

## **MINUTES**

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

**HELD ON THE 13<sup>TH</sup> DAY OF DECEMBER 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 Chairperson, Jeff Burbrink, with the following members present by a roll call vote: Tony Campanello, Steven Edwards, Roger Miller, Steve Warner, Douglas Miller, Mike Yoder, Jeff Burbrink, Dennis Sharkey, Blake Doriot. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Planning Manager; Mark Kanney, Planner; Duane Burrow, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Doriot/D. Miller*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 8<sup>th</sup> day of November 2012 be approved as submitted and the motion carried unanimously.

3. A motion was made and seconded (*Doriot/R. Miller*) that the legal advertisements, having been published on the 1<sup>st</sup> day of December 2012 in the Goshen News and the 1<sup>st</sup> day of December 2012 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Doriot/Campanello*) 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 amendments to the text of the Elkhart County Zoning Ordinance listed as follows: **Article 5 ADMINISTRATION** by allowing the Zoning Administrator to grant Administrative Adjustments for minor specified deviations from otherwise applicable standards of the Zoning Ordinance, for Elkhart County Advisory Plan Commission represented by , on property located on the for property located in the unincorporated areas of Elkhart County, the Town of Bristol, the Town of Wakarusa, the Town of Millersburg and the Town of Middlebury was presented at this time.

Brian Mabry requested an amendment to the zoning ordinance to allow for administrative adjustments to allow the Zoning Administrator the ability to approve minor encroachments into required setbacks. Approval of this request would reduce the number of insignificant items on the Hearing Officer and Board of Zoning Appeals' agenda and to also provide faster and more predictable service to customers at the counter.

Mr. Mabry stated that the encroachment could be up to 10% into a required setback, which currently would be required for approval by the Board of Zoning Appeals. He did some research and since 2002 there have been 44 setback variance requests that have been 10% or less of an encroachment into the setback and all 44 of those were approved, so it seemed feasible to bring this

issue to the Plan Commission as an amendment to the zoning ordinance for administrative approval rather than requiring a public hearing and public notice with the Hearing Officer or BZA.

Mr. Mabry said he had a note at the bottom of the Staff Report that, "Some communities, such as Lagrange County, allow the 10% relief to apply to any numerical standard in the Zoning Ordinance." He thought the direction from the previous workshop was to look at setback encroachments, so that is what they did.

Mr. Mabry gave a Powerpoint presentation illustrating the six main points of the proposed amendment.

*Applicability* – Has to do with a 10% encroachment into a required setback. If it is more than that and the applicant wanted to pursue it, it would be treated as a variance and go to the Board. Or, if what they are doing does not meet some of the review criteria than it would also go as a variance.

*Review Process* – The process is quite simple, it would be administratively reviewed by the Zoning Administrator, Brian Mabry.

*Standards Ineligible for Relief* – He said there are some standards that are ineligible for this type of relief and they are approved conditions or commitments on a property; such as, if the Board of Zoning Appeals required a 50 ft. setback for a special use that would not be eligible for this type of relief.

Mr. Mabry stated that if work was done without a permit than a permit would have to be acquired and then it could be considered as part of an administrative adjustment.

No administrative adjustment is allowed that would result in the location of a structure within any easement without approval from the Plan Commission to adjust or vacate it.

An administrative adjustment would not be allowed if the separation between any two buildings would be less than five feet. If the applicant still wanted to pursue it, they would have to appear before the Hearing Officer or BZA.

*Review Criteria* – The administrative adjustment could not adversely impact the surrounding properties, it would have to be consistent with the purpose of the zoning ordinance which is to provide for the health, safety and general welfare of the general public, and the adjustment should be the minimum necessary to provide relief.

*Relief Not Cumulative* – Mr. Mabry explained that an applicant could not 'piggy back' or accumulate two different kinds of relief. He said there is already setback averaging allowed where within a block there may be a set of older buildings that have setbacks that normally would not meet the current setback requirements of the ordinance, so they could average those existing buildings and have the new building meet that setback rather than what is required in the current zoning ordinance. He would not want to do that and add an administrative adjustment as well, so they would have double the relief, it would have to be one or the other.

