

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 9TH DAY OF OCTOBER 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 Lantz, Roger Miller, Blake Doriot, Steve Warner, Meg Wolgamood, Dennis Sharkey, Tom Holt, 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 (*Warner/Holt*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 11th day of September 2008 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Doriot/Wolgamood*) that the legal advertisements, having been published on the 27th day of September 2008 in the Goshen News and on the 28th and 29th days of September 2008 in The Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Doriot/Wolgamood*) 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 the vacation of a portion of a county right-of-way known as **PARKWAY AVENUE**, for Marilyn Bullard represented by Wightman Petrie, Inc., located on a 1,380 ft. portion of Parkway Avenue beginning 1,330 ft. South of CR 14 and continuing to Verdant Drive in Jefferson 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 #20082730*.

Kenny Jones, Jr., Wightman Petrie, 4703 Chester Drive, Elkhart, was present representing Marilyn Bullard. Mr. Jones submitted a drawing showing the portion they are requesting to vacate [*attached to file as Petitioner Exhibit #1*]. The area marked in blue was the right-of-way that was dedicated in 2003 and the area in red is the right-of-way that is currently being dedicated. Mr. Jones indicated the plat is finished and is ready to be recorded. The Elkhart County Highway Department has asked Wightman Petrie to get the property vacated and cleaned up for title purposes.

There were no remonstrators present.

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

6. The application for the vacation of a portion of a county right-of-way known as **BALBOA AVENUE**, for Concord Community Schools represented by Foresight Consulting, LLC, located on a 60 X 145 ft. portion of Balboa Avenue beginning at the intersection with Harding Road (CR 13), 155 ft. South of Jewel Court in Concord Township, zoned A-1/R-2, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082880*.

Larry Jackowiak, Assistant Superintendent for Concord Community Schools, 59117 Minuteman Way, was present on behalf of this request. Mr. Jackowiak indicated they were here recently in regards to the expansion of the school building. He also indicated there is adjacent property and they currently have a signed purchase agreement with the owner of the land.

There were no remonstrators present.

A motion was made and seconded (*Sharkey/Wolgamood*) 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 recommend to the Board of County Commissioners that this request be approved in accordance with the Staff Analysis. The motion was carried after a unanimous roll call vote was taken.

7. See page 3, item #10 for the application for **CIRCLE L/SPEEDWAY DPUD**.

8. Mr. Watkins said he had intended to have hand-outs for the Board regarding the Northwest Gateway Project, but the office's printer had malfunctioned. At the next Plan Commission meeting, it is his anticipation that the Redevelopment Commission will make a recommendation on the plan for the area for the Board's consideration. He will get the printed materials to the Board as soon as possible. Mr. Watkins indicated Laura Coyne would be the best person to talk to regarding any questions about the process. They have done a very thorough job and the Redevelopment Commission is getting very close to making a recommendation. The open house for Northwest Gateway was pretty impressive and they have heard positive comments about the proposed changes to the area.

9. Mr. Burrow presented the **2009 Planning Calendar** at this time. He indicated the Planning Department has backed everything up to coincide with the new Subdivision Control Ordinance requirements. Essentially, all Plan Commission applications for public hearing will be filed on the first Monday of every month. The only change is in August, which has a filing on the last Monday of the month because there are five weekends in that month.

During the year of 2008, all of the filing deadlines were the Monday before the Plan Commission meetings. The change in 2009 will be that about three to four months out of the year, the deadline will be two weeks before the Plan Commission. This will allow the staff to have a Technical Committee meeting and give the comments to the applicants. The applicants will have a week to make corrections and then the staff will submit the legal advertisements the following Monday.

Mrs. Wolgamood asked if the 2009 calendars will be colored and Mr. Burrow said yes. Green will be used for public hearings, red will be used for filing deadlines, and yellow will be for workshops and technical correction meetings. She also asked Mr. Burrow if he is comfortable with this. Mr. Burrow said yes as it gives the staff more time to make sure the applications are in

compliance. The secondary filings for the subdivisions will not change because they don't require a public hearing and have no legal advertisements.

A motion was then made and seconded (*Wolgamood/Miller*) that the Advisory Plan Commission approve the 2009 Planning Calendar. After a unanimous roll call vote was taken, the motion was carried.

10. The application for a zone map change from B-3 PUD to a Detailed Planned Unit Development-B-3 for Lot 1, and a zone map change from B-3 PUD to a Detailed Planned Unit Development-M-1 for Lots 2 and 3, to be known as **CIRCLE L/SPEEDWAY DPUD**, for LBS Team, LLC, Speedway SuperAmerica, LLC, and Dean A. Baker Revocable Living Trust (owners) represented by Brads-Ko Engineering & Surveying, on property located on the Northwest corner of US 20 and SR 15 in Jefferson Township, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #20082885*.

