduced copy of an aerial photo of the subject property was then submitted to the Board [attached to file as *Petitioner Exhibit #1*]. When originally done, Mr. Doriot said the owner of Clayridge deeded an additional 50 ft. of the property (the hashed area on the aerial) to the owners of the two parcels

(south and west of subject property) to add a buffer. In looking at the design of the contours, he said the water all flows that way so they are proposing a tree line and a retention area 50 ft. wide along the southern border of the subject property to allow ample room for trees. He said they have to put the retention area there to stop the water from coming off their property, which addresses the concern about maintaining all of their water on their site. He said there will be no disturbance of the retention area once it's built.

Mr. Doriot pointed out the location of the driveway and the main building on the plat. They have spotted a couple of buildings for the future, but he clarified that is not part of this petition and they will have to come back for a site plan review on any expansions. He feels they have met the four major concerns of the staff, and although the original PUD proposal does not want them to have the entrance, he said the town board has given their approval.

Also addressing the Board was Chris Harwell, 255 S. Madison, Nappanee. He explained that they have a very light duty manufacturing facility where they form aluminum sheet metal to make their cabinetry and structure. They also do some welding operations, and the end product they produce relates to water treatments. They cannot make hazardous material based on EPA requirements, and he said their business is small and has been in operation for about eight years.

Mr. Harwell went on to say that they've wanted to move to the Wakarusa area for the last several years, and they wanted to take action on this property when it became available so they could become part of the Wakarusa community. He said the equipment they make is relatively inexpensive and is all contained within the building. It is a "just-in-time" type of process so they do not have an inventory to maintain that would be outside of the building. He indicated that he would probably put a water feature at the north end of the property to dress it up, which he can also use for a water source heat pump to keep their energy costs down.

In conclusion, Mr. Harwell said he and his wife own this company along with his partner and his wife. His partner is an electrical engineer and he is a mechanical engineer, and they have built this company together. They are one of approximately a half dozen companies around the world manufacturing this technology, and he said they have a patent on their aspect of the technology, which they mostly sell international rather than domestic.

When Mr. Lantz asked if he has any objection with the four issues raised in the Staff Report, Mr. Harwell said he did not.

Mrs. Wolgamood asked if the out lots with the two residences were originally included in the DPUD and Mr. Doriot said they were not.

Mr. Doriot said there was a question whether the zoning had been changed and they had agreed to file for that if it needed to be done; however, he said it has been changed.

Mr. Sharkey asked if that particular area is what was originally called the landscape buffer and Mr. Doriot replied yes. Mr. Sharkey then asked if there has been anything planted there and Mr. Doriot said the previous owner had not done anything with it and the petitioner has owned it since February or March.

Mr. Doriot then pointed out where they are putting in a retention easement and planting trees along the front of the easement. He also pointed out the location where they are installing the chain link fence. If the Board deems necessary, he said they could also plant some trees in their setback area. When asked if the height of the chain link fence has been discussed, Mr. Doriot said the petitioner has indicated 6 ft.

Mrs. Wolgamood pointed out a notation on the plat that says, "*The buffer will be a minimum of 6 ft. pine trees on 8 ft. centers or equal privacy fence so as to create an appropriate*

visual barrier.” Mr. Doriot said they are suggesting either/or, but right now they are leaning towards the vegetation.

Lee Farney, 28229 CR 42, Wakarusa, was present saying he lives on the lot farthest to the west side and he is also concerned about the issues raised by the staff. According to Mr. Farney, the 50 ft. was not deeded to he and the Beachys, they had to purchase it from Mr. Schrock at the same time Mr. Stalter bought the rest of the property. At that time, he said they were told the buffer zone would be a mound with landscaping and that it had to be maintained by whoever subsequently used that property. As long as the property was left as a farmette, he said they had no objection. He then indicated that he and his neighbors have basically incorporated the 50 ft. into their back yards.

Mr. Farney said the 50 ft. to the east side of the Beachy’s house has been eliminated on this proposal. A driveway is being put in where there is currently a temporary access drive, but the Highway Department has indicated there are no permits for a driveway because there is a non-access easement along CR 42. He said a cul-de-sac was to be installed at the north end of the property on the original drawings, and they were guaranteed by the Schrocks that any entrance to any of the property north of them would have to be made from the north. He also thinks there was a provision to put a road in 400 ft. south of the current connection for Nelsons Parkway to SR 19 to access the property. He and the Beachys do not feel that driveway should come in at the proposed location, especially if they have to grant the 50 ft. to the east side. He also said he’s not sure there is enough room for a commercial driveway there anyway.

Mr. Farney said they now want to put a row of trees along their fence row with a water containment area. He has a water containment area where he works and every time it rains there is standing water until it eventually evaporates. This is fine, but he said you then get into a mosquito issue with water standing.

Mr. Farney also said he talked with Mr. Roeder yesterday and was told he would make no comments or judgments on this request before he hears the findings of the Plan Commission; however, he has sent in a letter approving the driveway.

When he originally talked with Mr. Harwell, Mr. Farney said he wanted to lease the buildings out to other people to work in. If that happens, he asked if that will require another public hearing to approve what they’re going to do, and to make sure they maintain the same standards as Mr. Harwell will.

Also present was Ken Beachy, 28177 CR 42, Wakarusa, who is the owner of the property between Mr. Farney and the commercial property. In the hearing approximately three years ago when he bought the half-acre, they said the 50 ft. buffer would go along the north and east sides if there were any commercial buildings there. They bought the original buffer so he said the buffer was moved out in case someone built back there. He too understood there was to be a mound landscaped with trees and maintained. He agrees there will not be enough room for a commercial access off of CR 42 based on the location of the property line on the west side of the Stalter property. Mr. Beachy also expressed a concern about truck traffic coming in off the county road.

In response, Mr. Doriot said he has been assured by Mr. Harwell that he wants a high-class operation. The petitioner is in the water treatment business and he said a stagnant pond doesn’t bode well for your company so the retention pond will be maintained.

Mr. Doriot said some type of planting along the driveway where there is 118 ft. is a possibility. If future buildings are rented out, he said they would have to come back to the Plan Commission to explain what they will be used for. However, they will be using the property for this water treatment company so that’s not an issue at this time.

Mr. Doriot said he was informed that one of the neighbors approached Mr. Harwell and said they would go away if he gave them another 50 ft. However, they want to put their shallow retention area and some buffer trees in there, which the town agrees is an adequate buffer. Obviously Mr. Roeder has weighed in on this request and he said the town believes that a driveway is not a problem there. He then reiterated that that would be reviewed by the town engineer.

Chris Harwell, 255 S. Madison St., Nappanee, said it takes four people to build once piece of equipment, and the typical amount of time to build it and ship it out to an industrial plant is approximately 16 to 26 weeks. He said he buys enough material to do the job so they do not have daily traffic coming in and out. Deliveries are made by UPS, DSL or Fed-Ex.

With regards to the future use of the buildings, he said they discussed the possibility of trying to help the County put Amish businesses in an industrial setting with County officials and the Wakarusa Town Board, but it probably will not happen. They would like to put all possible scenarios out for expansion, but even if they were to expand and increase the business, he said they would still have to maintain the same standards.

The number of employees was then questioned and Mr. Harwell said he has four full-time employees now. He said he did not anticipate the number of employees ever being in the hundreds.

When asked if they are opposed to the mound mentioned by Mr. Farney, Mr. Doriot said they would have to push the retention back to put in a 20 ft. wide, 3 ft. tall mound on the south end with trees on top.

Mr. Harwell said within a week after they purchased the property, Mr. Farney came into his shop and asked if he would deed another 50 ft. to them. If he did that, he said Mr. Farney indicated he would not ask for any kind of buffer and in fact would maintain it. If he took care of his run-off properly and put up a buffer, Mr. Harwell said he assumed that would not be an issue.

When asked if he is opposed to a mound, Mr. Harwell said he doesn't feel it would be necessary. He said they are changing the grade due to the location of their building so there will be no run-off to the west.

In further discussion regarding a mound, Mr. Doriot said they prefer not to put in a mound, but they could take that recommendation to the town board and evaluate their site to see if they could make it work. He said they don't want to make their retention pond real deep, and he pointed out that they widened it 10 ft. from the original 40 ft.

The staff was asked if their concerns have been met, but Mr. Kanney said they are concerned about the status of the residual parcel. Mr. Doriot said they have no control of that parcel (to the east of the subject property).

When asked to address the space required to put in a drive, Mr. Doriot said they have 118 ft. and dedicated right-of-way so there is adequate space for a curb cut. This property is annexed into the Town of Wakarusa and he said Loren Sloat, the town attorney, has advised that the town has jurisdiction.

Mr. Sharkey commented that the 50 ft. buffer was originally imposed by this Board and then they sold the buffer to the surrounding residences. Now they want another 50 ft. buffer, but Mr. Doriot said they feel they are giving an open space buffer by putting a retention area there with trees for a visual screening. Mr. Sharkey then asked if there will be some kind of buffer if the Board approves the additional curb cut along the east property line. Mr. Doriot asked the petitioner if he would object to planting two rows of pine trees along the dog-leg portion of the property and Mr. Harwell said no.

Mr. Farney again addressed the Board to clarify that what he meant was if Mr. Harwell gave them the 50 ft., it would save him money from building a mound and having to maintain it as they would incorporate that area into their yards. When he and the Beachy's purchased the original 50 ft., he said they were assured there would still be a 50 ft. buffer between their yards and this property. He also said he doesn't believe they addressed the 50 ft. on the east side of the Beachy's residence.

Mr. Doriot reiterated that there would be a buffer with two rows of trees, and he also offered to put the driveway as far to the east on the property they can. You can't build within that area and he assured Mr. Farney that it will be mowed.

Mr. Beachy pointed out that the Board decided three years ago there would be a 50 ft. buffer around that property. If there is going to be a business there, he said that is part of the privacy they are suppose to have. He said the 50 ft. will cut into the 118 ft. of access.

For clarification, Mr. Burbrink asked if that 50 ft. buffer wasn't sold to them after that meeting, but Mr. Beachy said they purchased the property in July before that meeting. During the hearing, he said Adlai Schrock said the 50 ft. buffer was now going to be around the existing property they had purchased and that was to be a landscaped mound.

Mr. Doriot responded saying they can build their drive 50 ft. off their west property line (Mr. Beachy's east property line). They don't want to mound it, but he said they will plant trees and mow it. The petitioner's units are relatively small and the traffic is minimal. He reiterated that they are giving 50 ft. to the south for their retention easement, and he pointed out where they will plant trees and build a chain link fence. This is a clean use, and he feels the drive and the retention area as a buffer area have been addressed by the town.

