

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 8TH DAY OF MAY 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 Vice-Chairperson, Mike Yoder, with the following members present: Tom Holt, Tom Lantz, Dennis Sharkey, Meg Wolgamood, Steve Warner, and Mike Yoder. 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 (*Holt/Wolgamood*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 10th day of April 2008 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Warner/Holt*) that the legal advertisements, having been published on the 26th day of April 2008 in the Goshen News and on the 28th day of April 2008 in The Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Sharkey/Lantz*) 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.

5. The application for Primary approval of a two lot commercial subdivision to be known as **STARLITE COMMONS**, for Wal-Mart (owner/developer) represented by Woolpert, Inc., on property located on the East side of Ash Rd., 700 ft. South of Old US 20 and South side of Old US 20, 500 ft. East of Ash Rd. in Cleveland Township, zoned M-1, was presented at this time.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081611*. He reported that an amended plan has been included in the Board's packets addressing some of the Tech comments, but he couldn't confirm if the easements have been addressed. He then submitted deed restrictions [*attached to file as Staff Exhibit #1*], which he said they are placing on these properties prior to selling them.

Present on behalf of this request was Dan Keister of Woolpert, Inc., 7140 Waldemar Drive, Indianapolis. He said he believes their revisions include all of the comments from the Tech Committee, but he will verify that. The location of the two out lots were then pointed out on the aerial map. He said one is immediately south and the other is immediately east of the existing BP station. Mr. Keister said the lots will have restrictions on them as Wal-Mart wants to have them developed in a way that will make their store look good.

Mr. Yoder asked if they are agreeing to anything that will violate the sign ordinance. Mr. Kanney explained that this is a straight subdivision and they are not granting any deviations. They talk about the images, but he said they do not talk about sizes.

Mr. Keister said he believes those are typical type requirements they have, and whoever develops the individuals lots will have to come back for permitting and approval. He clarified that Wal-Mart is not dictating what they can do, they are simply dictating what they cannot do and what they will be required to do in terms of quality.

Kevin Foy, who works for Coldwell Banker, 30590 North Shore Drive, Elkhart, was present saying he lives just east of the property in question. He is also a member of the Northwest Gateway Planning Committee who is currently doing a study in the area.

Mr. Foy submitted numerous photos of the area *[attached to file as Remonstrator Exhibit #1]*. Through this study, and from the surrounding neighborhoods and people concerned with this project, he said they have identified a lot of things they do not want in the area such as fast-food restaurants or convenience stores. They have identified big boxes that they want there with nice signage low to the ground. The study is not done yet, but he said there is already a rush to develop this area so he feels they are getting the “cart before the horse”. According to Mr. Foy, the purpose of the study is to identify what they want there and do it in a way that is acceptable to everyone.

Mr. Foy went on to say that they still have an ongoing problem with the roadway as shown in the photos he submitted. One photo he described is a right-in only at Corwin Road with a car coming out of it and no markings. He said they’ve been trying to put markings down for the last two or three months. When you stack cars heading south on Ash Road, he said you are basically canceling out a straight lane and a turn-lane because you have a yellow line, which he was taught not to cross. The stoplight at that intersection is over where the yellow line is so people are confused when they get the turn arrow because they are in one of the other lanes. There are two turn arrows going north that go onto US 20 heading west, and he said there is only one lane heading west so people are converging and almost side-swiping each other.

Mr. Foy acknowledged that Ash Road is controlled by St. Joe County, but he said Elkhart County has to take a look at it from our perspective because we all shop there. He is not opposed to the development, but he reiterated that he feels they are getting the “cart before the horse”. There are a lot of suggestions on the table through this committee doing the study, which he said is about six-months away from completion, so he feels this request should be tabled.

Laura Coyne was present representing the Elkhart County Redevelopment Commission, and she said Mr. Foy is on their steering committee for the plan for the Northwest Gateway. She said there is a tremendous amount of ownership these people are feeling at that intersection and the general study area. That is a good thing, but she said the timing is a little awkward and they were hoping they could get a real high degree of cooperation and coordination from all of the stakeholders. She also said they have a marketplace here that really can do a lot of things outside of any agreements with the Redevelopment Commission.

Mrs. Coyne doesn’t know about this subdivision request, but in talking with J.C. Schrock of D.J. Construction, if they develop this strip center as she suspects with a high degree of quality, and do it in such a way that can be copied by the other developments, she said they would be doing them a favor by giving them a template for a design in the future. That is asking a lot of a developer, but she thinks that D.J. Construction is the kind of firm that would understand the leadership opportunities in that situation.

Mrs. Coyne wonders if the problems with the access is Wal-Mart’s or the Highway Department’s ability to enforce something. She said part of the cooperation they are asking for is follow-through, and making sure that the nice plans everyone has actually gets accomplished. If somebody drops the ball on any of this, she said that becomes the weakest link in this entire concept. She said they are talking about doing something that has never been done in Elkhart County and they’re even talking about doing overlays. If they can actually get the kind of cooperation, coordination, and enforcement that they need, then she said they probably won’t need to follow up with an enforcement action.

In conclusion, Mrs. Coyne said they are a little worried about this because of the timing, but the general plan is moving forward with as much involvement and excitement as anything she's seen the county do. She has no particular recommendation right now, but she said this is a little bit of a "tight-rope" they are walking and they will be looking for the Plan Commission's guidance and continued support in this process.

When Mr. Lantz asked if she would like to see a timeframe put into place, Mrs. Coyne said she believes they are looking at having the plan, recommendations, the templates, and the zoning concepts in place in September.

Mr. Yoder said he thought they had a fix for the entrance, access, and that intersection done so they know what it's going to look like. He thought that was being funded by TIF dollars in that area, but Mr. Watkins said he doesn't think that any TIF dollars have been committed for anything other than the study.

Mr. Yoder commented that something is going to change and he thought Wal-Mart was going to help finance that in some way. Mr. Keister explained that there was a discussion about TIF money being used for improvements on the road; however, given timing and contracting, it worked out better to use TIF dollars for the water main extension put in by the City of Elkhart using public bidding to get that into place. In turn, he said Wal-Mart paid 100% for the improvements to that intersection. He said those plans were reviewed by both Elkhart and St. Joe counties with numerous revisions and expansions from beyond what they had initially presented as a design company.

Mr. Keiser went on to say that St. Joe County has now gotten involved with the contractor and the markings will be corrected and placed permanently. It's his understanding they were placed already, but he said that is something that is being reviewed with the contractor on a regular basis and he won't be paid until it's fixed.

When Mr. Yoder asked when construction will start on the improvements to the intersection, Mr. Keister said that work is already done. The only thing he understands is missing at this time is the striping that was put on temporarily last fall or winter. He said they couldn't do the thermoplastic because of temperatures and he understands the striping washed off through the winter. Mr. Keister said it has been a high priority item this spring to try to get accomplished, but he doesn't know if it is there or not.

Mr. Foy was asked when the photos he submitted were taken and he said two days ago.

