

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 12TH DAY OF NOVEMBER 2009 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: Meg Wolgamood, Roger Miller, Tom Lantz, Blake Doriot, Dennis Sharkey, Jeff Burbrink, and Mike Yoder. Staff members present were: Robert Watkins, Plan Director; 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 (*Doriot/Lantz*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 8th day of October 2009 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Miller/Burbrink*) that the legal advertisements, having been published on the 31st day of October 2009 in the Goshen News and on the 2nd day of November 2009 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Doriot/Burbrink*) 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 an unimproved north/south public right-of-way, for The Trustees of Ivy Tech Community College represented by Marbach, Brady & Weaver, on property located on the North side of CR 18, between Lots 14 & 15 in Eastmoore Estates, 235 ft. West of the intersection of CR 18 and Old CR 17 in Concord Township, zoned A-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #091002-1*. He clarified that the petitioner owns the property immediately to the east, west, and north. He also understands that Ivy Tech owns some more lots along the adjoining subdivision, which was created in 1966.

Chris Marbach of Marbach, Brady & Weaver, 3220 Southview Drive, Elkhart, was present representing The Trustees of Ivy Tech Community College. Mr. Marbach verified that Ivy Tech Community College owns the adjoining lots to the east, west, and north, which was indicated by Mr. Nemeth. He pointed out the location of the proposed new entrance, which would line-up with Old CR 17. The proposed new entrance will eliminate the need for the existing entrance.

Mrs. Wolgamood asked if they own any of the lots farther to the west, but Mr. Marbach said not to his knowledge.

When Mr. Doriot questioned their plans for the lots, Mr. Marbach said an existing house will be removed so the road can be extended north. He also explained that other buildings will be taken down and they will have a landscaped yard area.

Mr. Burbrink asked about drainage for this immediate area and Mr. Marbach said when the site is developed, the water will all flow to an area towards the east side of the property. He indicated the Board would see the drainage in the next presentation for the DPUD.

There were no remonstrators present.

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/Burbrink*) 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 with a unanimous roll call vote.

6. The application for a zone map change from A-1/General Planned Unit Development-R-4 to a Detailed Planned Unit Development-R-4 to be known as ***INTERCHANGE, DPUD – IVY TECH SECTION***, for The Trustees of Ivy Tech Community College represented by Marbach, Brady & Weaver, on property located on the North side of CR 18 at the intersection of Old CR 17, common address of 22531 CR 18 in Concord Township, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #22531CR18-091002-1*.

Present on behalf of this request was Chris Marbach of Marbach, Brady & Weaver, 3220 Southview Drive, Elkhart. Mr. Marbach noted that Jim Jazowitz, one of the Directors of the Ivy Tech facilities, is also present today.

In late 2007, he said he introduced the GPUD Interchange project to the Plan Commission and at that time they were pretty sure they would get Ivy Tech on this site. Ivy Tech is here and they are now moving forward to get this project built. A rendering of the entrance on the south side of the building was displayed through a power point presentation to illustrate how it will look when finished. After describing the location of the subject property, he said Ivy Tech now controls a total of 74.6 acres; 31 acres in the southern part of this area and another 40 acres to the north of that location is the Ivy Tech Foundation.

A topographical map of the existing conditions was then displayed to the Board, and he pointed out three additional lots Ivy Tech has purchased since the original GPUD was done. He explained that every one of the lines on the topographical map represents one foot of change in elevation. This is a site that has been a challenge to develop as it all slopes to the north for practical purposes, and there is a high tension power line running through the western third of the site. Mr. Marbach pointed out the west entrance on the site and explained the dark areas are delineated wetlands that Ivy Tech is working around as they go forth with this project.

The site plan was then displayed to the Board showing 31 acres with the proposed building in the middle of the acreage. Mr. Marbach explained they are proposing 450 parking spaces on the east, south, and west sides. They plan on having three wetland-type detention basins, which were also located on the site plan.

The east entrance will be the main entrance into the campus where the monument sign will be placed. Traffic studies have been completed and approved by the Elkhart County Highway Department for both entrances. There will be a passing blister on the south side of CR 18 and a deceleration/acceleration lane on the north side. The area is set-up to be a private driveway and entrance at both locations coming into the campus because they aren't sure about future development.

