

## **MINUTES**

### **ELKHART COUNTY PLAN COMMISSION MEETING**

**HELD ON THE 9<sup>TH</sup> DAY OF AUGUST 2012 AT 9:00 A.M.**

**MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING**

**4230 ELKHART ROAD, GOSHEN, INDIANA**

1. The regular meeting of the Elkhart County Plan Commission was called to order by the Vice-Chairperson, Roger Miller, with the following members present: Tony Campanello, Doug Miller, Dennis Sharkey, Steve Warner, Steven Edwards, Roger Miller, Blake Doriot and Mike Yoder. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Planning Manager; Mark Kanney, Planner; Duane Burrow, Planner; Kathy Wilson, Office Manager; and James W. Kolbus, Attorney for the Board.

2. Roger Miller noted that there were no July 12, 2012, Plan Commission meeting minutes to approve at this time.

3. A motion was made and seconded (*Sharkey/Doriot*) that the legal advertisements, having been published on the 28<sup>th</sup> day of July 2012 in the Goshen News and the 30<sup>th</sup> day of July 2012 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*D. Miller/Sharkey*) that the Elkhart County Zoning Ordinance and Elkhart County Subdivision Control Ordinance be accepted as evidence for today's hearings. With a unanimous vote, the motion was carried.

5. The application for a Zone Map Change from R-2 to a General Planned Unit Development-R-2 to be known as **KEYSER STORAGE**, for Randy C. and Carrie Keyser (owner) and Dan Scalise (developer) on property located on the South side of CR 16, 650 ft. West of Nappanee Street, in Baugo Township, zoned R-2, was presented at this time.

Duane Burrow did not present the Staff Report/Staff Analysis, which is *Case #CR 16-120618-1*. Mr. Burrow stated there was a procedural issue, because there was a request to withdraw. He then reviewed the portion of the Rules of Procedure that pertains to this issue (page 22, Item 6.04).

Mr. Burrow then read and submitted to the Board the written request from Dan Scalise, the developer for the property owned by Randy and Carrie Keyser on CR 16, to withdraw and formally cancel the PUD [*attached to file as Staff Exhibit 1*]. They indicated that they wanted to restart the process at another time.

Mr. Burrow pointed out that the last item in the Rules of Procedure state that when a request to withdraw is granted, the proposal may be considered for hearing before six months if it is a substantial change from the original petition. Before the withdrawn proposal can be placed on the docket, the Commission shall determine if the change is sufficient enough to warrant a hearing before the six months has been made to the proposal.

For clarification, Mr. Doriot stated if they dismiss this petition and they want to put it back on the docket before six months, it has to come before the Board for approval to put it on the docket earlier than six months and Mr. Burrow said that is correct. If they came next month, he said it would still be two months before they could get on the docket and again Mr. Burrow said that was correct. This would require all renotifications, because the date of the hearing is not set. Mr. Yoder asked if there was anyone present for the petitioner, but there was not.

A motion was made and seconded (*Doriot/D. Miller*) that the Advisory Plan Commission accept the withdrawal of this petition. Mr. Doriot also mentioned that there be renotifications should a new application be submitted. The motion was carried unanimously.

There were a few remonstrators in attendance for this petition that wanted to be heard, but Mr. Kolbus explained to them that with the petition being withdrawn there was nothing to be heard today. He reassured them that if they file for a zone map change again they will be notified.

6. The application for a Zone Map Change from A-1, B-3, and B-3 PUD to a General Planned Unit Development-B-3 and a Detailed Planned Unit Development-B-3 to be known as **NIKO DPUD AND GPUD**, for NIKO, LLC c/o Andriy Nikolaychuk represented by Wightman Petrie, on property located on the North side of US 20, 890 ft. West of SR 15, and West side of SR 15, 905 ft. North of US 20, common address of 18609 US 20 in Jefferson Township, zoned A-1, B-3, B-3 PUD, was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #18609US 20-120702-1*.

Mr. Burrow stated there were some procedural issues and two driveway easements, one is called the US 20 Access Easement and another is the SR 15 Access Easement, but the issue is that the locations are not definitively marked on the site plan. Mr. Burrow indicated that the other issue is with paragraph #2 of the Staff Report and the restrictions need to be clarified prior to approval.