Mr. Warner then asked if the entire intersection has been re-done and Mr. Keister said yes. The problem Mr. Warner said he sees, which is already in place and hard to eliminate, is the existing businesses that sit directly on the intersection. He believes that traffic studies have shown that the closer the curb cut is to the intersection, the number of accidents increases tremendously so he is concerned with safety due to the volume of traffic from this development.

Mr. Keister said their hands were tied in terms of what they could do with existing curb cuts. They discussed the situation, and he said they had to buy additional right-of-way to make the expansions, but they got very little agreement out of existing owners to make any changes. What they put back is what they had ahead of time, which was the same distance from the intersection. He said this intersection had problems prior to Wal-Mart's arrival, and although what they have is not a 100 percent fix because of existing conditions, he feels it is a definite improvement. At this point in time, Mr. Keister said the development plans would still have to be brought in and reviewed by the Board prior to the issuance of any permits. All they are looking at now is to plat the lots to make them available for future development.

Since this is a straight M-1 zoning and not a planned unit development, Mrs. Wolgamood asked if they have to bring anything back to the Board and Mr. Kanney said no.

Mr. Yoder said he is waiting on a stronger argument on why they should delay this today because this is an anchor for that area. If the intersection needs more improvements, he said they will need funds to do that and it will have to come from the TIF district. He also said the TIF district won't grow unless Wal-Mart is put there.

Mr. Foy said part of the planning committee study is to identify things that should go in there and make this a gateway into Elkhart County. The list they have covers some of the things they don't want to see there, but there is also a greater list of things the committee identified through the neighbors and the entire surrounding area they don't want that is not on this list. Once approved, he said there is no way to stop those types of businesses that are not on the list from going in, and it opens the door for all of the developers to come in with projects before the study is done. He reiterated that they don't want fast food up and down the corridor, they want nice upscale restaurants similar to those on Main St. in Mishawaka.

When asked about the traffic, Mr. Foy said the traffic issues and curbing are creating problems and have not been totally addressed. He indicated that people are doing u-turns around it and cutting through the out lot they want to sell because they don't want to go down a half mile and turn in. He also said the traffic converges from two lanes into one, and they are putting in two turn-lanes that have no place to go.

In response, Mr. Keister said there was no right-of-way available, and there was directly no need or room beyond that intersection for the extra lane. Otherwise, he said St. Joe County would have told them to do it because they were told to do a lot of things they had not planned. With regards to u-turns and people turning left at a right-in, he said those are problems that need to be addressed by the police and not this Board.

Mr. Yoder agreed that the traffic issue is not something the Board can address and he feels they've addressed it to the best of their ability. He wonders if this request should be a GPUD rather than a straight rezoning, but Mrs. Wolgamood pointed out that the M-1 is the original zoning and has been there since the ordinance came into effect.

When their options were questioned, Mr. Kolbus said the question is whether this meets the standards for a subdivision. If there are issues that are unclear as to whether or not the standards are met, he said the Board can table the request to get further information on those issues. Otherwise, he said the Board is tied to what the law requires.

Mr. Sharkey commented that the issues basically relate to the Highway Department such as safety at the entrances, not what's going in there. Mr. Holt also pointed out that there is another county involved as a turn-lane is in St. Joe County.

When Mr. Kolbus asked if the information is clear to the Board that those issues have been addressed through the highway standards, Mrs. Wolgamood thinks they do because they have Tech Committee comments in place.

Mr. Foy said they've already put limitations on this so if the developer would work with the committee to include the limitations they would like to see, he thinks the committee would be agreeable. He then pointed out that the entire north side is also zoned M-1 so if they are doing a study and they're going to implement this for everyone else in the future, he questioned the rush to develop. He's concerned that there will be a flood of people developing on the other side of the road before September in order to get it done. Then, he said you have a can of worms because you've spent \$90,000 on this study that can be implemented.

Mr. Sharkey asked if they can develop on the north side with a straight rezoning rather than a PUD. Mrs. Coyne said one of the tools the Redevelopment Commission is looking at is whether PUD's or an overlay will be required. At this point, she said they can't say what can or can't go in there, but they are asking to partnership with Wal-Mart in their designation of what can go there. In the very beginning of this Starlight Theater transformation, she said they wanted to go in and ask Wal-Mart if they can participate in the way the store is going to look, but they had no tools or opportunity to do that. She then said she is not sure that Wal-Mart's highway requirements have been satisfied.

Mr. Yoder asked if she wants the Board to hold this petition up because of highway striping, but Mrs. Coyne said she just wants them to get in the habit of making sure things get done.

Mr. Keister said he has no objection to getting the individual contact information for the person handling these out lots for Wal-Mart to the committee and vice-versa to let them work it out. He said Wal-Mart typically has an interest in the communities they move into, and they want this developed as a nice store. He thinks there is an obvious opportunity for discussion, but he can't guarantee they will include the study committee's list. However, absent of owning those lots, he said he's not sure anyone has the requirement to meet their list.

With regard to the roadway questions, Mr. Keister said that construction is not yet complete and the contractor has not been paid or released from the job. Until that passes county inspection, that roadway is not complete, but he said it will be completed in accordance with the plans that have been approved by both counties.

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

During discussion, Mr. Kolbus asked if this area is within a TIF district where TIF money would be available. Mr. Watkins said the TIF area is 125 acres and includes this property north to the railroad, and from the county line to Corwin. However, he said there will be no money in this district until next year, and \$90,000 is already committed to repay for the study, which is scheduled to be done in September. He said that leaves approximately \$90,000, which won't go far in terms of many projects, and that won't be available until 2009 at the earliest.

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

1. Both lots will require the submittal of a SWPPP prior to any land disturbance.
2. Check requirements: better define lot boundaries, date of development, correct setbacks from US 20 and Ash road to 120 ft. from centerline.
3. A no-access easement needs to be platted along US 20 and Ash Road frontage.
4. Will need easements to permit traffic, storm water and utilities to access Wal-Mart property.
5. Need copy (if any) of any deed restrictions placed on this property.

The motion further reflects that the Plan Commission encourages the developer to open communication with the Redevelopment Commission to meet their demands, and suggests that the Redevelopment Commission offer some economic incentives for the owner to build to the design criteria the study comes up with so they can use TIF dollars to reimburse the owner at some point in the future when funds are available.

In further discussion, Mr. Watkins said the priority in the TIF district is transportation and improving infrastructure north. He reported that the Redevelopment Commission will be meeting

next week to discuss an expansion of the district to the first major intersection to the north. Other than adopting standards, creating overlays, rezoning, or purchasing property if necessary, he said the first goal has been to maintain or improve traffic.

Mr. Kolbus said the Redevelopment Commission sets their own agendas and priorities and Mr. Yoder's comment was made as an option that can be pursued. Whether it is or not will obviously be up to the Redevelopment Commission and Wal-Mart. That can be taken out of the motion, but he said the Board has to look at the ordinance and determine if the standards are met.

Mrs. Coyne said she likes the incentive idea as she wants to see them move in that direction anyway. She explained that the Redevelopment Commission is charged with only granting TIF money if it believes that investment will be returned by additional growth as a result of that investment. Design is a factor because she said this is the most blighted entryway in the county, and what they are talking about is creating one initial concept in three dimensions that people have to take their queue from.

