

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 13TH DAY OF JANUARY 2011 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, Tom Holt, with the following members present: Steve Warner, Tom Lantz, Dennis Sharkey, Meg Wolgamood, Jeff Burbrink, Roger Miller and Mike Yoder. Staff members present were: Robert Watkins, Plan Director; Mark Kanney, Planning Manager; Duane Burrow, Senior Planner; Robert Nemeth, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Warner/Miller*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 9th day of December 2010 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 December 2010 in the Goshen News and the 3rd day of January 2011 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Burbrink/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. ***Election of Officers for 2011.***

In reviewing the 2011 Slate of Officers and Appointments, Mr. Yoder asked if it is appropriate for a county commissioner designee to serve as chairman and Mr. Kolbus advised that there is nothing that prohibits it.

Mr. Warner moved to accept the 2011 Slate of Officers and Appointments as presented (*see attached*). Mrs. Wolgamood seconded the motion, and with a unanimous vote, the motion was carried.

6. The ***Agreement for Legal Services for 2011*** was presented to the Plan Commission for acceptance at this time. Mr. Watkins explained that it continues exactly as last year and Mr. Kolbus is agreeable.

Mr. Sharkey moved that the Advisory Plan Commission accept the Agreement for Legal Services for 2011 as presented (*see attached*). The motion was seconded by Mr. Burbrink and was carried unanimously.

7. The application for Primary approval of a two lot major subdivision to be known as ***RIVERWOOD PLACE***, for Marcia R. Parker Testamentary Trust Attn: Stephen Haas (seller) and Craig Gibson (buyer) represented by Marbach, Brady & Weaver, on property located on the North side of SR 120, 1,300 ft. East of CR 19 in Washington Township, zoned R-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #20797SR 120-101201-1*.

Present on behalf of this request was Chris Marbach of Marbach, Brady & Weaver, 3220 Southview Drive, Elkhart, representing Craig Gibson, the purchaser of this property. Mr. Gibson will be living in the existing home and Mr. Marbach said he would like to build a new home for his mother in the front corner of the property.

When Mr. Sharkey asked if they will be using the same driveway, Mr. Marbach said yes.

Kevin McNerney, 20757 SR 120, Bristol, said he lives on the adjoining lot to the east. He said he bought his property years ago because he liked looking at a private public park. All of the homes in this area are nice and private and he said he's being selfish because he doesn't want to look at someone's back door. He understands someone wanting to have a "mother-in-law's" house, but he would like some restrictions so he doesn't have to look at old trailers and the horse barn on the property that should have come down 20 years ago.

Mr. McNerney was asked if he lives close to the river and he said his house sits back in along the river and there is a floodplain across from him. It was then clarified that the horse barn Mr. McNerney referred to is designated on the site plan as the frame building with a roof over concrete.

Also present was Carl Grove, 20741 SR 120, Bristol. He explained that he moved to this area on the river to get in lower density housing and he sees this as the exact opposite. According to Mr. Grove, he went through this same process a few years ago to build on a lot that was smaller than the required size for a septic and well. His request was approved and his house was built, and he suspects he is very close to the septic system with his well.

When asked to point out the location of his property, Mr. Grove said his property is adjacent to Mr. McNerney's to the east.

Next to address the Board was Richard Peters, 20825 SR 120, Bristol. His property is just west of the property in question and he said his driveway is close to the location of the proposed residence. Mr. Peters is opposed to a residence being constructed near the entrance to his property.

In response, Mr. Marbach reminded the Board that this property is zoned R-1 and the size of the property complies with the Subdivision Control Ordinance. He then explained that the new home will not be physically near the neighbor's building to the east. He may see the petitioner's home when driving in, but probably not from his home because of all of the trees located in the area. He concluded saying they have obtained approval of the septic system from the Health Department as required by the tech comments.

Mr. Yoder asked if the existing driveway will remain in its current location. Mr. Marbach said yes and that it will be shared by both lots.

Mr. Miller commented that the septic field appears to be small and he questioned the soil type on the property. Mr. Marbach said there is enough room for the primary and secondary systems, and the soil types listed on the survey are mostly all Bristol Loamy Sand. He said the home is proposed as three bedrooms and the septic has been designed accordingly.

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

Mr. Yoder understands the neighbors' concerns about density, but he said R-1 actually allows for a higher density than what people are used to in this area.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Yoder/Wolgamood*) that this request for a two lot major subdivision be approved by the Advisory Plan Commission in accordance with the Staff Analysis as the requirements of the Subdivision Control Ordinance have been met. The motion was carried with a

unanimous roll call vote.

8. The application for Primary approval of a two lot major subdivision to be known as **TROYER COUNTY ROAD 48 SUBDIVISION**, for Todd and Michelle R. Troyer represented by B. Doriot & Associates, on property located on the South side of CR 48, 1,560 ft West of CR 13 in Union Township, zoned A-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #OCR 48-101206-1*.

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, was present on behalf of this request and he noted that Todd Troyer is also present. He explained that Mr. Troyer bought this parcel with the possibility of subdividing it in the future, but incidences in his family have required him to move forward sooner.

Mr. Doriot said they do have no-access easements in two locations he pointed out on the plat, and two access easements side-by-side on the property line. He agrees that the driveway on the westerly lot (Lot 1) is definitely needed due to sight distance. There is an existing entrance to the property, but Mr. Doriot said he talked with Mr. Troyer and he is agreeable to having side-by-side driveways on the property line. He acknowledged that that does condense points of conflict from a traffic standpoint.