A motion was made and seconded (*Miller/Burbrink*) that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Lantz/Warner*) that the Advisory Plan Commission recommend to the Wakarusa Town Board that this request be approved with the following conditions imposed:

1. A chain link fence to be installed along the west side of the development prior to the issuance of a building permit as proposed by the petitioner.
2. The buffer, including the retention area as shown on the site plan, is permitted.
3. A buffer of 6 ft. pine trees on 8 ft. centers to be planted along the west side of the entrance road as proposed by the petitioner, but a mound is not required.
4. The driveway to be placed as far east as possible.

A roll call vote was taken and the motion was carried with a unanimous vote.

7. The application for Secondary approval of a ***PARTIAL REPLAT OF LOT 10 – CLAYRIDGE SQUARE FIFTH***, for Christopher Harwell represented by B. Doriot & Associates, on property located on the North side of CR 42, 800 ft. West of SR 19 in Olive Township, zoned DPUD-M-1, was presented at this time.

Mr. Kanney asked the Board to include a condition that Secondary approval be granted provided it meets the requirements just established in the amendment to the Site Plan / Support Drawing.

A motion was made and seconded (*Miller/Sharkey*) that Secondary approval be granted by the Advisory Plan Commission provided the conditions set forth in the amendment to the Site Plan / Support Drawing are met. The motion was carried with a unanimous vote.

8. The application for a zone map change from R-2, B-3 and PUD-B-3 to a Detailed Planned Unit Development-B-3 to be known as **MARTIN'S – ELKHART SITE - DPUD**, for Martin's Super Market represented by Wightman Petrie, Inc., on property located on the North side of CR 4, 400 ft. West of SR 19 and West side of SR 19, 450 ft. North of CR 4 in Osolo Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081849*.

When asked if the accesses on SR 19 are full accesses, Mr. Nemeth replied yes.

Present on behalf of this request was attorney Richard Paulen, 121 W. Franklin St., Suite 200, Elkhart. He noted that Mr. Bailey and Mr. Alwine from Martins Super Market are also present, as well as Ken Jones and Nick LaCroix from Wightman Petrie, Inc. A packet of information containing a sketch of the proposed store, a conceptual Landscape Plan, a Traffic Impact Study, a Site Lighting Plan, and a site plan was then submitted to the Board for review *[attached to file as Petitioner Exhibit #1]*.

Mr. Paulen explained that they are proposing to develop an approximately 51,000 sq. ft. full-service super market on this site that would include a pharmacy and food dispensing facilities. He also said there would be a 15,000 sq. ft. retail parcel to the east that will be compatible with Martins; however, he could give no further information as they do not have a tenant at this time.

When they were before the Plan Commission in June, Mr. Paulen said they had a problem with the ability to control the land and go forward with this project. He reported that that issue has been resolved and there are no real estate impediments to them going forward.

The Staff Report reflects the work that has gone on with the project, and Mr. Paulen said they generally agree with the conditions that have been recommended. A Traffic Impact Study (TIS) has been done and he said the County, City and State have copies, which they are currently reviewing. To date, he said they have received favorable preliminary comments from the County, but they have not received any comments from the State or City.

With regards to the 5 ft. variance on the west side of the property, Mr. Paulen explained that the 20 ft. setback meets the city's planning standards, and it is an area where they will do some minimal water retention on the northern portion. They will install a six-foot fence along that property line along with trees. This is more buffering that what is required by both the city ordinance and the county ordinance so they are requesting a five-foot narrower setback. With the way store is configured and due to the kinds of amenities they want to bring to the site, he said it fills up that space. From a safety standpoint, it allows for traffic coming around the west end of that building.

Mr. Paulen pointed out that the truck traffic on the north portion of the building is where their loading and unloading will take place. Those trucks will come in primarily from the east, go behind the building, and then go out down the west. They are trying to accommodate that larger vehicle, and he said they do not anticipate that this driveway will be used for normal customer traffic.

The second variance they are requesting is for the canopy on the east side of building. The canopy is set at 100 ft. from the centerline, and Mr. Paulen said it does not impair the future construction of the road if it's expanded. He then pointed out that it is about 27 ft. farther back than the existing canopy at the 7-11 at the corner.

Mr. Paulen reports that they have submitted an application to annex this property into the City of Elkhart, and they anticipate that will be accepted sometime later this year. He also said they

have talked with the Elkhart City Planning Department about the site and they have raised questions regarding the design. They have made some changes to meet those requirements so they have met everything the City has suggested to them on this site.

Mr. Paulen went on to say that they have accommodated all of the suggestions of the Technical Advisory Committee. They will meet the requirements of the State with respect to the curb cuts on SR 19, and he clarified the curb cuts are full-access in and out going north and south. The only curb cut that is slightly different is the one at the southeast corner, which he said is right-in only. There is currently no lane across the front, but he said there will be a lane all the way across the front of their property that will turn into the residential subdivision to the east, as well as a westbound lane.

The surrounding area has contained experienced development, which Mr. Paulen described as commercial, manufacturing and residential. They feel that Martins will be a valuable part of continued growth in this area, and their experience in their other locations is that property values have not been impaired at all. Some of the stores are more in commercial areas, but some are in residential areas such as the Bacon Hill site. There may be some increased traffic, but he said it will be minimal.

Martin's concept is to build super markets to provide neighborhood services and Mr. Paulen said they generally don't expect to draw from outside of a neighborhood. In their demographic work, he said that neighborhood is basically a three-mile radius around the store. Within that area, there are approximately 12,000 households with three people in a house, which equates to about 36,000 people.

As the area continues to develop, Mr. Paulen said they do expect some continued traffic increase; however, for the most part, he said the people who will come to this store are already going by this location. A traffic signal, designed by InDOT already exists at SR 19 and CR 4, and they think that design works very well with their proposal and that it will be approved by InDOT. He then indicated that they are actually reducing the number of curb cuts on SR 19 and CR 4 with this development. He explained that Martins provided demographic information about where their customers are coming from, and that information was consistent with the information developed as far as the project and traffic design is concerned.

As part of the development of this store, Mr. Paulen said they will be closing the Martins store at North Pointe as this will be a better location and will provide better service to their customers. The existing store is an old facility and it has a poorly designed traffic flow in its parking lot. The new store will be larger and he said it will allow them to have between 3,000 and 5,000 more grocery items than what they currently have at the existing store. They will have a salad bar, deli, and Starbucks, and it will also provide better service for the other departments.

Referring to the lighting diagram in the packet of information he submitted (Petitioner Exhibit #1), Mr. Paulen explained that the design exceeds the City of Elkhart requirements. It is designed to show 0.1 ft. candles of light at the property line, and the light is focused onto the property and not away from it.

Also present to address the engineering aspects of this project was Ken Jones of Wightman Petrie, Inc., 4703 Chester Drive, Elkhart. This site is 7.5 acres and he said they will be removing seven houses in this project. The proposed store they are building is the new Martin's prototype that includes all of the services he said we've come to expect from Martins. The site will fully comply with the standards of the City of Elkhart and Elkhart County other than the setback on the west side. He then clarified that the setback is not to the building, it is to the drive isle edge. After

they install the landscape and fence in that area, he said the property owners won't know whether they are five foot closer to that property line or not.

He went on to say that this site will use City of Elkhart utilities; therefore, it needs to meet their development standards for this Type II corridor. That means they have a very intensive review of landscape, lighting, building placement, and building materials, which is not required in the Elkhart County ordinance. The review will be in both jurisdictions until the project is annexed into the city so he said they will be doing extra to meet both requirements, which will be a very detailed process.

Mr. Jones said the site has been included in Elkhart's Tax Increment Finance (TIF) district in this area. They expect there to be a benefit to the tax district so the city can continue to do some of the improvements they have been considering.

They do exceed the city standards for the parking area, but he said the City does allow a 30 percent increase over their current standard for this business type without a variance. He said they are only exceeding their qualifier by 16 percent and in a lot of retail settings they ask for up to 50 percent.

Continuing, Mr. Jones said there will be irrigated landscaping and they have added sidewalks along Cassopolis Street and CR 4 in accordance with city standards. The circulation plan allows for a very safe maneuvering for the patron traffic as well as the loading and truck turning movements. He said they will continue to study that as they go into the final engineering plans for the site using two access points for truck movements, which he pointed out at the northeast and southwest corners of the property. He then clarified that most of the loading and deliveries at this site will occur before peak hour traffic in the morning and before the store opens.

They are required to meet both the city and county standards for handling storm water on the site. Mr. Jones said they will be talking about some filtration systems as well as sedimentation features on this site, and they may be seeking an overflow controlled release to the State's storm sewer that exists in SR 19. There seems to be plenty of capacity in that pipe, but he said they have to do a detailed study with InDOT before they will allow them to tap into it. He then reported that there is plenty of room on site to handle their storm water under the current standards of both Elkhart City and Elkhart County.

Mr. Jones said they understand the issues related to the traffic impacts as they have had a lot of experience in the SR 19 corridor. He then explained the process for studying the traffic impacts and he clarified that they would be working with InDOT, Elkhart County and Elkhart City as all three jurisdictions will be doing a review. One of the critical points was to study the intersection of SR 19/CR 4 to make sure that any impact from relocating this store from North Pointe to this location would be mitigated by the construction project. Currently, he said the site is operating at Level C, which is a very acceptable capacity rating for this intersection, and much better than the CR 6/SR 19 intersection. According to Mr. Jones, some responsibility is always put on the private developer to make sure that if their capacity drops, they mitigate that impact and bring it back up to that net condition.

Mr. Jones said they determined that the peak hour traffic is between 4:45 and 5:45 p.m. everyday. During that time they are expecting about 632 trips to the store. Based on the information from their traffic count and the demographic information from Martins taken from their customers' Martins cards, Mr. Jones said they were able to confirm that 50 percent of the patrons that will use this store will come from the north and go to the north. Twenty-percent will come from the east and 20 percent will come from the west. He said only ten-percent will come from the

City of Elkhart, but that is due to the fact they have other stores in Elkhart that are more convenient. He then reported that the current traffic count on Cassopolis Street is 17,600 cars per day with 9,000 on CR 4 in both directions.