Mr. Keister was then offered additional time for rebuttal. The only other comment he offered was the he would open the dialog with Wal-Mart and the Redevelopment Commission and try to come to a common ground of what requirements go in their deeds.

With regard to Mr. Foy's comments, he said this development has been in process for over two years and people have known this has been in process. This is not a situation where Wal-Mart has heard there is a Redevelopment Committee and is now trying to plat something, this has been part of their plan that developed over the two-year planning process. He understands the Boards' dilemma, but he said his dilemma is to try to get this done within the legal requirements.

The motion then died due to the lack of a second.

Mr. Holt moved that the Advisory Plan Commission approve this request in accordance with the Staff Analysis and comments of the Technical Advisory Committee with the following conditions imposed:

1. Both lots will require the submittal of a SWPPP prior to any land disturbance.
2. Check requirements: better define lot boundaries, date of development, correct setbacks from US 20 and Ash road to 120 ft. from centerline.
3. A no-access easement needs to be platted along US 20 and Ash Road frontage.
4. Will need easements to permit traffic, storm water and utilities to access Wal-Mart property.
5. Need copy (if any) of any deed restrictions placed on this property.

The motion further reflects that the Plan Commission strongly encourages Wal-Mart to listen to neighbors and the Redevelopment Commission. Mr. Lantz seconded the motion.

Mrs. Wolgamood asked to include the entirety of the Staff Analysis as stated, although changing the last paragraph to say, "The Plan Commission recognizes ..." rather than the staff.

Mr. Holt amended the motion with the requested change in the last paragraph as follows: "The Plan Commission also, recognizing the legal limitations of the Plan Commission, encourages the developer to become an active participant with the Plan Commission, Redevelopment Commission, and the surrounding community in setting the standard for future construction in the area. Building orientation, architecture, parking area placement, signs, and landscaping are issues of interest for this development." Mr. Lantz seconded the amended motion, which then carried with a unanimous roll call vote.

6. The application for Primary approval of a 6 lot major subdivision to be known as **REPLAT OF LOTS 62-67 SUNLIT ACRES – PHASE III**, for George & Enid Schmitt, Michael & Lori

McCourt, Vasilii & Halina Nizhnik, and Linda Tepe (owners) represented by Wightman Petrie, Inc., on property located on the East side of Sunlit Blvd., East of Sun Valley Blvd., South off of CR 20 in Jefferson Township, zoned A-1, was presented at this time.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081614*. As of Monday, Mr. Kanney said this plan was submitted with an amendment by taking the two new lots requesting to be platted and making them into one lot due to all of the septic issues. The other lots involved in the replat are already built upon, and of the original six lots, he clarified that lots 63, 64 and 65 (vacant lots in the middle) are now one lot known as lot 63A. According to Mr. Kanney, the information was submitted to the Health Department, and although they didn't say it was acceptable, they gave him good reason to believe it is very close. Therefore, he said the staff recommends approval of this request as revised keeping the Tech comments for that combination of one lot.

Ken Jones, Jr. of Wightman Petrie, Inc., 4703 Chester Drive, Elkhart, was present on behalf of this request. Ten years ago, he said Wightman Petrie worked on Phase 1, 2 and 3, which he pointed out on the aerial map. The subdivision was approved and the surveyor set property corners at every lot pursuant to Indiana law. At some point during their field operation, a field blunder was made and a few corners, which he also pointed out, were set in the wrong place. Therefore, he said you have a situation where the lot line is platted in one place on paper, but it is monumented in the field in a different location. Someone has purchased a lot and occupied it based on the monuments in the field, so now they're correcting the paper to match the irons in the ground.

In doing this, Mr. Jones said it also came to their attention that there was an issue with the buyer of the three lots in the middle having sufficient area for septic and with respect to having a buildable lot. Since they are already re-platting the two lots to the north and shifting the east property line of Lot 62A on paper, he said they decided to correct it all at one time. Between their experts and some advice of the Health Department, he said they quickly discovered that given the slope of the ground, which generally slopes to the northeast with seven or eight feet of vertical relief, and given other site constraints such as bad soils, it was determined that turning this into two parcels would not be permit able with respect to the septic.

Mr. Jones said there is a long list of comments provided at Tech Committee from the Health Department, which bring you to the conclusion that you need to design and submit the septic systems in detail, which normally doesn't happen until applying for a permit. Therefore, the decision was made to go ahead and do that now, but they did not meet the deadline when Tech comments are normally due. Mr. Jones then reported that a two-sheet detail design of two septic systems with a home has been turned into the Health Department and to the Planning Department, and the footprint used is similar in size to the neighboring footprints. They also placed two elevated sand mound systems on the site sized accordingly to serve a three-bedroom home, which is what the owners want to construct.

Mr. Jones believes they have the Health Department's concerns addressed, and he indicated that he met with Jason Kauffman from the Soil & Water Conservation District and addressed their concerns. They also talked with the owners and he said they are aware of what is going on. In the event the final plat is approved, he said they have engaged a title company to help them with quit claim deeds to clean the development up. Mr. Jones concluded his comments saying they agree with the staff recommendation and conditions.

Present in opposition to this request was Jason Hughes, 59059 CR 23, Goshen. He owns 47 acres to the east and south abutting the property in question. According to Mr. Hughes, the back

section was originally part of a Phase 3 that was going to be developed into several lots by a father, son and daughter. The drainage issue he has on his property was discussed at that time. Mr. Hughes said they have removed dirt from other areas and moved it towards the back, and the natural flow of land does not work anymore so his property retains water.

There was also a discussion about perimeter drainage put in for this development, but Mr. Hughes said that has never been done because they changed the way they were going to develop it. If they put a house on this property, and they elevate the house and run the groundwater away from it, he is concerned it will go out onto other properties and there has never been any perimeter drainage set up.

Mr. Lantz asked if he farms his land, but Mr. Hughes said he can't. He was then asked to show how the water used to flow on his property and how it flows now, and he also pointed out the areas where water now sits on his property.

Mr. Hughes said other developments in the area have storm drainage around the perimeter of the development. The only drainage systems set up here are within the development and there is nothing on the perimeters. If your land is not higher than what it is in the development, he said you are getting their water. Mr. Lantz asked if a retention pond will be enough to handle the water, but Mr. Hughes said he is not an engineer.

Mr. Hughes said he moved to the country to not have a lot of development around him, but he can't stop progress either. He has no objection with more building on the subject property, but he wants to make sure they do not add anymore water on his land.

Mr. Lantz clarified that the water flows south to his property and Mr. Hughes said it no longer flows north. He is at a high point for that area, and whatever what he gets from storms is not flowing in the natural course it used to before this development.

In discussing the wooded area of Mr. Hughes' property, Mr. Lantz asked if he could get that water tiled into the woods and the petitioner said that would be an option.

Mrs. Wolgamood asked the staff if drainage easements or perimeter drains were shown along the outer edge of the original plat that was recorded. If it was called for and not put in, she asked why not.