Also on the plat is a 200 ft. building setback from the property line with a 100 ft. wide envelope for placement of the homes. Mr. Doriot said any outbuildings will be placed behind the 300 ft. setback line, and the petitioner has also volunteered square footage restrictions on the plat. There will be a 1,800 sq. ft. ranch and a 2,500 sq. ft. two-story home with a two-car attached garage on both homes. Mr. Doriot said they do have an easement to the south to Mr. Mishler's wetland for perimeter drains so they can properly drain septic systems and any basement drainage that is needed.

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/Lantz*) that the Advisory Plan Commission approve this request for a two lot major subdivision as presented and in accordance with the Staff Analysis. With a unanimous roll call vote, the motion was carried.

* (*It is noted that Blake Doriot took his seat on the Board at this time.*)

9. The application for Primary approval of a partial replat of Weaver Woods Section Two to be known as **WEAVER WOODS SECTION THREE**, for Keith Hershberger represented by Brads-Ko Engineering & Surveying, on property located on the South side of CR 28, 1,800 ft. East of CR 15 and East side of CR 15, 448 ft South of CR 28 in Harrison Township, zoned R-2, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #OCR 28-101206-1*.

Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th St., Goshen, was present on behalf of this request. He represents Keith Hershberger, the owner of Weaver Woods.

According to Mr. Pharis, Mr. Hershberger purchased what he thought was a platted subdivision with constructed streets and curb, constructed sanitary sewer and water from the city of

Goshen, and a drainage system with the ability to begin selling lots. He suddenly learned there were severe drainage issues so he tried to contact the engineering firm who designed the drainage and discovered they were no longer in business. Mr. Hershberger was not allowed to obtain building permits on this site so he contacted Mr. Pharis' firm to find a solution.

Mr. Pharis said he spent a good deal of time on this site with the city of Goshen and the Elkhart County Highway and Planning Departments to come up with a drainage solution. The problem with the original design is that the drainage had been designed to be below the seasonal high water table. When you have seasonal high water or your drainage is full of water, he said it does not accept water so their solution was to raise the retention areas above the seasonal high water table.

Mr. Pharis said they received an itemized list of requirements from the city of Goshen. Out of 29 requirements, he said all have been completed with the exception of item #17, which suggests that this subdivision be re-platted. There are some issues to work out with the staff on secondary platting, but he said that would be done before it comes back to the Plan Commission. Primary approval today would give them the ability to determine exactly what the staff wants so they can either comply with it or convince the staff that they don't need to do it.

When Mr. Warner asked what they have in place to prevent homeowners from having wet basements, Mr. Pharis said they have done several things to alleviate the problem. He explained that there were two existing homes and they were both adjacent to one of these retention ponds, which was constantly wet. They also learned that their sump pumps were running 24 hours a day. Their observation and the soil borings they obtained showed they were taking water out of their basements, pumping it into the retention area and it was drifting back under their basements. He said it has just continued to flow 24 hours a day the same way.

To solve the problem, Mr. Pharis said they raised the retention areas to be out of the seasonal high water table so they are not wet. Under their plans, he said their client then installed piping from these two lots under the street and into a large retention area that will hold and clarify the water and then allow it to drain into a drainage ditch that goes off-site. By doing this, he said they were able to stop the constant recycling and move the water that was coming under these homes away from them. He reported that they have also instructed their client that no finished floor elevation, including the basement, can be below two-feet above the seasonal high water table. In addition, he said there will be no more basements.

Mr. Pharis has been on a deposition for a home in Weaver Woods and he said both he and his client understand the problem. For future phases, it is their recommendation to raise the streets, eliminate curb, and use side yard swales to eliminate this problem of drainage retention areas that have to be so large. He said they have worked with the city of Goshen to obtain their approval because ultimately this will be their project. Additionally, there are two areas on the east side of the property that Mr. Hershberger owns, but is not part of Weaver Woods, where he said they have enlarged the retention areas. These areas are platted with metes and bounds legal descriptions on Weaver Woods Third to be part of the solution.

Mr. Pharis believes the problem for the two homes they have addressed is gone. He said there have been no issues of water in the basement of the three other existing homes in the development. He then went on to explain how the drainage now flows into the retention area and then into the ditch that flows off-site.

Addressing the Board at this time was Esther Pressler, 1712 Aspen Drive, Goshen. She owns Lot 38 on the corner of Aspen Drive and Tyler Lane, which she said is east of the ditch. In

her attempt to fix the drainage problem, she said she currently has three sump pits and four sump pumps to manage the water and keep her basement dry. She asked how they know the correction of the drainage done on the west side of the development hasn't impacted their homes in Weaver Woods One.

According to Ms. Pressler, the first comment on the original plat said no basements. She asked how homeowners like her, who didn't look at the plat first and bought her home with a basement that flooded three months later, will know that no basements on the other side of the development will be enforced. She said she doesn't want any other homeowners to go through what she has.

In response to Ms. Pressler's questions, Mr. Pharis said they will not affect anything on the east side with anything they are doing on the west side because the county regulated drainage ditch is between them. He clarified that everything they have done has been with Weaver Woods Second and future tracts so they can eliminate any problems to the west of the ditch. He said almost all of the homes on the east side in Weaver Woods One are already constructed and there are basements there. It's his understanding those basements were built below the seasonal high water table and without benefit of soil borings so they have issues with water in their basements. They are addressing this in phase two and three by setting the minimum elevation that a finished floor can be at two feet above the seasonal high water table.

