

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 13TH DAY OF OCTOBER 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, Mike Yoder, with the following members present: Roger Miller, Jeff Burbrink, Tom Holt, Tony Campanello, Blake Doriot, and Meg Wolgamood. Staff members present were: Chris Godlewski, 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 (*Doriot/Burbrink*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 8th day of September 2011, be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Doriot/Miller*) that the legal advertisements, having been published on the 1st day of October 2011 in the Goshen News and the 3rd day of October 2011 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. At this time, Tony Campanello was welcomed as the new board member replacing Tom Lantz. Mr. Campanello's Certification of Residency was then entered into the record (*see attached Staff Exhibit #1*), which Mr. Kolbus explained is pursuant to the new state law in the Rules of Procedure. Since Mr. Lantz was a member of the Plat Committee, Mr. Kolbus also asked the Plan Commission to re-affirm that appointment.

Mrs. Wolgamood moved that the Advisory Plan Commission re-affirm Mr. Campanello's appointment to the Plat Committee replacing Tom Lantz. Mr. Burbrink seconded the motion, which then carried with a unanimous vote.

6. The application for a zone map change from R-1 to B-1 for ***Edward W. & Linda Gillespie (lessor) and Aaron & Angela Gillespie (lessee)*** on property located on the North side of CR 10 (Bristol Street), 225 ft. West of Glenwood Park Drive, 1,800 ft. East of CR 13, common address of 23653 CR 10 in Osolo Township, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #23653CR 10-110906-1*.

When the zoning district of the professional office adjoining the residential properties to the east of the subject property was questioned, Mr. Burrow explained that property is located within the city and zoning is not published on their website. If located within the county, he said it would be zoned B-1 or B-2, but it would not qualify as an R-4 zoning district based on Elkhart County's policies.

Mr. Burrow then submitted a petition in remonstrance to this request [*attached to file as Staff Exhibit #1*], and a letter from William and Mary Ezzell who live at 1555 Burgundy Court, Elkhart [*attached to file*]

as Staff Exhibit #2]. The Ezzells feel the appearance and type of business being requested would compromise the value and integrity of the neighborhood, and that it is totally out of character for the area. Also submitted was a letter from the City of Elkhart [attached to file as Staff Exhibit #3]. The city is opposed to this request as they feel B-1 zoning would allow for uses that are not in harmony with the surrounding properties and that there is inadequate space for required parking. They are also concerned about the storm water run-off and the potential for traffic hazards from patrons backing onto or parking along CR 10. The city feels that denial of this request would not deny the owner a viable use of the land as it can continue to be a residence or function as a rental.

After the Board reviewed the letter from the City of Elkhart, Mr. Burrow amended his Staff Report to include the following comments. Referring to paragraph 3, he said Elkhart County B-1 zoning does include a residential / commercial mix as a permitted use. The statement in the letter may be valid inside the City of Elkhart, but he said it's not valid with the Elkhart County Zoning Ordinance.

Mrs. Wolgamood asked if that includes single family residences and Mr. Burrow said yes.

Mr. Burrow estimated that the required parking spaces could range from 3 to 5, depending on how much actual retail they're going to display for sale. One of the things that will limit the impact is the fact there is not to be outside storage or display, which is not permitted in a B-1 zone. In addition, if there is a slope that allows run-off to leave the property, he said a modification will be required.

Mr. Burrow continued saying the traffic impact would be less than the adjacent assisted living facility, the multi-professional offices located near the non-residential uses, the library, and the school. In terms of overall traffic in that area, he said the turning impacts will be negligible. He then clarified that this will have to be reviewed by the Elkhart County Highway Department and they will apply their standards to this driveway.

Mr. Burrow acknowledged that this property could be a rental (referring to paragraph 4 of the letter), but he said recent court decisions in the State of Indiana says rentals are not permissible in R-1 zones. The Elkhart County Zoning Ordinance does not allow business /commercial activity within an R-1 zone so he said they could be challenged if it is rented in addition to what they have already had complaints on.

The staff still supports the request to rezone this property from R-1 to B-1, and Mr. Burrow said they will require that the petitioners submit and demonstrate compliance.

Mrs. Wolgamood asked if the structure is owner/occupied now and Mr. Burrow said it is currently a rental.

Present on behalf of this request was Dallas Fireline, 16168 CR 14, Goshen. He is representing Aaron and Angela Gillespie, his son-in-law and daughter, and Ed and Linda Gillespie, Aaron's parents and the property owners. He explained that Aaron and Angela lost their home three years ago due to the present economy and Aaron could not find a job to support his family. His parents offered this property to them and he said the business Aaron is doing will allow him to support his family and be close to care for his wife who is ill and undergoing treatment. They want to live in the residence on this property, and they are requesting this rezoning to B-1 so he can operate his retail store.

Mr. Fireline said he did not realize this wasn't commercial property, and because there is so much commercial on Bristol Street, he didn't see a problem. He indicated that a realtor (Mary Ezzel) listed the property for sale as commercial property so he's not sure why she is now opposed because she said all three of those properties need to be changed to commercial.