Mr. Hughes also added that they originally talked about putting in a cul-de-sac in the case property was sold in the future, but that has also not been put in.

In rebuttal, Mr. Jones said according to their plat, the property adjacent to the south and west is owned by a father and son, which was not part of the plat and he thinks was a remainder of the old parent parcel as phases were created and developed. With any subdivision development, he said they are required to create engineered road plans and submit them to the Highway Department, and account for the storm water run-off generated by their roads on their site, which was done.

Mr. Jones is not sure of the drainage issues along the common property line, but he's pretty sure there is water taken on along the common line from the property to the west. The properties to the west and east are higher than the subject lots, and he pointed out three ponds that he's not sure how they are draining with respect to each other. Their slope goes in a north/northeast direction, and he explained that there is a 20 ft. wide drainage easement that exists along the back lot lines, which he believes was added originally in case it was ever needed. To his knowledge, there have never been any other improvements within that easement because the streets have their own storm water collection and storage system.

In conclusion, Mr. Jones said it's a pretty well known and accepted idea that a developed subdivision creates less storm water run-off than agricultural land, depending on the slopes and

time of year, because of manicured lawns. This property is lower than the properties to the west and southeast pretty significantly, so the only proposed improvement he's requesting today is the development of a home and driveway on these three lots that will be approximately 1.3 acres in size. He feels the storm water impact they have will be minimal, if noticeable at all, to anyone other than their own property.

Mr. Yoder asked if the drainage easement looks like a swale on the east side, but Mr. Jones said it is unimproved and is an encumbrance on the lots that is there to be used if needed. It's been known for some time that there are some poor soils in this area, and when you're building sand mounds, he said you have to have an approved outlet. In projects he's been involved with, he said that approved outlet cannot be the storm sewer associated with the street.

Mrs. Wolgamood indicated that she was given a copy of the recorded plat for Sunlit acres Phase 3, which she outlined on the aerial map. It includes the subject property and she said there is a platted 20 ft. easement for drainage along the perimeter.

Mr. Sharkey commented that the drainage issue is a code enforcement issue and he doesn't think they are talking about the lots in question. Mr. Kolbus agreed and said it is a private issue because they changed the water course. When Mr. Sharkey then commented that the issue is between Mr. Hughes and the developer, Mr. Jones said the lots in question are no longer owned or controlled by the Sunlit Acres Phase 3 developer.

Mr. Hughes then interjected that there is no drainage easement and that the land to the east is not higher than the land being developed. Mr. Jones offered no additional comments to his statement.

A motion was made and seconded (*Sharkey/Warner*) 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 (*Yoder/Holt*) that the Advisory Plan Commission approve this Replat of Lots 62 – 67 in Sunlit Acres – Phase III as revised and in accordance with the amended Staff Analysis and comments of the Technical Advisory Committee with the following conditions imposed:

1. Checklist: Need corrected title, restrictions, finished grade of lots, depth to groundwater, and reference previously approved drainage plan.
2. The sheds within the drain easement should be removed.
3. Slope and PD drainage easements and outlets are a serious concern. Proper sizing and orientation of ESM's will be essential with this approval. Need floor plans and footprints of homes on each lot. Show and document PD easements and authorization to use street drain retention areas for the outlets of the PDs. Two soil borings minimum are required in each system area on each lot. (4 borings minimum/new replatted vacant lot). Detailed (PSs, ESMs, elevations, and all minimum requirements maintained including dispersal areas and PDs outlining system design plans must be provided for the initial and reserve system on each lot. ESM depictions are not typical for actual ESMs and their construction standards (3 to 1 slopes, toe slopes, back slopes). Starting over – fresh with this project. We are acting as if nothing has transpired with these lots in the past.
4. Lots in all subdivisions created after August 5, 1991, must maintain area equal to at least two (2) times the required absorption area in suitable soils to allow for the original and one replacement, expansion, or repair of the original leaching system. This area shall be reserved for the installation of the original absorption field and one replacement,

expansion, or repair of the absorption field. The use of the reserved area shall be limited to those uses which will not decrease the size of the reserve area and will not decrease the loading rate of the soils.

With a unanimous roll call vote, the motion was carried.

Mr. Hughes was then advised to contact the Elkhart County Highway Department with regards to his drainage issues.

7. The application for an amendment to the Site Plan Support Drawing to be known as **LUMBER SITE PHASE I DPUD (TACO BELL)**, for RLC Enterprises, Inc. (owner/developer) represented by Warren Johnson Architects, Inc. and Wightman Petrie, Inc., on property located on the West side of CR 17, 700 ft. South of SR 120 in Osolo Township, zoned DPUD-B-3, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081608*.

Cherish Jordan of Warren Johnson Architects, 19 N. Greeley St., Palatine, Illinois, was present representing RLC Enterprises on behalf of this request. When previously designed, she said the use was for a 4,000 sq. ft. retail building, but that was never built. Her client has purchased the property and would like to construct a Taco Bell with a drive-thru. The original site plan had no access around the buildings so they are requesting to revise the site plan to accommodate for a drive-thru lane.

Ms. Jordan went on to say that 33 parking spaces are required and they are providing 36. She reports that they have shifted the sign down at the request of the property owner to the north so it is not in direct view of his customers. They still have the two access isles connecting to Arby's and one to the property to the north, but she said they had to shift it slightly to work with the traffic flow at their site so they are also requesting to revise the cross-access easement.

When asked how far south the sign will be shifted, Ms. Jordan said to the island at the entrance to the site at the opposite end of the parking row. She clarified that it will be north of the detention area and located 70 ft. from the centerline.

A copy of the site plan submitted by the property owner to the north that suggests a better traffic flow to Taco Bell's drive thru was given to Ms. Jordan to review. It is noted that this site plan and a letter from John LaPierre dated April 29, 2008 (owner of the strip mall adjacent to the proposed Taco Bell) is in the file for review.

Mr. Kolbus asked Ms. Jordan to address the curb cut issues and she indicated that Brett Konarski spoke to the neighbor about that.

Brett Konarski of Wightman Petrie, Inc., 4703 Chester Drive, Elkhart said he is working with Warren Johnson Architects on this project and he has spoken to the adjacent owner to the north about the curb cuts for this access. According to Mr. Konarski, the neighbor's concern was that traffic would not be able to flow smoothly through the access-way. However, if they cut the curb line off and push the radius farther to the north, Mr. Konarski said he is concerned it would expose the cars waiting in the drive-thru lane. After explaining to the neighbor that traffic should still be able to flow smoothly through that area with the curb as shown, he agreed that the risk to cars sitting in the drive-thru lane was a risk not worth taking. Therefore, he believes the neighbor is now agreeable to the layout they are showing.

When Mrs. Wolgamood asked about the sign, Mr. Konarski said they moved the sign farther to the west to get it out of the sight-line of his restaurant patrons. He said the sign is west

over by the entrance off CR 17 and outside of the detention area.

Mrs. Wolgamood then asked if there will be any change to the CR 17 entrance/exit and Mr. Konarski said no.