Mr. Yoder asked if there is any possibility that Mr. Pharis' firm could provide some relief for the homeowners in Weaver Woods One and Mr. Pharis said he didn't think so.

Mr. Pharis went on to explain that their advantage with Weaver Woods Two is that there were very few homes and a lot of bare space. The problem with Weaver Woods One is that all these homes are built and they were built with basements. Anything is possible, but he said he doesn't know if the homeowners would want to spend the kind of money it would take to come back into that area and have a retrofit, which may include filling basements in with concrete.

If there is going to be any slight relief to the neighbors of Weaver Woods One, Mr. Pharis said it will come from their efforts in Harrison Ridge. He explained that there is a series of three retention areas they have addressed in Harrison Ridge that are all interconnected. He pointed out a single large retention area, the next larger retention area to the west of it, and the last retention area that is adjacent to Weaver Woods One on an aerial photo that was displayed. It's his belief that there will be some slight benefit to Weaver Woods by what they have done with these retention areas.

Mr. Sharkey asked if the county drainage ditch is sufficient or if it needs to be re-worked. Mr. Pharis said dredging the ditch and cleaning it out will not make a big impact.

Mr. Doriot said they have looked at that drainage ditch and have tried to adjust things through there, but they just can't fix it in this particular area. He said they would also have to go through Sherwood Glen and down through CR 113. They would have to lower large pipes at all of those crossings and they would also have to deal with a large Nipsco gas line.

Mr. Pharis believes they have solved the problems and have solutions for the balance of the land when the economy turns. He reiterated that they have strongly recommended no basements and absolutely no finished floor level less than two-feet above seasonal high water tables.

When Mr. Yoder questioned the location of Goshen's city boundaries, Mr. Pharis said it is way east of Harrison Ridge. He explained that the city of Goshen won't annex anything until it is built out and until it's adjacent to its corporate limits, which Harrison Ridge is not. He also said that the new CR 17 goes between the corporate limits and Harrison Ridge so he questions if they

will ever be adjacent because that 200 ft. strip is now owned by the county.

Mr. Doriot then asked if it would be possible for the developer to put a restriction on the face of the deed that says no basements are to be below a certain elevation in addition to all of the other restrictions. Mr. Pharis said he has told the developer that he has to have the purchasers sign a document at closing that they understand the basement floor elevation cannot be below the specified elevation. In addition, that is to be on the deed when it's transferred that this is a restriction to the lot, and he said Mr. Hershberger is in full agreement with this. Mr. Pharis said he will do everything he can to make sure that happens, but he cannot guarantee that will happen in ten years.

Ms. Pressler was then allowed to once again address the Board. She said that ditch is not large enough as it is completely full with any small amount of rain or snow melting. She then asked if the retention areas on the Harrison Ridge side are drained anywhere or if they are just meant to detain the water. With the new CR 17 extension, she believes the water situation on that side will worsen.

Mr. Pharis explained that the steps they have taken on the west side by enlarging ponds and creating areas to hold this water are partially to address the issue of the flood events to the ditch. The land on the east side (Weaver Woods One) is also lower and has a higher seasonal high water table than the west side. The three drainage areas in Harrison Ridge are supposed to connect to a ditch to the south that goes to the east, but he said it doesn't. That's why they've had problems in Harrison Ridge and why these are retention and not detention areas. Fortunately, he said they have sandy soils under all three retention areas to address the issue of ultimately draining away. He said they are going to remain wet most of the spring because you have the combination of heavy rains and snow.

Mr. Pharis also explained that the construction of CR 17 will be a benefit to portions of Harrison Ridge and Weaver Woods. He said it prohibits water from coming towards it to get to that ditch and it is captured on the east side of the new CR 17.

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

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Wolgamood*) that this request be approved by the Advisory Plan Commission as the developer and designer have met the standards in attempting to make this subdivision dryer. The motion was carried with a unanimous roll call vote.

10. The application for Primary approval of a 20 lot major subdivision to be known as **JEMIAN TRACE – PHASE III AND IV**, for Max R. and Rhoda E. Weldy, Trustees, Weldy Revocable Living Trust (owners) and Granite Ridge Builders (developer) represented by Brads-Ko Engineering & Surveying, on property located on the North side of CR 18, North extension of Jemian Drive, 2,300 ft. East of CR 23 South in Jefferson Township, zoned A-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #OCR 18-101206-1*. He has spoken with Mr. Pharis and he said the owner is changing the name of Kelsi Drive, which will be reflected on the Secondary plat.

Present on behalf of this request was Rick Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th St., Goshen, representing Granite Ridge Builders in Ft. Wayne.

According to Mr. Pharis, these two phases were part of the original preliminary plan of

Jemian Trace that was approved several years ago. He said Phases I and II have been platted, recorded, and lots have been built on. Due to the downturn of the economy the last several years, he said the overall preliminary approval has lapsed so today they are requesting primary approval of Phases III and IV with a total of 20 lots. The original overall plan did include the property to the north, but he said their plan does not own or have control of that land. He clarified that the petitioner is only buying these two phases and the balance of the land is still owned and controlled by the original developers.