Barry Pharis, 1009 S. 9th Street, Goshen, was present representing Circle L Speedway and Dean Baker. He explained this is very complicated and can be a very confusing project. Mr. Baker has owned the northwest corner of SR 15 and US 20 for over 20 years. There has been a convenience store on site for over 20 years and a manufacturing building as well. Brads-Ko Engineering & Surveying represented Ora Lehman when they attempted to move his Circle L machinery business and his recycling plastic/paper business onto CR 27. The site had previously been approved as a sawmill and it was then abandoned. The neighbors spoke against the request and Mr. Pharis told the petitioner that he believes the Plan Commission and Commissioner's could give a favorable vote based on the technical issues of the petition. However, they would never satisfy the neighbors and it would make them aggravated. He suggested that the petitioner look for property that is zoned for his business.

Mr. Lehman found this building and the company that had owned it is in Ohio. He was advised that it was M-1 and went through the process of purchasing it. The petitioner wanted to put a sign up for Circle L Machinery and the staff discovered that the actual zoning for this building is a B-3 PUD. Brads-Ko Engineering & Surveying entered the picture again and started work on a plat and rezoning to make this legal. Shortly after that, Speedway approached the Planning Department to obtain a building permit because they wanted to have significant improvements to their convenience store. They wanted to remove and replace the tanks, upgrade the facility, and they had obtained a curb cut permit from the State of Indiana to improve the US 20 access point that serves this site.

Knowing that Brads-Ko was working on this plat, the staff suggested that they combine both plats together for Speedway and Mr. Lehman. In that process, the firm learned that Mr. Lehman has an option to buy a strip of land adjacent to his building from Mr. Baker. Mr. Pharis said it made sense to include that strip in the plat at the same time, which is why they have a three lot plat and a DPUD.

Mr. Pharis explained that Circle L currently uses an on-site septic. The Speedway is connected to the on-site wastewater treatment plant, which is owned and operated by Mr. Baker. It is also approved by the State of Indiana and managed by a qualified company. The agreement is that Circle L will not seek a permit from the State Health Department to upgrade or expand their septic system and when the time comes, they will connect to the wastewater treatment plant. Mr. Pharis said they have a favorable staff recommendation. The proposal is consistent with the

Comprehensive Plan. The traffic patterns and integration of the two lots and the entire site have now been achieved. Mr. Pharis said they are not deviating from the history of the site, but they are seeking primary clarification of that history, the original planned unit development, and establishing legal, transferable lots.

Mrs. Wolgamood asked if Mr. Lehman has outside storage and Mr. Pharis said yes and pointed out the location on the aerial photo.

She questioned what type of outside storage the petitioner has.

Ora Lehman, 16482 CR 18, Goshen, indicated there is a fenced area to the rear of the property. They have containers which are used for recycling and vehicles.

Mrs. Wolgamood asked what type of containers they are. The petitioner indicated they are stackable steel containers that are eight ft. wide, four ft. long, and four ft. high. They fit on forklifts to go into the back of trucks.

The number of containers being stored on site was questioned by the Board and Mr. Lehman said no more than around 40. Most of the time, they are circulating to factories.

The height of the fence was questioned by Mrs. Wolgamood and the petitioner said around eight feet.

She asked if they would be stacking one on top of another and Mr. Lehman said yes, two or three of them.

Mr. Miller asked who transports the containers and Mr. Lehman indicated the companies they recycle for usually transport them back and forth. He explained that twenty containers fit in one semi trailer.

The Board asked what kind of customers they are receiving the material from and Mr. Lehman said plastic companies and molders.

There were no remonstrators present.

A motion was made and seconded (*Yoder/Doriot*) 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/Sharkey*) 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 and comments of the Technical Advisory Committee. The motion was carried with the following results of a roll call vote: Lantz – yes; Miller – yes; Doriot – yes; Warner – yes; Wolgamood – no; Sharkey – yes; Holt – no; Yoder – yes; and Burbrink – no.

Paul Loucks, 18711 US 20, Bristol, was present to voice his concern. Mr. Loucks asked what will happen to his property value and if there is any type of a noise ordinance. Mr. Loucks indicated the property in question adjoins his land.

Mr. Yoder indicated he's not sure how the Plan Commission can determine what effect this will have on the property values. He said there is an Elkhart County Noise Ordinance in place that will have control over this situation.

Mr. Doriot said this is a recommendation to the Commissioners, so they will have a chance to speak again.

11. The application for a replacement ***SUBDIVISION CONTROL ORDINANCE*** for the Elkhart County Advisory Plan Commission affecting the unincorporated areas of Elkhart County, including but not limited to the following townships, Cleveland, Osolo, Washington, York, Baugo, Concord, Jefferson, Middlebury, Olive, Harrison, Elkhart, Clinton, Locke, Union, Jackson, Benton,

and the Town of Bristol, Town of Wakarusa, Town of Millersburg, and Town of Middlebury, was presented at this time.

Mr. Watkins explained there was some confusion as to whether or not this hearing was being held. He spoke to the Planning Assistants and each of them said when asked about this item, they told anyone who asked that it was a tabled item set for 9:30 a.m. today. Apparently, some information was passed along that this was a tabled item and it was just tabled, but he does not know by whom. He clarified that this is a tabled item from the previous meeting and it was published. He then reviewed the exact wording on the agenda which states, "Tabled Subdivision Control Ordinance."