*Expiration* – Unlike a variance this would not run with the land; it would be specific to the structure being built and specific to the setback that would be encroached upon. The owner would not be allowed to rebuild into the setback again. They would have to reapply for approval.

Mr. Mabry stated that an approved administrative adjustment expires, unless an Improvement Location Permit for the associated structure is approved, within 90 calendar days of approval of the adjustment. Also, an administrative adjustment expires unless construction work is completed within one year from the date of the issuance of the building permit for the associated structure.

Roger Miller asked for clarification if a person was going to build between two other buildings, whether they could administratively match the setback of the other two buildings and Mr.

Mabry confirmed that would be the case.

Craig Buche with Yoder, Ainlay, Ulmer and Buckingham, 130 N. Main St., Goshen, heard the comment about the variance and that it would not run with the land. He was not sure that had been fully thought through, but if the building were constructed or the variance were complied with and then later the person sold the property, he did not think they would want to terminate it because from a title insurance or title standpoint, they would think if it does not run with the land the next person that purchased the property is not going to be in compliance with the variance. He suggested that they take that into consideration. Mr. Kolbus agreed once the building is constructed it becomes a vested right.

Mr. Sharkey commented if you are a neighbor and you have questions about the setback, how are they going to know that this resident has been approved to encroach 10% without the neighbor being notified. Mr. Mabry stated that there is no public notice for this type of request, because it is administrative. He said the draft could be amended to include that, but at this time there is no notification.

Mr. Doriot pointed out that Mr. Mabry indicated that the administrative adjustment does not adversely affect the permitted use of adjacent property or the physical character of the surrounding area. He stated that they would determine whether it would be approved after it was reviewed. Mr. Sharkey said adverse to one person, may not be adverse to someone else. Mr. Mabry said if there is a grey area he would refer it to the Board of Zoning Appeals as a variance instead of an administrative approval.

There were no remonstrators present.

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

Mr. Kolbus asked the Board if they wanted any type of notice after the fact, which is how minor subdivisions are done. Roger Miller asked if in the 44 times that the variances have been approved was there any remonstrations. Mr. Mabry told him he was not aware of any remonstrations. Mr. Burrow said that normally complaints are heard at the hearing and if they wanted to appeal the decision they would go to the Board of Zoning Appeals. Notices would also be sent. Doug Miller asked if the administrative adjustment would take place only when construction was involved and Mr. Mabry replied that there may be other circumstances, such as errors in staking a property. Mr. Doriot stated that the encroachments usually happen due to error in construction.

Mr. Sharkey felt it may also be a matter of trusting the staff. If the staff has a problem, then they could have a public hearing. Mr. Doriot pointed out that they are looking at 10% which would be 3 ½ ft. for a 35 ft. setback and 2 ½ ft. for a 25 ft. setback, so it is not that much. Doug Miller said if it is on a radius there is quite a bit of latitude in terms of cul-de-sacs. Mr. Doriot thought this request was a good idea.

Mr. Kolbus stated that on the issue of the vested property right, if they want to preserve that property right when it is granted and acted upon, under F.1. of the Administrative Adjustment Amendment Draft, the second sentence should be removed.

The Board examined said request and after due consideration and deliberation:

**Motion: Action:** Approve, **Moved by** Blake Doriot, **Seconded by** Douglas Miller, to recommend approval of the text amendment excluding the second sentence of paragraph F.1. as presented.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 10).

**Yes:** Blake Doriot, Dennis Sharkey, Douglas Miller, Jeff Burbrink, Mike Yoder, Roger Miller, Steve Warner, Steven Edwards, Tony Campanello.

6. The application for a zone map change from R-1 to B-1, for *Olha Ustymchuk (Seller) and Mark H. Hinds (Buyer)* on property located on the South side of US 33, 125 ft. West of CR 113, common address of 23492 US 33 in Concord Township was presented at this time.

Brian Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #23492US 33-121102-1*.

Mark Hinds, 57356 Appleseed Ct., Elkhart, said he currently has an office at 23737 US 33 and is planning to purchase this property and move the insurance office to this location. Roger Miller asked if he was going to use the current buildings. Mr. Hinds said he would use the 1 ½ story residence as his office, but would not use the attic area at all. He was just going to use the first floor. There is also a detached garage and two carports. He wanted to remove the carports, but keep the detached garage. Roger Miller asked him if he planned to have any major construction and Mr. Hinds said he was not.