Mr. Burrow explained that the staff is not against the request in terms of the type of uses being proposed, but they have more of a problem with how they were going to affect access to this site in the future. He asked that the Plan Commission table this matter until the items previously discussed could be resolved more efficiently.

Ken Jones, Wightman Petrie, 4703 Chester Drive, Elkhart, was present to represent Andriy Nikolaychuk. Mr. Nikolaychuk's principal business is trucking and logistics and he operates his business on this site. He purchased the property from Dean Baker and is working on bringing the site into reasonable compliance. In doing so, they needed to bring it to the Plan Commission as a PUD based on the current ordinances to bring it up to date. Mr. Jones said they were not talking about changing the zoning on the site, but they were clarifying through the PUD process what is going to occur and pointed out that there is access through the driveway. He agreed with staff's recommendation for approval, but did not agree with the recommendation for tabling and wanted to address the staff's concerns. Mr. Jones displayed the site plan and pointed out where they wanted to build a truck service center on the property. Currently, there are tractor trailer rigs on the site and they need the truck service center in order to bring all of the operation inside which will be the first part of the project.

Mr. Jones stated that they are asking for a DPUD and in the future they will be coming back to the Plan Commission for DPUD's on other sites and for a discussion about improved access through the entire site for construction of a new INDOT approved access point on US 20. Currently, the access through all the properties on this site comes through shared access that appears on the deed of the respective properties, including the property that Mr. Nikolaychuk acquired

through Dean Baker. Mr. Jones said they could take care of all of the compliance issues on the site, so the staff's only concern is relative to the legal agreements between the private parties on the site. Mr. Jones questioned whether it was the Plan Commissions' right to delve into the details of these legal agreements between the private parties when they can absolutely say, 100%, that Mr. Nikolaychuk has legal right in every way to use the access road between the parties. He felt that was the primary detail that the Plan Commission needs to concentrate on, not necessarily, how they work with each other.

Mr. Jones stated that one of the first comments the staff made that was relative to the agreement was referring to all agreements, covenants, and restrictions of record which is common for an author of a legal description or deed to include because there may be something they could not find. Mr. Jones said based on the comment from the staff, they went back and looked at the deed records for the adjoining property owners and they could not find anything, because it may not exist. He did not feel that the first comment from the staff was an issue.

Mr. Jones wanted them to understand that this agreement predates Mr. Baker buying the land and it has to do with the parent parcel and it pre-exists their approach.

Mr. Jones noted with the second comment the staff is concerned about what the configuration of the access road could be and Speedway may have the right to review anything that Mr. Nikolaychuk does in the reconstruction of the road. Mr. Jones said if that occurs it would not be just Mr. Nikolaychuk doing it, it will be all three parties and everyone will be able to review it. He said at this time, they do not have any plans to do anything, so there is nothing for Speedway to review. He reiterated whether it was the purview of the Plan Commission to know what Speedway's rights of review are and what those standards might be for construction, but he thought it was a matter that is best left to the private parties where it belongs. His opinion is that the Plan Commission's concern should be that there is legal access and that it is approved by INDOT. The easement continues to be used today and they will not change it. They do not believe that the Grantor, Speedway, needs to be a part of the petition at all.

He said the legal description appears in the legal document and is not exclusive to all three parties. However, the legal description is so poorly written that they cannot even plat it. Mr. Jones thought Barry Pharis did the best he could to locate it when Brads-Ko did the PUD for this in 2008, but he thought there was an error in the legal description of that easement. The staff was concerned that this property owner has some operations that are spilling out into the legally described boundary of this access easement. Mr. Jones thought that had been going on for as long as he knew and so far all of the parties have been able to get along and get their vehicles back and forth through the easement. There is nothing specific in the easement document that says one person has the right to somehow control what is going on in the easement, other than ingress and egress and he thought the encroachment the staff refers to is temporary. Mr. Jones felt it should be up to Mr. Nikolaychuk and the other two parties to have a private agreement between the parties and it is up to them to manage it, not the Plan Commission.

Mr. Campanello asked if the grantor maintained the easement, but Mr. Jones said there really is no clear language as to how it is maintained. He said one of the things he is changing for the entire development site is offering a secondary access point that will be built to County and INDOT standards in the future as the project needs it, but right now it is not needed.