If the study identifies a speed or turning movement conflict, Mr. Jones said they will have to build geometry back in the road to overcome that. Because of the expected traffic arrivals from the north, he said they will have to add a right-turn lane adjacent to their site (between the driveways) to allow for that conflict to be eliminated on SR 19. He pointed out that there are two lanes south, two lanes north, and a center left-turn lane in this location on SR 19. In order to make a free-flow right-turn into the store without being impeded, he said they will have to design a full lane widening along the east side with the expectation of doing some tapering if InDOT requires it. That means they will have to move storm sewer over, relocate utilities, and build a full 12 or 13 ft. lane of concrete pavement and re-attach the curb to the back side of it. In addition to that, he said they will have a sidewalk.

They expect that they will have very few left turning movements into site northbound on SR 19. The reason for that is that they expect them to be intercepted by the signal at Cassopolis St. and CR 4. When they redistributed the traffic at the new store on this site, Mr. Jones said they found they only needed about 60 ft. of cueing in the left-turn lane for the left-turn into the site (SR 19). However, he said there is plenty of room to make that cueing space available by shortening the taper about 100 ft. for the southbound approach to the left-turn on CR 4. He then pointed out that their approach point is directly opposite the new northerly approach point for the CVS Drugstore.

In addition, he said they found that when the State rebuilt Cassopolis Street, they rebuilt a public approach when they put the pavement in; however, they did a marginal job on West County 4 as they found all of the lane widths to be substandard at 10 feet. They believe a right-turn in on CR 4 is absolutely necessary to make sure the left-turn doesn't create any issues on Cassopolis Street as they feel this will provide benefit to their northbound patrons.

Mr. Jones said they are widening the road between the two approach points to include a right-turn lane into their westerly access point. While they're doing that, he said they will widen that entire road and increase those 10 ft. lanes to a minimum of 11 ft. all the way to the north. Their road improvement will end just past their (west) property line, but he said it would tie-in with the taper that widens out for the subdivision to the west. Basically, he said they will have a four-lane road that will carry through their site and then taper down to three lanes on the west end of that subdivision so it will be a much safer condition. He then explained that they were concerned about the number of driveways between their site and Adamsville Road, but in pulling the accident reports, they found no left-turn issues so the third lane is being used appropriately. They also found no significant accidents at the school and church driveways or even the private home sites.

As InDOT and Elkhart City finishes their reviews, Mr. Jones said they will probably see an adjustment to the traffic signal to make sure the two main roads are impact free based on their traffic study. They don't expect the Board to give them an approval today that is not subject to that traffic study, but he said they're asking for four approach points in the configuration they are showing. He admitted that it's possible the State or City could come up with a site plan alternate, and at that time, he said they would have to decide if that is a staff or Plan Commission decision.

Mr. Doriot recalled that the ground in this area is very sandy and he wanted to make sure that the contractors realize they should not get down in those retention areas and seal the bottom. Mr. Jones said they recognize that problem and they have developed a specification for their retention ponds that does not allow that to happen.

Mr. Doriot also suggested an information sign as people come in that north drive for trucks and employees only. Mr. Jones said they are thinking that the ingress to that northerly access point will end up being almost all loading and that their patrons, unless they are going to the fuel center, will use the southerly access point because that gets them to the main parking field.

Mrs. Wolgamood asked when they will be loading and unloading and Mr. Paulen said they think the majority will be done between 6:00 and 8:00 a.m. and between 9:00 and 10:00 p.m. However, because of the current cost of fuel and the fact that you no longer get a half truck load, he said there may be some odd hours. He then estimated the semi truck traffic per week to be 20 for a store of this size, which consists of five produce, five grocery, four meat, and six dairy trucks. He also indicated that smaller trucks will come in routinely throughout the day, but that traffic will be to the north.

If you're going north on Cassopolis Street, Mr. Sharkey asked if there is a left-turn into 7-11 now. Mr. Jones said there is and both of 7-11's are within the functional limits of the intersection. The reason theirs is north of the cueing space of the left-turn lane southbound is because they want it to be out of the functional limits of the intersection. Mr. Sharkey said if you have someone wanting to turn left into Martins 100 ft. down the road looks like a very dangerous situation to him.

Mr. Jones pointed out that there is no left-turn lane at the 7-11 drive location so you will be in the through-lane if trying to get in there off of Cassopolis Street. When you get to the Martins driveway, he said you will be fully in the left-turn lane, which is the key.

Mr. Paulen pointed out that the demographic information he previously mentioned does include people in southern Cass County, and they believe that is a positive aspect for Elkhart County as it brings that income into the county. He then submitted a copy of the Traffic Impact Study *[attached to file as Petitioner Exhibit #2]* for the record.

In conclusion, he said they will meet InDOT requirements for SR 19, and county and city requirements for CR 4. They believe the project will promote the public health, safety and welfare in the area, and that it is a positive aspect for community development. It also provides services and amenities that their customers have asked for, and they feel the proposal is consistent with the Comprehensive Plan as it continues the development in an existing corridor in Elkhart County in an orderly fashion. Based on their store's history in Elkhart, he said they believe this project will increase property values, and it is consistent with the purpose and intent of both the Elkhart City and Elkhart County zoning ordinances.

Dave Foutz, who lives on Simonton Lake, said their neighborhood feels this new construction will be a huge asset to the neighborhood, and will fit nicely into the economic development plan for the north end of Cassopolis Street. They wholeheartedly approve of this Martins store, but he said they do have one concern.

Mr. Foutz said the intersection (SR 19/CR 4) is literally the starting line for the drag race north on Cassopolis as traffic moves much faster than it should, but he feels the addition of the two lanes has enhanced the traffic flow. Although this is not Martin's problem, he said cars leave the intersection quickly and he's concerned the problem will be exacerbated with the future lane structure if someone suddenly decides to turn left across the turn lane into 7-11. He then pointed out the new CVS driveway and the start of the turn lane marking that is going to be moved down and narrowed. Mr. Foutz said you will have the southbound traffic coming into the center lane, traffic turning into CVS, turn traffic trying to go eastbound onto CR 4, and then turning into Martins so there are about four different uses for the lane all within 150 to 200 ft.

Mr. Foutz said he would like to see some type of barrier (from the intersection to beyond the southern Cassopolis access to Martins). This is a destination commercial site and most people are coming to this site because they want to. Although he feels that most people will use the turn lane to access the site as they should, he said allowing this to be completely open for one or two isolated individuals who want to make a suicide left turn into Martins parking lot seems to him to be unnecessary.

Agreeing with Mr. Foutz's comments was Vaughn Nichol, president of the Simonton Lake Area Homeowners Association. He feels it would make sense to consider consolidating the two curb cuts for 7-11 and Martins on SR 19 and the curb cuts on CR 4 to simplify the traffic. He said the expectation on the north side is that they will continue to develop to the north on SR 19.

Phil Replogle, 26589 CR 4 West, Elkhart, was also present and he questioned how far the sidewalk will extend along CR 4 to the west. He owns the property just to the west side of the subdivision and he said no one has addressed the school and school buses.

In rebuttal, Mr. Jones reiterated that they are still in the approval process for their TIS and he's sure there will be questions they have to answer with InDOT and the City of Elkhart. He said the CVS Drugstore was required to add a right-turn lane northbound on Cassopolis Street so their traffic conflict is now moved out of the two through-lanes.

According to Mr. Jones, one of the safest turns you can make from a multi-lane road is the left turn into a site once you are out of the through-lanes of traffic. If you don't get out of traffic, he said you could be hit in the rear end. The key to that is making sure that in the geometry of the road you are providing room for the traffic slowing down to move out of the through-lanes and into the left-turn lane. Once you're into the left-turn lane, he said you're seeing the two oncoming lanes of traffic coming straight at you and you don't have to look behind you. You can gauge that traffic gap and the time you need to cross those two lanes of traffic. That condition does not and cannot exist at the 7-11 approach point, but he said they have allowed for that.

Mr. Jones said their ability to consolidate driveways with 7-11 is significantly hampered by their desire to make their approach points safe. If 7-11 asks them to access their site through Martins' driveways at the proposed locations, he said that is something Martins would have to consider. They don't own the land and he said they've had no dialog with 7-11 so far so consolidating the curb cuts is probably not going to happen. He then pointed out that they cannot move their driveway to 7-11's location because that is not safe.

With regards to the sidewalk, Mr. Jones said it will only be built on their property as that is the only area they control. He indicated that they will stub it off at either property line in hopes that it is carried in either direction some day.

Mr. Sharkey agreed that a left turn entering is very safe, but he asked if it isn't very dangerous for a left turn exit. Mr. Jones said left turns out is usually the worst, but they are counting on people going northbound to use the signal at CR 4.

In addition, Mr. Paulen said that normally a store like this is oriented toward the major traffic arterial so you get the most visibility of the store where you are. This store is oriented to the south with CR 4, and part of the reason for that is so the two entrances on CR 4 are primarily used by customers for entrance to the store.

In response to the County's review of the traffic study, Mr. Paulen said they will exaggerate the right-in turn just behind the 7-11 as much as they can to make it a left-in on the street side. He also said it will be heavily signed on the internal side to control that entrance. They want to be a good neighbors and he said they want their customers to be safe so that is part of what they are

doing with the road design.

Mr. Paulen referred to the proposed curb cuts in the packet of information he submitted (Petitioner Exhibit #1). He said the stackings where it turns into Martins and the stackings for southbound left turns at CR 4 has not changed. The design angle of the lane has changed, but the size of the turn lane for southbound cars has not. Based on the traffic counts, he said it does provide stacking for northbound traffic, but 50% of the cars are coming southbound.

Mr. Sharkey commented that the vast number of customers coming to the store have been there before so they will learn the easiest ways in and out. His concern is trying to cross three lanes to turn left into the CVS. He feels any kind of a center barrier as far north would be beneficial, but he's not sure it would be possible because 7-11 would probably not agree with it. Mr. Paulen said it would create a problem with their design and Mr. Kolbus advised that would have to be approved by the State.

A motion was made and seconded (*Doriot/Holt*) that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Lantz*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved as presented with the deviations, and in accordance with the Staff Analysis provided the revisions of the Technical Advisory Committee (as amended by the Board) are completed prior to the issuance of building permits as follows:

1. Submit the traffic impact study for state highway permits on SR 19 to the County Highway Department for review and comment.
2. Obtain commercial driveway permits for CR 4 with review by the county and city.
3. Obtain storm water pollution prevention plan approval prior to development.
4. Provide and utilize City of Elkhart water and sanitary sewer as stipulated on the plan.
5. Obtain detailed floor, finish, and equipment plan approval prior to construction.