Mr. Burbrink asked if the public hearing was closed last month and Mr. Doriot said yes, but the intent was to re-open because of new information. Mr. Yoder said he also had understanding that they would take public comment at this meeting as they had questions on a parent parcel and they had issues regarding the number of the administrative splits they would allow. Mrs. Wolgamood then reviewed the minutes from last month's meeting.

A motion was then made and seconded (*Doriot/Holt*) that the public hearing be re-opened. A unanimous roll call vote was taken and the motion was carried.

At last month's public hearing, Mr. Watkins said they considered revisions to the Elkhart County Subdivision Ordinance. The majority of that Ordinance was given approval except for three areas. Staff was directed to work on those areas and bring them back before the Board at today's meeting. The staff, with Mr. Kolbus' help, has attempted to address the concerns and provide alternatives for the Board's consideration. Mr. Doriot sat in on one of the work sessions and has made a suggestion for item A under the Administrative Subdivision section.

The first area the staff was to consider was Section 1.15, which at the time was identified as an agricultural statement. The concern was expressed that if they are going to have an agricultural statement talking about the conflict between zoning and subdivisions, then they should have a statement to address all such conflicts. The staff's attempt was to revise the agricultural statement and rename it "The Conflict and Zoning Statement". Mr. Watkins then reviewed the statement with the Board, which was in the Boards' packets (see attached). The staff chose to modify this paragraph because as an agricultural statement, it has some basis in law. By adding the industrial and commercial uses, they have a tool the Plan Commission can use if there is a potential conflict.

Mr. Kolbus said there were issues expressed by others at the last meeting requesting that if you have one for a residential development, then why they don't have it for commercial/industrial development. The staff's position is that this statement was formulated based on the fact that Indiana has a 'Right to Farm Law'. There isn't a similar law for commercial or industrial, so the staff's position is to put in the agricultural statement or don't put in the agricultural statement. It doesn't feel that it's appropriate to have one for each zone because there's nothing in the law which supports it. The ultimate decision is up to the Board and they think the options are an agricultural statement, no agricultural statement, or advise them to create a statement for every zoning district.

Mr. Watkins said the secondary the staff was supposed to consider was better definitions of lot, parcel and parent parcel. The revised definitions of lot, parcel, and the two definitions of parent parcel were then read to the Board. These definitions were included in the Boards' packets (see attached). He indicated the definition of tract was essentially the same as a parcel.

The staff received a letter that requests the parent parcel be the same as the parcel number, which would be more acceptable than a parent parcel having every contiguous parcel that is described or transferred in the same conveyance.

Mr. Kolbus said the staff worded the definition to make it more clear by explaining in a single transfer document, whether it's contiguous or separated by a public way, consistent with the way they've always treated it. He explained that is the staff's recommendation, but they have another option to use the tax parcel number. The staff's position was based on how they have always treated them in the past, but the Board has the ultimate decision.

The difference between parent parcel definitions one and two is that the staff had talked about once the new Subdivision Ordinance goes into effect that there be some leeway to allow them to put the new procedures into effect. That's why the staff has asked that the parcel of land be defined as a date in the future rather than the date the Ordinance passes.

Mr. Watkins said the last item is the Administrative Subdivisions in Chapter Four. He reminded the Board that the Subdivision Ordinance addresses land use or changes in land use. It is not to regulate the sale of land. As written, the draft provides three options to subdivide land which include specific processes. First, the minor subdivision is utilized to create one to three lots. Secondly, a major subdivision is used to create three residential lots or greater. Both the minor and major subdivisions have come before the Board and have had at least tacit approval at the last hearing. The third type is a proposed addition to the Ordinance of an Administrative Subdivision. This method of subdivision is created as a direct result of the public meetings. At the request of those who felt that in an emergency situation it was necessary to subdivide a piece of property, primarily agricultural land and primarily for residential use. As the minor and major subdivisions currently come to Plan Commission for approval, a minor subdivision would go through staff review only. Mr. Watkins said there are a lot of potential solutions to this and the Board has three in writing. They have the language in the draft as presented and there is now a version A.

The only significant change from the draft to version A is that letter A strikes item number eight. Mr. Watkins then read item number one and item number eight to the Board at this time (see attached). The proposal is to strike number eight and Mr. Watkins said his concern is that the Board needs to clearly define number one. The reason number eight was added was to clarify number one, but as he reads number one, it says that one new buildable tract can be created. Some are saying that only one new buildable tract can be created at a time. He doesn't see where it says "at a time", so he believes the Board should clarify that in the absence of item number eight.

At the last meeting, there was concern over the residual parcel, which led to the changes in draft B. The only change in draft B from the original draft submitted for the hearing was an addition to number one to clarify what happens or to give direction as to what could happen to the parent parcel. Under General Requirements and Standards, Mr. Watkins read number one to the Board (see attached). If the parcel prior to this Ordinance had a house or building on it, then the parcel remains buildable. The attempt was to make sure that the house could be rebuilt.