Roger Miller asked if the approval needed for today was only zoning. Mr. Jones said the Plan Commission was also approving a site plan/support drawing for the DPUD portion of the project. He explained that by approving the site plan/support drawing for the DPUD today the Plan Commission would be approving their method of access to US 20, but no access is shown to SR 15.

They do not plan to make a change at this time for this DPUD from the current plan for access which is this commonly used entrance road.

Mr. Sharkey asked what happens to the two parcels to the east if this request is approved and they do not get access to SR 15. Mr. Jones said the overall plan is to extend this access road and make a connection to a secondary access out to US 20. He felt it would be reasonable for the Plan Commission to request that Mr. Nikolaychuk finalize that plan and seek approval from INDOT and the Plan Commission for further parcels that may be served, but that will be for the next phase. Mr. Sharkey agreed that would be a good idea, especially when someone is accessing that much easement on someone's private property. Mr. Jones thought Mr. Nikolaychuk felt that there was a better way to provide circulation in the development site. He stated if they would go look they do not have a non-access easement that was negotiated with INDOT, but to build that access point on SR 15 in that location would be difficult, expensive, and it may not benefit a lot of people. As Mr. Nikolaychuk moves forward with a build out on the site he will engage INDOT in a traffic impact study that will look at how the proposed access points would affect the main roadway.

Mr. Jones reiterated they do not have a problem with the staff recommendation, but want to move forward today. He asked for the Plan Commission to make a motion for recommendation for approval to the County Commissioners and to set aside the staff's concerns relative to the private matters, through private agreement with those private property owners. Mr. Jones stated they could show them that they have full access to their site through that private easement. Mr. Sharkey asked if the private agreement would last forever and Mr. Jones told him until someone would try to take it away from them and the only way that could happen is through court.

Mr. Campanello asked who plows it in the winter time. Andriy Nikolaychuk, 19770 CR 38, Goshen, the petitioner, stated that the Speedway takes care of the drive to his property line, because his trucking company does a lot of business with Speedway. He said they fuel up and exit their property from there. Mr. Nikolaychuk said they never ask him to clean the driveway, but he supplies a service for them for sewage, as well. He said they have never been asked by Speedway to do anything. As a matter of fact, he said they wanted to open the parking lot for them so they could park their trucks in the back because there is not much room.

Paul Loucks, 18711 US 20, Bristol, was present stating he has lived in the third house west of the junction since 1986. His concern was what would happen to the property value, and will the new structure be hooked into the sewage treatment plant. He stated he was aware that the sewage treatment plant is operational on a daily basis. The two houses east of him are now empty and he did not know if they would be destroyed or if the new access put in would take out one of the houses, or would access come in behind the existing truck repair property, etc.

Mr. Doriot questioned how much property Mr. Loucks owned at that location. Mr. Loucks said he owned a long strip of property. In the past, Mr. Baker wanted to buy the strips of property and he bought the two strips to the east, but Mr. Loucks would not sell to him because they wanted to maintain the woods behind them for wild animals. Mr. Sharkey asked how many acres he owned and Mr. Loucks replied approximately 3 acres.

Mr. Jones told Mr. Loucks he did not know about real estate values, but he could give him details on the wastewater treatment facility that is privately owned by Mr. Nikolaychuk and it is being operated by a licensed operator based on a permit issued by the Department of Environmental Management. Mr. Jones said Mr. Baker hired Wightman Petrie to complete the design and oversee the construction and installation of the wastewater system to make sure it met the requirements of IDEM's discharge permit. He said the system is fully operational providing wastewater treatment everyday to those that are hooked up to it which are the two homes west of the truck service center,

the offices of Mr. Nikolaychuk, and the Speedway gas station. Mr. Jones noted that there had been some discussion from others out in the neighborhood that might want to seek some service and that is being discussed.

In talking about taking the homes down, Mr. Yoder asked him to describe what is going to be between the new driveway, in the future, and Mr. Loucks' property line. Mr. Jones stated that at this time they are asking for a GPUD with a B-3 overlay, so it is likely it will be some sort of retail business use and that would need an access point out to US 20 with the design and approval to meet INDOT standards. He said they did not offer up any type of allowable uses in this PUD. Mr. Doriot asked how much frontage they would have and Mr. Jones told him it was 330 to 350 ft.