If there are issues with water run-off, Mr. Fireline said they will take care of it. He operates a construction company and he poured the concrete for the driveway. He then explained that Ed and Linda have lived there for 20 years and parked on the hill by the front door. He said they have never had a problem with erosion. He also indicated that the motor home is owned by Ed and Linda and they are normally gone. The motor home has been parked on the property so they could work on remodeling the home at night for Aaron and Angela. They also wanted to remain here while Angela is undergoing treatments. He said the motor home will be gone in a week and a half and will not be sitting there again.

In conclusion, Mr. Fireline said the B-1 zoning limits what can be done on this property. The retail store is all Aaron wants to do so they feel that this was the best way to proceed. He said he looked at the petition in remonstrance signed by the residents of Brentwood, but that surprises him because Aaron has had residents from Brentwood buying from his store. He admitted that there are people who are not happy with the business, but he said you have that with anything you do and it is something you just deal with.

Mrs. Wolgamood asked if this property is served by city services and Mr. Fireline said there is a septic and well there. He said it may be available in the future, but the sewer hook-up is behind the house and the cost would not be feasible to trench in all the way around the house so they did not hook-up.

Present in opposition to this request was Ben Russo, 3517 Briarwood Drive, Elkhart, which is located to the east of the subject property. He is concerned about the traffic as there are two lanes with a passing lane on the right. There have been a lot of accidents in this area, and because it is narrow, he said you do not want to turn left going west toward Pinewood School. If there were four lanes, he said it would be a different situation and he indicated that turning right going east is not a problem. Mr. Russo said he's been watching the sales on this site and he does not feel that five parking spaces will be enough.

Also present was David Henke, 1752 Crabtree Lane, Elkhart, who is the Executive Director of Brentwood. He submitted a photo to the Board *[attached to file as Remonstrators Exhibit #1]*, which he said was taken yesterday and shows the outside display and motor home parked on the property.

According to Mr. Henke, city water and sewer passed through and is all the way out to Pebblestone Phase I. There are two or three homes that are carved out so this property is surrounded by city property. He said the property is non-conforming and it became a major eyesore. In addition, it poses a safety risk to everyone entering and exiting their (Brentwood) building. Because of parking, he said emergency vehicles could not enter or exit their facility, which he pointed out is a Senior Independent Living facility. They talked with the neighbors about this on several occasions and they put up signs, which solved the parking problem, but he said it added to the eyesore. He then indicated that they have had the police out on several occasions to solve the parking issues. People park on Bristol Street and their property cluttering their driveway, but they don't park in the petitioners' driveway because it is full of items for sale.

Referring to the photo he submitted earlier (Remonstrator Exhibit #1); Mr. Henke said you can see signs that say "no parking at Brentwood". They were told two months ago that the motor home would be leaving next week, but it is still there. Whether someone is living there or not, he said the lights are on at nighttime, and it looks like the rug in front of the door would indicate that people still live in the motor home. In the background, he noted that a truck with a trailer behind it is parked on the lawn. The landowners were given a cease and desist order from Code Enforcement, but he said they have not complied nor cleaned the property up. Should this rezoning

be passed with restrictions, Mr. Henke said they will need to be policing it all the time because complaints will be made.

Mr. Henke then clarified that the petition submitted in remonstrance (Staff Exhibit #1) is not from the residents of Brentwood, it is from all of the surrounding houses. He said there were only two people who did not sign the petition because they didn't understand what was happening. He then indicated that Brentwood has their own petition in remonstrance, which is signed by 78 residents; however, he did not have the petition with him so it was not submitted to the Board.

Even though this business may provide a livable income for the petitioner, Mr. Henke said it detracts from the other businesses in this area. Based on their clientele, he said purchasing items from this retail business is not something the residents from Brentwood do, either physically or financially. He did say, however, that the landscaper at Brentwood has gone over to the retail business to make an inquiry. His vehicle was parked at the entryway to unload tractors to cut the grass when other people pulled in and blocked the other lane. When that happened, he said there was no ability to get in or out of their property.

Mr. Henke feels this business will be injurious to health and safety. The property is located on the outside curve, so as you exit Brentwood, he said the view to the left is obstructed due to the items sitting outside on the subject property. He said they have poured the drive all the way to the street and there is suppose to be a 30 ft. angle for view. They don't have anywhere close to that so he does not believe a permit would have allowed that. Mr. Henke said the traffic is congested because people park across the road on Bristol Street. This is a garage sale so people do stop, and if their drive is cluttered with all of those articles for sale, he said the only place you can park is in their yard or on Bristol Street, neither of which are permissible.

In addition to traffic congestion, Mr. Henke listed property values and erosion as potential harm to others. He said you don't put a scrap yard next to a country club, which is what they've done. Brentwood has been there ten and a half years, and he said they went through zoning and complied with everything they were required to do. He indicated that this is the highest rent district in the city of Elkhart, and the devaluation of their properties will have a larger impact.

With regard to non-compliance, Mr. Henke said the photo shows five or more violations on this property as of yesterday, even though this has been ongoing for more than two months. He said they are not going to get conformity so he hopes the zoning remains as it is today and that it be enforced.

Mr. Miller questioned the violations in the cease and desist order. Mr. Henke said it regarded parking on the grass, the motor home could be there but no one could be living in it, and they cannot park or have items displayed within a certain distance from the sidewalk as it affects the view when leaving the property.