Mr. Hinds said right now the parking area is stone and gravel in the front and rear. However, he wanted to pave it at the rear of the property and plant grass in the front with no parking.

Roger Miller asked Mr. Hinds about signage. He stated he wanted to put a 4 x 6 sign in the front with a 55 ft. setback and would like a lighted sign on the home. Mr. Doriot informed him that would have to be approved by staff. Mr. Hinds said he wanted to follow the guidelines.

There were no remonstrators present.

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

Mr. Sharkey asked if anything was brought to staff about the house to the south that is being torn down. Staff replied that a building permit had been pulled for demolition. Mr. Sharkey inquired whether they planned to get a building permit to replace the modular and Mr. Kanney told him they plan to replace it and it will be at the same location.

The Board examined said request and after due consideration and deliberation:

**Motion: Moved by Mike Yoder, Seconded By Blake Doriot** that the Elkhart County Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved in accordance with the Staff Analysis.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 10).

**Yes:** Blake Doriot, Dennis Sharkey, Douglas Miller, Jeff Burbrink, Mike Yoder, Roger Miller, Steve Warner, Steven Edwards, Tony Campanello.

**Action:** Approve

7. *Amendatory Declaratory Resolution for Elroy Drive Industrial Park TIF District – Craig Buche*

Craig Buche, Yoder, Ainlay, Ulmer & Buckingham, 130 N. Main Street, Goshen, is the attorney for the Town of Middlebury concerning the proposed amendment for a TIF District which is maintained and established by the Middlebury Redevelopment Commission. Elkhart County serves as the Town of Middlebury's Plan Commission, so after they consider a TIF District or an Amendment it goes to the Elkhart County Plan Commission for a referral with respect to whether this conforms to the development plan for that area. He submitted to the Board a copy of the Amendment to the TIF District, but he also brought a colored copy of the TIF District which may be helpful in determining the actual expansion of the TIF District [*Attached to file as Petitioner Exhibit #1*].

Mr. Buche explained the color coding on the map and pointed out the existing TIF District

boundaries for the Middlebury Southeast TIF District, the parcels in the blue or turquoise are the areas proposed for the expansion and are owned by Jayco, the small parcel on the lower right portion of the page, is owned by FFT Land Management.

Jayco had asked for an Amendment to the Town boundaries and had a portion annexed to the Town, so they are requesting municipal services from the Town. This area has been industrial for a long time. Jayco and the Town have continued to move to the south, and have continued to furnish municipal services in that area, so it is anticipated that water and sewer services will need to be expanded in that area. He said a new water tower is also planned to be in that area. The area in the Elroy Drive area, in the lower right portion of the page, is the original portion of the TIF District.

Mr. Buche said the plan is to continue to use TIF revenues for expanded municipal water and sewer services and, as indicated, a water tower. This has been considered by the Middlebury Redevelopment Commission and was requested by Jayco in order to help facilitate the municipal services. The question before the Plan Commission is whether or not the requested amendment would be consistent and conforming to the plan of development with Elkhart County. Mr. Buche stated that if approved by the Plan Commission, the request would go back to the Town of Middlebury for the Town Council's consideration and if they approve it, the request will go to the Elkhart County Redevelopment Commission for a formal public hearing.

Roger Miller asked if there was a proposed period of time that this TIF District will exist. Mr. Buche stated there are limits on the time periods and he believed this TIF District is limited to 25 years. He said it was established four or five years ago. He confirmed to Roger Miller that the blue area on the map is the portion to be added and the turquoise area represents the existing TIF. He pointed out that in the Resolution he provided Exhibit B, which is a labeled map for the Elroy Drive TIF Expansion and A, B, and C belong to Jayco, D is an area where they hold RVs for delivery.

Mr. Doriot stated that he was concerned about new buildings coming in and using tax monies or revenue that would have been otherwise used for the community and those homeowners are paying more monies for services. Even though this business will pay taxes, they are reallocating tax monies to an infrastructure that helps themselves. Mr. Buche agreed that there can be some benefits, but most of the projects that Middlebury has looked at are those which are more general in terms of their benefit. For example, the water tower would not be beneficial to any one particular property in that entire area.