Mr. Yoder said at the DPUD level when they come in with a specific use they could look at the impact of adjoining properties. Mr. Jones stated that they will be required to do some type of buffering according to the ordinance. Mr. Sharkey reminded him they would have to come back to the Plan Commission to build anything. Mr. Jones told them they would be back to see the Plan Commission when a user is identified. Mr. Doriot asked for clarification on the treatment package and that they do have the capacity. Mr. Jones said there is plenty of capacity. The discharge permit and the system were designed for 10,000 gallons a day, but they probably are at 10% of that which is minimal. There will be plenty of room for this site to grow and even provide service to others if needed. Mr. Doriot asked if there were any problems with non-access at this location. Mr. Jones thought that would be a better thing to discuss in the DPUD stage. Mr. Doriot said there would be a lot of dirt work.

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

Mr. Doriot asked if they had met the staff's questions as far as the subject to and all restrictions of record. He informed them that Barry Pharis found a deed that Mr. Doriot could not find, which was the dedication, so there are some things that are not found and that is why he put that boiler plate statement on the bottom of all descriptions. Mr. Doriot researched another property last week and he found a spelling error in 1840 where it went from 'gauge' to 'sage'. He spent many hours working on this and had to end up hiring someone else to do the research for him. He felt some things require an attorney or surveyor's assistance for a description, because they have to cover themselves, in case there is something unusual that turns up. He thought that question on that description is kind of moot to him, however, he understood Mr. Burrow's concern.

Mr. Sharkey's only concern is the private drive. They do have easements and right now the two parties are very happy and working together with no problems, but what would happen if the parties change ownership. Mr. Doriot thought the sewage plant controls it all. Mr. Yoder stated that all the access easements are noted on all of the deeds of the properties presented, so the legality part of the issue has been addressed to his satisfaction. Mr. Sharkey noted that he does have the property to do something different in the future.

Roger Miller felt something might happen with the property as the other property develops next to them, they will want to upgrade, but if there is a problem they have other properties to get an easement if they had to. Mr. Jones stated that is the recorded plat that was approved by the Plan Commission in 2008 that acknowledged the existence of the easement and formalized it and they have rights. Roger Miller asked what would be the action taken if Speedway denied access and Mr. Jones said they would go to court, because they do not have any legal right in the agreement to deny it. Mr. Kolbus noted that it runs with the land.

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

made by Mr. Yoder that the Advisory Plan Commission finds that the staff's concerns have been addressed appropriately and adequately, and therefore, recommends to the Board of County Commissioners that this request be approved as presented. Mr. Doriot seconded the motion provided they allow for an access to the development west of the existing cross-access easement. Mr. Yoder agreed to the amended motion, and the motion was carried with a unanimous roll call vote.

7. The application for an Amendment to Jayco West GPUD/DPUD and for a Zone Map Change from General Planned Unit Development-B-3 to Detailed Planned Unit Development-M-1 all to be known as **JAYCO WEST PHASE III DPUD**, for Jayco Inc. represented by Wightman Petrie, on property located on the West side of SR 13, 969 ft. South of Industrial Parkway, common address of 1003 S. Main Street in Middlebury Township, zoned DPUD-B-3, GPUD-B-3, DPUD-M-1, was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #1003SMainSt-120702-1*. Mr. Burrow stated this is a request to take a couple of Planned Unit Developments and incorporate them together. The GPUD is going to be integrated in with the original DPUD for Jayco and it is all going to be incorporated into the manufacturing part of Jayco, Inc.

Mr. Burrow said the only concern is staff needs to know when portions of it are annexed into the Town of Middlebury, so the staff can prepare the appropriate ordinances for the appropriate legislative body. He thought there was action before the Middlebury Town Council to start the annexation process, so they want to be sure they are not having the wrong legislative body sign the ordinance.

Ken Jones, Wightman Petrie, 4703 Chester Drive, Elkhart, was present to represent this petition and agreed with the staff's recommendation. He did not have anything to add, but he displayed a Jayco site plan showing up to three buildings in the future toward the south plant and mentioned there is plenty of room and adequate utilities for the buildings. Mr. Sharkey noted they already had the buffer on the south.

Mr. Doriot asked about the timeline on the annexation. Mr. Jones stated that the annexation is underway and they have already approached the Town and they are working through the details. He added that Jayco will be served by municipal sewer and water. Mr. Jones noted that Wilbur Bontrager from Jayco was in attendance.

There were no remonstrators present.