Laura Manley addressed the Board at this time. She lives at 1553 Burgundy Court, Elkhart, which is on a cul-de-sac directly behind Brentwood. She feels this request does adversely affect her property value and she asked the Board to honor the intentions of the city. She feels this business is out of character for the city of Elkhart as the businesses in the area are professional buildings with plenty of parking space. She said the property in question looks like a perpetual yard sale and it is an eyesore. If there is a cease and desist order, she said it is not working and she would not want it next door to her if she lived in the county.

Ms. Manley then submitted four color photos of the subject property and Brentwood *[attached to file as Remonstrators Exhibit #2]*, which is located next door. She said the difference in the appearance of the two properties is stunning, and she feels the hand lettered signs on the property look very

unprofessional. There is no parking and she said this is a dangerous corner on a very busy street. As you look east on Bristol St. from the subject property, she said it is heavily treed and you cannot see around that curve.

If approved, Ms. Manley is concerned that there would be no way to stop other requests should someone else want to put a business like it in one of the other houses. She does not agree with the staff's recommendation that this will not adversely affect them. She has sympathy for the plight of the petitioners, but she suggested they lease property for their business in Cobblestone Crossing, which is five minutes away.

Steve Garatoni, whose company developed and currently owns the real estate of Brentwood, was also present. He is very supportive of Aaron and Angela and glad that Aaron has found a business that hopefully can thrive for his family. He said the business is not so much the issue, it's because of the accountability that's been put forth by the city to develop along Bristol Street to not only function well, but to also be aesthetically pleasing. If this was a building built from the ground up specifically for this use, he thinks everything, including the traffic, visual appeal, parking, and drainage, would have been looked at more closely. The area is being developed with businesses and he said there have been major expenses to enhance the area and traffic. He feels the petitioners need to adhere to the standards that have been set by the city like other properties in this area.

With regard to safety, Mr. Garatoni said people do not have a place to turn around and they back in and out on Bristol Street. With the current amount of traffic coming through, and more that he anticipates, he asked if the Board wants people pulling out blindsided onto Bristol Street.

When the audience was asked if there was anyone present in opposition to this request, but does not want to speak, a number of hands were raised.

In response, Mr. Fireline assured the Board that the motorhome will be gone. It was supposed to be gone over a month ago, but it remained on site to help out his daughter. He indicated it would be gone in a week and a half and will never be there again. Code Enforcement had come out to the site and Ronnie Weiss informed them they would need to be in a B-1 zoning district. Mr. Fireline proceeded to come into the office and talk to the staff to find out what he should do and Code Enforcement has allowed him to continue operating pending this public hearing.

There is adequate parking on site for their operation and he indicated cars do not back out onto Bristol Street. The cars turn around in the parking lot and exit the premises. Since the business has been operating at this location, they have had two people that had pulled into Brentwood and they have immediately went over and told them they are not allowed to be there. Anybody else parking over there or blocking the driveway is not someone involved with this store.

The signs are handwritten and if granted a B-1 zone, a sign will be installed in accordance with the requirements of the Zoning Ordinance. They have also complied by moving all items to the appropriate setback to ensure it doesn't block vision, and by moving all items inside at night. It was indicated that the property line is in the middle of the sidewalk and they poured the driveway up to the edge of the sidewalk. Overall, Mr. Fireline explained there is commercial property all along Bristol Street and he believes the residential properties will become commercial developments in the future.

Mr. Yoder asked if the items shown in the photo are all moved inside at night and brought back out in the morning. Mr. Fireline said they were told everything had to be a certain distance back from the edge of the right-of-way. They are not allowed to have saleable material out there. He indicated they don't put items out much farther than where the motorhome is located.

Mr. Yoder said the B-1 zone does not allow for outside storage, but Mr. Doriot clarified the B-1 zone does not allow for outside display. If this request is approved, they cannot have displays on the concrete in front of the building. Mr. Fireline said they have no problem with adhering to the conditions.

The Zoning Administrator was then asked to comment on outside storage and display. Ann Prough, Zoning Administrator, said the B-1 district does not allow for outside storage or display related to the retail business. When Mr. Weiss was out on site, the complaint was that they were operating a retail business and had outside display of items and they were told that retail sales were not permitted in the residential zoning district. They then tried to classify it as a garage yard sale, but that is not permitted because you're only allowed to have six sale days per year. They were told to cease and desist everything immediately, whether it was inside or outside. Therefore, it would not be permitted.

Mr. Miller recalled that Mr. Fireline said they were told they could continue until the hearing was completed. Mrs. Prough explained the complaint was received on August 29th and Mr. Weiss went out to the site on August 30th. On August 31st he wrote a letter and on September 1st Mr. Fireline came in and met with the Planning staff. He determined to submit a rezoning application and was told at that time that they could continue operating until the public hearing.

Mr. Doriot noted a vehicle parked in the grass and Mrs. Prough said that is not permitted. She explained that you can park in a front yard, but it has to be back at least 15 ft. from the property line or 55 ft. from the centerline of the road, and it is required to be on a dust free surface. Mr. Weiss had addressed parking with them at the time of his site visit.