Mr. Konarski was then asked to show the location of the sign on the site plan and it was clarified that they are moving it all the way to the south by the entrance.

Ms. Jordan reported that she provided exterior elevations and all of the signage in the original submittal, which comply with the PUD ordinance.

Mr. Konarski said they have submitted a replat that's going to define the access easement area to accommodate their driving lane through the site rather than how it was shown in 2003.

Also present was Patsy Bucklen, 56260 Dana Drive, Bristol. She is not opposed to this request, but she is worried about the traffic. She would like to see that all of the business owners in this area cooperate to have common entrances and exits so there are fewer people trying to enter and leave from various points. She pointed out that the traffic will get even worse when there is a train, and that a fast food restaurant will probably have more traffic than a retail business would have had.

Mrs. Wolgamood said they are not asking for additional access on CR 17 so she thinks they have done what Mrs. Bucklen suggested.

A motion was made and seconded (*Yoder/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 (*Yoder/Lantz*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved as presented and in accordance with the Staff Analysis. The motion was carried with a unanimous roll call vote.

8. The application for a zone map change from B-2, M-1 and M-2 to a Detailed Planned Unit Development/General Planned Unit Development-M-2 to be known as **HERITAGE POINTE DPUD/GPUD-M-2**, for Five MC, LLC represented by Brads-Ko Engineering & Surveying, on property located on the Southwest side of US 20 at CR 16 (Wayne Street) in Middlebury Township, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081609*.

Mrs. Wolgamood asked if this went to the Technical Advisory Committee and Mr. Burrow said it did, but there were no comments.

Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th St., Goshen, was present on behalf of this request representing the Dutch Corporation and Five MC, LLC, the purchaser/developer of the noodle factory. He noted that Lance Miller is also present representing both firms. He then displayed a site plan and gave a brief orientation of the subject property and surrounding area.

According to Mr. Pharis, InDOT has required that they relocate their driveway and convert the three-way light at the corner of Wayne Street (CR 16) into a four-way stoplight. He then indicated that they will accomplish that this spring.

He then explained that the existing noodle factory is on 4.4 acres and is the DPUD portion of their petition. The balance of their land is the GPUD, and he said they are asking to rezone it all to M-2. This site is served by a private drive, which Mr. Pharis said intersects to make the stoplight at Wayne St. The maintenance to include repairs, improvements or snow plowing of this private

drive is the responsibility of the owners.

Mr. Pharis clarified that the petition is a technicality to enable a legal transfer from Dutch Corporation to Five MC, LLC. The Town of Middlebury was involved with them in the construction of the noodle factory, and he said sanitary sewer and water have been constructed to the site and would serve any and all future uses at the site. Mr. Pharis said any future use would come back in a detailed format to the Plan Commission and then to the Town Council of Middlebury for approval.

Mr. Sharkey asked if this will be split into individual lots in the future and Mr. Pharis said the potential is there. When asked if the responsibility for the private road will be in the covenants, Mr. Pharis replied yes and said the plat is also going to clearly specify that. He said they want to assure that their buyers are aware the drive is private, which means they have to maintain and plow it. Currently, he said the Essenhaus and its owners own the noodle factory so that situation is under control, but if they sell another parcel and bring in an outside entity, it has to be clarified for them as well. They also specify on their plat what the owners must do in the event they want to have the road dedicated. They clarify that they, at their own expense, must bring it to the then current county highway standards to seek petition for dedication.

Mrs. Wolgamood asked if they have made any provisions for buffering or landscaping along the west property line to protect the R-1 zoning to the west. Mr. Pharis said they have maintained a 50 ft. strip where plantings are starting to be placed as a buffer. However, he said their construction was completed at the onset of winter and they are waiting for the proper time to plant trees or bushes.

Mr. Pharis went on to say that all of the activity (entrances and traffic) is on the opposite side of the residential subdivision to the west. He then pointed out that the subdivision to the west was originally zoned M-2, but his firm rezoned it to R-1 and designed the subdivision. At the request of the Town of Middlebury, he said the commercial PUD to the north and west of the subject property was asked to connect to their street so they could use the stoplight, but he said it was an emphatic no.

Mr. Yoder asked how they are addressing on this private street and Mr. Pharis said everything will have a US 20 address. Mr. Yoder expressed a concern about the complications created by private roads, including deliveries and emergency services finding the location. Mr. Pharis said he thinks there is an opportunity to pursue creative thinking to these problems in smaller communities, and he indicated he would try to find a logical solution they can pursue on not only this project, but every other project.

Present in support of this request was Craig Baker representing Middlebury Community Schools, 57853 Northridge Drive, Middlebury. He said their new high school is on Raider Drive, a private drive as well, and they will be using Northridge Drive since that's a public road where they can get mail service.

Mr. Kanney said there is no street and the post office will not deliver on that street as they do not want the liability on private property.

Lowell Miller, Middlebury Town Manager, was also present. He said they have had an ordinance in place for addressing for a long time and they do issue addresses for private drives; however, he did say Mr. Kanney is correct that the post office will not always accept it. This property is in town so a town address should be assigned with a dash and a number. He indicated that Middlebury has a lot of private roads that have addresses and UPS finds them, but the postal service can't.

Mrs. Wolgamood said the issue to her is if someone calls 911 and gives that address. Mr. Miller agreed that getting them the address information is a problem, but he said their system isn't that hard to figure out.

With regards to the development, Mr. Miller said they have worked with the town in putting the loop in for water and it has been good to work with them.

A motion was made and seconded (*Yoder/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 (*Wolgamood/Sharkey*) that the Advisory Plan Commission recommend to the Town Council of Middlebury that this request be approved in accordance with the Staff Analysis. A roll call vote was taken and the motion was carried with a unanimous vote.

9. The application for a zone map change from A-1 to a Detailed Planned Unit Development-A-1 to be known as **MAPLE RIDGE DPUD**, for Parkway Development Group represented by Brads-Ko Engineering & Surveying, on property located on the West side of SR 13, 845 ft. North of CR 10 in York Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081610*. He explained that the design professional met all of the technical comments from the other departments, and the Planning Department just needs to have the deviations from the A-1 district noted in the narrative. It is noted on the site plan and he said that can be taken care of before it goes to the Commissioners.

Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th St, Goshen, was present on behalf of this request. After displaying a site plan, he explained that they represented Parkway Development when this was originally platted as Maple Summit and approval of this request for a replat will reduce the original 16-lot subdivision down to four lots. He pointed out that the site plan delineates the platted right-of-way to allow the vacation, as well as to demonstrate to the Health Department that they can construct four residences with septic and repair sites without being on any of the property that has been disturbed. The private drive will be owned by each of the four lots, and if approved and prior to obtaining secondary approval, he said covenants and restrictions will define the maintenance (including snow plowing) that will be required by those lot owners.