The motion was carried with a unanimous roll call vote.

* (*It is noted that Tom Holt stepped down from the Board at this time due to a potential conflict of interest.*)

9. The application for the Vacation of an unnamed county right-of-way for ***K.C. Industries, LLC*** represented by Marbach, Brady & Weaver, on property located on the right-of-way which runs in an east/west direction along the southern border of Jackson Park Subdivision, between the East line of the plat and a point 320 ft. East of the west line of said plat in Baugo Township, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082158*.

Mr. Doriot asked what the property was created with and Mr. Burrow said it appears to have been created through a plat to the north that may have been vacated.

Chris Marbach of Marbach, Brady & Weaver, 3220 Southview Dr., Elkhart, was present on behalf of this request. He explained that the Jackson Park Subdivision was platted in 1914 and is recorded in Plat Book 1 page 117. The current owners of the property have purchased various lots within this plat. He pointed out the southern border of the plat and he said the southern 30 ft. was reserved for a road. A copy of the Jackson Park Subdivision plat was then submitted to the Board

[attached to file as Petitioner Exhibit #1.

According to Mr. Marbach, in a vacation process, state law says when a road is created by dedication of a plat and then subsequently vacated it needs to stay within the boundaries of that plat. He said the returned ownership goes within the boundaries of that plat the way it started so everything on this road should go to the property owners to the north. They are requesting to vacate the portion of this road which has never been used or improved since 1914 so it can be used with the VIM property.

Mr. Sharkey asked if there is a reason the request has not gone to the west to the intersection and Mr. Marbach said they do not own that property. When asked if he has talked with those owners to do that, Mr. Marbach said no.

Betsy McCaslin, 29993 CR 16 West, Elkhart, owner of the company to the south, said it was their understanding they were to get half of that right-of-way. Mr. Doriot explained they would get half if their area had been platted with the lots to the north and the right-of-way. However, as Mr. Marbach explained, in all vacations it goes to the subdivision that it is platted with. He said it reverts back to the original ownership and the person who platted it had to have ownership of the entire ground to dedicate that right-of-way.

Mrs. McCaslin said it's her understanding that the petitioner purchased their property from Robert W. Martin who they also purchased their property from, but Mr. Doriot said it doesn't apply, it's at the time of platting in 1914.

Mrs. Wolgamood asked Mrs. McCaslin if they access their property through that right-of-way and she said no.

When they bought the southern part of their property from Robert Martin, Mrs. McCaslin said there was something written in an older document that they would have some variance on that side; however, they only obtained a 1987 copy from the Records Office. If there was a variance granted, Mrs. Wolgamood explained that would have been a variance to the setback to the building, which would have been granted by the Board of Zoning Appeals and has nothing to do with the right-of-way.

In further discussion, Mrs. McCaslin was advised that if they have a dispute with the 1914 document that was submitted, that can be taken to the public hearing before the county commissioners or they can appeal the Plan Commission's decision.

Also present was Gerald Hart, 30119 W. Blaine, Elkhart. He's lived there for 42 years and he said he never knew that Tower Road went past CR 1 until this hearing came up. If someone has not opened up a road and now they want to close it before anyone knew it was there, he feels there should be some consideration for the people who do have businesses down the side of that road so they can use it if they want to.

Mr. Marbach concurred with the fact that there is a month before this vacation goes to the county commissioners if they can produce some documentation that shows otherwise. However, based on their research of this particular property, the plat, and the ownership, this road was created in 1914 and it has never been used so they are asking that it be vacated.

A motion was made and seconded (*Doriot/Sharkey*) that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Wolgamood*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved in accordance with the Staff Analysis and as prescribed by law. With a unanimous roll call vote, the motion was carried.

10. The application for a zone map change from M-2 to a Detailed Planned Unit Development-M-2 to be known as **VIM DPUD**, for K.C. Industries, LLC (owner/developer) represented by Marbach, Brady & Weaver, on property located on the North side of Old US 33, 1,140 ft. East of CR 1 and East side of CR 1, 700 ft. North of Old US 33 in Baugo Township, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082157*. He reported that on July 7, 2008, he sent a memo to the Plan Commission with a letter attached to Ken Will dated January 28, 2008, concerning the history of this property and why it is in front of the Plan Commission. This memo and letter are in the file for review.

When Mr. Doriot questioned the definition of recycling, Mr. Burrow said the ordinance we operate from does not address recycling. If it is maintained as they are demonstrating, it is the staff's position it is not a junk yard and that's why the staff feels this can be done as a Planned Unit Development (PUD) and not a Conditional Use.

Mr. Miller felt it was important for the audience to understand why they are proposing a PUD and Mr. Burrow said it is to establish a site plan that would make it easier for the staff to determine compliance with the zoning ordinance. Based on the letter to Ken Will dated January 28, 2008, they are not in compliance with the ordinance and the DPUD may be their only option, which makes it easier for the staff to enforce the standards.

Mr. Burrow explained that the Plan Commission does have the ability to modify the staff's suggestions as they are only advising to the County Commissioners. He also said they can forward the request with a recommendation, with no recommendation, or with additional conditions. Additionally, if it is extremely complex, he said it might be in their purview to take the information under advisement and possibly make a decision at a future Plan Commission meeting.

Present on behalf of this request was Chris Marbach of Marbach, Brady & Weaver, 3220 Southview Drive, Elkhart. After displaying several aerial photos and site plans, all of which are in the file for review, he went on to describe the location of the subject property.

Since the June 14, 2007, fire on this property, Mr. Marbach said the petitioner has been making improvements and trying to actively rebuild this site to make it a functional facility as it was before the fire. He reported that he has not completed his rebuild process, but he is very close. Over this year there have been stories and issues about this site, but he said some are factual and others are fictional.

The reason they are here today is because recycling/wood processing is not defined anywhere in the zoning ordinance so the staff doesn't know where it goes, which is creating the issue of how to enforce it. He said the simple issue is what zone does VIM belong in, and to alleviate that issue, they are requesting a DPUD to put it into a particular zone.

He went on to say that they don't want this facility to be out in the country and destroy agricultural ground, and totally go against the Comprehensive Land Use Plan. Mr. Marbach said the plan wants it in an urban growth area in the area where manufacturing takes place. He also said it does not belong in a residential or commercial district so the only choice left in the zoning ordinance is the manufacturing district. He then pointed out that this property is zoned M-2, but it does not say that wood recycling can be done there.

The uses currently allowed in the M-2 zone were then reviewed, which includes things like building equipment yards, yards for lumber, coal, sand and gravel. Also permitted is stone, marble, and granite grinding and cutting, feed grinding, and feed processing. Mr. Marbach said lumber treatment processing is allowed, but they do not treat the lumber in this business so it does not fit

that category. In addition, he said sawmills and planing mills are allowed in M-2 zones. You can cut up the wood with a sawmill, but he said they don't know where to put it if you grind up the wood. He said this use is very consistent with the M-2 uses and requirements so he feels the M-2 zone is where this particular site needs to be.

According to Mr. Marbach, this site currently receives cured hard and soft woods from a variety of places across the county. It comes in various sizes and shapes, and it is sorted based on the type of wood once it arrives to the site. If it is cured hard or cured soft woods, he said it will be placed inside the east side of the building where the grinding of the hard and soft woods is done. Once it is in the building, it will be ground and produced into mulch or an animal bedding product. After the grinding is completed, he said it is then moved over to the other side of the building where it is stored, packaged and bagged, then it's shipped out of that particular building.

The recently live woods brought into the site from people who have cleared their woods off, removed storm damaged stumps, trees or limbs, is delivered to the site and separated into clean green wood and dirty greenwood because it has to be processed differently. They are both then ground up into separate grinders that sit outside and they produce another type of mulch, which is put into the bins that sit on the asphalt. This allows them to cure naturally and he said they keep those bins turned over and watered so there is no dust coming off the bins. As another option, Mr. Marbach said they soak some of this mulch in an environmentally safe color-fast dye. This allows them to put color into the mulch that landscaping companies sell to people to put out at their homes.

In describing the second part of their business, Mr. Marbach said when the dirt comes off of the stumps and topsoil is brought to this site from other sources, it is stored in an asphalt area he pointed out as well as an IDEM certified Grade A compost from the Elkhart County Landfill. That compost is inspected and reviewed by IDEM, and it is certified that it has no harmful bacteria, toxins or dangerous chemicals for humans, animals, plants, or water before it leaves the landfill and comes to the property in question. The owner then mixes the topsoil, the compost and sometimes woodchips to create a soil enhanced package for people to buy a mineral rich product of soil that is used for topsoil. He said that process happens on an asphalt pad on the east side of building.

With regards to future plans, Mr. Marbach said they did present a two to five-year plan, which is included in the file. They hope to one day add a three or four-sided building in the back and increase the asphalt area, and then move the production line to give them more room to work. It's basically the same product of enhanced topsoil and maybe some new erosion control packages that people can use to protect their inlets such as replacements for straw bales or a biodegradable substance made out of the topsoil material.

Also pointed out was an area in the corner they designated for the renewable energy facility, which Mr. Marbach explained is two to five years out. He said the market of renewable energy changes every week and the details that surround these options can change daily. Currently, there are three processes that could come out of the energy side of the business. One is to take the material collected by the dust collector inside the building currently stored in silos and trailers and sold for animal bedding and convert it to energy pellets. This is an energy option for people to burn fuel pellets in residential or commercial site burners.

The second process Mr. Marbach described is the gasification of wood waste and the processing of the material to produce a cellulose ethanol fuel. They don't know if this is financially feasible yet, but this is something they are considering and he acknowledged they would have to come back to the Plan Commission for a DPUD if those details are firmed up.

The third use is the generation of electricity by burning that wood to heat boilers, which creates steam to generate electricity. Mr. Marbach said this is another up and coming technology that may or may not be feasible, but they want the Board to be aware they are considering it.

All of the materials that come to this site are either ground up or mixed into animal bedding mulch or a topsoil compost product. Mr. Marbach stressed that this is a manufacturing facility that brings raw materials in that are discarded from other companies and creates a new product out of them. He said this business belongs in the M-2 zone, it's located in an existing M-2 zone, and it has been in the M-2 zone since they opened in 2000. He also said the staff recommends continued approval of this activity in this zone.