The area directly north of the campus (42.8 acres) owned by the Ivy Tech Foundation was shown on the site plan, which Mr. Marbach said they are currently building. He pointed out the location of the Arbor Lakes Apartment Complex where they are connecting with the existing sewer and water, running it south along the INDOT right-of-way, across US 20 and angling

over to a lift station. There will be a force main coming back in a 12-inch water main, and from the lift station they will do gravity sewer down to the corner of the property. Mr. Marbach said Ivy Tech is using a borrow pit to obtain dirt to raise the site to deal with all of the contours. They're also proposing an inner-connecting road that will ultimately extend to CR 17 as indicated in the original GPUD.

When originally submitted, Mr. Marbach said they were discussing a 10,000 sq. ft. community center to be added onto the west end of the building. Consequently, they wanted 100 additional parking spaces to expand the parking lot and accommodate the future center. However, since filing the application on October 2nd, he said they are going full ahead with this project so this is now part of their request as they have every intention of building this (community center) and the parking lot that goes with it. The location of the additional parking was then pointed out on the site plan.

Architectural elevation views of the building were then displayed along with the photometric plan. Mr. Marbach clarified that all of the lights are pointing inward on the project to help alleviate any concerns of the neighbors. There will be some lighting out at the entrance, but he said no lights should go beyond the outlined perimeter shown on the site plan.

Mr. Sharkey asked if that includes the expanded parking. Mr. Marbach said it is based on the current parking in the original plan so those lines will slide a little to the south and west if they have to move the lights down to accommodate the additional parking.

When asked about the portion of property that is cut-out of the subject property, Mr. Marbach explained that it is owned by a private individual who has not been willing to sell. Mrs. Wolgamood recalled that there is a pole building on that property, which Mr. Marbach then verified.

While reviewing the landscaping plan, Mr. Marbach explained the areas with the dotted symbol is where they want to plant seeds, which is all around the retention area. They are also going to do wetland plantings in all three retention areas to speed up that wetland development. He's heard they want to do that yet this year, and he said the dark areas are where they will put in actual seed grass. Canopy trees are scheduled for a lot of the island areas with ornamental trees around the buildings and evergreens along the edges.

When Mr. Doriot asked if those will shift down, Mr. Marbach said there is room on the property for the landscaping to shift down.

Since filing this application the first of November, Mr. Marbach said they've had discussions between Ivy Tech, the Commissioners, and the Highway Dept. regarding three items that have been changed. In describing those changes, he said sewer and water will now be extended all the way out to CR 18. They are in the design of that set of plans, and he said the bids are in, the contracts are being written, and they anticipate completion of those improvements by the first of February.

Also discussed was the west entrance, which Mr. Marbach said they proposed as a private road. Because they didn't know where and when it was going to go, they have agreed to build it as if it were a public road according to highway standards, but reserve the right to put in a public right-of-way at such time the property is developed to the north. He indicated they would put that as a future public right-of-way on the recorded plat, but they would like to keep it private until they determine what will happen on the property to the north. The Highway Dept. will not have to maintain it as that will be done by Ivy Tech. He then pointed out that when anything happens to the north, they will have to come back before the Board for approval so that will be the time to amend

the plat and make it a dedicated right-of-way.

Mr. Marbach continued saying the same thing will apply to the east entrance as well. The plat submitted in October shows a private easement on the west, but since then it has changed to being reserved as a future public right-of-way. He thinks it was a direct request from the commissioners to have this possible future public road in this location. He then reviewed the plat note, which says an 80 ft. private ingress/egress and utility easement for the adjoining property to the north has been reserved for a future public right-of-way 40 ft. wide from side to centerline for both the east and west entrances.

Mr. Sharkey asked if that road goes into the church property and Mr. Marbach said yes.

In conclusion, Mr. Marbach said he feels the easements he's added to the plat are relatively minor changes, which are agreeable to Ivy Tech and hopefully to the Board as well.

Mrs. Wolgamood questioned the distance between the property line and the additional parking to the south. Mr. Marbach estimated 70 ft. from the property line, which will allow for the planting of trees and evergreens along the southern side of the property where the residential lots are located.

The height of the buffer of trees was then questioned by Mr. Doriot, but Mr. Marbach said he's not been told the exact size of those plantings at this point in time. He did say, however, that for the most part it is all wooded along that property line already. Mr. Yoder said the plan indicates there are 7 ft. high Colorado Spruce and some White Oak with a 2.5-inch caliper.