According to Mr. Pharis, a Certificate of Deposit will be created in the amount of the contractor's cost to refinish that driveway with asphalt, and that will be established in the name of the Maple Ridge Homeowner's Association to be available if they need the funds to repair it in the future. Additionally, the plat will specify that this is a private drive, and if the four lot owners are in 100-percent agreement to pursue having it dedicated as a public right-of-way, it will be their responsibility to bring it to then current Elkhart County Highway Standards at their expense. He also said this private drive will be constructed sufficiently to support large vehicles. Downsizing the number of lots and increasing the size of those lots will make Maple Ridge more in-line with adjacent property owners and the plat on the east side of SR 13.

Mr. Sharkey asked if the new cul-de-sac will be built to the required size of county standards so fire trucks can turn and Mr. Pharis replied yes. He said it won't have a curb, which is primarily the biggest difference.

When Mr. Yoder asked why they are doing a private drive, Mr. Pharis said it's easier to deal with InDOT with a private drive because it takes months to get their approval. He also said that building this road to county standards for four homes was going to drive their cost through the

ceiling and there is no deviation from the standards.

Mr. Pharis feels this is a perfect site to not have curbs because they have plenty of land, they can elevate the centerline, and they can get their drainage off the street without causing any damage to anyone's property. He then explained that they made sure the size of the drive is equivalent to the town's standards, and should it become a public street, its location would meet the setback for the lot owner to the north should they ever decide to subdivide their land.

Mr. Pharis also indicated that steps are being taken in providing plats to 911. He feels that private drives are better for the County in the long-run provided you put the steps in place so the buyers understand what they're getting in to so you don't have problems. However, he did say there are many places where private drives are not appropriate, which he then described.

Mr. Yoder expressed his frustration that there is not an ability to build this road without a curb, but he said they could possibly address that when they talk about the street standards later this month. He said the problem the commissioners have with private roads now is that it could become an issue in the future and another county commissioner would have to deal with the problem. He did point out, however, that they have not run into an issue with a private road that has been set-up the way this is being proposed.

Mrs. Wolgamood agreed that Mr. Pharis has made a legitimate case for this particular private street and that a lot of mechanisms have been put in place to possibly address any issues in the future. She feels it is a good plan, but she questioned the strip of land on the north side of the private road, which is shown to be owned by Lot 4. Mr. Pharis said they wanted to move the road to the north and put it up against that property line, but they took steps to protect the property owner to the north so they would have the 25 ft. separation to allow them to build within 15 ft. of their property line should that property ever be developed.

Mr. Sharkey commented that it actually benefits the property owner to the north, but Mrs. Wolgamood said if this were a public road they would not allow what she referred to as a "spite strip" to the north.

Mr. Sharkey also expressed his concern with 911 finding the addresses and he suggested they be numbered one through four. With today's technology and GPS, Mr. Holt felt they could come up with a better system for addressing. Mr. Kolbus said a lot of that is unfortunately out of our control, but it is something we have to recognize.

Mr. Pharis explained that they email every plat that's recorded to the Auditor's office in a 100 ft. scale that they can put into their system without having to redraw it. He thinks that is a requirement, and it's his understanding that 911 uses the Auditor's data for locating addresses.

Craig Baker of Middlebury Community Schools, 57853 Northridge Drive, Middlebury, feels there is also a transportation issue with a private drive. He visited this site when they were proposing 16 lots and he said it was a steep entranceway into the development. He's not sure that has been corrected by moving the drive to the north. He's also not sure he would take a bus in the subdivision with four homeowners because pulling a bus back out onto SR 13 south coming out of that drive will be a challenge. Invariably, he said the bus would use more than a lane to get out of that subdivision, and he wants the future homeowners that live there to realize their children will have to walk down to a public stop at the corner of Maple Summit Drive and SR 13.

Mr. Yoder clarified that the radius of the cul-de-sac is the new radius that allows buses to turn around. Mr. Baker said the issue then is trying to come back out to a full stop on SR 13 coming south.

Mark Mullin, 54225 SR 13, Middlebury, which is north and east of the subject property, said they have already started construction. After locating his property on the aerial photo, he said the trees along his south lot line have been marked to be removed and they already removed his grapevine during construction. He asked if the road will be on his lot line, but Mr. Kolbus said according to the survey it will be 10 ft. off his lot line.

Mr. Mullins said they are already on his lot line and they abut the existing vinyl fence along SR 13 that he built about four-feet off the lot line. He then indicated that they have filled the northwest corner of the property with dirt where there was a 30 ft. deep hole. Mr. Yoder pointed out where they would be putting a home and he said it is all one lot so they would not be putting anything in that filled area.

In response, Mr. Pharis said they have not staked the road yet nor have they flagged the property corners. Typically, he said they don't do that until they have approval, but that doesn't say his client hasn't had people there doing something. He indicated he would talk with his client to make sure they are aware that there may be an issue, and before he does anything else, he needs to have Brads-Ko's crew flag the corners and set POL's (points on line) along that property line. Mr. Pharis said it's not uncommon that fences are not built and plants are not planted on the right property. He knows his client will make an extraordinary effort for the neighbor, and Mr. Pharis said he would communicate that if the neighbor would contact his office.

Mr. Pharis then explained that the reason they are moving the drive to the north is so line-of-sight and access to SR 13 is superior. When it's constructed, he hopes the school corporation takes another look at it and then makes their determination as to whether they would send a bus into the subdivision or not. It might not be feasible for four homes and he said the homeowners will be made aware of that as part of the disclosure and sale of the lot.

A motion was made and seconded (*Sharkey/Warner*) 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 (*Holt/Lantz*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved in accordance with the Staff Analysis and comments of the Technical Advisory Committee with the following condition imposed:

1. Deviations from the A-1 district to be noted in the narrative.

The motion was carried with the following results of a roll call vote: Holt – yes; Lantz – yes; Sharkey – yes; Wolgamood – no; Warner – yes; Yoder –yes.

10. The application for a zone map change from A-1 to a Detailed Planned Unit Development-B-2 to be known as ***STARBEST MIDDLEBURY DPUD (formerly known as Green Valley Hotels DPUD)***, for Dan Yoder (owner) and Green Valley Hotels, LLC (developer/purchaser) represented by Brads-Ko Engineering & Surveying, on property located on the West side of Main Street (SR 13), 490 ft. North of Orpha Drive (CR 37), common address of 719 S. Main St. in Middlebury Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081612*. The property north of the subject property was questioned and Mr. Nemeth indicated it is a wetland area that is unlikely to be developed in the near future.

With regards to the comments from the Technical Advisory Committee, Mr. Nemeth said they have met the requirements from the other departments, but the Planning Department is still requesting a revised site plan where they identify the landscape symbols. They are also asking that

they note on the site plan the one deviation from the B-2 ordinance as they have a rear patio proposed 15 ft. from the west line, but 24 ft. is required. They will need to get approval from InDOT for their one access point, and in the course of obtaining that permit, he said they will be providing transportation data; therefore, they do not need to do a traffic projection and thoroughfare report. Mr. Nemeth said they are asking for information on the site plan to be included in the narrative as itemized in memos dated April 18 and April 28, 2008.

Mr. Sharkey asked if the north/south road in the residential subdivision to the west is a public road. Mr. Burrow said the houses there are not on a public road, but they are legal based on action by the Board of Zoning Appeals many years ago.