Mr. Yoder asked if he created a 40 acre lot through an Administrative Subdivision and then did another Administrative Subdivision on the 40 acres to create a ten acre lot, would that be possible through an administrative subdivision. Mr. Watkins said if there was no house on the residual, then that residual would have no standing as being a buildable lot. Mr. Doriot said it would need to have had a building permit issued.

Mr. Miller questioned what "Administrative" means and Mr. Watkins said it would go through staff only. The Administrative Subdivision establishes a procedure and the requirements for the submission of a subdivision for administrative review. That process follows very closely the procedure for obtaining a building permit. The difference that would be added by this Ordinance is that all of the information that goes in with the building permit would be handed in with the

application and not piecemeal as happens now. The debate at this point could be if this is still a good idea, how many lots should be allowed, or should there be a limit on the number of lots.

Mr. Miller asked if the Board is deciding at this time how many they can do at one time, but Mr. Watkins said no. The Plan Commission will be deciding how many people can do period. The way the draft is currently written, people can do one Administrative Subdivision of three acres or more, depending on the zoning. Due to that statement not being clear during the public meetings, section eight was added that said you can't do that more than two times. People at the hearings were reading that as you could only do one 3-acre lot at one time. Therefore, if the Board chooses number one, then that statement needs to be clarified.

The Board questioned what the negative is of having more than one split at one time. Mr. Watkins said more than one at a time would be a minor subdivision.

Mr. Kolbus said the intent of option A is an unlimited number of administrative splits. The current Ordinance as written limits it to two additional splits. If you add the language from option B, which says the residual parcel is a buildable lot, then you will have three buildable lots including the original and two more. At the last meeting, there was also some discussion on the number of splits based on the size of the parent parcel.

Mr. Yoder asked if the Board should interpret option A to mean an unlimited amount of splits. They may need to re-write number one to clearly say that. Mr. Kolbus said they should amend number eight in option A to read, "There shall be no limit on the number of Administrative Subdivision splits from a parent parcel after the effective date of this Ordinance." The Ordinance says that it's one at a time, so he doesn't feel that needs to be in there.

Mr. Doriot asked if that would supersede the Highway Department requirements and Mr. Kolbus said no. There should be no limit on the number from a parent parcel, provided it continues to meet the requirements and standards of this Ordinance.

Mr. Doriot explained that the process for the Administrative Subdivision is to be about 30 to 45 days from the time you hire a surveyor. The surveyor will go out and do the survey and then come up with a plan that shows drainage, curb cut, and safe access to the site. The septic has to be approved by the Health Department and the drainage needs to be approved by the Surveyor. At that point, everything will be taken to the staff for review, which will be approved if it meets all of the requirements.

The minor subdivision process is around 30 days to allow you to get everything together for the filing. If you file at the deadline, then it's about ten days or two weeks for Technical Committee and another two weeks for Primary Approval. After Primary Approval, it would go to Secondary Approval, which would be four weeks later. After Secondary Approval, the request would have to go to the Commissioner's meeting. The process is around 14 weeks total after which it needs to be recorded. The current minimum lot size for a minor subdivision is one-half acre.

Mr. Watkins indicated the current draft has been on the website for several months. It was available for the public meetings and should be available at the counter today.

Mr. Warner then asked Mr. Watkins to go through proposal B. Mr. Watkins said the only change in proposal B is the addition of the language with regard to the residual parcel. The addition to item number one was to add the statement, "Residual parcels created by the Administrative Subdivision that are improved and still meet the minimum requirements of the Ordinance for a lot have standing as a buildable tract without going through the subdivision process." Therefore, if you have a house with 40 acres and choose to sell two three acre parcels, then you wind up with three splits because you go through the administrative process for two of them. Basically, the

third split is waived.

Mr. Kolbus said you get two new lots to be created and it doesn't count your existing lot if it's improved.

Mr. Watkins said if the existing lot is not improved, then you wind up with a 40 acre parcel minus whatever lot sizes you subdivide off of that with a residual parcel that has no standing for residential use without going through either the minor or the major subdivision. If someone presents a proposal to the Board and it meets the requirements of the Ordinance and is technically correct, then the Board has no option but to approve it.

Overall, Mr. Watkins indicated the Board has three proposals. One proposal would be to keep the existing draft and do Administrative Subdivisions one at a time and not more than two. That leaves the parent parcel with no standing as a buildable lot. The second proposal is revision A which would eliminate the number two and would require number one to be revised. The revision would have to clarify how many times you could do one subdivision. Proposal three would be the existing language with the addition of the language that would allow the residual parcel to be accepted as a buildable lot if it had a building on it already. If it did not have a building, then you basically have two residential lots and a residual that is not buildable without going through a minor or a major subdivision.

The Administration Subdivision was specifically added to address the concern of people wanting to split a lot off for residential use expeditiously. This Ordinance only establishes the standards for the process, and then establishes the processes for the number of lots they want.