Mr. Marbach said the site has some perimeter residential uses to it, but he pointed out that there is a couple hundred feet of woods before any residential home exists along the northern and western borders. In order to help mitigate this area and the entire northern border of the western border, he said they have installed a new six-foot chain link fence along the perimeter. They will then have a 37 ft. wide area that will be a fire road and drainage swale area to act as a fire break should anything happen between the woods and the site. From that barrier, he said they will have a 15 ft. high minimum berm with Arborvitae planted on the top along that entire northern and western perimeter of this particular area, which is identified by the cross-hatched areas on the one-year two to five-year plans. The woods and 40 to 50 ft. of buffer they are providing to help mitigate noise and visibility of the site.

The time limit on that buffer was questioned by Mr. Sharkey. Mr. Marbach said the Staff Report indicates they want it done by October 2008, but he pointed out the earliest this DPUD could be recorded is the end of August, which leaves one month to have everything done and that time is too short. Although there is currently a berm in place, he said they need to reshape it to meet the 3 to 1 side slopes and a more reasonable maintenance type situation.

When asked if the berm is the same height, Mr. Marbach said it is a little lower than what it is now, but it will be about the same once the Arborvitae is up.

Mr. Marbach pointed out a second berm that will be installed to meet the same standard of six-feet with Arborvitae on top. The depth of the berm was then questioned and Mr. Marbach said it totals 144 ft. He also said there's 350 ft. between the property and home in that area.

Mr. Doriot asked if they will maintain water on the top of that buffer for the trees if necessary. Mr. Marbach said he has not discussed irrigation with the owner and it's not a condition anyone has talked about to date. He then explained that the material they're using is very rich in nutrients and grows vegetation very well. Mr. Sharkey commented that it still needs water and Mr. Marbach agreed, but he said it would be their problem if they can't keep the trees alive.

The conditions recommended in the Staff Report were then reviewed in detail with the Board. Mr. Marbach said staff item #1 is a mandate to provide six more PUD applications by bringing them to the Plan Commission every six months for the first year and then every year thereafter. He said the Board does not require anyone else to bring back their PUD's and show progress as they build them in this county, and he pointed out they have enforcement authority already by the staff. If they don't comply, then the staff has the grounds to enforce the issues so he questioned why the Board needs to see it every six months.

Staff item #2 also has to do with enforcement issues as they want the staff to have the immediate ability to create enforcement. Mr. Marbach said that is fine, but he asked that they let the staff use whatever is approved by this ordinance as the guidelines for enforcement. He said it doesn't need to come back to the Plan Commission to see it every six months.

Mr. Marbach said staff item #3 is a repeat of item #1 g.

Staff item #4 says that all activities of VIM be conducted inside of a building; however, Mr. Marbach said they would need a 25-acre building to accomplish that. He assumes that request comes from an issue of dust control, but he said this facility is regulated for fugitive dust through its Title V Air Permit through IDEM, which requires a fugitive dust control program. IDEM issues, inspects and enforces this permit, and he said they have inspected this site for the last five years and have not found any proof of dust leaving this site. Therefore, he said they are just requesting that they comply with their Title V Air Permit and let IDEM and the state agencies, the experts who set the rules and standards, be the enforcement agencies.

Mr. Marbach feels that staff item #5, which requests that records of the site retention time of the wood products on site be maintained, is a business issue and not a planning issue. He doesn't know of any business where the Board has required them to tell them how long their raw product has sat in their parking lot before it is used. This is the same thing as they have raw product that may sit there until it is processed, and that is a planning internal business operation, not an ordinance issue.

Staff item #6 stipulates the height of the piles be limited to 15 ft. Mr. Marbach said there is a national fire code in addition to a State of Indiana fire code, and those experts have made the determination across the county that this type of wood can be stored to a height of 25 ft.; therefore, he asked that they be allowed to follow the national standards.

Mr. Miller questioned the type of wood he is talking about and Mr. Marbach said they have three types. The 'A' wood, designated in the application, is cured hard woods such as pallets and cut-offs from cabinetry, which is typically oak, maple, and a hickory product. The 'B' wood is cured soft woods like plywood, paneling, pine, and dimensional lumber. This material is generated by the RV and manufactured housing industry. The third is the 'C' wood, a classification of IDEM, which is the 'B' wood that has sat outside more than 12 months. It becomes weathered so he said it has a different definition.

Staff item #7 is requiring that a commercial driveway permit is to be obtained and constructed prior to October 2008. Mr. Marbach said they concur with the highway driveway permit application, but the issue will be the timing. If he can't have a recorded ordinance until the end of August, he said he can't get the permit, the approvals or a contractor to build that driveway in a one month timeframe. He also said he will not design this driveway until he knows he has an approved DPUD project.

Mrs. Wolgamood questioned if he has a timeframe in mind and Mr. Marbach said they may be able to negotiate and have the driveway done by the end of 2008 rather than waiting one year, but ideally they propose it to be done within the one-year plan. If the PUD is approved, he said there is a lot of work to do in moving berms and the petitioner is in the process of building this facility back up right now. The staff has suggested they table the request, which he said delays the process even another month and he may miss the construction season as is it.

Mr. Marbach said they agree with staff item #8.

Staff item #9 says a detailed construction plan is to be filed for all fugitive dust control systems for all buildings used for inside grinding. Although he suspects it is not, he asked if that is required of all dust control systems in Elkhart County. He also asked the Board if they are prepared to do that for every dust collection system throughout the county. There is no violation with their dust control system so he asked why they should be singled out to file plans. Mr. Doriot asked if IDEM reviews those plans and Mr. Marbach said they are part of the Title V Air Permit. He then

reported that they are in the process of modifying their air permit because they have a new dust control system.

Mr. Marbach said he feels that completing the berms by the end of October (staff item #10) is unrealistic. Again, that is only one month from the end of approval so they are requesting at least a six to 12 month period to get that done.

Staff item #11 limits the hours of operation. He wonders if the Plan Commission has ever limited hours of manufacturing in other zones throughout the county. He said people have three shifts all over this county that produce all kinds of products and he asked why they wouldn't let the petitioner have the same thing. In order to keep up with 400 to 600 tons of processing a day, he said they may need more than one shift to get it all done. If the RV industry picks back up again, he said there may be that day where 650 tons come in and they may need some extra time to get that extra tonnage out that day. For that reason, he said they don't want to be limited to just an 8:00 a.m. to 5:00 p.m. scenario.

Mrs. Wolgamood asked if they are suggesting that for the outside grinding as well, but Mr. Marbach said the outside grinding is just one shift during the day. He said the inside grinding is what potentially could happen at later hours. With the newer equipment they have installed, he said they will be able to grind more per hour than they could before so hopefully it's not a 24-hour business, but it might be a 12-hour business.

If noise is a consideration, Mr. Marbach said he has been around the site at various times during the day and evening and most of the noise he hears is from the rail yard and not from VIM.

Mr. Marbach continued saying they agree with staff item #12.

With regard to staff item #13, which requires a twice yearly report from a service technician for the dust collection system, he again asked if this is a planning issue and part of the zoning ordinance. If they impose this requirement on them, he hopes they require it for everyone else in the county and that would mean more staff to manage, market and keep track of those reports. Mr. Doriot asked how often IDEM monitors them and Mr. Marbach said currently once a week.

In staff item #14, Mr. Marbach said they want the Plan Commission to have unlimited power to change the conditions whenever they want. If this is approved today and the commissioners approve it with the conditions that are approved, he doesn't think the Board can change their mind later. If the petitioner complies with those conditions, he said there should be no need to change anything.

The staff wants all of the berms to be constructed of the "naturally occurring mineral soils" in staff item #15. Mr. Marbach explained that their mixture contains topsoil, sand, the IDEM approved compost, and wood chips. All are naturally occurring, all have minerals in them, and their soil so he's not sure how they don't fit that definition. He acknowledged that it is a manufactured soil, but he said it is a soil.

He went on to say that the existing berms are on 2 to 1 slopes and very steep so you can't even walk up them. They've been there since 2005, and after walking the entire perimeter, he said they show no signs of erosion. According to Mr. Marbach, the nutrition in the material will allow that grass and trees to grow very well as long as they get some rain; therefore, he requested they be allowed to use the material they have on site to complete these berms. He then explained that this material is very similar to what you find in the bed of a seasoned wood.

The owner is requesting protection for the fire stations (staff item #16), which Mr. Marbach said has already been done. He then submitted a photo *[attached to file as Petitioner Exhibit #1]* to show that balusters are already in around all of the fire hydrants with barriers around them. They also want

the asphalt and storage areas delineated, but he said they believe the asphalt itself delineates those areas. He said you can see the edge of the asphalt and that's the limit of the storage areas.

Staff item #17 requires a comprehensive soil report by a soil scientist. Mr. Marbach said they did a soil report that determined the location of the reserve septic area, and that report has been provided to the staff to prove they can get a system in there, although it would probably be a mound system. They understand there is a high water table in this area, so in creating the retention areas in the one-year plan and in the five-year plan, he said they are only 18 inches or less deep. He said they have to be very large in surface volume, but they are very shallow in depth so they don't mix with the water table and that's why they lose so much of their property to retention. In his opinion, soil borings will tell them nothing different.

With regards to the additional information to be addressed, Mr. Marbach said they concur this is not a junk yard (#1). He explained that this site has raw materials that are manufactured into new products, which are shipped all over the country. The weight of the material leaving the site equals or exceeds the material coming in each day (#2). Once everything is flowing and up and running again, he said there should be no outside storage of that 'A' and 'B' wood because it's constantly processed all day long. He then pointed out the only area where overflow may sit if there is some reason they can't get it all inside the building during the course of the day.

Mr. Marbach pointed out that he already described the three different grades of wood (#3). He then went on to discuss the recommendation for surety for improvements (#4 & #5). Up until now, he said surety has been posted on public improvements that take place within ground dedicated to the public such as the sewer, water, drainage, and the roads. Now they want them to do this on private property, and if the county has to enforce a surety bond, he asked if a public entity can go on private property and build a private improvement. He pointed out that this is not a public road or a public dedicated site so he's not sure a surety even applies to something on private property.

In conclusion, Mr. Marbach submitted and reviewed with the Board a summary of their analysis of the Staff Report and revisions they are proposing to the conditions recommended by the staff *[attached to file as Petitioner Exhibit #2]*. He asked if the Plan Commission and staff are prepared to require all other existing organizations that perform similar operations to this to abide by the same standards, and hold them to the same DPUD standards as there are other facilities that don't meet these standards today. A business that recycles 400 to 600 tons of scrap a day into useable products for framers, landscapers, landowners, and major retailers across the country should be supported.