Addressing the Board at this time was Lonnie Franks who said his mother owns the property that jets out into the Ivy Tech area (parcel north of Lot 11 on the site plan). He has reviewed the drawings and he said the landscaping shows evergreens along the southern border. He has evergreens planted along the east and north border, but there is no barrier on the west side so he requested they plant some evergreens to provide some privacy for that area as well.

Also present was Melvin Hoover who resides at 22507 CR 18 (Lot #4). He said he did not learn of this project until he saw stakes in what he thought was his yard. He heard the west entrance was not going to be improved right away, and although he is not opposed to progress, he and his wife prefer not to be in the midst of this progress as there will be a lot of traffic. He is very uncomfortable because he sees the entrance and accel/decel lanes are right around his house. He then indicated that he was told Ivy Tech would purchase his property, which he encourages to happen.

Mr. Yoder said he's visited this site and he verified the right-of-way and accel/decel lanes do intrude on what Mr. Hoover perceives to be his property. He said he's surprised to see Mr. Hoover today because he thought the sale of his property had already occurred, and he indicated he will do what he can to help that process along.

Mrs. Wolgamood asked Mr. Hoover if his driveway comes out onto the easement and not CR 18 and he said that is correct. He explained that he replaced his driveway a couple of years ago and that easement is now about 30 ft. into his driveway.

A motion was made and seconded (*Sharkey/Yoder*) that the public hearing be closed and the motion was carried with a unanimous vote. However, it was noted that Mr. Marbach was not given an opportunity for rebuttal so Mr. Doriot moved to reopen the public hearing and Mr. Burbrink seconded the motion, which was carried unanimously.

With regards to Mr. Franks' request for some evergreens along the west property line of extended Lot 11, Mr. Marbach said Ivy Tech would be glad to make sure there is some landscaping as requested and evergreens would be logical thing to put in there.

Mr. Marbach said he has attended meetings where they have discussed the acquisition of Mr. Hoover's property. He said Ivy Tech has a lot of board members and steps to go through to make acquisitions happen, but he's pretty sure it's in the process.

Mr. Burbrink then asked if they are considering that on Lot 3 as well and Mr. Marbach said the owners of Lots 2 and 3 are in the audience and they do have plans for those lots.

Mrs. Wolgamood noted those two lots are currently empty and she asked if the owner also owns the house immediately west of those lots, but Mr. Marbach said no. He clarified that the owner is associated with the church on the other side of the road.

A motion was then made and seconded (*Doriot/Wolgamood*) to close the public hearing, and with a unanimous vote, the motion was carried.

Mr. Kolbus asked the staff if they will need a revised plan showing the details of the extended parking lot as they only have a rough outline now and Mr. Burrow said that is correct. He then indicated they would like to have that revision before the DPUD is submitted to the County Commissioners. He explained that the only item not shown on site plan would be the extension of the private easement to the property to the east and that might be something that should be shown on the Site Plan / Support Drawing. When asked about the community center, Mr. Burrow said that is shown in a schematic way and the staff has always accepted that in the past as long as it did not violate the integrity of the original DPUD.

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

7. The application for Secondary approval of a Detailed Planned Unit Development known as **INTERCHANGE, DPUD – IVY TECH SECTION**, for The Trustees of Ivy Tech Community College represented by Marbach, Brady & Weaver, on property located on the North side of CR 18 at the intersection of Old CR 17, common address of 22531 CR 18 in Concord Township, zoned A-1/GPUD-R-4, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #22531CR18-091002-2*. They did submit the corrections, and he said the only issue is that the establishment of an access going to what is known as the church property on the east line was not in the file ten-days prior to this meeting so it would be at the Board's discretion as to whether or not that is adopted at this time.

Mr. Doriot said he had no objection to adopting the access as it has been presented and Mrs. Wolgamood was in agreement.

A motion was made and seconded (*Doriot/Wolgamood*) that Secondary approval of this Detailed Planned Unit Development be granted by the Advisory Plan Commission as the Development Plan meets the intention of the proposed Detailed Planned Unit Development Ordinance, the Elkhart County Zoning Ordinance, and the Subdivision Control Ordinance. The motion was carried with a unanimous roll call vote.

8. The application for a zone map change from B-2 Planned Unit Development and R-1 to a Detailed Planned Unit Development-B-2/R-1 to be known as **RIVER LAUNCH DPUD**, and the application for Secondary approval of a Detailed Planned Unit Development known as **RIVER LAUNCH DPUD**, for The Board of Commissioners of Elkhart County represented by Brads-Ko

Engineering & Surveying, on property located on the East side of CR 17, 550 ft. North of SR 120 in Washington Township, were presented at this time.