Attorney Loren Sloat, 102 Heritage Parkway, Nappanee, was present today representing his client base. Mr. Sloat indicated he represents a lot of farmers and a lot of people who live in the rural area. This is a matter that will affect everyone as the Ordinance goes forward. Mr. Sloat checked on the latest Ordinance that is posted online, which didn't state anything that Mr. Watkins spoke about. He said he would like to address two of the issues in regards to parent parcels and the number of splits. It's always been his understanding that a tract is a parcel number at the Auditor's Office. It wasn't until just recently that he became aware of the fact that it is the attempt to combine contiguous parcels into one parent tract. Mr. Sloat explained it's not uncommon for a farmer, when he is selling a piece of land or conveying it to his children in an ordinary course of business, to have acquired one or two 40 acre tracts from different sources that are contiguous. Each of those tracts has its own parcel number and when they do a deed to the buyer/son, they normally put all of the parcel numbers on the same deed. The parcel numbers are usually contiguous, but they may not be. He sees that this is an attempt to identify a tract by fence rows instead of by parcel numbers. Mr. Sloat feels that is an underhanded way to eliminate how they are currently doing it. He asked how they will track that through the system because there will be an extra layer of research to pull that deed that was in existence to see if they are contiguous or have a common property line. If they go by parcel numbers that exist on the effective date of the Ordinance, then you can get the parcel number from the Auditor's Office. He believes the parcel numbers they are getting from the Auditor's Office should be the parent parcel and not the contiguous tract.

With regards to the number of splits, Mr. Sloat said it's his understanding there are two administrative splits and they're talking about whether the third becomes a buildable lot or not. He believes a lot with or without improvements should be treated as a buildable lot.

Present to voice some concerns was Jim Weeber, 57564 CR 115, Goshen, who was also speaking on behalf of the Elkhart County Farm Bureau. Mr. Weeber said he would like to speak

to chapter four under Administrative Subdivisions under B, item number eight regarding the splits issue. Mr. Yoder and Mr. Watkins visited Farm Bureau on April 1st of this year. He indicated this part of the Ordinance was not in there at that time and he is asking where it came from. They had a meeting at the fairgrounds over the summer and it was not in the draft at that time. He then questioned where item number eight came from and he said Farm Bureau would like to see that item go away.

Farm Bureau feels that it's appropriate for the Board to write law that yields reasonable standards on property usage regarding health, safety, and the general welfare of the community. They don't feel that it's appropriate to write law that takes privileges that go with ownership of property from them. They feel that they own these privileges and options because they have paid for them through their mortgages and the insurance people keep on their properties. They feel they have paid for these for over two or three generations on a lot of farms through the enduring of drought and tragedies. He feels they should be able to keep the options and privileges they have at this time with regard to real estate transfer. If this is good policy, then he would like someone to tell him how item number eight adds to the health, safety, and general welfare to the community.

In order to transfer property to family members, Mr. Weeber asked if he is required to surrender property to the county to get that done. Mr. Doriot indicated that is correct and is dedication of right-of-way to the Highway Department. Mr. Weeber said that is a type of eminent domain without valuable consideration, but Mr. Kolbus indicated that is an opinion.

It was questioned by Mr. Weeber if there has been any legal opinion solicited or written with regard to the impact of item number eight on the Ordinance. He also asked if there has been any solicitation regarding the constitutionality of this particular item. Mr. Weeber said there probably hasn't been any.

He asked if any financial professionals in the community have been consulted regarding the potential depreciation of value on any specific parcels of property in the event that this item would go through. If this item were to pass, the Board would be limiting options of real estate transfer and that would possibly affect loan value.

Mr. Weeber feels there are some items that are unaddressed and unanswered. The idea of restricting the community's ability to transfer their property is bad policy. He feels the best way to address this is to have this item stricken from the Ordinance and then the Board can move ahead without any complaints from the Farm Bureau.

Two weeks ago there was an article on the front of the Farmers Exchange that stated property tax on agricultural property is going to escalate significantly. They already have more burden to carry coming down the road, so he thinks its best not to limit the options and privileges with regards to real estate transfer. Not only is this for the property owners, but also for the potential buyers.

Mr. Yoder indicated that Mr. Weeber feels number eight is unconstitutional and he asked if he feels the entire Subdivision Control Ordinance is unconstitutional. Mr. Weeber said he didn't say that item number eight was unconstitutional, but he asked if there has been any opinion written as to the constitutionality of the item.

Mr. Burbrink indicated that he understands Farm Bureau wants the Administrative Subdivision dropped out of the Ordinance. Mr. Weeber said an Administrative Subdivision requires no public hearing, so they don't have a problem with it. He only has a problem with the number of splits that is allowed and indicated they would like an unlimited number.

Mr. Lantz asked him if he feels comfortable with the three acres. Over the period of time that the three acre law has been here, a lot of people had said that a lot of that is waste. Mr. Weeber said they are comfortable with going down to half an acre if they pass the technical parameters. He feels comfortable with lot sizes much smaller than three acres.