Mr. Pharis continued saying each lot will have septic systems and its own well. Based on numerous soil borings they had done, he said some of the lots will need larger field systems. That has been accommodated on their plan and sent back to the Health Department for review and approval. The streets will be built and constructed to Elkhart County Highway standards and dedicated to the county for public use. The original primary plan had Kelsie Drive as the north/south street on the east side of these two phases and he said there is a Kelsie Court just down the street. With the agreement of his client and the planning staff, Mr. Pharis said they have changed the name to Nana Lane and that will be reflected on the plat.

Mr. Pharis reported that their restrictions will be above the county minimums, but they have not yet submitted them to the staff for review. The date of development is upon county approvals, and they are asking for no change in the zoning. The minimum floor size will be 1,200 sq. ft. and the average lot size is 23,000 sq. ft. Existing utilities are located within the dedicated right-of-way of Jemian Lane and within the platted easements of Phases I and II. He said there is no municipal sewer or water available to this site. This property is also not located within the 100-year floodplain boundary according to the 1979 FEMA maps.

According to Mr. Pharis, drainage is a big issue out in this area. He then went on to describe their drainage calculations and design, which has created an additional 2.63 acre/feet of storage needed within their phases to help accommodate some of the drainage that has been flowing to the south. He said the 2.63 is a little more than their two basins on the southwest and southeast corners of their sites will hold, but if you take it to the top of bank, they have 2.97 acre/feet of storage. During storms that are producing more than the 100-year three-inch rainfall, he said the retention basins will fill up, and with the overflow at the top of bank, it will continue on as the water is today through the entire frontage of their property. He did ask the Board to keep in mind that they are now taking almost three acre/feet of run-off away from what used to continue south and west.

In summary, Mr. Pharis said the overall drainage is currently about 1.68 acre/feet that flows through their site and from the north. Upon completion of the 20 lots in Phases III and IV, he said it will generate about 2.48 acre/feet and they are providing 2.5 acre/feet of storage. He then concluded his comments by saying they have addressed the comments and concerns from the Technical Review Committee.

Mr. Warner asked if they will continue with the same size and type of homes that are in Phases I and II and Mr. Pharis said yes. He also said they will adhere to the original restrictions from Phases I and II with some slight modifications, but they are all in excess of the county minimums.

There were no remonstrators present.

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

The Board examined said request and after due consideration and deliberation, a motion

was made and seconded (*Wolgamood/Doriot*) that this request be approved by the Advisory Plan Commission in accordance with the Staff Analysis with the condition that the street name Kelsi Drive be changed to a name that is phonetically different from Kelsie Court for public safety. With a unanimous roll call vote, the motion was carried.

11. The application for a zone map change from A-1 to M-1 for **Hi Tech Housing**, on property located on the North side of CR 8, 1,160 ft. East of CR 21 in Washington Township, was presented at this time.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #19319CR 8-101206-1*.

The size of this tract was questioned and Mr. Kanney said 15 acres. It was also clarified that the Plan Commission's recommendation will go to the County Commissioners and not the Town of Bristol.

Ken Giljack of Hi Tech Housing, 1103 S. Maple St., Bristol, was present on behalf of this request. He explained that Hi Tech Housing is part of Parkwood Homes and the manufacturing facility has been in this location for 25 years. They had an opportunity to purchase another facility in Bristol at an auction and they moved their main manufacturing facility to Maple Street.

Mr. Giljack said they bought three parcels of land to the north of their facility, which is contiguous to M-1 zoning. They would like for this property to be zoned M-1 along with their current property so it can be utilized for cold storage behind their plant. In talking with the staff, he said they do not want manufacturing access on CR 21 nor do they want any access to this property on CR 21. He said they have no objection to not accessing this property on CR 21. The plant is approximately 106,000 sq. ft. and he said there is physically not enough room to park their product on that site.

Mr. Giljack pointed out the 15 acres of property to the north is currently zoned A-1. He said they would be happy to separate a portion of that property off so it can remain residential. He then pointed out that all of the property to the south is manufacturing and there is a buffer zone between this property and the neighborhood to the east. He also said there is an excavation company in the area that parks large equipment outside. The land behind their property is about four-feet higher with sandy soil and he said they would like to fence it in within the next couple of years and use it for storage. They have no immediate plans to build, but in order for them to stay viable in this company and pay taxes on two buildings he said they need to have the option of selling it in the future.

According to Mr. Giljack, there has been an average of 100 people in their plant for almost 25 years and they have never had a problem with the existing septic system. He also said there is a storm drain that goes under CR 8, which goes all the way out to the St. Joe River.

Mr. Doriot asked if there is a high line running through the property and Mr. Giljack said yes.

Mr. Sharkey then asked if they own the A-1 tract to the north, but Mr. Giljack said no. He also replied no when asked if they own the buffer zone to the east. Mr. Giljack clarified that they do not own the residential property to the south of their residential property on CR 21.

Mr. Holt questioned the daily production of the cargo trailers in their plant and Mr. Giljack said they currently have 15 employees; however, there is a potential for that number to go much higher.

If they move parking back to this area, Mr. Doriot asked if they would be removing the tree

line on the east side of their property and Mr. Giljack said no. He was also asked how close they would be to the house and buffer area to the west. Mr. Giljack said initially would they probably just use the area behind their current property for storage.