When Mrs. Wolgamood questioned if the motorhome was addressed by Mr. Weiss, Mrs. Prough said yes. They had indicated to Mr. Weiss that no one was occupying the motorhome.

Mr. Miller questioned if a motorhome is permitted to park on site in a B-1 zoning district and Mrs. Prough said yes and indicated they are also permitted in R-1 zones. A motorhome is accessory to a residential use, but it cannot be occupied.

When asked if they have talked to the Highway Department about entrance requirements, Mr. Fireline said no since they didn't disturb the existing entrance. Mr. Doriot explained that with the use change, there may be different restrictions placed on the property by the Elkhart County Highway Department. Mr. Fireline said he would gladly contact them and follow their restrictions.

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

Mr. Holt said they could be a good neighbor if they follow the standards and he feels they are willing to do that.

Mrs. Wolgamood sympathized with what they are going through, but she also sympathizes with the neighboring property owners. She feels this is the most dangerous area along Bristol Street. She does not disagree this will most likely become commercial in the future, but she noted everything surrounding this property is zoned Planned Unit Development or single family residential. The city has architectural control, but she said this Board does not. With a straight rezoning, there would be no restrictions and she pointed out there is a list of 62 permitted uses in a B-1 zoning district. She indicated the Zoning Ordinance stipulates off-street parking.

If the city wants control over this, Mr. Doriot feels they should annex the property.

Mrs. Wolgamood said she talked with Eric Trotter from Elkhart City and asked why this property was an island. Mr. Trotter explained to her that there was a request to annex this property, but the owners of these three residential properties did not want to be annexed.

Mr. Yoder is concerned that the petitioners will struggle to meet requirements should this be a straight rezoning to B-1. He would prefer that the family go through the Board of Zoning Appeals process to address what they want to conduct on this site rather than a straight rezoning.

As this property currently exists, Mr. Campanello feels said there is no room for this business to expand.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Burbrink*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from R-1 to B-1 be denied. The motion carried with the following results of a roll call vote: Miller – yes; Burbrink – yes; Holt – no; Campanello – yes; Doriot – no; Wolgamood – yes; Yoder – yes.

The audience was then advised that this request would be heard by the Elkhart County Commissioners on November 21, 2011, at 9:00 a.m.

7. The application for a zone map change from B-3 to R-2 for **Marjorie Springer (seller) and Ronald L. & Karen S. Butler (buyers)** on property located on the West side of Benton Street (SR 13), 330 ft. South of Lincoln Street (CR 42), common address of 227 South Benton Street in Benton Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #227S BentonStreet-110901-1*.

Marjorie Springer, 407 S. Martin Street, Ligonier, was present on behalf of this request. When she purchased the subject property, she said she was not told it was zoned for business (B-3) and apparently, that was not something the realtor needed to disclose to her. She did some research on this property, but was not able to ascertain how long it has been zoned B-3. The buyers are being funded with an FHA loan, and because this is a residential area, FHA has a problem that it is zoned business. Therefore, she said the Butlers are locked into a purchase agreement through at least October pending the rezoning process to see if they can still buy this house.

There were no remonstrators present.

A motion was made and seconded (*Yoder/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/Holt*) that the Advisory Plan Commission recommend to the Millersburg Town Council that this request for a zone map change from B-3 to R-2 be approved in accordance with the Staff Analysis. The motion was carried with a unanimous roll call vote.

8. The application for a zone map change from B-1 to B-3 for **Marvin H. & Ruth A. Schmucker** on property located on the West side of 1st Street (CR 13), 300 ft. North of CR 142 in Union Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 13-110808-1*.

Present on behalf of this request was Marvin Schmucker, 67515 CR 13, Goshen. As stated in the Staff Report, he said this property was originally zoned B-3 and then rezoned to B-1 for a house that was never constructed. He'd like to return it to B-3 so he can have a small used car lot.

When Mrs. Wolgamood asked if he owns the existing B-3 property located to the south, Mr. Schmucker said that is owned by Mr. Hess.

There were no remonstrators present.

A motion was made and seconded (*Miller/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 (*Holt/Wolgamood*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from B-1 to B-3 be approved in accordance with the Staff Analysis. With a unanimous roll call vote, the motion was carried.

9. 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 **WINGS ETC. NORTH GOSHEN DPUD-B-3**, for Trinity Development Group, LLC represented by Marbach, Brady & Weaver, Inc., on property located on the Southwest side of US 33, 192 ft. Southeast of Glenmore Avenue, common address of 23222 US 33 in Concord Township, was presented at this time.

A letter from 1st Source Bank, which Mr. Burrow explained is one of the properties that was part of the original DPUD, was submitted to the Board [*attached to file as Staff Exhibit #1*]. It was then clarified that Ingrid Mathias signed this letter in her official capacity with 1st Source. Because of the short timeframe, Mr. Burrow said he was advised that she limited the amount of her comments to very specific issues associated with their feeling of lack of involvement in this process that would negatively impact them should the request be approved. In summarizing the letter, he said they are basically asking that this matter be held until they are involved in the process.

Mr. Burrow went on to present the Staff Report/Staff Analysis, which is attached for review as *Case #23222US 33-110801-1*. He said the staff feels strongly that they want the integrated traffic patterns to continue through this property.