Mrs. Wolgamood said that would be possible with a minor subdivision. Mr. Lantz indicated it's the cost of the minor subdivision and the regulations.

Leroy Nissley, a Bishop in the Amish Church, 62800 CR 35, Goshen, was present to voice some concerns on the Ordinance. In 1966, he came to the Zoning Board to get a permit for a chicken house. He was asked how many acres he owned, which was ten, and he was told that if he has five acres of land and sets his building back 75 ft. from the center line of the road, then he doesn't need a permit. Mr. Nissley said it only took him about two minutes, which he is comparing to today's hearing.

He feels the proposal for the Administration Subdivisions, as spelled out under B, the general requirements and standards are too restricted concerning the one lot tracts. He feels this would be a hindrance to the future generations who would like to build and stay in the community. As the restrictions become more and more in depth, then the process will be even more drawn out. He said the Board has done a lot for the community over the years as a whole, but he feels the major subdivisions should be served for those who have farms or other large tracts of land and develop them into smaller lots.

Present to voice some concerns was Brad Hooley, 14385 CR 22, Goshen. Mr. Hooley said he's a realtor, developer, farmer and an auctioneer. He feels that he's in a very unique position to look at this and analyze it. He has tried to keep a very open mind from the beginning. Mr. Hooley was adamantly opposed to the first draft he saw of this many years ago. He was involved in the original three acre rule committee.

Mr. Hooley softened on this Ordinance, but then things changed. The tax code should be the parent parcel. It is a simple system and what they are working with already. The previous subdivisions that have had approval and have been done properly should be specifically grandfathered in whether they Primary or Secondary approval. The current Ordinance is not clear according to Mr. Hooley. He feels the information needs to be public so people can make an informed decision. He has heard a lot of questions from the Board regarding clarity and technicality.

Mr. Hooley feels it's very naive so say that this law will regulate use and not the sale of the land. The use of the land and the sale of the land are linked. People buy land to use it for a specific purpose because they want to farm it or build a house on it. When you start regulating the use of the land, then you are manipulating the value.

He feels the economic situation everywhere has changed very dramatically. He thinks the Board needs to wait and see what is going to happen with the economic situation. The Board needs to be very cautious on how they proceed so what they are attempting to do as a positive doesn't have a negative effect several years down the road.

Nancy Brown, 72811 CR 137, Syracuse, was present with some concerns as well. Ms. Brown indicated she works for the Elkhart County Soil and Water Conservation District. The Soil and Water Conservation District has worked with farmers for a long time. When they hold meetings to find out what the biggest threat is to farmers in the county, the biggest answer is the three acre split. With three acres developed along every county road, it's harder to drive farm equipment and spray.

The point she would like to make is that if the Board allows unlimited administrative splits, they will have went through all of this work for nothing. There will be no change in the Ordinance because if people can split off three acres whenever they want, nothing will have changed. The Board has put tons of effort into making a change that will benefit the health and safety of the rural communities and she wants to thank the Board for the work they have done to address those issues. As far as the parent parcel definition, her concern as a farm wife is what is equitable and what is fair. If they look at the size of the parcel, then the Board may be able to find equity and fairness there rather than by legal definition.

As far as the agricultural statement is concerned, her personal fear is that as they allow people to exercise their right to change things, they take away the rights of the people who want to leave things the same. She feels the agricultural statement is a good idea.

Mr. Lantz suggested that in the agricultural zoning, the farmers could decide what zone they want and the number of splits would be tied to the zoning. If you want to protect your farm for generations to come, then you would ask to be zoned accordingly and that would limit the number of splits. From a personal prospective, Ms. Brown said she already controls the destiny of her farm as she has the right not to sell. She understands that the Board's job as a Plan Commission is to protect the health and safety of the community of Elkhart County and not her as an individual. Maybe what she as an individual wants to change should be denied because it may not be what's best for the community.

Present to voice some concerns is David Blough, 57446 CR 29, Goshen. Mr. Blough explained he owns property in Jefferson Township, had owned a farm in Middlebury Township and owns a farm in Washington Township. He will be speaking on behalf of the Jefferson Township Advisory Board with the past 18 years of service he has had as a Deputy Assessor. Mr. Blough explained he is also a farmer and a parent of children who he hopes will come back to his farm.

Woodsbrook Farms is two farms that are contiguous tracts and total about 400 acres. They have no utility easements, pay all of their taxes, have part-time people who help, and two struggling people who are trying to make all of the mortgage payments. In 1965, they blew away in the Palm Sunday Tornado and rebuilt. In 1978 and 1999, Mr. Blough's barn burned down and they rebuilt. In 2000 and 2001, he was in three automobile accidents. If he would not have had the right to sell off three acre parcels along with his mother and sister's help financially, they would have been insolvent.

The three acre rule was very helpful and they ended up selling two three acre lots from the CR 31 property. They did not bulldoze their fence rows or destroy any creeks. His mother was forced to buy the property across the street because it was going to be turned into a mobile home park. His mother opted to have very restricted covenants for a residential development. Those residents are good middle class people who have built \$250,000 homes.