Mr. Buche said in this case, the benefit would be that instead of affecting the rates which everyone would pay, the allocated revenue would pay for the improvements rather than increasing the rates for everyone in terms of a bond issue to pay for them. He stated if they could pay for the improvements with TIF revenues, there would be more effective return and less of an impact on everyone. The three projects he is familiar with, none of which are specifically aimed at any particular parcel or developer, are improvements to the lift station which serves that area in general, the water tower, and an additional water line to loop the water that would improve the service for everyone in that area.

What concerned Mr. Sharkey more than anything was that he knew what they are paying now they will always pay outside the TIF tax. He said the only thing they will be paying for that goes into the TIF District or Redevelopment Commission is what is put on the improvements and assessed value in the future and Mr. Buche agreed. Mr. Doriot said they have industrial ground that will be taxed as industrial ground. That money will stay in the general fund and will not go into the TIF revenue. Mr. Sharkey stated that when anything new is built, new roads, new sewers, etc. they

will need to be maintained and so many times these are not maintained by the TIF District, but they are maintained by the general fund of the Town or County. He said it did not used to be a problem, but now it is becoming more of a problem because there are tax caps. For instance, as soon as the 2% cap is reached they do not pay anymore and when that happens the City of Elkhart, especially, is getting hit by the tax caps and the City of Goshen is also. Mr. Sharkey felt they all had to be very careful of what property becomes a TIF and what has to be maintained. Mr. Buche agreed and he noted that it used to be that they could say the TIF District is not going to affect anyone's taxes, because everyone would pay the continuation and the money was spread out, but now it is true if they have properties over the tax cap, because a TIF District diverts from some of the assessed value that would have gone into the value for everybody's taxes, could increase the Circuit Breaker.

However, Mr. Buche informed the Board that Redevelopment would be getting some information from Umbaugh, and the Redevelopment Commission of Elkhart County is going to have a study done, so they will be able to show what the impact is. He believed that they will still find that the TIF approach is the most economical approach, because while you will potentially lose some revenue because of the Circuit Breaker, you will still be effectively having a greater return for the public infrastructures than what would be lost. He explained that they would actually only lose the Circuit Breaker piece, the rest would be a positive. However, they will see what that percentage is when they compute it and he thought it would differ based upon the taxing district. Obviously, those areas are already facing significant Circuit Breaker impact and there will be more of an impact. He said Middlebury rates are not to that point, but it is still an issue. Mr. Sharkey stated again, this is more of a Town of Middlebury problem, than a County government problem, but it is the Town's vote because they have to approve it.

Mr. Doriot noted that this TIF was adopted in 2009, so another 22 years would be a long time. He thought the duration of TIFs had expanded over the years and recalled it used to be seven, but Mr. Buche informed him they are actually shorter because there used to be no limit, then it was 30 years and now it is 25 years.

Mr. Yoder stated that they needed to determine whether the amended TIF would comply with the Elkhart County Comprehensive Plan and Middlebury has their own Comprehensive Plan that covered this area. He recalled that Middlebury did project this development.

Mr. Burbrink said the Town of Middlebury has water issues and they want to use this TIF to develop the loop and he thought having the water tower would probably help the city a lot. Roger Miller asked that if this request is for water, why would they need a TIF District to do it and Mr. Yoder told him it allows, if Jayco develops the property and does not sell it, Jayco's property taxes, the increment, to be directed toward paying for the infrastructure. Roger Miller said as opposed to the rest of the town paying for this, the taxes on this property will pay. Mr. Campanello said the funds must go for redevelopment, and he asked how this would create more redevelopment in Middlebury and who decides. Mr. Sharkey told him that the utilities would create redevelopment. Mr. Doriot felt that water is driving more industry and he thought expansion of this TIF would be a good investment. Mr. Sharkey asked if Middlebury planned on a bond issue for the water tower and Mr. Buche said when they actually do the project he did not think there would be enough cash on hand to do a major project like that, so they would probably finance it and allocate the on-hand funds from the TIF District and the ongoing funds to the bond issue. Roger Miller did not think there was a better way to get the funds.