Mrs. Wolgamood asked if they are suggesting no curb cut to US 33. Mr. Burrow said they still support the curb cut to US 33, but they want the extra relief to facilitate those people who do not want to go to a non-signalized intersection.

Based on the information from 1st Source that they were not involved in this, Mr. Burrow said the staff is not sure this site plan is ready for consideration by the Plan Commission for final recommendation.

When the Board's options were questioned based on Mr. Burrow's last statement, Mr. Kolbus said they have the right to table the request now, or they can table it upon conclusion of the public hearing if they feel what's been represented is accurate.

Chris Marbach of Marbach, Brady & Weaver, 3220 Southview Drive, Elkhart, was present representing Trinity Development Group, owners and operators of Wings Etc.

In describing the area surrounding the subject property, he pointed out that US 33 is now much wider than when this project was first discussed. They are proposing for Wings Etc. to sit in the front area with access to US 33 and parking in the back. Six-foot opaque fences are proposed along the west and east property lines to shield adjoining properties from headlights. The current city limits line is between the 1st Source Bank and follows a portion of the subject property.

At this time, Mr. Marbach submitted a copy of the August 19, 2011, minutes of a meeting held by the City of Goshen [*attached to file as Petitioner Exhibit #1*]. He explained the discussion was about the 1996 PUD, where this was originally adopted. Also submitted was Ordinance No. PC96-38 [*attached to file as Petitioner Exhibit #2*] when 1st Source Bank was approved. He noted that page 3 shows the site plan that 1st Source Bank was approved on. It says that they were to build an entrance road to service the subject property in the future, but that was not enforced. They did not provide that access, which he

said is not their fault. He feels requiring them to get that fixed before they can get a building permit is an undue burden on the petitioner. They are willing and ready to build the driveway if they can get the easements. On August 19, 2011, Mr. Barks indicated he would start working on obtaining those easements as indicated in the minutes. This request has already been delayed for a month and they are still waiting for those issues to be resolved.

Mr. Marbach said they are not opposed to an access in the back to the ring road, but they feel the entrance on US 33 is sufficient. He said they can't force a third party to give them an easement. He noted on the site plan that they have shown alternate access locations. Meijer verbally told them that they didn't want a second entrance on their ring road and asked them to come through 1st Source, but 1st Source doesn't want them going through their parking lot. He requested that the condition recommended by the staff not be imposed.

The staff is concerned that the utilities are not in place, but he said this project will be on sewer and water. He said they have other options that they will pursue if they need to, but it doesn't affect the planning of the property. If they can't get utilities there, he said they will not build it. This property has been vacant since at least 1996 and he said this will bring more jobs into the area. He then requested approval of this request with a condition that they obtain sewer and water, and that they construct a rear driveway if they can obtain easements.

Mr. Yoder said the City of Goshen submitted a letter asking the petitioner to meet signage and lighting requirements, but Mr. Marbach said that will not be an issue. If approved, he said they will have to get a sewer agreement with the City of Goshen.

Michael Clayton, 59597 Glenmore, Elkhart, was present in opposition to this request. After he pointed out the two parcels he owns on the aerial photo, Mr. Clayton explained that he has lived in the area for 24 years. He applied for a lower interest rate on his property and due to foreclosures in the neighborhood, his property value has been lowered to \$62,000. He is concerned that this will decrease the value of his property even more, so he is opposed to this request.

Mr. Doriot explained that the property in question is already zoned for the proposed use, which Mr. Clayton said he is aware of.

Mr. Yoder pointed out there would be an opaque fence to offer them some protection to the surrounding property owners, but Mr. Clayton said they are already getting increased traffic in the area due to the new Ashton Pines apartment complex. A copy of the site plan was then given to Mr. Clayton to review.

Also present in opposition to this request was Randy Troyer, 519 Sunset Lane, Middlebury. Mr. Troyer explained he owns 59608 and 59610 Glenmore, Elkhart, which he pointed out on the aerial photo at this time. He said the house on the corner has been for sale for a couple of years and the next property to the south is in distress. He asked if this zoning will eventually move onto those properties. Mrs. Wolgamood explained the properties are zoned R-1 and should that area be changed, it would have to go through this exact same process so that everyone's voice would be heard. Unless that is petitioned by the landowners, that does not normally happen.

Also present in opposition was Dwight Keim, 59611 Rosedale Avenue, Elkhart, which is three blocks to the west. Mr. Keim asked if Wings Etc. is the only thing being constructed at this location or if there are plans for more at this time. When Ashton Pines apartment complex was built, he said Meijer objected to putting a road through there due to increased liability. There were neighbors that had a contract with 15 stipulations for the property that never happened. Mr. Keim explained that all of the neighbors had to install stockade fences along the back of their properties. He questioned if this is going to be annexed by the City of Goshen and if so, when.

Joseph Hauflaire with the Goshen City Plan Commission, was asked to address the comments that have been made. Mr. Hauflaire said they want to see this development happen because it makes sense. He indicated that it is moving forward, but he is here primarily for the developmental side of the zoning such as signs and landscaping.

Mr. Campanello asked who was responsible when 1st Source Bank was developed and Mr. Hauflaire said the property was in the County.