Mr. Blough said he agrees with most of what has been said this morning, but he feels he should have the right to sell his land however he can for the best dollar because that is his 401K, investment, and legacy to his children.

He supports the Board's plan A because it puts things back to an administrative level. He can live with an Administrative Subdivision if they don't restrict the amount of splits. He feels that an acre would be more than enough for a beautiful home, an ancillary building and the double septic requirement. He said the Board should fine tune the details of the Ordinance. He would appreciate the parent parcel to be what Mr. Sloat has said.

Mr. Blough indicated he also supports the county's new tall grass Ordinance.

Present to speak with some concerns on the Subdivision Ordinance draft was Sam Dashiell, Century 21 Landmark, 1211 Heckman, South Bend. Mr. Dashiell is representing quite a few of his clients who have large parcels. He said anytime you start to take away personal property rights, the Board should have some good reasons for doing that. He doesn't feel its right to take away income and investments from residents.

Mr. Yoder asked which part of the Ordinance is stepping across the personal property rights issue. Mr. Dashiell said anytime you start to limit what someone can do with their property, the Board would not trust the free market to allow for the appropriate solution.

Phil Neff, 18695 CR 42, Goshen, made the clarification that he called the Planning Department on Tuesday morning to find out when the land use hearing would be. He was told that she didn't think there was one. She then told him that there is one, but it has been tabled. Mr. Neff then asked if there will be nothing before the Plan Commission on Thursday regarding this issue and the employee indicated yes. He then informed six other people that there would be no hearing today.

Dean Slabaugh, Remax Realty, 2134 Elkhart Road, Goshen, said he understood that this Ordinance would not be discussed today as well. Mr. Slabaugh said he has been involved in many committees, thoughts and processes regarding the three acre law and regulations. He believes the county needs three acres for animals; however, if someone wants to have a lot along a roadside, he thinks that should be a smaller parcel because there is wasted land. He agrees with what has been said and he thinks there are a lot of farmers who would like to do what previous farmers have done by selling their land for the best dollar available. He thinks by restricting this to the capacity of the Subdivision Ordinance will do that and actually do some great financial damage to their land values in the future.

Mr. Slabaugh said he has understood that the closer you are to a town, the restrictions to get subdivisions approved for building would be easier than if you lived further into the county. He would like to know if that is true. Mr. Doriot said that would be something that would come under the Zoning Ordinance at a later date if they take the new "urban growth areas" that have been requested. Mr. Slabaugh indicated he feels that is very unfair to other property owners in Elkhart County. By doing that, he said you are dictating the value of their property.

Once this is passed and there is an understanding of what is happening here, Mr. Slabaugh said the realtors need to know what they are dealing with so they don't misrepresent land to a client.

Mr. Slabaugh then stated that the planning office is an outstanding office to get information from. They do a good job in informing buyers and sellers that may not be in tune to what is going on.

Mr. Slabaugh assumes that the existing three acre tracts with separate deeds would be grandfathered in and Mr. Doriot said that is correct. The family to family parcel is a little more confusing to Mr. Slabaugh and Mr. Doriot clarified the family half acre split is gone. Mr. Slabaugh said he can't imagine doing that to the Amish and Old Order people this community was built around.

Chris Marbach, 3220 Southview Drive, Elkhart, was present to ask for a clarification regarding the Subdivision Control Ordinance. He feels it would be unfair if the Board decides to put a number on the number of splits associated with the parent parcel. For example, if he has a cornfield of 40 acres and he bought ten acres from four different people, there would be four

separate deeds and four parent parcels. If he bought that same 40 acres from his father who had bought it from those four different people but it was on one deed, he would only get the smaller number of the administrative splits even though it was on the same physical piece of property. He said that doesn't seem fair to the farmers who have acquired their parcels in multiple pieces over the years.

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

Mr. Kolbus indicated the Board can't start discussion until they decide how they will handle the issue of apparent miscommunication on someone's part because the law requires that any public hearing be fundamentally fair. If the Board believes that bad information was given out that there was not going to be a hearing on the Subdivision Control Ordinance today, and that information originated in the office here, he doesn't think they can decide today. He feels they should table it until next month and re-open the public hearing at that time for discussion.

Mrs. Wolgamood said if they do that, will they be tabling it to allow new people to speak. She asked what would happen next month when they re-open the public hearing or keep it closed. Mr. Kolbus said it would allow the opportunity for those to speak who aren't here today because they didn't get accurate information. He suggested not having their discussion today because it will fuel new questions by people who are here and they will want to talk again next month.

Mr. Sharkey said he feels it is unfair to the people who are here today because they took a day off of work to come here to speak and to hear the Board's discussion.

Mr. Doriot indicated a big portion of today's audience had to get rides to get here and they don't have the internet to keep up to date on this.