Mr. Marbach said this should be in an M-2 zone, and if that 400 to 600 tons went to the Elkhart County Landfill, the lifespan of the landfill would be decreased substantially so we need a place to recycle this wood. This property has been zoned M-2 since the 1960's and he said the current site is in compliance with all of the M-2 requirements. If wood processing, wood grinding, and wood chipping were permitted in the M-2 uses, he said he's not sure they would even be here today. It is his opinion that the conditions the staff would like to impose are influenced from sources other than the zoning ordinance.

Also present was Tom Holt of Holt Communication, who said he has represented VIM for the last year. He said a lot of people will be saying that VIM and Ken Will does not follow through with what he says, but in the last year after the fire, he made a commitment to make his facility safer than it was. Improvements made in the last year includes the installation of a fence, and Mr. Holt said the petitioner has been doing as much as he can to ensure and address the neighbor's concerns in regards to the fugitive dust and dust problems that exist in that neighborhood.

According to Mr. Holt, IDEM has had compliance oversight over VIM since they came into existence 18 years ago. This is a highly regulated industry from the land, air, and water, and he said a Title V Air Permit is one of the most stringent air permits that a company can get. He said it is the same type of air permit that a paint manufacturer, a paint shop, or a fiberglass shop would get and that permit allows for the release in those industries of VOC gases, which are more harmful than wood.

In explaining how fugitive dust is determined by IDEM, Mr. Holt said it is a visual only, and in order to achieve a violation, someone must visibly see the dust cross the property line. How IDEM addresses that issue is through a Fugitive Dust Control Program where they are mandated to keep records on how often they grind, what material is being ground, and what time that material is ground. They also have to record how often they water the roads and the wind speed in one-hour increments.

Since 2000, Mr. Holt said there have been two IDEM violations at the VIM site. One involved fugitive dust in 2003 in which he explained dust was blowing to the eastern end of the property. The violation in 2005 was due to record keeping, but he said that kind of a violation occurs all over Elkhart County where your books aren't kept up to date. He admitted that that doesn't make it right and you have to do better so that's why that oversight agency exists.

Since the fire, Mr. Holt said IDEM has been on their site at least once a week, and sometimes twice, by land and air by the director from the northern region himself and multiple PhD scientists from Indianapolis, all looking to make sure the site is in compliance. According to IDEM, he said they cannot scientifically prove that dust created from that site is the cause of the dust problems. He then asked that the remonstrators who speak point out where they live on the map that is displayed because he said there is other scientific data that is key to this. According to Mr. Holt, the wind blows in that area 88 percent of the time from the west to southwest.

Mr. Lantz asked what they were grinding from the RV's brought up after all of the storms. Mr. Holt said they were grinding up plywood that had a laminate on it, but it was not fiberglass. There were some bins dumped on site from one of their customers that had a fiberglass product in it, but he clarified that the fiberglass is sorted out before it is put into the grinder. When asked about gypsum board, he said they are not authorized to grind that at the Elkhart site. If there is any incidental thrown in, he said they remove it the landfill and they charge their customers back if they find what they consider a "dirty load". He then clarified that a "dirty load" could be one piece of fiberglass in a 25-yard dumpster.

Mr. Miller commented that the wood classifications are all cured wood, but he said there were some indications they are processing other than cured wood. Mr. Holt explained that other than cured wood there would be trees limbs, logs, and stumps, which is technically not a classified wood. He was then asked where that wood is stored after is it processed and he said it is either bagged or put for retail or bulk sale in concrete balusters.

When Mr. Miller asked if that wood is stored outside in piles, Mr. Holt said it's stored in piles based on state regulations, which specifies they can be 25 ft. high, 250 ft. long, and 100 ft. wide. He was also asked if that material falls under the same code for storage as the cured material. Mr. Holt said any wood product that is ground-up is considered by the Indiana Fire Marshall and the International Fire Code as being a "hog" material, which has a very specific guideline for the height of the stored piles and the access around those piles. Mr. Sharkey asked if there is no specified turnover time or how much is there and Mr. Holt said as long as the pile is separated by at least a 20 ft. area, you can start another one.

A concern was then raised about the storage piles heating up. Mr. Holt said one of their processes is an aged material which is taking the green wood and allowing it to age naturally instead of adding a colorant to it. That is watered and turned on a regular basis so it colors naturally. That is a carbon product and it's going to naturally try to break itself down, and when that starts, he said it does create heat. Because of the State Fire Marshall and the International Fire Code, he said they are mandated that they must take temperatures of any kind of pile that has wood in it and record that temperature on a daily basis.

When asked what caused the fire on June 14, 2008, Ken Will, 22907 SR 120, Elkhart, addressed the Board explaining that it was an operator error. It was 96 degrees outside with about a 95 degree humidity, and the night shift had stopped grinding to go to lunch and they were not watching the outflow. He said the system clogged itself up because of the humidity, and the air flow stopped for about two hours where it built up static electricity. The dust collecting system collapsed and he said the sparks caused an explosion. The explosion blew the roof off of the building and sent ambers everywhere on their compound. Tragically, he said they lost an individual in the initial explosion because he was in line of the dust system collapsing inside the building.

Mr. Will was then asked what precautions they are now taking to prevent a fire from again happening. He said they had 72,000 cfm to do all of the processing of getting the dust out of the 'B' wood, and the insurance company wanted to put 132,000 cfm in. He said he's spent the last year researching ways to eliminate the air volume and to do it with less than what they had and not go along with the insurance company of 132,000. They are now down to air tables and air knives and he said they are trying to come up with the latest technology. According to Mr. Will, the new technology is basically using gravity rather than air to separate their dust in the future. He said they will have a lot less air, which is the key in this business.

Mr. Holt stressed that this tragic industrial accident could happen at any other businesses with dust collection systems such as Adorn who has had multiple fires in its dust collection system. This is something that happens on a regular basis whenever you're collecting dust, and it could happen in one of the RV factories just as easy as it happened at this business. He also said there are technologies that can be added to the dust collection system that monitor air flow that have alarm systems, which they are looking at. He said VIM is committed to putting the safest equipment in its building to eliminate the possibility of an accident like this happening again.

Mr. Sharkey said his biggest concern is the outside storage and the creation of odor from multiple 25 ft. high storage piles. Mr. Holt said there is no odor involved and the wood that is there is what you would smell if you were in a forest. Additionally, he said there are no statutes or regulations that control odor. For the most part, Mr. Holt said the piles that exist there today were created because VIM did not stop servicing their customers after the fire, and the only pile that existed previous to the fire was the 'C' material. He said the big storage piles won't exist once the site is up and running.

Mrs. Wolgamood questioned the height of the tallest pile currently and Mr. Holt said 25 ft. The current number of piles was also questioned and he replied four. He then pointed out two piles that he said would be gone if their air permit would have been changed, and he said they have made the commitment that the piles will be gone within a year from the time this DPUD is approved. In addition, he said they will be able to process what they currently have coming onto the site once they are up and running.

Mr. Miller said it seems like Elkhart County is approving something they are not exactly sure what to call it, but Mr. Holt said they are approving land use and whether they are consistent

with the use, not the business of recycling which is highly regulated. He said the recycling industry is no different than the RV, cabinetry and paint manufacturing industries, as well as the rail yard, which are all regulated by the same agencies.

Prior to hearing from the remonstrators, it was noted that approximately 12 people in the audience wanted to address the Board. A time limit of one hour was given to the two representatives of the group with all others who wished to address the Board limited to new comments only. The remonstrance procedure was then reviewed with the audience.

Joyce Bellows, 56234 46th Street, Elkhart, was present in remonstrance to this request. She submitted a folder of information to the Board for review *[attached to file as Remonstrators Exhibit #1]*. This information includes a narrative of her presentation; a copy of the May 30, 2008, letter to Mr. Will from Robert Watkins, Plan Director; a copy of a letter dated March 3, 2008, to Robert Watkins from Joyce Bellows and Wayne Stutsman; three copies of "junk-yard" definitions; a June 27, 2008, newspaper article regarding the closing of a restaurant by the Health Department; and two photos of the subject property dated July 8, 2008.

See the copy of Mrs. Bellows' narrative (*attached to minutes*) for her presentation. It is noted that she omitted the paragraph addressing their Mission Statement presented to IDEM. During her presentation, she said a junk yard is not a derogatory term, it is a description of something they have.

Mrs. Bellows said the county commissioners allowed VIM to take the wood scrap out to the (county) landfill during this year, and it was reported in the newspaper that they would only allow those piles to be 14 ft. high. She feels they have now set the precedent (for the height of the piles) and she asked that they continue with that in their area. She pointed out that they can always be more stringent than the state agencies, but they cannot be less stringent.

Mrs. Bellows said she is also concerned that they have been disadvantaged with having a member of the Plan Commission being an employee of VIM and able to communicate back and forth with VIM. She said they feel this has been conflict of interest.

Also present in opposition to this request was Wayne Stutsman, 29862 Cardinal Ave., Elkhart. He too submitted a folder of information to the Board *[attached to file as Remonstrators Exhibit #2]* that includes a narrative of his comments, photos of the petitioner's dust collection system, and various other photos of the property in question.

See a copy of Mr. Stutsman's narrative (*attached to minutes*) for his comments on this request. In addition to his written comments, he said it was mentioned earlier that 'C' grade material was over one year. If this is extended for another year, he said the material that is there presently will then become 'C' grade and we will then have two years of that material.

Brandy Trosper, 56696 CR 1, Elkhart, was present and she pointed out the location of her property on the aerial photo. She disputed the comment that there is 200 ft. of woods separating the business from the residential houses to the north. She said there are areas where there are no woods at all, and the woods between her property and VIM is only 10-15 ft. deep.

Ms. Trosper said she does get dust on her property and she doesn't believe the business is following the air regulations. She can wash her car and then an hour later it is just as bad as it was before she washed it. She also indicated that there are property line issues. According to Ms. Trosper, the petitioner put in a new property marker that is five feet over from where the old property marker was located. She said their papers do not agree with each other, and rather than taking care of the issue, they went ahead and put the fence up five feet over the old property line, which had been there since she moved there four years ago.

Warren Seegers, the owner of the building at 56692 CR 1, Elkhart, which is the building with the blue roof located at the northwest corner of the VIM property, was also present. Mr. Seeger's said he wouldn't have bought the building had he known all of the turmoil that is going on with this situation. Since he has been in the area, he said he has never experienced any dust like he's heard from others; however, if you go by the landfill where they are currently grinding, he can see where the neighbors probably had dust coming over the berm.