Present in opposition to this request was Wayne Geggie, 52956 CR 21, Bristol, who lives in the house to the south of the petitioner's residential property on CR 21. He pointed out a tree line behind his house that buffers the area in the back and he's concerned about visual encroachment of RV's onto his property. He has no objection to them developing their property as long as they do not move the tree line and start moving forward.

In rebuttal, Mr. Giljack said there is already a buffer zone adjacent to Mr. Geggie's property. There are two deteriorating structures on their (Hi Tech's) property and they're going to contact the Bristol fire department to see if they want to burn them down. The tree line is basically a scrub tree line and he said they would be happy to plant more trees or combine some of the area with the property they own behind him.

Mrs. Wolgamood asked when they purchased this additional property and Mr. Giljack said about two years ago.

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

During deliberation, concerns about industrial traffic, the residential properties in the area, and the future use of this property if rezoned to M-1 were expressed. The options of submitting either a Planned Unit Development or a Use Variance to specify what the use and design is going to be were discussed by the Board.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from A-1 to M-1 be denied in accordance with the Staff Analysis. A roll call vote was taken and the motion was carried with Mr. Doriot voting in opposition.

12. The application for a zone map change from R-1 to B-3 for **Terry M. Streib**, on property located on the West side of Division Street (CR 23), 180 ft. South of N. River Road (CR 8) in Washington Township, was presented at this time.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #609N. DivisionStreet-101203-1*. He then read and submitted a letter from an adjoining property owner, Richard Schoonover, in opposition to this request [*attached to file as Staff Exhibit #1*]. Photos of the subject property are attached to this letter, which indicates the property is an eyesore. Mr. Schoonover is concerned that rezoning the subject property will decrease the value of his property and he questions why it is being used as commercial property.

Terry (Matt) Streib, 609 N. Division St., Bristol, was present on behalf of this request. He explained that the purpose of his request is to change the zoning to reflect the current use of the property. According to Mr. Streib, there has been some disagreement regarding what he can do there with the current non-conforming use. Not only has he been trying to figure out what he is allowed to do, he's also been trying to prove how this property has been used in the past, which greatly impacts how he can continue to use it.

Mr. Streib tried to obtain a Special Use Permit for an adjacent parcel that became available, but he said that request was denied. In court action in defending against the zoning, he was told the business is beyond the scope of their non-conforming use. He said their business has been there a

long time and he feels that changing to a business zoning would benefit him and the county by clearly defining what can be done and what is not permitted on the property, as well as saving them resources. He feels a business zoning would have more clearly defined rules and would be less open to interpretation because there is a lot of confusion regarding non-conforming uses.

Mr. Streib said he understands that once the zoning is changed to B-3 any permitted use in that zone could go on the property. He met with the staff last week, and in order to alleviate some of their concerns, he said he prepared some deed restrictions for the property, which he then submitted and reviewed with the Board *[attached to file as Petitioner Exhibit #1]*.

Because Mr. Streib had an opportunity to move the business, he said he originally considered rezoning this property to B-3 so he could move the business back if it didn't work out in the other location. However, if he moved the business, he said there would be no return under the current non-conforming use. The business has been on this property for 35 years and he said they hosted the national championships in Bristol in 1975. This has been his family's livelihood for longer than any of the surrounding property owners have been there so he doesn't feel it will affect their property values. Rob Cunningham, 700 N. Division St., Bristol, said he lives north of the property in question. He knew the business was there when he bought his property eight months ago and he has no objection with the business as long it remains the way it is.

Present in opposition to this request was Steve Eldridge, 2851 E. Bristol St., Elkhart. He is a real estate broker representing Janice Ress who owns the large parcel on the corner and adjacent to the subject property. Mrs. Ress has had her property for sale for roughly a year and he said the largest comment they've had from people looking at the property is the canoes they see lined up across the fence line. This takes away from the aesthetics of the home so there is no question it has already had an impact on the value of her home. Based on his 20 years of experience, Mr. Eldridge said he's confident that changing to a B-3 zoning would have a very negative effect on her property.

Mr. Eldridge said it's his understanding there is a lawsuit filed by the county that still exists in the court and has not been acted upon. The county filed suit in June 2007 against the owner of this property for exceeding their non-conforming use of the property and he said they were ordered to cease and desist. He's sure this action would have an effect on the court action, but he's not sure which action would take precedence over the other.

Mr. Eldridge was a 17-year member of the city of Elkhart's Plan Commission and he said it's his feeling this is a classic example of a spot zoning. This puts something in the middle of a neighborhood that is clearly residential and turns it into something that it's clearly not. Once rezoned, he said you lose control and it turns over to what B-3 is doing and whatever B-3 becomes in the future. He said we all know that granting this without getting a rezoning doesn't work because what you have given the petitioner is the right to do things that are not in conformance with the law.

Janet Ress, 101 N. River Road, was also present. She has owned her property since 1977 and she is opposed to rezoning the subject property from R-1 to B-3.

Mrs. Ress then submitted a packet to the Board for review and consideration, which contains photos and information pertaining to this request *[attached to file as Remonstrators Exhibit #1]*.

When she purchased her home in 1977, Mrs. Ress said this was a weekend canoe rental business only and there were no retail sales. They sold the canoe business in 1986 and then started retail sales. Everything was below the fence line at that time and was not visible. Matt took over the business in 2001 and she said the inventory started to increase almost immediately.