**Motion: Action:** Approve, **Moved by** Roger Miller, **Seconded by** Steve Warner that according to the Elkhart County Plan Commission the expansion of the Elroy Drive TIF District complies with the Elkhart County Comprehensive Plan.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 10).

**Yes:** Blake Doriot, Dennis Sharkey, Douglas Miller, Jeff Burbrink, Mike Yoder, New member, Roger Miller, Steve Warner, Steven Edwards, Tony Campanello.

8. *Site Plan/Support Drawing Review for Vista Manufacturing (Office Manufacturing Distribution Facility) on Lot 9, Elkhart East – Area D – Duane Burrow*

Duane Burrow presented the Staff Report to adopt an Amended Site Plan/Support Drawing, Lot 9, and a portion of Phase 3 of Elkhart East Area D, for Vista Manufacturing. He clarified that this was referring to the development on the Southwest corner of CR 6 and CR 17, indicated on the site plan/support drawing, which is Lot 9, and a portion of what was to originally be a portion of County right-of-way included in the site plan. He also pointed out the façade drawings and the interior which illustrates some open spaces with office floor area. Mr. Burrow explained that the last drawing was the original configuration of the plat that was adopted by the Plan Commission. Subsequently, the Developer is intending to remove that portion of the stub extending West off of Columbia Drive. The Staff indicated to grant approval with conditions that would reflect what would be necessary to bring this request into compliance with the adopted County Zoning Ordinance. The attempt is to try to secure the amended site plan/support drawing prior to occupancy and in order to begin building in a more timely fashion.

Rob Dunlop, was present to represent J. A. Wagner Construction, Inc., 3325 Middlebury Street, Elkhart and submitted a memo highlighting details of the proposed building [Attached to file as *Petitioner Exhibit #1*]. He said Vista Manufacturing is currently located on the North side of Elkhart close to the airport. They are trying to plan for their long time needs and Mr. Dunlop has been working with them for about 1 ½ years. He said they need about 30,000 sq. ft. and would like to grow into 60,000 sq. ft. Mr. Dunlop stated that they need dock facilities; they need a taller building than they have right now and would like to be located within 15 miles of their present location. They have been searching for existing buildings in Elkhart County, the City of Elkhart and St. Joe County, but have not found a good fit. Mr. Dunlop thought they came up with a configuration at Remington Park that would work at 400 X 550, so they went to Rob Letherman for assistance and decided that Lot 9 almost fit perfectly, however, they just needed an additional 60 ft. to the South.

Mr. Dunlop would like to get started, because they have been planning this project with them for quite some time. He needs to be able to get the permitting approved immediately and the main thing is to give the developer as much as two years to complete the improvements. He informed the Board that Almac has been developing industrial properties for over 40 years and J.A. Wagner has been developing properties for over 25 years. He did not think there was any history of either company failing to put the required infrastructure in.

Mr. Dunlop then submitted a site plan indicating his encroachment into the unplatted property is less than 9,000 sq. ft. of asphalt [Attached to file as *Petitioner Exhibit #2*]. He explained he would like to obtain a permit on Lot 9, have the site plan and drainage plan approved at Staff level and to give the developer two years to construct the required infrastructure. Mr. Dunlop thought from the time the construction project is completed it would take 18 months for the infrastructure and the replatting. This would allow them to reconfigure what is going to be required, if they were to submit a replat for just 60 ft. He wants to make this project as economical as possible and mentioned they did not have any problem with the landscaping plan being submitted to the Staff and installed before the end of the year.

Rob Letherman, 3414 CR 6 E., Elkhart said he needs an extra 60 ft. on the South end of that lot. He stated the number of lots was limited in Remington Park and if the economy continues to

strengthen within the next three to six months they plan to bring Phase 3 to the Plan Commission showing the replat. Mr. Letherman felt that Staff was going to require them to replat now and not let him build the building. Therefore, what he is asking is that they get the building permits without this replat under the condition that they will bring in a new plat within six months to two years. He wants to handle the replat at the same time they present Phase 3. Mr. Campanello commented that they were taking the liability on themselves and Mr. Letherman agreed. He said normally they would submit a replat, but knowing that they will be platting Phase 3 they can handle the replat at that time. He said it is their position that they will replat it within six months to a year and he also talked to County Highway and they have no problem with not extending the road 60 ft.