One of the concerns Mr. Seeger had with VIM was the safety issue because they did not have a fence around the property. He has two young boys and he was concerned they could get onto the property. After expressing his concern to Mr. Will, he said a fence was installed. From what he's seen since he bought the property in December 2005, he feels the petitioner is making an honest effort to move forward and fix a lot of the problems and issues that may have been there in the past. When Mrs. Wolgamood asked Mr. Seegers if he lives there, he said no, but they hope to be living there by December of this year.

Also present in opposition to this request was Terry Schenk representing Global Composites who has locations at 56807 Elk Park Drive and 28967 Old US 33, Elkhart. Ms. Schenk said their concern has been with VIM's previous compliance history. Global Composites is a manufacturer and they have to comply with their Title V permit as well. Her company is regulated by local, federal and state agencies, and she said they realize it is difficult for the county to enforce when there is a question on how to regulate them. They hope that the Board can put more stringent regulations on the subject property due to their previous history. She said it has been done with the Groundwater Ordinance because they are one of the few communities that have a sole source aquifer so they can be more stringent than the federal or state rules.

Global Composites also has a concern with the piles at VIM. Ms. Schenk said accidents will happen and they are okay with 14 to 15 ft. piles, but they don't support 25 ft. Their concern is with having a fire come back through their property to the industrial park and involve the chemicals at their facility and the surrounding facilities.

When asked who her company is regulated by, Ms. Schenk said IDEM and EPA. Their air emissions are one of the target focuses as most dust emissions are because they are classified as a nasal carcinogen so they have to comply with their permit. She said Global Composites is inspected the same as VIM for water, air and ground, and they also have county groundwater inspections.

Next to address the Board was Tammy Justice, 56908 CR 1, Elkhart, who lives directly behind VIM's building (#4). Mrs. Justice then submitted photos that were taken of the Elkhart County Landfill on November 14, 2007 and July 2, 2008 *[attached to file as Remonstrators Exhibit #3]*, which shows how the dust goes in the air when they load the trucks.

Mrs. Justice explained that the fence that was installed aligns her property. She said Mr. Will admitted that the roof was blown off the building during the fire, which happened at 9:30 p.m., and not everyone is inside at that time in the evening. At the time the roof blew off, she said her family had just come inside. Had her family been outside at the time of the incident, she said her five year old daughter could have been hurt. She has an acre and a half of land, but she said she prefers to be away from the road.

Mrs. Justice said the petitioner has admitted that dust collectors cause fires quite often. They also indicated that the fire was due to the error of an employee. She would like to know if they can guarantee that no employee will ever make a mistake again. She is very unhappy with the dust and smell, but she is more concerned with the safety of her child.

Also present was Dwight Fish, 1627 Elizabeth Street, Elkhart, who is the neighborhood coordinator. During last year's fire, he said it was brought to his attention how bad the air quality was so he got involved in learning more about the VIM situation. His original experience started in May 1971 with the recycling of raw materials such as this in Allen County. What has happened since then is a huge change in the way they deal with solid waste. He believes we are at a point in time where we can really improve the quality of life by handling this type of situation in a much more logical, heartfelt, and legal way. Mr. Fish said we have to think about the future of VIM and the neighbors who live around the business. A plan is in place and he said it looks good, but in his experience in solid waste management and recycling of wood, he doesn't think we are on the right path fast enough. He said we are back to a visual just like we were before the fire.

Mr. Fish went on to say that groundwater problems are occurring and he has heard of West Nile Virus situations. All of those things are potentially going to happen unless we control this influx of material and the way it's processed, which can be done through regulation. Mr. Fish asked the Board to look at this situation from strictly an environmental position and he believes they will see that we've got to make changes. These are the problems across the country that are not being dealt with and he said it really needs to be addressed quickly. If this particular problem is addressed he feels this could be the precedent setting situation in Elkhart County to make the quality of life better.

Mr. Fish explained that the timetable for the end of life for a landfill is coming faster than we realize. He said we need to continually look at waste and recycle material such as this. He's not opposed to a man making money and being in this type of business as he is a woodworker and recycles as much wood as he possibly can; however, the point is that this situation is not being handled in a timely and an environmentally safe manner. If the petitioner is going to do his job as a business owner, he said he should make a move to do the job and don't ask for extensions. If the profitability is there, he said the petitioner should be able to comply within a reasonable time frame.

Mr. Fish lives four blocks from the city landfill in Elkhart and he said they did a beautiful job of landscaping and turning it into an educational facility. They teach over 6,000 students a year at that location. If this business fails, he said we won't be able to turn it into an education center because there is a problem that they're not dealing with. He said we need to deal with the time issue and move on.

When Mr. Lantz asked if this is a matter of processing or location, Mr. Fish said he thinks the petitioner had a very good idea 18 years ago, but those participating in the system became overwhelmed. He feels the material has dictated how the business is being run and he said it is out of control. He feels the petitioner needs to take a step back and look into the future. He indicated that two to five years is fine, but he asked what will happen in 25 years or if the business goes bankrupt. He also asked when we will have compliance and a reasonable business site that deals with the reality of the situation.

Mr. Fish said the fire that occurred last year affected him in the City of Elkhart through low water usage and ash covering his house, cars and pond, which is an air quality issue. Dealing with one fire station down the street is not going to cover the issue if they have another fire. He also indicated that he has had West Nile Virus and the reason is due to poor water situations and mosquitoes breeding in places they shouldn't. Mr. Fish said they need to take a look at reality, and the reality is that this is out of control and is not being forced into compliance.

Also present in opposition to this request was Michael Fitch, 56861 CR 1, Elkhart, which is right across the road from VIM. Mr. Fitch said he feels the 17 conditions are all good ideas, but he

would rather hear the petitioner say he would try to comply with them rather than saying he can't do some of them. He asked the Board if they feel disrespected with the petitioner saying they can just go to the State and get approval. He believes the county does have authority as they were told by IDEM that it is a county matter.

Mr. Fitch hopes there are better alternatives coming up for dust collecting. If they are very stringent about the inspection of dust collectors, he said that is not something that should be complained about. He doesn't feel the argument there are other businesses that aren't tightly regulated makes logical sense. Other industries didn't cause the largest ecological disaster this county has ever seen, and he said they didn't require 40 fire departments to take care of the fire. If the controls are tight, Mr. Fitch said it is because of past history.

Robert Pedzinski, 29704 Cardinal Avenue, Elkhart, was present to voice some concerns in opposition to this request. Mr. Pedzinski said he fought the first big fire at VIM, and although he retired prior to the recent fire, he said he was there trying to help out the neighborhood. The fire was a major issue for the entire county as well as St. Joseph County because our tax dollars had to pay for the firefighters to fight this fire.

Mr. Pedzinski said there is no odor control and the property smells, which he attributes to decomposing wood. He feels they can rotate the piles better by limiting them to 14 ft. rather than having 24 ft. piles. If you can rotate the piles, he thinks the odor will go away. He feels the petitioner has a great idea, but he doesn't think he will be able to achieve it. He said it will take a lot of money to get where he wants to go, and he agrees the county needs to have control over this situation.

Gene Messick, 29852 West Cleveland Avenue, Elkhart, said he owns 7.5 acres just north of the proposed property and he is affected by VIM more than anyone in the area. Before VIM came to this location, he said there was a junkyard on the property. There were tires and junk cars there for ten years and no one in the neighborhood said a word about it but himself. Mr. Messick was happy when VIM moved to the property because the junkyard was going to be eliminated.

When VIM first started out there was a dust problem, but he said they upgraded their filtering system and the dust has been diminished. Mr. Messick said he also asked the Elkhart County Health Department to come out and check his water because he had fish dying in his one acre pond, which is located 300 ft. from the business; however, he was told there was no problem with the water in the pond.

Mr. Messick said it's hard for him to understand why the business is getting so much criticism. He knows of four families in particular that are very critical about the operation being there, but he said they have accepted mulch from VIM. He then explained that seven houses have been built within 1,000 ft. of the business, and he is currently building the eighth house for his son. Mr. Messick doesn't have any problems with dust, and he believes the petitioner has the right to run his business at this location.

Last to address the Board was Debra Brown, 56791 CR 1, Elkhart. She pointed out the location of her property and said her front window faces the storage piles. She has been battling this since VIM came to this location, but she said most of those people who are supporting VIM are not living there at this time, or do not live within the perimeter of this business.

Mrs. Brown said her mother is currently ill and she cannot come to her house because of this operation. If VIM is permitted to expand, she said the issues will continue to mount and the neighbors will continue meeting with the Plan Commission on a regular basis. Mrs. Brown said the petitioner has not been a friendly neighbor, and she feels if he would occasionally meet with the

community who lives there that some of the issues could be resolved. Mrs. Brown then explained that landfills use perfume barriers to deodorize the air and she suggested that could be done on this property when they are turning the piles.

During rebuttal, Mr. Marbach said the letters mentioned by Mrs. Bellows go back to what use this is and if it meets the lot coverage and setback requirements. If classified as a junkyard, he said it might not meet some of those classifications. If it's not a junkyard, they don't have a lot coverage or setback problem so they meet all of the M-1 requirements.

With regards to not being able to meet the timelines, Mr. Marbach explained that he was hired on approximately April 20, 2008, to start their portion of the project and it took about two months to put the documentation and narrative together for the June meeting. The petitioner did not understand the PUD process and he said it takes time to get each individual component done.

Several people talked about pile heights and Mr. Marbach said they need to pay attention to the one-year plan. There will be no piles there when they are done, and he explained the piles are there today because the building has been out of service for a year. He also said the back pile is due to a hurricane, but as soon as the business re-opens, those piles will all be gone. They will have to grind all of the 'C' piles, which will take a little time, but they are here today to establish the rules and clean up the site. They are going to reshape the berm and the fire road, and he said the fence has already been put up around the perimeter. After they empty the sites, they will only have the working area as shown in their one-year plan. He said the Plan Commission has the authority to determine the height of the piles, but they are asking for 25 ft.

If the pile height is diminished, Mr. Doriot asked if they will need more footprint to handle the tonnage. Mr. Marbach said the footprint is controlled by that 100 x 250 x 25 ft. If the height is lowered, they will still be 100 x 250 ft., but they will need more piles to hold the same volume. However, he said that is moot because the only pile that will be there on a temporary basis is an overloaded day where they can't get it all in the building. The next open availability to put it back in the building, he said it will go back in the building.