Mrs. Ress clarified that the privacy fence shown in the photos she submitted is her fence,

and the photos illustrate what she sees when pulling into her driveway. She also said there is an ad where the petitioner states he has over 400 pieces of product on the property now. The property is very visible to the neighborhood and she said it is an eyesore.

Attached to the information she submitted was a traffic count from the Elkhart County Engineering Department, which gives the average daily traffic count on CR 21. Mrs. Ress said the proposed sign of 55-inches by 80-inches with a maximum of one-foot off the ground would be five-foot high and would block the visibility from the corner. She has witnessed three and sometimes more semi deliveries in one day with no room to get in or out of the property. The semis were parked on North Division Street in the middle of the road, and at times she said they have sat there for 30 minutes waiting to unload.

Mrs. Ress feels that B-3 zoning has no place in a residential area. Not only would it harm the landscape quality of the area, she said it would also harm property values more than it has already. She then asked the Board to review the photos she attached with the information she submitted.

Also present in opposition to this request was Winfield Bates, 301 N. River Road, Bristol, whose property adjoins the property in question. Mr. Bates said the petitioner purchased an empty lot (Lot 2) in the Carmein housing addition and he was told by the Board he could not use that lot for his business. According to Mr. Bates, 90 percent of his business comes up through that lot.

Mr. Bates also explained that there are temporary buildings on the site and he said all of the canvas has blown off of them. He lived there before Mr. Streib's father sold the business and he had a privacy fence completely the back length of their property. The only thing you could see was the top of the house and he said no one had any problem with the business. When Matt moved in he removed the privacy fence and he said now the property is an eyesore. Mr. Bates said he installed a privacy fence to keep Mr. Streib's customers off of his property; however, Mr. Streib indicated there is an easement going through there for Lots 1, 2 and 3 and it is a much easier access for his customers to get down to the river. Mr. Bates feels the petitioner has no respect for this Board or his neighbors, and if this request is approved, he said the petitioner will not do what he is told to do.

The petitioner's father, Terry Streib, 8500 E. Keating Park, Lot B24, Floral City, FL, asked to address the Board. He was advised he could address the neighbors' concerns as part of their rebuttal.

Terry Streib said there have been a number of statements that are not correct. When he started the business, he said he started the rental and sales at the same time and he mainly had canoes and some kayaks on site. The statement was also made that the rental customers used the parking out front exclusively, but he said most stopped at the park where they ended the trip and only the sales customers parked out front at Fluid Fun. He said the business has always been visible from the road. He said you want to be reasonably visible in a business and he remembers hanging canoes and kayaks from the trees and stacking them so you can see the top half. He even lit the kayaks with lights at Christmas time. He didn't like the rental business and he didn't think his neighbors did either so he sold the rental portion of the business in 1989 and then only had sales. He explained that it was a separate type of business and separate type of customers, and it was also very noisy.

Mr. Streib said they did have a few semis coming in throughout the year, but it was always during the day when most people were at work. While reviewing the photos that were submitted,

he pointed out that from that angle you really cannot see any boats from Mrs. Ress' property. The only way you could see a boat looking up is if it was leaning right on that fence and he said none of them are. When he started the business, the racks were at least ten or 11-feet high so the canoes on top were always visible.

In continuing their rebuttal, Matt Streib clarified that the deed restriction he is proposing is not in place of the rezoning he is requesting. The purpose of the deed restriction is so the non-conforming use would continue and this type of business can remain on the property if rezoned. He pointed out that Mrs. Ress bought her property when the business was there, and it sounds to him that she wants to sell her property without the business being there, which he does not feel is fair.

Mr. Doriot questioned the number of canoes/kayaks on site when Mrs. Ress moved in next door. Matt said the non-conforming use did not come into play until approximately 1985 when zoning for the Town of Bristol was given to the County. At that time, he estimated there were 100 boats in the rental business.

Matt said it is not true that this was only a weekend rental business when Mrs. Ress moved in. They started racing in 1969 and he said his father was one of the top ten canoe racers in the country at that time. According to Matt, his father actually brought some boats in for sale before he started renting them. He also clarified that his father sold the business in 1989 or 1990 and not 1986.

With regard to the traffic count, Matt said it is not very high compared to a prime retail location. He suspects Mrs. Ress mentioned the traffic count because she thought their sign was blocking visibility. He then explained that their sign is a 4 x 8 ft. sheet of plywood hanging from landscape timbers. He said the sign has been in that location for probably 20 years it is only one foot off the ground and approximately 10 feet from the pavement.

In reviewing the timeline submitted by Mrs. Ress, Mr. Lantz commented that it appears the trouble started in 2003 when the privacy fence was removed and the units were visible. Matt explained that the privacy fence was removed because he bought Lots 2 and 3 and the fence was along the rear of those properties. He said he didn't see a need to have them fenced, but Mr. Lantz wondered if he would be okay if he put the fence back up with a gate. Matt indicated that he sold one of the properties and he uses the other for storage of his personal watercraft only.

With regard to semi deliveries, Matt explained that traditionally they have sold as many as 500 to 600 boats in a year, but that number has decreased to approximately 400 in the last few years. Semis hold 100 boats so they average less than ten semi deliveries a year. He doesn't remember having two deliveries at the same time and he disputed the comment that there have been two or three semis at the same time sitting out in the middle of the road for over a half hour. They do have UPS or FED-Ex deliveries as well, but he pointed out that Mrs. Ress has the same type of deliveries to her property.