Both Staff Reports/Staff Analysis's were presented by Mr. Burrow, which are attached for review as *Case #0CR17-091005-1* and *Case #0CR17-01006-1*. He reported that they have submitted a plat to dedicate the right-of-way. The County Commissioners already have the right-of-way, but he said this makes it more effective for people to find the plat in the future so they understand the process they went through to dedicate it. He then clarified that the plat just consists of one lot, dedicated right-of-way and retention areas.

The county property line in terms of ownership was questioned by Mr. Sharkey. Mr. Burrow explained that they separated the McDonald's property, which is the next item on the agenda, so there was a clear delineation of ownership and to make it easier to get the platting and ordinances recorded. Also pointed out on the site plan was the area where the new boat launch will be located.

Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th St., Goshen, was present on behalf of this request representing the County Commissioners, Douglas and Janice Coffman, owners of the McDonald's property, and the McDonald's Corporation. He also noted that council for McDonald's is also present to address questions from the Board.

Mr. Pharis then requested that he be allowed to make a single presentation and then answer questions on the River Launch DPUD and McDonald's Restaurant DPUD separately. He's concerned that doing separate presentations will be confusing for everyone because he said everything fits together. If the Board chooses to combine this into one presentation, Mr. Kolbus advised they would need to hear the Staff Report for the McDonald's Restaurant DPUD at this time and then there would be three separate votes.

Mr. Burrow then presented the Staff Report/Staff Analysis for the application for a zone map change from B-3 Planned Unit Development to a Detailed Planned Unit Development-B-3 to be known as ***MCDONALD'S RESTAURANT DPUD***, for L. Douglas & Janice Coffman represented by Brads-Ko Engineering & Surveying, on property located on the Northeast corner of SR 120 and CR 17, and the West side of River Launch Court (proposed right-of-way), common address of 21879 SR 120 in Washington Township, which is attached for review as *Case #21879SR120-091005-1*.

Mr. Pharis gave a brief orientation of the location of the existing McDonalds, the existing boat launch and the area of Linton's, which has been purchased by the County. He said their plan is to close all entrances on CR 17 so there will be no access to the boat launch. McDonalds is losing its access from CR 17 as well as from SR 120 so all access will be the new River Launch Court. This will provide two access points for McDonalds, an access point for the River Launch, and access points along the way for commercial and residential parcels east and north of River Launch Court.

This area is all under construction and Mr. Pharis said the new site includes a retention area, which he pointed out on the west side of the new driveway. He said that retention area will handle part of the water off CR 17, all of the water on the new drive, and the water off the parking lot. He also said that McDonalds has been permitted to put a pipe from their retention to that new retention area.

Mr. Doriot commented that they will be eliminating the inlet that fills with water all of the time and Mr. Pharis said that is the plan.

He continued to explain that they are amending the McDonald's PUD to a Detailed Planned

Unit Development. The changes are limited to eliminating CR 17 and SR 120 access points, creating two ingress points on the new River Launch Court, and a drainage pipe to the retention area. He added that McDonalds will maintain the existing pole sign on their property, and they have requested a new pole sign in a new location that is shown on the site plan. He spoke with the Planning and Highway Departments and they agree it would help to have a pole sign there to assist the motoring public in accessing this site as they are used to coming here on SR 120 or CR 17. The out-lot will remain green space with the exception of that sign, and he said McDonalds will have the right to install seeds or some plantings, and possibly put in picnic tables or a gazebo.

In each step of this DPUD process, Mr. Pharis said they have met with the Elkhart County Highway and Planning Departments and confirmed that all actions meet the requirements of both departments while keeping McDonalds apprised through their counsel. They believe they have correctly depicted the county's new boat launch and River Launch Court while accommodating the viability of McDonalds which has existed there for many years.

The height of the pole sign was questioned and Mr. Pharis said it would meet the standards, which was clarified to be 40 ft. Mrs. Wolgamood pointed out there would be two 40 ft. McDonald's signs within a short distance, which she objects to.

Mr. Yoder said there has been a significant change in the traffic patterns there so he understands the business wanting to help identify how to access their site. He said a right-in access is very important for most restaurants and they have pretty much taken that away from them.