In response, Mr. Marbach noted that one of the comments in the minutes was that the City of Goshen would annex the property after it was built, and not before. There will only be a Wings Etc. on this property. He then reported that INDOT has agreed to the driveway, but they still need one signature before they can obtain their permit.

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

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Holt/Miller*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved in accordance with the Staff Analysis as amended by the Board eliminating condition #1 recommended by the staff. The motion was carried with a unanimous roll call vote.

10. The application for Secondary approval of a Detailed Planned Unit Development-B-3 known as **WINGS ETC. NORTH GOSHEN DPUD-B-3** for Trinity Development Group, LLC represented by Marbach, Brady & Weaver, Inc., on property located on the Southwest side of US 33, 192 ft. Southeast of Glenmore Avenue, common address of 23222 US 33 in Concord Township, zoned B-3 PUD, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #23222US 33-110801-2*.

A motion was made and seconded (*Wolgamood/Doriot*) that the Advisory Plan Commission recommend to the Board of County Commissioners that Secondary approval of this Detailed Planned Unit Development be granted in accordance with the Staff Analysis. The motion was carried unanimously.

* (*It is noted that Attorney Don Shuler from Barkes, Kolbus & Rife, LLC replaced Jim Kolbus as Board Attorney for the remainder of this meeting.*)

11. The application for a zone map change from General Planned Unit Development-E-3 to a Detailed Planned Unit Development-M-2 and a General Planned Unit Development-M-2/B-3 to be known as **ELKHART ECO PARK DPUD**, for Waste Away Group Ltd. represented by Wightman Petrie, Inc., on property located on the North side of CR 26, 1,000 ft. East of SR 19 in Concord Township, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #27751CR 26-110906-1*. He then indicated that a binder of the past studies is available for review.

Ken Jones of Wightman Petrie, Inc., 4703 Chester Drive, Elkhart, was present on behalf of this request. A copy of his PowerPoint presentation was submitted to the Board at this time [*attached to file as Petitioner Exhibit #1*]. Also present was Dan Cripe, Project Architect, and Matt Schuster of Wightman Petrie, who has helped with engineering the site plan.

Waste Away Group acquired the former American Countryside site earlier this year. After ten years of planning, it appears that they will need to start over from the original approvals. He

indicated there is a lot of history on this site and everyone in the community is well aware of what has gone on. The previous planning documents did consider E-3 zoning, and although the current proposal does move away from E-3 zoning, it doesn't move away from quality development.

The Waste Away Group has been around the community since the 1940's and it is a completely family operated company. Their principal source of revenue is industrial waste hauling, residential waste services, recycling services and document shredding and there are some things coming up that will be exciting for the community. Currently, they employ about 200 people and they have made a significant local investment in our economy. Similar to a lot of our solid, local companies, they need to grow. If you're familiar with their site in Elkhart, they are pretty much landlocked, so they will have to find another site where they will have a limitless ability to grow, or they will have to start breaking up their operation. In their business, one of the principal things that they need to deal with are logistics, which means more costs and more trucks on the road going different places. The business they are in has everything to do with the appropriate handling of waste and to ensure that it not only finds its way to the appropriate location, but also finds its way back into our resource string. That is one of the things that Waste Away is particularly good at and would like to expand into. The nature of their business encourages a location not in proximity to residential land uses.

If you're familiar with the site at American Countryside, the nearest home to their location would be on the north side of the US 20 bypass and several hundred feet away from the site. Their transportation network is key for them and one of the reasons they chose the site is because of the two state highways (SR 19 and US 20) and the two landfills immediately adjoining the site. With 300+ acres, they have all of the room they need to grow on the site and that is absolutely critical.

Waste Away Group is interested in a business cluster development concept. They want to follow the concept of bringing similar businesses to the same site and taking logistic advantages of having those businesses located immediately adjoining their business. The Waste Away group does not own the property immediately west between SR 19 and their west boundary line. They are hoping that becomes a similar business or a collocation business, but they are not in control of that site in this point in time. Mr. Jones pointed out the location of the two landfills, noting that the entrance of the Elkhart County Landfill is immediately across the street on CR 7. They feel this is an ideal location for this operation.

Mr. Jones indicated he understands the staff recommendation and the planners' train of thought. The idea of the gateway concept was discussed significantly prior to the American Countryside project and specifically in the comprehensive plan that was adopted by the City of Elkhart in 1996. The gateway discussion was primarily happening along the west boundary of the site. A good deal of that land is not owned by the Waste Away Group and they don't disagree with the fact that this is a very important gateway into the community from the west and the south.

When Mr. Jones first started talking to the Waste Away Group about this, he made sure that they understood their use may not be compatible with the gateway, unless they considered that fully and planned their site around that, and he indicated they are doing that. They have the advantage of significant natural buffers which they plan to maintain. The boundaries of the site are completely covered in wooded tree lines. There are also mature woodlands and wetland resources on site. They would like to be very sensitive to the fact this is a gateway, and some things need to be buffered which they plan to incorporate into their plan. Mr. Jones displayed some photos of the site on the PowerPoint presentation at this time.

He pointed out that the B-3 area will be on land adjoining the east bound on ramp. They

will be bringing that back as a DPUD and said they will try to come as close to E-3 standards they can. Mr. Jones said they recognize this is a gateway interchange zone and they feel they can do a very good job at developing the site and making sure that people get the best impression of Elkhart County and of Waste Away Group as well.