Mr. Warner questioned the history on this situation and whether it has been done before. Mr. Burrow said they normally try to abide by the originally adopted Planned Unit Development site plan/support drawing. The developer when it was originally adopted indicated that they were going to create a cul-de-sac at this property. He said that is the only reason the Staff was asking for a replat, because they are making such a major deviation from the original site plan support drawing. There needs to be direction to figure out where their streets are going to go once they put the drive outletting onto private property. Mr. Burrow clarified that they do not see this on the drawing, but if they would go back to the original site plan it shows that these properties have been, for some reason, tract off into multiple ownerships. He agreed that Mr. Letherman may or may not be in control of it, but the Staff presently has some issues with properties that have been transferred to different entities. Mr. Burrow reiterated the Staff is just asking them to plat the site plan/support drawing so that the County won't have to have a driveway coming out onto private property. He said the history of the request started months ago and they could have submitted a request to the Plan Commission and ask for some relief through the PUD process. Through a site plan adoption process there is no capacity for granting relief, because that is not what they are asking under the original ordinance to adopt a site plan and not amend the PUD. Subsequently, they could have gone through the complete public hearing process and relocated the drive, so that is why Staff is trying to figure out what is going on at this time.

Mr. Burrow stated that the Staff would just like the road issue clarified, because when they adopted this they submitted a plat that sat and we need clarification as to how they are intending to extend the road south and then east off of Columbia Drive. It is not normally done with them driving off onto private property.

Rob Dunlop replied that these are not normal times and he needs flexibility. He has also talked to Mr. Letherman about a 20 acre tract. Mr. Dunlop said if Mr. Letherman had gone ahead and platted all of the lots across the south end of that property Mr. Dunlop would probably be back asking for it to be replatted into a single lot. The flexibility it gives them is that the activity from this project might spur other activity in that area and could help Mr. Letherman develop the remaining land and a small cul-de-sac road would continue east toward CR 17. Therefore, he thought he would be encroaching just 9,000 sq. ft. on to the unplatted ground really does not materially affect anything other than a cul-de-sac that was going back to the west to a dead end and serving a 2 ½ to 3 acre lot in the southwest corner of the development. He said they were going to change that into a 5 acre lot and continue on to the east.

Mr. Letherman said he shelved Phase 3 in 2007 after Odyssey happened, so they shelved all of their projects because they saw where things were headed. He clarified that why it was never recorded or taken to the Commissioners. Mr. Doriot asked about control of the ground and Mr. Letherman clarified Northland Corporation owns all the property in the southwest corner. Mr. Letherman said there are 20 different properties they purchased, so if someone would pull up the

property cards it would say Almac Inc./Ludwig Investments/Northland. Mr. Doriot questioned if they do not bring a plat in within one or two years would he commit to platting at that time. Mr. Letherman said they just do not want a double step. Mr. Doriot asked him if they could grant easement to them across that portion of the right-of-way that is going to be extended for their driveway. Mr. Letherman said there is an existing temporary cul-de-sac there and the talk about the street going to the west is now irrelevant. He thought they could get in off that temporary cul-de-sac that is existing. He said he could also get the easement. Mr. Doriot thought if he could get the easement do the plat within two years. Mr. Letherman anticipated they would see the plat sooner. He wants time to get Mr. Dunlop started. He reiterated 9 times out of 10 they would cooperate with Staff and do exactly what they wanted.

Mr. Burbrink said the Board needs to make a decision whether approve the site plan/support drawing with the Staff conditions or the conditions proposed by the petitioner.

Mr. Warner pointed out that according to Mr. Burrow this should be brought to the Plan Commission as a major change. Mr. Sharkey commented that if Elkhart County has someone interested in building a new building the Plan Commission needs to make it easier for them and not make to more difficult. Mr. Campanello stated that it would only behoove Northland to do it the right way in the first place and put the roads in the right way for future development. Roger Miller agreed the road has to be put in correctly so it can be utilized by future companies.