Mr. Yoder asked if it would be appropriate to acknowledge that there may have been a mistake made by staff, but that there will be additional opportunity for a public hearing at the County Commissioner level which these people could participate in. He asked if that would bring this back to some fairness. Mr. Kolbus indicated he couldn't answer that, but it appears that is more appropriate.

Mr. Sharkey said he doesn't feel he can make a recommendation if he doesn't hear those people speak and Mr. Doriot agreed.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Yoder/Holt*) that the Board acknowledge there may have been a miscommunication from someone in this office concerning the nature of this hearing today, but that there has been adequate public testimony and good representation from the community so the Board will move forward with discussion and a determination on this with the knowledge that there is another public hearing that will be held at the County Commissioner meeting to provide opportunity for those who were not present today.

Prior to voting on the motion, Mrs. Wolgamood indicated she would like nothing more than to proceed with the discussion today, but she also agrees with Mr. Sharkey. She would never want to be accused as a Plan Commission member that she didn't give the opportunity to everyone who wanted to speak. She is hearing that there may be some people who would like to speak so she doesn't feel she can say yes to that.

If one or two members from Farm Bureau or the Amish come in, Mr. Doriot said this Board needs to remember they are speaking for their group. Mr. Miller said they will not be able to hear somebody who was adamant about wanting to say something, which he doesn't feel good about.

Mrs. Wolgamood suggested if the Board decides not to have the discussion today, that

everyone in the audience make every attempt to be here at the next meeting so there is no miscommunication when the Board makes a decision and passes it on to the commissioners.

A roll call vote was then taken and the motion did not carry with the following results: Lantz – no; Miller – no; Doriot – no; Warner – no; Wolgamood – no; Sharkey – no; Holt – no; Yoder – yes; and Burbrink – no.

A motion was then made and seconded (*Doriot/Yoder*) that the Advisory Plan Commission table the Subdivision Control Ordinance discussion until the November 13, 2008, meeting to hear comments from people who were not able to be here due to a miscommunication, with the questions from the members of today's audience who are here next month to be addressed at that time.

Mr. Yoder asked if it's appropriate to not use the word "tabled" on the agenda and word it as "Public Hearing Continuation of Subdivision Control Ordinance." Mr. Burbrink said the public hearing was closed and it will need to be re-opened at next month's meeting. Mr. Yoder indicated he is trying to cut out the word "tabled" on the agenda to avoid this situation from happening.

Mr. Doriot asked if the Board can set a time for next month's hearing so today's audience members are aware. Mr. Kanney suggested setting the hearing for 9:00 a.m.

Mr. Doriot then amended the original motion to include that the request will be tabled until the November 13, 2008, Plan Commission meeting at 9:00 a.m. Mr. Lantz seconded the motion as amended and after a unanimous roll call vote, the motion was carried.

** (Mr. Sharkey left the meeting at this time.)*

12. There were no audience items.

13. Mr. Kanney presented a request from ***Coachmen Industries – Shasta Complex*** for a minor change to their Planned Unit Development (PUD) located on CR 35, north of US 20. He gave the Board a copy of the letter with a site plan and legal description attached from Phil Barker, which is in the file for review.

This property is currently under a PUD, which Mr. Kanney pointed out on the site plan. They intended to make the house on the property an office, but they have asked that they be allowed to sell that as a house. The proposed location of the split of the property was shown by Mr. Kanney and he indicated they would have to go through the minor subdivision process. He said the PUD designates that as manufacturing and that the house is to be used as an office. Coachmen Industries would maintain 60 ft. for access to the industrial building that is already there. The property is zoned M-1 PUD. Mr. Kanney said the Board's options are to say this is a minor change and let him go for a minor subdivision or say it is a major change, which would require them to amend the PUD. That amendment could include a minor subdivision.

Mr. Burbrink asked if they have access to US 20 on the south end and Mr. Kanney said they may through other properties they own, but not through the property that was rezoned.

Mrs. Wolgamood asked what the adjacent zoning is and Mr. Kanney said the staff map from 1994 shows A-1, but he doesn't think anything has changed.

Mr. Doriot said it will be less use as a residence than an office.

Mrs. Wolgamood indicated there would be two different ownerships. If she was going to buy that house, she wouldn't want it in a manufacturing zone. If they have to go through a minor subdivision anyway, they might as well tack on a rezoning.

Mr. Holt also indicated that it may make it difficult for any financial institution to get a mortgage on the home.

Generally, minor changes are site improvements, but Mr. Kolbus said changes in use are usually major changes unless it's a significantly small portion of the overall development.

Mr. Burbrink asked if there are currently people living in the home and Mr. Kanney indicated he couldn't answer that because he's not sure.

From a legal standpoint, Mr. Kolbus said this is a major change and they would need to re-zone it and apply for a minor subdivision.

A motion was then made and seconded (*Yoder/Lantz*) that the Board considers this as a major change. A unanimous vote was taken and the motion was carried.

14. See page 2, item #8 for the *2009 Planning Calendar*.

15. The meeting was adjourned at 11:50 a.m.

Respectfully submitted,

Kate A. Keil, Recording Secretary

Jeff Burbrink, Chairman