The staff is suggesting a tabling so that we would enter into a multijurisdictional review of the corridor and potentially stop an overlay district or a corridor master plan for the interchange at SR 19 and US 20. Waste Away Group's goal is to maximize their investment as soon as possible and they would like to use the property as soon as possible. He is concerned that a delay for a study would bring delay to the project.

The other staff concern was how the comprehensive plan adopted in 2005 supports this plan. Mr. Jones said they went through all of the goals that are included in that plan. In regards to Goal #1, this area has been an urban growth area for at least ten years based on the rezoning that occurred with the American Countryside project back in 2000. There has been a significant amount of interplay between the county and the city and the fact that the site is completely served by municipal utilities.

Goal #2 talks about a sense of community and rural character and Mr. Jones said he wishes he could give the Commission an answer as to how this project supports that part of the comprehensive plan, but it isn't responsible for that change that occurred with the rezoning of American Countryside ten years ago. He can't say that their business will reserve a sense of community and rural character in this particular situation, but there will be open space. There is a good sustainable concept that is being applied to the plan and it probably will have some impact on the rural character of the county.

The coordinated approach to plan growth was Goal #3 in the comprehensive plan. This proposal certainly represents a coordinated approach because so far, INDOT, the city, county, previous developer and current developer have worked together to make this project site the best it can be. Roadway improvements and a significant intersection improvement was made on CR 26 on SR 19, and the site has been prepared for significant development. The plan is also considering a cluster business development concept and the idea is to not only provide room for Waste Away Group to grow their business, but to allow collocation of similar businesses that enhance their ability to be successful.

Goal #4 refers to environmental stewardship and the people at Waste Away Group are all about this. They feel the future of the waste business is in reuse and capturing resources that are flowing through our economy and our waste stream, and bringing those resources back to the consumer in a better way. The site is being planned for sustainable business growth and they are planning some additional things they will be hearing about over the next few years, including a more efficient use of fossil fuels, and will pursue solar wind and biomass. This project does preserve open space and sets aside sensitive resources. They will have efficient consumption and treatment of waste water through the City of Elkhart's partnership.

In regards to Goal #5, this site is attractive to the people at Waste Away Group because of its close access to SR 19 and US 20. He also pointed out that traffic to the Elkhart County Landfill uses the same routes.

Mr. Jones explained the road improvements are already complete and the Waste Away Groups already travel here. The landfill and jail have already altered the landscape in this area. If it is done right and under the control and guidance of an appropriate PUD, impacts to any dissimilar land uses should be minimized. Currently, they are primarily agricultural. They feel the previous

rezoning considering a significant and very ambitious theme park and the location of this use is more compatible with the community, local economy and the infrastructure that is already built.

Mr. Jones indicated they are asking for the M-2 zoning district because that is what is required in Elkhart County for the Waste Away Group's core business, which is heavy logistics and the handling of waste. The future of their business is going to require the M-2 zoning. They have included the B-3 zoning for the simple fact that they would like to be able to provide some transition from the gateway into the site. They've located the B-3 in a location that accommodates that transition.

The current plan is to convert the existing building into professional office space. There will be some significant changes to make the parking field and the building itself more compatible with Waste Away Group's use. He also pointed out another facility on their site plan that is currently under design which will be used for the maintenance headquarters for all of their equipment. They are making some changes in the rear parking field to allow for the marshaling of the Waste Away fleet. This circulation is being planned specifically for their fleet, including the size of their vehicles and the way they would like to enter/exit the site. Trucks will come into the parking field and park and then be able to back up and immediately leave. They are going to provide some idle reduction equipment and he noted a parking bay and future parking. The overflow parking in the gravel/grass surface is where containers will be stored to go to the maintenance shop. He also pointed out the location of the future fuel center, truck wash and a future public recycling facility. There will be a visual buffer around the outside storage area and around the back side of the maintenance facility.

Mr. Doriot questioned the plan for the front of the American Countryside building as he's heard a concern that containers will be placed there. Mr. Jones said that is the employee parking area and he pointed out two places for outside storage of containers on the site plan.

The next phase of construction will be built out of future fuel island, which he indicated would probably be next year or the year after. They will ultimately move the truck traffic to the east and this will be done as funds allow.

Mr. Yoder pointed out they are working with the number of curb cuts that are currently allowed. Mr. Jones said the curb cut on CR 26 (east) aims at a wetland and is a funny location. He indicated that they will probably end up moving it.

With regard to the GPUD, Mrs. Wolgamood asked if they will be looking at a landfill on this site in the future. Mr. Jones said they have no need for a landfill. Future recycling was then questioned and Mr. Jones said they currently operate a very significant automated recycling program at their current site in the City of Elkhart. The auto sorter will definitely be done at this site as they build out in the future.

There were no remonstrators present.

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

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Holt/Campanello*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved. The motion was carried with the following results of a roll call vote: Miller – no; Burbrink – yes; Holt – yes; Campanello – yes; Doriot – yes; Wolgamood – no; Yoder – yes.