Matt agreed that there are some definite eyesores shown in the photos Mrs. Ress submitted. However, he explained that he had picked up boats in the past rather than having them delivered and there were boats sitting around the parking area. He said the boats were cleaned up within a day or two. He then pointed out the location of Mr. Bates' property and said the easement he mentioned does not apply to the property where his canoes are kept. Had he been able to expand the business to the northwest, he said he could have used lower racks.

When Mr. Burbrink clarified that his customers should not be crossing Mr. Bates' property, Matt said they don't.

A motion was made and seconded (*Doriot/Holt*) that the public hearing be closed and the

motion was carried with a unanimous vote.

Mr. Doriot noted that Ann Prough, the code enforcement manager, was in the audience and he asked if she has been to the subject property quite frequently. She replied yes and said she had received the original complaint in 2004. When she was at the site, Mr. Doriot asked how often the property looked like it is currently shown in the photos and Mrs. Prough said often.

Mrs. Prough went on to explain that there is a long investigative report with photos and the main problem has been with storage. When Matt Streib took the fence down, she said he started to expand in the area beyond his original operation and that is when the county became involved. That resulted in the petitioner applying for a Special Use permit to expand the business, which was denied, and she said the vertical outside storage then became a problem.

The problem Mr. Sharkey sees is that they want to expand like every other business and it gets to the point where they do not conform. He said the business basically outgrows the residential area and he feels this now belongs in a commercial area. Both Mr. Doriot and Mrs. Wolgamood agreed that this business has outgrown the area and that it either needs to be brought back into conformance or moved.

According to Mr. Yoder, the county offered property to Mr. Streib near the Six Span boat launch, but he said there have been zoning restrictions placed on the property the county owns so the business could not be moved there. He then pointed out that the Staff Report indicates the petitioner would not be permitted to live in the B-3 zone he is requesting and he said that has not been addressed. If the Board agreed to recommend to Bristol that the property be rezoned to B-3, he's not sure that would be in the petitioner's best interest. He doesn't want to put someone out of business, but he agrees it has grown too big for where it is located.

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 Bristol Town Council that this request for a zone map change from R-1 to B-3 be denied in accordance with the Staff Analysis. A roll call vote was taken and the motion was carried with Mr. Miller voting in opposition.

13. The ***Amendment of the Millersburg II TIF District*** was presented by Mr. Watkins. He explained that this TIF was established in 2007 primarily to upgrade their water treatment facility. They have done some of that work, but in the process, they have learned that the expenses have basically doubled; therefore, he said they have asked the Redevelopment Commission for the dollar amount of that reimbursement to be doubled to 1.3 million dollars from \$650,000.

Mr. Watkins went on to explain that this is a 30-year TIF that brings in about \$180,000 per year so it does have the means to pay itself back. He said it became obvious to the Redevelopment Commission that the repairs were necessary. When the TIF district was originally approved, it was approved predicated upon them receiving some federal funding, which did not happen; however, he said they have applied again so it's possible they won't need the entire amount.

Mr. Watkins said a decision needs to be made by the Plan Commission to determine whether or not this is in compliance with the Comprehensive Plan as the Redevelopment Commission has already approved the expansion of the TIF. He then clarified that the only change is the dollar amount of the reimbursement the city can claim from the TIF, and he is actually seeing that amount going down because of appraised values or appeals. That amount is currently steady at \$160,000 a year and he said at that amount they should be paid back well within the 30-year timeframe of the TIF district.

Mr. Yoder moved that the Advisory Plan Commission approve the Amendatory Declaratory Resolution (2007-03) for the amendment of the Millersburg II TIF District (*see attached*). Mrs. Wolgamood seconded the motion and the motion was then carried with a unanimous roll call vote.

14. At this time, copies of the Pre-Draft Document of the Zoning Ordinance were distributed to the Board. Mr. Watkins explained that a lot of comments were taken into consideration at the previous public hearings.

Mr. Doriot asked how the changes are marked in the document and Mr. Watkins indicated they are red lined and black lined. A few of the changes were reviewed by Mr. Watkins at this time. There were questions about gun clubs at the public hearings, so they were added to the conservation zone and the agricultural zone. There was a comment regarding drive-up ATM machines and where those would be allowed under special exception. There were uses within the five-mile airport overlay zone that have been taken out. Language regarding zero lot lines was added to Section 4.3 under Planned Developments. The entire section on facades has been removed and the angle of roof requirement has been removed. There was a change in some of the isolation distances and where gravel driveways would be permissible.

Branded vehicles were an issue with some of the small home-based businesses. They were concerned about not being able to have their company logo on the side of their vehicle, so that section has been revised to allow for up to ten square feet of signage.

The Steering Committee spent a lot of time on the "Keeping of Animals" chart and couldn't come to an agreement, so it has been completely removed. There is no limit on inside animals and the outside animals refer to pastures.

On page 4.45, there were some changes to the landscaping requirements. The total number of trees required in a commercial zone was removed. Mr. Watkins noted that in Section 5.80 E, an important section was added regarding existing properties where improved lots will be legal and not legal non-conforming. Mr. Doriot questioned if his house burns down, then would he be required to rebuild. Mr. Watkins said from what he has seen, it would allow you to re-build in line with what is already there. If you wanted to go closer or larger than that, you would be required to meet the standards of the Zoning Ordinance.