Mr. Burbrink asked if the sign they are discussing would be permanent and Mr. Pharis said yes. He wondered how long it would take the public to learn where the new entrance is, but Mr. Pharis pointed out there would be visitors coming to Elkhart County to the River Launch with friends or family. He doesn't think anyone would be able to see a monument-style sign and be able to access without confusion. As a Board, he feels they also need to look at the disadvantages they've placed on McDonald's Corporation by removing all of their access points on public right-of-ways.

Mrs. Wolgamood asked if they've been compensated and Mr. Pharis said he's sure they have.

Mr. Doriot said he has used the CR 17 entrance in the past and he feels the new design is difficult to get around. He has more of a concern up at the boat launch because it is very isolated, and he doesn't know if there are any lights there or not.

If you're new to this intersection area, Mr. Yoder said it will be confusing for people to find it. This is a major intersection with major changes and a lot of traffic in this area so people are going to see the McDonald's and will need to figure out where that entrance is located.

If you remove the existing sign, Mr. Doriot said people will not see the new sign up CR 17 until the last minute, which could mess up the turning process in the intersection from the north.

Mr. Sharkey questioned the disadvantage of having both signs there. Mrs. Wolgamood said she is considering the other three corners, including the Marathon station on the northwest corner. They all have one sign, and she pointed out the Marathon station has also lost its access from CR 17 so she wonders if they will come in and ask for another 40 ft. sign as well.

Mr. Pharis said he represented the Marathon station as well and they still have direct access from SR 120. The signage they had stayed in place and they asked for a Variance from its distance from SR 120; however, this situation is different because they're creating a new road and new entrance.

Mrs. Wolgamood said she's lived in the area for 13 years and she has witnessed accidents

while people were trying to enter and exit from CR 17. That's been eliminated and she feels that River Launch Court will give them great access not only to McDonald's, but also to the restaurant to the east and the boat launch.

Mr. Pharis suggested the Plan Commission first decide whether this be a pole or a monument style sign and then they can proceed after they see what the vote is. His client believes that a pole sign will give him visibility for access, but he said he's not going to walk away from the project if he doesn't get approval for it.

Mr. Sharkey asked if the River Launch includes any structures and Mr. Pharis said it includes one. Although it is hard to see, he pointed out that it is shown on the drawing. He also clarified that the structure will be restrooms with connection to sanitary sewer and water.

Mr. Doriot asked if there is any lighting down at the boat launch, but Mr. Pharis didn't know as Tom Rushlow (County Highway Dept.) designed it.

Attorney Zeff Weiss, 3400 One American Square, Indianapolis, was also present to address three issues. He said they do agree with the lighting at the boat launch for protection and security because they are very concerned about people being down there particularly at night. They recognize that light pollution is an issue for the neighbors and people across the river, but he said they are very concerned about security and how it might impact on their restaurant at the corner.

Mr. Weiss went on to say they have not yet been compensated because they wanted to work through this process because it's very important to them. They have lost both of their points of access on CR 17 and SR 120, which they did not fight because they want to be cooperative. They welcome this new road because it is the only way they can get access, but their customers are looking for convenience and this is no longer easy in and easy out. According to Mr. Weiss, they have already experienced a significant decrease in business so want to do everything they can to maintain this restaurant and to continue to serve the community.

The issue Mr. Weiss sees with the pole sign is attracting people to see it. Otherwise, he said you will have people come to that intersection that may not be familiar with it and are trying to figure out where to go to get into the restaurant. They will see the original pole sign, but he said they are trying to attract their attention to the River Launch road to get in and out of their site quickly and conveniently. He then pointed out that as the traffic backs up on the light at the intersection, they will get their traffic backed up on the River Launch Road. Until the light clears he said it will be difficult to get in and out. They are trying to attract people in a way that makes it most convenient and most efficient given the circumstances they have.

In conclusion, Mr. Weiss said they feel this is the best design they've been able to develop with Mr. Pharis and his team. He then noted that representatives from McDonald's Corporation are also present to answer questions.

Mr. Kolbus said the Ordinance permits 40 ft. and he asked if they have looked at different options. Mr. Weiss said he thinks the sign may be less than that because the pole itself is 23.1 ft. with the sign on top of that. He pointed out that the application, as amended, does say not to exceed the 40 ft. because they are sensitive to that. He then indicated that their goal is to attract people to that corner and make it easier for them to get in and out.

Mr. Burbrink wondered how many people who visit this site are residents of the immediate area versus how many are transient passing through.