In a brief discussion regarding the surrounding area, Mr. Nemeth clarified it is commercial once you get past the farm and wetlands.

Present on behalf of this request was Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th St., Goshen, representing Green Valley Hotels, LLC. A site plan was displayed and he described the subject property and surrounding area.

Mr. Pharis explained that they are proposing a 77-unit Holiday Inn Express, which his clients have in Indiana and Michigan. A straight rezoning to a B-2 would permit any B-2 use in this site so they are presenting this as a detailed planned unit development because it is site specific to this use. He then acknowledged that any change from that use must come back to the Plan Commission and then go back to the Middlebury Town Council.

Mr. Pharis pointed out that the Holiday Inn Express has no accessory uses that create loud noise or traffic. They have had discussions with the town about this site and connecting to city services, but to this point no serious objections have developed. He also said they are aware of the challenges of this site. They will have the expense of connecting to sanitary sewer, which is some distance north of this site on the west side of SR 13. In all likelihood, he said the town will require a main line extension as opposed to a single service line.

In addition, Mr. Pharis said the topography of this site will require earth movement, and they will also be required to maintain that no water created by this project goes onto their neighbors' property, which creates a challenge that needs to be dealt with. He said they must also work with InDOT on this project and they will likely require them to provide a traffic study.

According to Mr. Pharis, they are seeking one deviation from the current standards. The ordinance requires that the rear setback be 10-percent of the depth of the property with a minimum of 15 ft. and a maximum of 25 ft. In this case, that would make the rear setback 23.8 ft. He then pointed out that they have a patio at the rear of the building, which has a setback of 15 ft. from the rear property line. Their building is actually 30 ft. from the property line, but he said the small portico area that sticks out is 20 ft. Therefore, they are asking for the minimum of 15 ft., which is a variance from the required 23.8 ft.

In conclusion, Mr. Pharis said they have agreed to provide any InDOT required traffic study to the Elkhart County Highway Department so it becomes part of their records. They believe they have either complied with all of the requests of the Planning Department or they will comply before they go to the Town of Middlebury.

Mr. Warner asked if the town has any concern with limiting curb cuts on SR 13. Mr. Pharis said this property has one curb cut and that is what they are going to maintain as they are replacing one curb cut with another. The property north and adjacent to them is really not buildable, and he said the likelihood of another curb cut on the west side of SR 13 between Orpha Drive and north of the low/wet area is very minimal.

When asked if their curb cut will require an accel/decel lane, Mr. Pharis said InDOT will tell them whether they are required to put in an accel/decel lane or a left-turn passing lane and his client is aware of that.

It was then noted that this property is on a hill and Mr. Pharis said they did a line-of-sight survey from their entrance and it meets the state standards. However, because of their access from US 20, he thinks InDOT will ask for a left-turn lane.

Sam Hoover, 313 Mill St., Middlebury, said his family owns the land to the north. This property is on the side of a hill and he said water runs onto his property now. He is concerned that more water will run over on his property with the construction of a parking lot and large building. Mr. Hoover said he has heard nothing about a retention pond, and he would also like some type of land barrier between the two properties. He is not opposed to the hotel, but he has had a cabin on his property for 50 years and he wants his property to be protected.

Mr. Pharis reiterated that they are aware they had have a fairly significant topographic issue with this site. He explained that the elevation is about 868 at the north and about 891 to the south so he can understand why the water is flowing towards Mr. Hoover's property now. To make this work for a hotel, he said they have to level it out. They will be raising the north end of the property and lowering some of the south end using that dirt to level the property out. He then pointed out that their retention is almost all along the north side to capture that water and keep it from going onto the neighbor's property. Mr. Pharis said they are going to make a serious effort to make sure that Mr. Hoover is not affected by this project. He also indicated that they will have landscaping on the north edge of their property, which is between the subject property and Mr. Hoover's cabin.

It is noted at this time that the staff distributed photos from the file to the Board for review.

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

During discussion, Mr. Holt said he disagreed with the staff recommendation. With the exception of a used car lot at the corner, he said this is a residential neighborhood. There are relatively new homes built to the west and a golf course that is growing so he does not feel this use would fit in with the surrounding environment.

Mr. Yoder said he considers the businesses in the area to be low-impact with a nice open golf course, and he indicated a church would be going in there eventually. He feels a three-story 77-unit hotel changes the entire area quite a bit. Mr. Sharkey agreed and he expressed a concern that leveling the property out may possibly affect the building to the south.

A concern with the traffic flow in and out of this site in addition to what already goes through Middlebury was also expressed by Mr. Warner.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Holt/Wolgamood*) that the Advisory Plan Commission recommend to the Town Council of Middlebury that this request be denied and the motion was carried with a unanimous roll call vote.

11. There were no audience items.

12. The proposed **2009 Planning and Code Enforcement Budgets** were presented by Mr. Watkins. The difference between these budgets and those he presented a month ago is that the personnel figures from the Personnel Department are now included, and he was instructed to include capital items for next year.

In describing the changes, Mr. Watkins said he put \$1200 in the Code Enforcement budget for replacement of office furniture, and \$10,000 was included to purchase tablet computers for the building inspectors. Before the year is over, he said the code enforcement inspectors will be using tablets with the current database. They will actually be able to do an electronic inspection for nuisance and code violations and then dump that information into the computer database. He indicated that they hope to be doing that next year with the building inspectors as well.

In the Plan Commission budget, \$700 was added for replacement tires for a vehicle, and he is again asking for \$1200 to continue the desk and chair replacement program. One of the goals this year was to get everyone on the same operating system in the same version of Microsoft Office, which is close to being done, but he said some of the old computers are becoming obsolete so another \$10,000 is being requested for replacement of those computers. The largest item he is requesting is a vehicle for Planning for use by employees when going to training and visiting sites for Plan Commission meetings.

Mr. Yoder clarified that the overall budget without the capital items is an increase of 5.7 percent and personnel is 6.1 percent and Mr. Watkins said that is correct. When questioned about the 1.1 percent for flexible items, Mr. Watkins said that is his reference for everything that is not capital and personnel. It includes those items the staff has discretion on how they spend that money, which includes office, data processing, and copy supplies. He then reported that the increase to the Code Enforcement budget is less than one percent.

Mr. Warner moved that the Advisory Plan Commission approve the 2009 budgets as presented (*see attached*) and Mr. Holt seconded the motion. The motion was carried with a unanimous vote.

13. Laura Coyne, community development coordinator, explained that a National Brownfield Conference recently took place in Detroit and Elkhart County was recognized in four different ways. She displayed a plaque the County received for Brownfield Prevention that started with the Groundwater Ordinance Inspection Program 20 years ago. Because of that ongoing contribution of data toward the database, she said we ended up having a reservoir of information that is the envy of the entire nation.

She then displayed a poster that was entered in a poster contest that describes what has been done in creating a completely searchable database. Mrs. Coyne said they are making this computer software program available to the entire country, which in part is what they obtained a \$400,000 grant from the EPA to do. Also displayed were photos of the conference, which she went on to describe in detail.