A motion was made and seconded (*Sharkey/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 (*Sharkey/Warner*) that the Advisory Plan Commission recommend to the Board of County Commissioners and the Town Council of Middlebury that this request be approved according to the Staff Analysis. The motion was carried unanimously with a roll call vote.

8. The application for a Zone Map Change from A-1 to a Detailed Planned Unit Development-M-1 to be known as **JAYCO WEST PHASE IV DPUD**, for Jayco Inc. represented by Wightman Petrie, on property located on the West side of CR 37, 2,000 ft., South of CR 22/CR 37, common address of 57974 CR 37 in Middlebury Township, zoned A-1, was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #57974CR 37-120702-1*.

Mr. Burrow stated that Ken Jones had a few suggestions on item #2 amending the site plan/support drawing to indicate a 50 ft. landscaping buffer easement along CR 37 along with some proposed notes, and item #4 that the location of the future access be moved 300 ft. north or south of the residential drive located on the east side of CR 37 with a proposed berm. Mr. Burrow felt that would be better suited with a phase development concept, but he had no problems with what Mr. Jones recommended. Mr. Burrow recommended approval to the County Commissioners depending on how the phasing is presented.

Ken Jones with Wightman Petrie, 4703 Chester Drive, Elkhart represented the petition. Mr. Jones stated that with the result of the local economy getting better the need to make changes will continue. He said no raw material is kept on this site; it is a secured finished product storage area. They do have some neighbors in this location and Jayco kind of wraps around this neighbor. Mr. Jones stated that the goal is to bring in to the Plan Commission a development of a transportation yard. Right now there is no transportation secured area or office building for the facility and that is what they are proposing on the south end of the site. He said they would use the existing driveway approaches and will build a small parking lot for a structure for the drivers to be dispatched and this area will be secured from the main storage area. He and Duane Burrow discussed that they could have brought this request in as special use and not done a complete rezoning, but in that case the Plan Commission and County Commissioners would not be able to review it to provide some input. Therefore, they decided to complete the M-1 zoning because it is compatible with the storage of finished products and at the same time, bring it into compliance.

Mr. Jones commented, relative to storm water, that Mr. Burrow was correct there never has been development of a storm water retention system on this site, because there is no need for it. All of the existing contours on this site are not flat, there is some relief to it as much as six to eight feet in some locations. He stated on the other Jayco projects they tried to take advantage of some of the natural topography to do the things that are required by the ordinance without doing mass grading. In order to do that, they would have to develop 143,000 cubic feet of storm water storage. He said the property is not paved it has grass and minor gravel. He said there is a significant area that protects the adjoining property owners from runoff right in the middle to the site and some areas along the margin, if continued to be uninterrupted, would allow stormwater to leave the site. However, they are not talking about repaving the site, but they are going to use it as it is. He questioned whether it would be reasonable to do a mass grading operation to redirect the storm water on a site that is not creating a problem currently.

Roger Miller recalled that there is no natural flow on this property. Mr. Jones explained if anything happened at all, stormwater is collected in the naturally occurring depressions and there may be some migrating storm water from the upper areas along the west boundary line. He pointed out from Mr. Burrows aerial there is a big wetland close and there are no homes or businesses in that area that would have any impact. He said when he did the storm water calculations and apply the area and the storage available on the site they meet the standards. They did the same thing on the east side in the Jayco area that had a big hole in the ground so they used it. He thought that made more common sense and asked them to set that concern aside, because they accomplished that standard by using the existing topography.

Mr. Sharkey stated if they decide to build plants they must come back to the Plan Commission which would be different, but this is just outside storage. Mr. Jones agreed if they wanted to put another plant on the site they would come back to the board to amend the DPUD.

Mr. Yoder asked for confirmation that they are also going from A-1 to M-1 and Mr. Jones agreed. He also asked if there was a limitation of M-1 uses he was asking for and Mr. Jones stated

they were asking for a straight M-1 overlay. Mr. Doriot asked about one of the neighbor's accesses and also asked Mr. Jones to go back to the previous aerial he was displaying and stated when staff was looking at that location he noticed that the only access Jayco has is through the pumpkin vine trail.