Addressing the question was Ryan Magnus of McDonalds, 250 W. 96th Street, Indianapolis. In an average McDonalds, he said about 60 percent of the traffic is local with 40 percent either working in the area at the time or passing through. They have seen upwards of a 40 percent decline

in the restaurant since their access has been taken away. He said you could make the argument that the remaining traffic is local and they know how to get there so what they've lost are people passing through who don't easily recognize how to access their restaurant.

Mr. Burbrink commented that a lot of people are avoiding the intersection right now because of the construction. According to Mr. Magnus, they have been tracking construction as well and the construction impact to them was significantly less than it was after they lost their access. Mr. Sharkey said they will get a big share of that back after the construction has been completed and Mr. Magnus said they hope to.

When people get to that intersection, Mr. Yoder said their focus is to get through and not stop to eat. Once you get there, he feels it is becoming even more confusing so he said that will improve.

Mr. Doriot feels the sign is needed to help clarify the issue, but he's not sure it needs to be 40 ft. tall. The Commissioners have the final say so he said the petitioner does have time to come up with different sign designs for them to look at. Mrs. Wolgamood asked if the sign is going on the Commissioner's property and Mr. Burrow said yes.

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

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Wolgamood*) that the Advisory Plan Commission recommend to the Board of County Commissioners that the River Launch DPUD be approved in accordance with the Staff Analysis with the condition that the owners look in to properly lighting the area so it does not adversely impact the east adjoiners, but provides adequate lighting for safety of the general public. The motion was carried with a unanimous roll call vote.

A motion was then made and seconded (*Wolgamood/Doriot*) that the Advisory Plan Commission grant Secondary approval of the River Launch DPUD as the Development Plan meets the intention of the proposed Detailed Planned Unit Development Ordinance, the Elkhart County Zoning Ordinance, and the Subdivision Control Ordinance. With a unanimous vote, the motion was carried.

A final motion was made and seconded (*Doriot/Lantz*) that the Advisory Plan Commission recommend to the Board of County Commissioners that the McDonald's Restaurant DPUD be approved as presented and in accordance with the Staff Analysis with the additional sign. The motion further reflects that at the time this DPUD is presented to the County Commissioners for final approval, they will have details of their proposed sign so the Commissioners can make an educated decision on that sign.

When asked if the details of the sign can be ready for the Commissioner's meeting, Mr. Wise said yes. He said they do have some sign alternatives that they want to test to see what they think is best to accomplish their goal.

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

9. Mr. Burrow reported that the staff would like to withdraw the proposed amendment to the Plan Commission Rules of Procedure by amending the Uniform Schedule of Fees (*see attached memo dated November 4, 2009*) as there are other fees they would like to be included. They are not asking for any Board action today, but he did ask for a consensus on whether this is the appropriate direction to go.

Mr. Doriot was opposed to adding fees for the administrative filings because it was meant as something to be straight forward and easier for the applicants. He doesn't feel the administrative subdivision is being handled the way they originally intended. He realizes this is to support the government, which is short on money now, but when the economy comes around he said they won't give this back.

According to Mr. Burrow, one item they do not have in the ordinance is the Appeal to the Plan Commission and a few of those do occur. The other issue is the major/minor change determination.

The cost for an administrative subdivision was reviewed at this time. Mr. Doriot explained that you were previously required to have three soil borings, but since it is becoming a lot, the Health Department requires additional borings. What used to cost \$250 to \$350 for a soil scientist is now costing the landowner between \$500 and \$900 in addition to paying the surveyor. Mr. Burrow clarified that two soil borings per acre are now required by the Health Department.

As written in the ordinance, Mr. Burrow said Primary and Secondary approvals are treated as two separate applications so there would be a separate fee for a Secondary. It was pointed out that there would also be fees for building and septic permits.

Mrs. Wolgamood felt that imposing these proposed fees might be a good idea in the future, but not at this time due to all of the emphasis on unemployment and the current economy. Mr. Kolbus asked if she meant the fees for the administrative subdivision, Mrs. Wolgamood clarified the amendment in its entirety.

Mr. Burrow then asked the Board to consider the Waiving of Fees portion of the proposed amendment. He feels that should be written into the rules so there's an understanding there is a procedure for it.

When Mr. Kolbus was questioned about the proposed wording of the Waiving of Fees, he asked for an example of a natural disaster or emergency (whether declared or not). Mr. Burrow said the Nappanee tornado, which was declared an emergency by the County, but not by the federal government. The reason, he said, was because too many of the residents repaired the damage themselves.