Mr. Marbach was asked to address the property line issue where the fence was installed. He explained that during the course of surveying the VIM property, they did research to look for other surveys in the neighborhood. They have a survey that was done by Wightman Petrie for Roger Thompson who had the property platted through the subdivision process to recreate the Trooper parcel, the parcel in the front, as well as several others parcels. They located the irons along the southern border (northern border of VIM) and he said they checked. The irons also checked with all of the VIM dimensions, and from a survey standpoint, he said they all fit together the way all of the deeds say they fit.

The problem, according to Mr. Marbach, is that there was another survey marker in the corner, which was put in by someone else at an unknown point in time. He said they took measurements to it and it is five feet too far south, and it does not agree with the Wightman Petrie survey, the platted subdivision, or any existing deeds. It was visually visible to the adjacent neighbors so there is a property line issue, but he said the two different firms agree with the location of the property line coming from both sides of the situation.

Once the business is operating, Mr. Lantz asked what would happen to the material if they tell customers they are at their maximum limit should there be an overflow situation. Currently, Mr. Holt said there is a temporary storage site at the (county) landfill that they are paying for, but that will terminate. If there is some reason they have a large influx of wood, he said the landfill told them this summer they won't be allowed to bring wood in because it comes at such a flow that they

can't keep up and bury it.

Mr. Lantz suggested they locate another temporary site for a holding area for the material until it comes to their facility. He said they can process it in a timely manner and that would eliminate some of the problem. Mr. Holt agreed a temporary site would be an ideal situation; however, Mr. Sharkey said the problem with temporary when they are at capacity never goes away. The other option Mr. Lantz gave was moving the facility to an entirely new location.

Mr. Will reported that they cleaned the old dump out for the City of Elkhart about seven years ago and that environmental center is full again. The key is that you have capacity, but he said the city has two environmental centers that are currently full because of the overflow so they are demanding that they come to VIM, especially when there is a storm.

Mr. Sharkey lives very close to an environmental center on CR 19 and he said they have a huge influx when they have a storm. They keep it pretty clean and leveled, but he said they sell a lot of mulch so a lot of it goes back out.

Mr. Marbach reiterated that there are controls in place and he said they all want to work under the same permit. With regards to the dispute about woods separating the neighbors from the business, he recalled that he made an exception where there were no trees. He then pointed out the areas where the neighbors are separated by trees and the one opening where there are no trees.

VIM has been out of business for one year because of the fire and Mr. Marbach said it has caused piles as a result of that fire. He said they've got to give the petitioner a chance to make it right again once he's in production.

Mr. Warner said one of the most important issues involved is fire and he questioned what plan VIM has over and above best management practices to prevent fires. Mr. Holt said these types of fires are not controlled with water, they have to be smothered with dirt. He then explained that they have put a series of five fire stations around the property, which are hydrants equipped with fire hoses and the equipment to turn the system on. They have also put in a road system around the exterior so the neighbors won't have the fire trucks driving through their yard. In addition, there is an internal series of roads so you can get access quicker.

According to Mr. Holt, the building has a sprinkling system in case there is a fire that exists inside the building. The dust collection system has the ability to turn itself off and send alarms if the environment is created which could potentially cause a fire, but he said there really isn't a way of eliminating a fire. Mr. Holt also explained that according to many fire departments and emergency management officials, the berms that exist today saved the neighborhood from burning. The berms they plan to install to the west and north will not only serve against sound and provide a visual barrier, he said they are also there to protect the residential area.

To address the comment that their statements weren't correct in the application and some of the narratives, Mr. Marbach explained that what they were saying in the narratives is what they want to do when they open. He said they aren't doing that today because they are not in business.

The height of the berm was questioned by Mr. Doriot and Mr. Marbach said 15 ft. plus the Arborvitae. The more they grow, he said the higher that angle is going to be.

When asked what they anticipate to accomplish in six months from the commissioner's approval, Mr. Marbach said he's sure they can get the driveway permit resolved with the Elkhart County Highway Department barring major weather problems. As soon as they know it's acceptable, he said they can start the berm work, and they also have to have some of those piles cleaned out in order to move the berm over. Mr. Will then estimated having the berm moved and in place by spring time.

If the Plan Commission recommends denial of this request and the commissioner's agree, Mr. Burbrink said the property will still be M-2 so he asked what that means to the petitioner. Mr. Marbach said he felt that was a better question for the staff. Since the staff hasn't determined what they are yet, he asked what they comply with.

One of Mr. Sharkey's biggest concerns is that the staff made 17 recommendations, but the petitioner wants to revise some of those recommendations. He feels the Board needs some mediation between those 17 conditions and how they go about that today would be extremely difficult.

A motion was made and seconded (*Doriot/Miller*) that the public hearing be closed and the motion was carried with a unanimous vote.

While discussing requiring a form of surety recommended by the staff, Mr. Kolbus advised that state law only talks about requiring surety on public projects. However, he said one condition the Board can impose on a PUD is the furnishing of a bond or satisfactory written assurance guaranteeing timely completion of a proposed public improvement in a PUD.

During a lengthy discussion that followed, the Board made revisions to the 17 conditions listed in the Staff Analysis should they recommend approval of this Detailed Planned Unit Development.

A copy of VIM's current Title V Air Permit was submitted to the Board [*attached to file as Petitioner Exhibit #3*]. Mr. Holt explained that there is a specific section that addresses fugitive dust management.

Also submitted was a bag of VIM's proposed mixture for construction of the berm [*attached to file as Petitioner Exhibit #4*].

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Warner*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved in accordance with the Staff Analysis (as amended by the Board) with the adjusted list of 17 compliance items imposed as follows:

1. That all dust producing activities such as, but not limited to, grinding, handling, loading or unloading, and on-site relocation must comply with the petitioner's Title V Air Permit. The "A" and "B" material must be processed inside, and as soon as the Grade "C" wood piles are removed from the site (within a year), the only grinding permitted outside will be the green wood brought in from storms, etc.
2. That no processing or storage piles for all wood products be higher than 25 ft. with the topsoil permitted to be 50 ft. in height (indicated as raw resources on the Site Plan / Support Drawing).
3. That a commercial driveway permit be bonded and obtained from the Elkhart County Highway Department within six (6) months after commissioner approval.
4. That all uses indicated as "Potential Future Usage" will require an amendment to this DPUD Ordinance. The listed future use of gasification/electricity production to be noted as requiring additional material substantiation to demonstrate that the process will not become a nuisance by odor or by other vapor release.
5. Upon request for a building permit for the installation of the fugitive dust control system, a complete construction plan to be submitted to the Building Department.
6. That the northern berm and the western berm (on the north portion) be constructed, planted and seeded within one (1) year from commissioner approval.

7. The petitioner be limited to one (1) eight (8) hour shift for outside grinding, but inside grinding permitted 24 hours.
8. That the portion of the document "Narrative Reports" with a revision date of June 27, 2008, be made part of the Site Plan / Support Drawing and the DPUD ordinance, more specifically the description of the "WOOD PROCESSING". (beginning at the bottom of page 7, continuing to page 9, and ending before the potential future usage.)
9. That all berms be constructed of naturally occurring mineral soils and/or the processed material from the site as submitted (Petitioner Exhibit #4). The berm is to be maintained at the heights specified with the plantings.
10. The access road around the site be maintained for fire protection with all fire hydrants to be well marked with balusters. Piles to be separated as required by the State Fire Marshall with an interior sprinkling system and sensors on the dust collecting system.
11. The staff to file a progress report with the Plan Commission six (6) months after commissioner approval, with a detailed review by the Plan Commission for compliance one (1) year after commissioner approval.

The motion further reflects that based on the evidence presented, the operation is defined as a material and recovery processing facility and not a junk yard, and providing some form of surety for improvements is not required. With the following results of a roll call vote, the motion was carried: Lantz – yes; Warner – yes; Miller – yes; Doriot – yes; Wolgamood – no; Sharkey – yes; Burbrink – no.

11. There were no audience items.

12. Mr. Burrow distributed a memo regarding a proposed change to the Rules of Procedure (*attached to minutes*), and he asked the Board for the authority to go forward with and present this change to the Plan Commission at their next meeting. He explained that the new Comprehensive Plan indicated that we were going to have urban growth boundaries, and we were going to allow the cities and municipalities to have some additional input in those areas. This would allow them to make application in those areas that would go to the town and they are putting the Town of Wakarusa in the front of the process so they are given notice.

Mr. Burrow reported that it was suggested that item 2 of the memo should state: "A Letter of Review and Consideration will state whether or not the proposal conforms to all pertinent municipal Policies and Ordinance, and if not, specify those deviations." Mr. Kolbus then clarified that it would be like a Tech Report from the Town of Wakarusa because the Plan Commission would have the final say.

Mr. Burrow said one of the other issues is a possible ordinance change for actually putting the town in the loop for the issuing of building permits.

Mr. Doriot moved that the Advisory Plan Commission give the staff the authority to pursue this proposed change to the Elkhart County Plan Commission Rules of Procedure. Mr. Holt seconded the motion, which then carried with a unanimous vote.

* (*It is noted that Blake Doriot stepped down from the Board for the following staff item*).

13. Mr. Kanney read a letter (*in file*) from Lisa Meade of HN Industrial, LLC, requesting that the original plat for the **Appleridge Subdivision** be extended for two years. He said there has been

no active platting of this property since 2004.

Blake Doriot of B. Doriot & Associates, the engineer for this project, was present and he explained that a company purchased the property with the intent to go forward. He designed the next section, but he said the demand for housing in Goshen is not there at the present time. This property would be accessed internally from two stub streets in the last section of the subdivision, and he indicated that there are approximately 15 to 20 lots remaining.

When asked if there have been significant changes since the original approval, Mr. Doriot said the only change is that it was approved without curbs in 1993. The only thing the Highway Department would say is that they want curbs, but then you would have a non-curbed street all around and then a small portion of the subdivision would have curbs. However, he pointed out that that would be a highway issue when they file the road permits.

Mrs. Wolgamood moved to extend Primary approval for a period of two (2) years from today's date. Mr. Warner seconded the motion and the motion was carried with Mr. Miller voting in opposition.

14. Mr. Watkins reported that there are three pages of changes to the *Subdivision Control Ordinance*, which they are in the process of reviewing.

15. The meeting was adjourned at 3:42 p.m.

Respectfully submitted.

Kathleen L. Wilson, Recording Secretary

Jeff Burbrink, Chairman