Wilbur Bontrager, 13545 CR 12, Middlebury stated that the neighbor Mr. Doriot referred to owns the property next to Jayco and is land locked, but he gives them free access across their property. Mr. Bontrager said he primarily uses the north driveway immediately across from his driveway and gets to his property that way. He said it has never been a problem or an issue. Roger Miller asked if they were farming any land and Mr. Bontrager said he was not. He explained he has a cabin in the back of the property.

Mr. Yoder asked who is responsible and does he have a legal right to an actual legal description of an easement across the property. Mr. Doriot said it all depends on how it was created. If he just sold land and did not imply it in the transaction verbally or written, he shot himself in the foot. If Jayco owned it sold it to him it would imply that Jayco is giving it to him. Mr. Kolbus agreed it depends on who sold what to whom, so that could not be answered today. Mr. Bontrager said they did not buy it from him, but he may have owned it at one time. Mr. Kolbus said they would have to go back to when it was originally split. Mr. Doriot said as long as they worked together he was fine with it.

Roger Miller asked how long the area was and Mr. Jones replied it was 3,000 ft. from north to south along CR 37.

Mr. Campanello asked how much it would cost to put the buffer in. Mr. Jones mentioned they needed to change something on the site plan. During the tech committee review there was a requirement from the county highway department that asked for 40 ft. of right-of-way dedicated from the centerline. Mr. Jones said he has an issue with that because they are basically saying if Jayco wants approval they have to give the Highway Dept. 40 ft. There are multiple classifications for county roads and they are based on average daily volume and thresholds on a daily basis. The standard says 40 ft. or 80 ft. total width for a collector, which is defined as any industrial or commercial street or any numbered county road that has traffic in excess of 3,000 to 5,000. Mr. Jones stated that the average daily count of traffic including Jayco's operation on that road is only 700. He inquired what the classification would be for a road that has only 700 cars a day, which is a minor roadway. He reiterated the threshold clearly states in the standards that it has to be over 3,000 cars, but they are not even close. The minimum standard for the total width of right-of-way for a minor is 40 ft. or 20 ft. from the centerline in each direction. Currently, this county road only has 30 total feet. Mr. Jones stated if the Plan Commission was going to require them to dedicate anything, the Plan Commission would only be able to ask them for 5 ft. If it is required he said they would do that, but he does not know why.

Mr. Jones said in the development of the site in the last 25 or 30 years Jayco has had to secure 100% of the perimeter of the property with fencing. In addition, they have installed a security system, a lighting system, and a gravel access road that goes completely around the site to move vehicles and to keep it secure. He said the issue they have is if they have to dedicate 40 ft. then the fence, gravel driveway, the lighting system and security system would all have to move, because it would be in the county right-of-way. He clarified that they are not asking to build a new building; they are going to continue to use the property just the way it is, so it would make sense to not make those changes at this time.

Mr. Jones said his estimate to move the fences would cost around \$60,000, the relocation of the security and lighting has to be around \$26,000. The access ring road surrounding the property is



probably the most expensive item at \$128,000. Just to comply with that 40 ft. standard and move everything would cost them over \$200,000 which makes no sense.

Mr. Jones went on to discuss the berm and the buffer. He understood to buffer between manufacturing and residential land uses is reasonable. Mr. Jones indicated that Jayco has done that with the only two adjoining residents. He elaborated on the different types of buffering used at each location. Mr. Jones suggested that instead of 3,000 ft. of earth and berm 45 ft. wide at the bottom and 4 ft. tall with trees planted at the specified separation; they could do something that is specific to these two homes. He believed, as neighbors, they would work issues out themselves.

Mr. Jones said the 4 ft. mound for 3,000 ft. is about 11,300 cubic yards of material that would be moved onto the site. He thought it might be necessary to provide the dirt in the future if they decide to build. He asked the Plan Commission to give Jayco the approval and requested that before any capital investments into earth and berm and significant buffering between them and the residential houses do something that makes more sense, such as, go behind the fence line and put some plants in between the houses. The plants can be moved in the future when they would have to build the berm if they build.