When asked to explain the last sentence, which says "for persons having been qualified for County Public Assistance where the Public Assistance Agency would be the sole provider of the fee", Mr. Burrow said vouchers have been presented for connecting electric and for Special Use applications. He said a procedure had to be put in place so an application could be issued, which the applicant could then take back to obtain their money from poor relief from the township. Usually, he said they can't get the permit until it is paid for. Therefore, he suggests they waive the fee since this is a county governmental agency that would pay the fee anyway.

Mr. Yoder said they could adopt the waiving of the fees portion of the amendment today because it makes a lot sense or they could look at it further next month.

In further discussion of the proposed fees, Mr. Burrow explained that in rewriting the Zoning Ordinance, there are issues associated with the Subdivision Ordinance that will be brought back to the Board, in addition to some references that the staff needs clarification on.

When asked how much he thinks these fees will generate, Mr. Burrow estimated \$150 to \$200 per month at the present rate. He indicated there has been a total of eight administrative subdivisions since adopting the new Subdivision Ordinance in March.

Mr. Doriot moved that the Advisory Plan Commission amend the Uniform Schedule of

Fees by adopting the Waiving of Fees as proposed: *“Waiving of Fees: Any scheduled fee, upon written request, may be waived at the discretion of the Director. The waiving of fees should be for, but not limited to, the following: Governmental Departments or Agencies application; any scheduled fee requests caused by a natural disaster or emergency (whether declared or not); for persons having been qualified for County Public Assistance where the Public Assistance Agency would be the sole provider of the fee. Additionally, any fees may be waived at the direction of the Elkhart County Advisory Plan Commission or by the Elkhart County Advisory Board of Zoning Appeals with the approval by a quorum vote of the Commission or Board at a public meeting.* Mrs. Wolgamood seconded the motion, which carried with a unanimous vote.

With regard to the remaining fees being proposed, Mr. Miller said there are not that many applications and we now have the waiving of the fee provision. If he had three acres and wanted to make an application for it, he said he'd be surprised if he didn't have to pay something for it.

Mr. Yoder said he understands if the decision to postpone action on these fees is due to economic conditions, but he said we also need to understand that we have a general policy in this county that some of the costs incurred are paid by the applicant. He said these services are going to have to be paid by somebody, either all of the taxpayers or the people coming in to ask for the service.

Mrs. Wolgamood suggested they discuss this further at the December meeting. This would give the Board members an opportunity to think about it and Mr. Holt an opportunity to review the minutes. Mr. Burbrink then commented that it would be helpful to see the list of all the fees.

Mr. Watkins reiterated that all the staff wanted to do was introduce this amendment for consideration, but it was not their intention to act on it today. He said another reason they're not asking for approval today is because there are other fees they need to consider internally, and he wants to continue to review the cost.

If reviewing the cost to the Planning Department, Mr. Doriot felt they should also review the benefits to the tax base; however, Mr. Watkins felt that would be very hard to do because every property is going to be different. If that has to be done, he said he would request the Commissioners require everyone to do that since there are other departments that do fees in the County.

Mr. Kolbus then advised that when any fee is set by the County, the guideline is that the fee cannot exceed the reasonable value of the cost of providing the service.

At the conclusion of their discussion, it was the consensus of the Board to review this further at the December 10, 2009, Plan Commission meeting.

10. There were no audience items.

11. The **2010 Planning Calendar** was presented to the Board at this time. Mr. Burrow said the major change is that there is now only one Plan Commission filing deadline per month rather than a separate filing deadline for Secondary applications.

Mr. Doriot commented that this will add more time to the process.

When Mrs. Wolgamood asked what the purpose of that was, Mr. Burrow said it will allow the staff to establish more effective filings. He said there are times when the staff has 10 or 15 applications and it is hard to determine whether it goes to the Plan Commission or Plat Committee. The staff was trying to establish that when an agenda is prepared, it is only done once and not modified three or four times throughout the month. This will allow a more consistent pattern of

processing applications.

In discussing the filing deadlines as they currently exist, Mr. Burrow indicated the staff does not have enough time to get the commentary back to the petitioner before it is assigned to an agenda. If the Plan Commission follows its Rules of Procedure when a deficient Secondary is filed, they are to deny it and the application fee is to be lost. Mr. Kolbus advised the Board that if everything is not in place, state law says Secondary is to be denied.