One of the photos she described is how Elkhart County is working toward understanding the role of formaldehyde in RV's and some of our other industries, and questioning why it needs to be there. That is the subject of the county/cities meeting next week, and she said some of the greater innovators of our county who are working to get formaldehyde out of our operations for building will be there.

After a brief discussion, Mrs. Coyne was recognized by the Board for organizing and coordinating all of the work that was involved in this conference.

14. In other staff/board items, Mr. Watkins reminded the Board about the Ohio, Kentucky, and Indiana Regional Planning Conference in October. He is planning to attend along with Mrs. Wolgamood, Mr. Nemeth, and Mr. Burrow, and if anyone else is interested, he would like to know

by the end of the month so he can start making arrangements. Mrs. Wolgamood then indicated that she would be willing to forgo the conference if anyone else is interested because it is a very worthwhile conference to attend.

Mr. Watkins reported that he is working with Mrs. Searce and Mr. Hess from the Auditor's office in obtaining funds to update the aerial photos. They had planned on doing this in 2010, but the Auditor has informed him that it really needs to be done in 2009 when they do the next assessment. The Auditor and Assessor have money, and he said he may be coming to the Board to move money around to accomplish this earlier than planned. When asked how old the aerial photos are, Mr. Watkins said they will be five years old in 2010.

There was discussion last month about the need to update the zoning ordinance and Mr. Watkins had suggested they were getting information from a consultant. A memo from RW Armstrong was then submitted to the Board (*see attached*), which is a detailed review of the current zoning ordinance. Mr. Watkins said it makes some suggestions for revisions and how those revisions could take place, and it also suggests that the staff needs to play an integral part of that. Their estimate is \$150,000 for this update, and he said they were the cheapest of the three bidders on the Northwest Gateway.

Mr. Yoder said this proposal indicates to him how much a revision is needed, and that he would support the Plan Commission forwarding this proposal to the commissioners with a recommendation that they move forward with this project. He is guessing that they will have to bid the project so he said it might come in less.

Mr. Holt moved that this proposal from RW Armstrong to update the Elkhart County Zoning Ordinance be forwarded to the Board of County Commissioners. Mrs. Wolgamood seconded the motion, which then carried with a unanimous vote.

15. Mr. Watkins reported that a special meeting was held last week to go through the entire ***Subdivision Control Ordinance*** and the updated version of the ordinance, with the exception of deleting Section 4, is a result of that meeting along with his comments and those from Mr. Kolbus and Mr. Kanney, as well as some suggestions from the committee.

It was suggested that they needed a flow chart explaining the technical review process in Chapter 3, which was distributed to the Board (*see attached*). He asked if the Board wants it inserted into the ordinance, and if so, should it go in as a figure in the narrative or as an addendum.

Mr. Holt suggested they put it in as an appendix and refer to it as a document, but Mr. Yoder and Mrs. Wolgamood preferred to insert it into the narrative. Mr. Kolbus pointed out that in the zoning ordinance letter they recommend you try to do documents and diagrams as it helps the general public understand what is going on.

At the conclusion of the discussion, the Board indicated that they didn't care how the flow chart was inserted into the document as long as it was there.

Also distributed was an Agricultural Statement (*see attached*), which Mr. Watkins said is common in subdivision ordinances where you're treading into agricultural areas. This statement is being forwarded to the Board for acceptance or modification.

Mr. Kolbus asked the Board to review the statement and think about whether it would be more appropriate to use the word "farm" or "farming" rather than "agriculture". He explained that it comes from the Right to Farm Act that states have, including Indiana, but the first sentence is out of Indiana statute, which talks about "agricultural" rather than "farming". Mr. Kolbus said this statement is a little more expansive than what they currently have.

When Mr. Holt asked if they should do a manufacturing statement as well, Mr. Kolbus advised that the states have a Right to Farm Act, but not a Right to Manufacture.

Mr. Watkins explained that the purpose of this statement is to advise someone who is building a subdivision in an agricultural area that they will be subject to these things and they should know it.

After reading the statement, Mr. Yoder said he is happy with the word "agricultural" and he suggested they act on it today.

Mrs. Wolgamood asked where this statement is going and Mr. Kolbus explained that they have one section in the subdivision ordinance where they talk about putting up some warning language where they have private streets. In a number of subdivisions coming to the Board, he said they have the neighborhood talking about how it might affect them. He thinks there are probably some subdivisions that have similar language already, and he said he asked Mr. Pharis to send him his comments on a private street statement for a development he presented today, which go beyond what has been presented. Mr. Watkins then indicated that it could also go in the land suitability section of the ordinance just as an advisory statement.

If this statement goes in the Subdivision Control Ordinance, Mrs. Wolgamood asked if they are suggesting this be placed on every subdivision plat that is going in an agricultural zone. Mr. Kolbus said it could and that's the purpose of the statement. Mrs. Wolgamood said she thought they did that now and Mr. Kanney said they've always used the agricultural statement as a condition of primary approval, but the idea was to get a uniform statement. Mr. Kolbus said this is the official statement that modifies what they had before.

During further discussion, Mr. Kolbus said this is just a warning statement and it does not give anyone the right to violate any laws. The law talks about a nuisance, and in the event they violate laws, standards or regulations, he said they're still liable.

Mr. Sharkey commented that every time they approve a subdivision now next to a farm, they do stipulate the "grandfather clause" of right to farm. Mr. Kolbus said that is correct and this statement would take the place of that.

When the Board was asked if they want to act on the statement today or come back to it next month, the consensus of the Board was to include the Agricultural Statement into the draft of the Subdivision Control Ordinance for public comment.

In discussing how they now move forward, Mr. Yoder asked if they want to establish a public hearing date. However, Mr. Watkins felt it would be better for the entire Board to review the draft and make additional comments and Mr. Sharkey agreed.

Mr. Watkins then asked if they want to have final comments or suggestions for revisions at the June meeting or if they want to again discuss it at the workshop so they can decide at the June meeting if it is ready for a public meeting.

Mr. Yoder then questioned the hesitancy to set it for a public meeting in June. He said they have all worked through this and he doubts that the language has changed significantly. After the public hearing, he said they will have another chance to come back and make revisions if they want, and he wonders what they gain if they delay it 30 days.

Mr. Holt said he would like them to have multiple public meetings around the county so they can get as many people there as they can.

When you revise ordinances, Mr. Kolbus said you can have a public meeting where Plan Commission members and staff get public input, and then you are legally required to have a full board public hearing so the Board needs to make a distinction.

After further discussion, it was the Board's goal to hold four public input meetings in June so they can have a public hearing in July. They determined that the meetings would be held in Middlebury, Dunlap, Wakarusa, and New Paris.

Mr. Watkins said they still need to go through the definitions and he indicated that possibly half of them can be removed. He also said he would insert the revisions that have been made since the meeting last week.

16. The meeting was adjourned at 12:18 p.m.

Respectfully submitted.

Kathleen L. Wilson, Recording Secretary

Jeff Burbrink, Chairman