Mr. Yoder wondered why staff triggered the buffer at this time, because the use is not being changed. He agreed if a new manufacturing building was being built they may look at buffering, but that is not the case. Mr. Yoder referenced a photo displayed and asked about the area around the farmland. He stated it was surrounded mostly by manufacturing to the east. Mr. Yoder stated the Middlebury Comprehensive Plan included that area as well and thought they probably projected manufacturing in that area. Mr. Campanello agreed if the residents wanted buffering he would make a motion for it, but they are not present and Jayco said they would work with them. Mr. Sharkey said the only reason they were here is for the building to the south. Mr. Jones agreed they are not making any other changes other than that. They thought it would be appropriate after all these years to rezone to M-1. Again, Mr. Jones asked the Plan Commission to offer a recommendation for approval and set aside the staff's recommendations. He realized that the staff was following the rules that the Plan Commission gave them. Mr. Sharkey asked about access to the property and if there was only access to the south. Mr. Jones said there are two access points currently, and they are gated and secure.

Mr. Yoder asked if his display was an accurate depiction of the area, because it drops down into that field south of the normal property line next to the soccer field. Mr. Jones said that land is also owned by Jayco and they developed the soccer field for the community. He noted the reason they dropped down in that area and wrote the legal description for the PUD, it is also A-1, was because this land is all impacted and they are wrestling with the idea of whether there should be a sewer extension from the Town or whether they can build a small septic system that would handle the minor occupancy of that office.

There were no remonstrators present.

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

Mr. Doriot stated that the buffering issue is a non-issue, because someday it is going to all be a manufacturing area. He said this location is not suited to a residential location. Mr. Warner agreed the proposal eliminating b., c., and d. makes sense. Roger Miller agreed if they wanted to put trees there it is fine. If there were a number of residents there it would be different or if it was new, but it has been there for quite some time and the people are not complaining. Mr. Doriot agreed and thought the second issue was the right of way. Mr. Sharkey asked if the Plan Commission could override the Highway Department and Mr. Doriot informed him that the Elkhart

County Plan Commission controls access, right-of-way and, technically, control the Thoroughfare Plan. Mr. Sharkey wondered what would happen if traffic goes from 700 to 3,000 vehicles. Mr. Doriot said if County Highway had no reason to widen the road nothing would happen. Roger Miller thought if it was going to become manufacturing the road would be widened, but that is in the future. Mr. Sharkey said it is a DPUD so they would have to come back to the Plan Commission. Mr. Yoder asked if Mr. Doriot was comfortable with the drainage and he was.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Campanello*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved as presented and in accordance with the Staff Analysis (as amended by the Board) with the following Site Plan / Support Drawing corrections to be made part of the DPUD ordinance:

1. That prior to September 1, 2012, the Site Plan Support Drawing be amended to demonstrate storm water retention is in compliance with the DPUD Standards and the Elkhart County Highway Standards; and that the site storm water retention will be sized to the standard that requires the largest capacity.
2. That the owner submit and receive approval for a Storm water pollution prevention plan by September 17, 2012 to facilitate the installation of the required storm water retention and the landscape buffer within the 2012 construction season. This to prevent the continued discharge of storm water offsite.
3. That the location of the future access be moved 300 feet north or south of the residential drive located on the east side of CR 37 with the proposed berm to still be constructed and with removal of the berm and plantings to be permitted only after amendment to the Site Plan Support Drawing and approval by the Engineering Department of the local jurisdiction.

The motion carried with a unanimous roll call vote.

9. The application for an Amendment to the Site Plan / Support Drawing for an existing Detailed Planned Unit Development known as **MILLERSBURG FOREST RIVER DPUD**, for Forest River Inc. represented by Wightman Petrie, on property located on the West side of SR 13, 500 ft. South of CR 40, common address of 66135 SR 13 in Clinton Township, zoned DPUD-M-1, was presented at this time.

*\*(Doug Miller left the meeting at this time.)*

Brian Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #66135SR 13-120702-1*.

Ken Jones of Wightman Petrie, Inc., 4703 Chester Drive, Elkhart, was present on behalf of this request and agreed with the Staff recommendation.

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

Mr. Campanello asked about the berm that is not there now and whether it is always a requirement with a new building. Mr. Doriot pointed out the various zonings surrounding the parcel and dividing lines adjacent to the residential areas. Roger Miller stated the Plan Commission had held discussions with people at previous meetings when they first started building. Mr. Doriot said they had problems with a berm before. Mr. Yoder did not think it was quite as clear that the area to the south will be manufacturing and indicated it was more residential. Mr. Doriot stated that even though there is a park there, it could be brought in for a residential development and the Plan Commission would have a hard time denying that residential development. Mr. Campanello asked

if it would be considered undue hardship for the business to have to do that if it is not there right now. Mr. Doriot agreed.