Mr. Doriot said they would be adding three to four weeks to the process, which Mr. Burrow acknowledged. He said there is nothing that stops anyone from filing a Secondary at the same time they file the Primary.

Mrs. Wolgamood recalled talking about this before and the reason they continued with the two filing deadlines was to take the burden of incomplete filings off of the staff. If this change were to take place, she said the burden would be put back on the staff and Mr. Burrow said has been assigned to the staff through the Ordinance. An applicant has the ability to go before the Plan Commission without a correct filing, but he said the way the Rules of Procedure are written, the staff will recommend denial because it is not technically compliant. Mr. Sharkey asked if that applies to DPUD's as well and Mr. Burrow said yes.

After further discussion, Mr. Burrow said they can change the filing deadlines back to the old way because the Planning Calendar can quickly be modified. However, he said they also moved the Board of Zoning Appeals filing deadline to facilitate having an actual timeline for advertising at a fixed point in the month. This will allow the staff to review the applications to check for completion and have time to advertise them in a correct format.

Mr. Yoder said Secondary approvals are routine and supposed to be easy. Mr. Burrow said they could create a Plat Committee made up of technical staff in the county with one Plan Commission member who could meet twice a month to act on those requests. Mr. Yoder said they talked about that at one time because they thought it would speed up the process and make it quicker, easier, and more effective for the petitioners. He wondered if that is a discussion they can still come back to and Mr. Burrow replied yes.

Mr. Doriot said he is more concerned about making it quicker and easier for the surveyors' clients. If they created a technical Plat Committee, Mr. Burrow said that would allow for the committee to meet more often so there is a shorter turnaround on the subdivision ordinance.

Mr. Marbach and Mr. Pharis were both present and Mr. Yoder asked for their opinions. He would rather not establish another committee if there is a way to work with this committee and have it done quickly and effectively. With the proposed filing deadlines, Mr. Pharis pointed out that it would take four months from the time someone applies for a minor subdivision until they go before the Elkhart County Commissioners, which he feels would be ridiculous. If the filing deadlines stay as they are now, it would reduce the time by one month.

When the timeline for major subdivisions was questioned, Mr. Pharis said it would be the same.

According to Mr. Burrow, they are not required to submit the plat to the Commissioners so that part of the application process could be removed. However, he said the Plan Commission would have to make sure everything is in place before Secondary is approved.

Under the current calendar, Mr. Kolbus said if they file in January, they will be done in April. On the new calendar, if they file in January, they will be done in May. He advised that they either change the calendar to the way it was done before or they amend the entire Ordinance and try to implement a new procedure. Mr. Burrow said he prefers the Board modify the calendar first and

then they can talk about changing the Ordinance.

Mr. Doriot feels they should be treating minor subdivisions different than major subdivisions due to their technical nature. If the Plan Commission has a technically complete application on January 1, Mr. Yoder said it should move pretty fast. If the application is correct when it is submitted, Mr. Burrow said you should be able to submit a Primary and a Secondary at the same time. Mr. Doriot pointed out that the definition of a “correct application” may not always be viewed the same. However, Mr. Burrow said “technically compliant” is the only thing that comes out of the Technical Committee. There may be other issues that come from the Technical Committee, but those are not allowed to be attached to the documents that come before the Plan Commission.

If someone submits the Primary and Secondary at the same time, but then they decide to make a change, Mr. Miller asked if that means the Secondary plan is no longer valid. Mr. Burrow said the Secondary does not reflect the improvements on the property, it only reflects the right-of-way dedication, easements, and setbacks. The site plan support drawing, which Mr. Miller is referring to, is a different document. He did say, however, that they are allowed to submit both applications at the same time under the PUD process.

Mr. Burrow said he needs some type of action from the Board so he can start printing the calendar. If the Board prefers to go back to the old style, he said they need to make that recommendation and the staff will modify the calendar to reflect that. He indicated that the staff will take under advisement that there is support for an expedited subdivision process.

A motion was made and seconded (*Doriot/Wolgamood*) that the proposed 2010 Planning Calendar be modified by separating the Primary and Secondary filing deadlines as they currently exist, with the staff to come back with a recommendation on an expedited subdivision process in the future. After a unanimous vote, the motion was carried.

12. The meeting was adjourned at 10:56 a.m.

Respectfully submitted,

Kathleen L. Wilson, Recording Secretary

Mike Yoder, Vice-Chairman