12. Mr. Burrow explained the Town of Wakarusa did sign their documents to adopt a resolution agreeing to participate in a national flood insurance. Evidently when they were brought into the

system, they forgot to incorporate them as part of the National Flood Insurance Program.

Mrs. Wolgamood asked what he needs from the Plan Commission and Mr. Burrow said they need to accept the resolution supporting the Town of Wakarusa being their municipal Plan Commission with our Zoning Ordinance and our Subdivision Control Ordinance in compliance with the National Flood Insurance Program. They adopted it on October 4th, but they have not given Mr. Burrow the signed copies.

A motion was made and seconded (*Doriot/Yoder*) to adopt the resolution upon signed completion of the document by the Town of Wakarusa. The motion was carried with a unanimous roll call vote.

13. Next to be discussed was the proposed amendment to the Elkhart County Comprehensive Plan Commission. Mr. Kanney explained that Middlebury entered into a contract with KKG Consultants a couple years ago to do a strategic comprehensive plan, which has been completed. They have already adopted it, but a large portion of the county is included within that comprehensive plan. For that to have any validity, the County Commissioners will have to adopt it into our comprehensive plan.

Mark Salee, Town Manager of the Town of Middlebury, was present and he indicated he could provide this 162 page document on a CD or put on the internet for access. He then submitted a PowerPoint presentation to the Board *[attached to file as Petitioner Exhibit #1]*.

Mr. Salee explained they started this process in April 2009 with a Steering Committee. He went on to name the members of that Committee. The plan is very comprehensive and includes a market analysis, master plan and implementation schedule. This was done in two phases and Phase I was primarily a marketing analysis. They did a very in depth study of not only Middlebury, but the community at large in terms of Elkhart County. They looked at other plans that are related to what they are doing.

He indicated there is a market understanding section that provides tables from the demographic analysis that the consultant did. For planning purposes, they wanted to look at the growth and development of their community. They also looked at community segmentation which is a retail demand and supply analysis. There is a state statute for community planning and their plan provides a listing of meeting those objectives for a community.

Mr. Salee noted there are numerous pages of design elements. The Town of Middlebury doesn't know what they want yet, and he said a large part of the plan is to give not only the officials of the community, but also the residents, the ability to decide what they want the character of the town to look like. He said they first need to understand what the components are.

An important section for the Plan Commission is the section on land use. They are not proposing big changes in terms of the way the land should be used. One of their missions is to preserve the agricultural and small town feeling.

There is a whole list of other components of the study of the plan talking about issues and opportunities. There are strategies and recommendations for each of those components.

Their master plan is more of a conceptual plan according to Mr. Salee. There are four focus areas and he said three of those areas are gateways, which he then described. The focus of their community is their town center.

He noted that when you come into town, there are no signs indicating where you go for public parking. It hasn't been an issue due to them being a small town, but that is changing very rapidly with the opening of the bicycle trail from Middlebury to Shipshewana.

The last part of their plan is an implementation matrix. Every one of the components has an

implementation matrix and it's numbered. They are now in the process of prioritizing the projects into a detailed implementation plan. Then they will look for funding and start moving forward. Their emphasis from the very beginning was not to develop a comprehensive plan that was just going to sit on a shelf. Mr. Salee said the purpose today was to present this plan to the Plan Commission.

Mrs. Wolgamood questioned the boundaries and Mr. Salee said SR 4 was their bottom line on the south and the west boundary is CR 31.

If the jurisdiction decides to have their own Plan Commission, Mr. Doriot said they could enforce the area of influence. However, Mr. Kanney said no, that was incorrect. Mr. Salee said there is no desire to have their own Plan Commission, but they left recommendations in the plan should that happen in the future. At this point, he would like to formalize the process in a detailed fashion.

Mrs. Wolgamood said she feels this is fantastic and gave compliments to the Town of Middlebury and their proactive involvement. When she asked how soon they will have the information, Mr. Salee indicated next week. It was the consensus of the Board for the Town of Middlebury to provide this plan on a CD.

14. Mr. Godlewski indicated he would send the Plan Commission routine mail to give them information of things happening in the department. There are always a lot of little things, so he felt it would be a good way to keep everyone informed. He noted he would try to do it in between Plan Commission meetings so there wouldn't be such a long gap in communication.

15. Mr. Godlewski also reported that he will be meeting with the Executive Committee with regard to developing some metrics for the next year. Mr. Burbrink was the only member able to attend a previously scheduled meeting so that meeting will be rescheduled.

16. Mr. Yoder explained that he met with a group of commercial dog breeders last night. There are approximately 33 in the county presently that do not meet the Zoning Ordinance standards. He had worked with that group during the development of the draft of the Zoning Ordinance and they had taken care of the issue within that draft, but that draft is not adopted and there is a still an issue. He would like to meet with staff and have a representative from that group to develop some options for them to look at. The options can then be reviewed at one of the Plan Commission workshops and then the Ordinance would be amended accordingly. It was then reported that the next workshop will be on December 1, 2011.

17. A motion to adjourn the meeting was made by Mr. Miller and seconded by Mr. Holt. With a unanimous vote, the meeting was adjourned at 12:09 a.m.

Respectfully submitted,

Kate Keil, Transcriber

Kathleen L. Wilson, Recording Secretary

Mike Yoder, Chairman