Roger Miller said he would normally agree, but there have been quite a few residential people complaining and he thought there may be some controversy if something is not done with it.

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

10. Chris Godlewski Zoning Ordinance Update – Mr. Godlewski sent an agenda for the Policy Committee meeting to the Plan Commission and Policy Committee yesterday. He mentioned Mr. Doriot and Doug Miller were in attendance. During the meeting they mostly answered questions and decided to hold another Policy Committee meeting September 5<sup>th</sup>. Mr. Godlewski will present some discussion points about policy issues to the members a week ahead of time so they can review them prior to the meeting. Mr. Godlewski said some of the subjects would include airport overlays, pyramid zoning, etc. and they may have additional items to discuss. He said they would have a little over a week from that time to bring the results of that discussion to the September Plan Commission. Mr. Godlewski charted out a six month and 1 ½ year time frame which will probably adjust as they go through the process. He thought everyone was relatively satisfied and asked the questions they needed. Mr. Doriot heard some disagreement, but did not hear about people not willing to listen to the other side and he thought it would work out. Mr. Godlewski felt it would help with points of clarity of when they compare and contrast the existing proposed ordinances on how it was presented to this group and then the public. He felt it was on the Commission's shoulders as to how the information is presented at the key point. Mr. Doriot recalled they talked about how to bring definitions to this Board for review, bring the uses, and review four sections at a time. They could then assemble it all together, and bring it back to the Board for a 'road show'.

Mr. Warner asked if the Policy Committee had a sense of direction at this point. Mr. Kolbus felt that by next month the meeting results would give them a directional plan. Mr. Sharkey expressed his only concern was contracting again with Ground Rules and did not want to wait 18 months to pay them another \$50,000 to \$100,000. Mr. Godlewski explained he estimated when he talked to them to update Elkhart County's information, and produce it into their template the amount would range from \$5,000 to \$15,000. Mr. Doriot said that cost would be for layout and hyperlinking, etc. and he understood that the code would be put together by the Policy Committee and staff.

Mr. Godlewski stated an improvement to the process would be constant communication throughout, separating the proposals into four sections, and bringing them to the Plan Commission with the drafts being posted online and in paper format at the counter. He said the 'road show' would be at the end. Mr. Warner noted he made mention of a road show, and asked about any direction from the Policy Committee as to how that is best done, how many, where, etc. Mr. Godlewski replied there had been no direction at this point, but it is something that will be worked on immediately and when. He felt he could lay it out in detail for them. He felt at this point it is premature to speak about details. Mr. Godlewski said if he did not update the Plan Commission at this meeting formally, he would probably do so by email and a written memo; if that is not sufficient, an additional representative from the Board could be at the Policy Committee meeting. He wanted to keep them completely in the loop.

11. Brian Mabry – Minor Amendments to Planning Applications – Mr. Mabry said they would be constantly looking at the planning applications adopted in 2009. He is reformatting and revising the development review applications to ensure that they are consistent and clear. He gave an example of the Primary approval application for plats, which by the subdivision regulations, has certain information that needs to be submitted to make it a complete package. He will continue and be certain that the necessary information is submitted, so it can be reviewed by the Technical Committee without having to resubmit applications lacking information.

In addition, to assist with answering questions at the counter, Mr. Mabry is creating an official written interpretation of certain property or ordinance issues; for example, old PUD's that were adopted without site plans. He felt it would be helpful to have something on file so that the staff would be giving consistent answers to customers. He said that whenever there is a change in the application he would furnish a copy at the meeting for the Plan Commission to review.

Mr. Campanello asked whether the applicant was provided adequate information when the request was submitted. Mr. Mabry stated that from time to time some fundamental things are missing when the application is filed that the applicant will need to provide. He clarified that the required information is listed on the application, but there may be a clerical error also.

He informed them that the Primary approval application for plats has a checklist of what needs to be submitted. He reiterated he planned to write up interpretations so answers to customers' questions are consistent.

Mr. Campanello wanted to be sure the application process was not any more complicated for the applicant. Mr. Mabry explained they just would like to clarify the information.

12. Roger Miller adjourned the meeting at 10:50 A.M.

Respectfully submitted,

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Sandra Herrli, Recording Secretary

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Jeff Burbrink, Chairman