A concern was discussed regarding the multiplier rule and that has been defined in Section 5.75 D. There was also some concern regarding the length of the sign section and that has been reduced significantly. A concern about pole signs was raised during one of the public hearings and the sign size in the highway and commercial zones has been increased to allow up to 400 sq. ft. The staff suggested that there needed to be a cumulative cap for signage on a piece of property. The section on storage tanks has been revised. He also noted that a paragraph was added under "Non-conforming Structures, Uses and Lots", section 6.02 C, regarding exemptions, which Mr. Watkins then read to the Board.

Mr. Doriot said he does not recall that golf courses would have the option to go back to agricultural from park and recreation. Mr. Watkins explained they did add sections in this Zoning Ordinance to talk about vacant land waiting to be developed.

Mr. Watkins said the staff has been working on the zoning maps and they need input from the Board on whether or not they agree with how they are being done. He then asked the Board if anyone would be available for a workshop on Wednesday, January 19th at 10:00 a.m. to talk about some of the changes.

With regard to setting this for a public hearing, Mr. Watkins said there has been some

concern about having a public hearing without all of the Board members present. Mr. Doriot said he does not want to set a public hearing until the Board has a completed draft.

Mr. Watkins explained they have addressed the comments and concerns expressed by the public interest groups; however, the sign ordinance may still be an area of concern. The timeline they are looking at would be a public hearing in February and then make changes in March.

Mr. Holt also felt they needed more time to digest the document before holding a public hearing. Mr. Watkins indicated the Board will be given a copy of Draft E by January 28th. Mr. Doriot explained he would be comfortable having a public hearing on it as long as the Board was given a couple weeks to digest it. Mr. Watkins noted that a copy of the Zoning Ordinance would be posted on numerous websites and CD's will be generated for the public.

At this time, Mr. Kanney explained that the staff has to re-draw all of the zone maps in Elkhart County. They have to adapt the old zones with the new Zoning Ordinance. There will no longer be an A-1 zoning district, but there will be other agricultural zones. The staff is trying to match the new zones to the existing land use.

A zoning map of one-quarter of the county was then displayed to the Board and Mr. Kanney pointed out that the potential boundaries of the sewer utility districts have been outlined in yellow. Also on the map is the area of influence of the two airport overlays, as well as the wellhead protection areas that have separate restrictions.

The tracts outside of the utility boundaries that are less than three acres are to be zoned General Agricultural (AG), but tracts within the utility boundaries which are greater than three acres will be zoned Rural Estates (RE). Rural Estates allows for hobby farming, but it is not big on promoting farm animals. Tracts inside the utility boundaries that are less than three acres will be zoned Rural Residential (RR) and tracts inside the utility boundaries that are platted in a subdivision, or a tract less than one and half acres, will be zoned R-1.

Mr. Kanney explained that the staff struggled with what to do with PUD's. They feel it's reasonable to keep them as is under the jurisdiction of the PUD Ordinances; however, he did say that future changes could require re-zonings. Mrs. Wolgamood felt that was logical and suggested having the PUD's identified as "PUD" along with the Ordinance number rather than including the zoning.

Over the years, Mr. Kanney said churches, schools and government buildings have been developed with Special Use permits. In the future with the adoption of the new Zoning Ordinance, those types of requests will be under an institutional zoning. The staff is unsure how to adapt the existing Special Uses and he questioned whether they should designate them as "Institutional" or leave the Special Uses in place.

Mr. Miller asked if they would be required to come back in to petition the Board in the future. Mr. Kanney said they would be non-conforming, but if they wanted to make any changes to the Special Use, they would be required to re-zone the property to the correct zoning.

Mr. Miller feels they will run into people who think they have a non-conforming building. Once they start changing things, they may develop an attitude that the change is permissible because they've had the use for years.

As a member of a church, Mrs. Wolgamood said she would prefer to be able to bring the neighboring property owners on board by the way of a Special Use permit as it would be less intrusive than an institutional zone. Mr. Yoder felt they should be treated the same way as PUD's.

Mr. Kanney said he believes an institutional use requires sewer and he's not sure that could be obtained.

Mr. Watkins explained that they are looking to link all of those types of uses with the GIS system.

Mr. Kanney then noted there will be further discussion on this at the upcoming workshop.

* *(It is noted that Mrs. Wolgamood was not present for the remainder of the meeting.)*

15. At this time, Alex Wait, 23604 River Lake Court, Elkhart, read and submitted a letter prepared by the Elkhart County Farm Bureau Board (*see attached*). This letter asks for clarification in what regard Elkhart County is currently non-compliant with State Statute or other law. The Farm Bureau would like to have a better understanding of the state statutes and other laws they must comply with before the Zoning Ordinance is presented for a vote.

* *(It is noted that Mr. Yoder was not present for the remainder of the meeting.)*

Mr. Holt felt the Board should work with the Elkhart County Farm Bureau Board and correct the state statutes they are not in compliance with.

Mr. Kolbus said whether or not they are non-compliant doesn't matter in the current Zoning Ordinance. As long as they are compliant in the new Zoning Ordinance, then that is all that matters. Mr. Holt then suggested having discussion on this issue at the workshop.

5. A motion to adjourn the meeting was made by Mr. Doriot and seconded by Mr. Warner. With a unanimous vote, the meeting was adjourned at 12:29 p.m.

Respectfully submitted,

Kate Keil, co-transcriber

Kathleen L. Wilson, Recording Secretary

Mike Yoder, Chairman