Mr. Yoder stated, for the record, that this issue has created some tension among a number of people, but he thought they should affirm the Staff's position on this to bring it to this Board, because they do not want the Staff to make arbitrary changes at this particular level, so he thought it was appropriate that this issue came before the Plan Commission. He apologized that it took a couple of weeks longer, but this is an exception that is not really allowed anywhere. He asked if the the Board was in agreement and Mr. Campanello stated there were common sense issues to consider also. Mr. Yoder agreed without a doubt, but even with the common sense issues, the Staff needs to bring it to the Plan Commission. He then deferred to the Plan Commission to decide what they thought was appropriate.

**Motion: Action:** Approve, **Moved by:** Mr. Campanello **Seconded by:** Douglas Miller to adopt the site plan submitted by J. A. Wagner, and to adopt their request with these conditions,

1. Permits to be issued by the Planning Department without amending or replatting the PUD.
2. Site plan approval including drainage design to be approved by the Staff.
3. Developer to be given two years to plat the required DPUD for the unplatted portion of this site plan and construct the necessary improvements.
4. That J.A. Wagner and Vista Manufacturing submit the required E-3 Landscaping Plan to the Staff for approval prior to occupancy in the spring of 2013 with the installation of the Landscaping Plan to be no later than November 2013.
5. The site plan must include an access easement on the future right-of-way area.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 10). **Yes:** Blake Doriot, Dennis Sharkey, Douglas Miller, Jeff Burbrink, Mike Yoder, Roger Miller, Steve Warner, Steven Edwards, Tony Campanello.

9. *Amended Site Plan/Support Drawing for AGDIA DPUD – Duane Burrow*

Duane Burrow presented the request to modify the site plan/support drawing for AGDIA DPUD pertaining to the proposed entrance onto CR 1 and asked the Plan Commission to determine whether this change to the site plan would be considered a minor or a major change.

**Motion: Action:** Approve, **Moved by** Blake Doriot, **Seconded by** Roger Miller that the request to amend the site plan/support drawing be considered a minor change for a drive that will not have acceleration and deceleration tapers for a dedicated passing lane on the west side of CR 1.

**Vote:** Motion carried by unanimous vote.

10. *2013 Agreement for Legal Services – Chris Godlewski*

Mr. Godlewski stated that the proposed amount for Mr. Kolbus to attend the meetings next year is \$7,403. He said they built in a 1 ½% increase, which is what the County employees received in 2012. The Board expressed their appreciation to Mr. Kolbus for his services.

**Motion: Action:** Approve, **Moved by** Roger Miller, **Seconded by** Blake Doriot to accept the 2013 Agreement for Legal Services as presented.

**Vote:** Motion carried by a unanimous vote.

11. *Jemian Trace Subdivision Extension of Primary Approval – Mark Kanney (From Item #13)*

Mark Kanney submitted a letter from Brads-Ko Engineering & Surveying, Inc., along with a preliminary site plan for Jemian Trace, Phases III and IV [Attached to file as Staff Exhibit #1]. Mr. Kanney said the subdivision was approved January 2011. He said up to this point they had not been able to follow through with any of the platting, but they still have that intention. They would like an extension on the validity of the Primary, which by Ordinance lapses after two years. Mr. Kanney stated that the Plan Commission has the authority to grant an extension and the Staff does not believe there have been any changes in the Ordinance or anything to justify bringing it back for a new Primary.

Mr. Warner asked if he remembered correctly that Brads-Ko was not the original surveyor and Mr. Kanney confirmed that to be true, because another surveyor represented Phase I and II.

**Motion: Action:** Approve, **Moved by** Blake Doriot, **Seconded by** Steve Warner to extend the Primary for Jemian Trace Phases III and IV for two years.

**Vote:** Motion carried by a unanimous vote.

12. *Nominating Committee for 2013 Slate of Officers and Appointments*

Mr. Burbrink asked for volunteers to serve on the Nominating Committee. Steve Edwards, Blake Doriot, and Roger Miller will come up with a list for the proposed officers of the Plan Commission. Mr. Burbrink reminded them that the Secretary of the Plan Commission will also be the Chairperson for the Plat Committee.

Mr. Warner noted that the Executive Committee needs to be in a full rotation. Mr. Kolbus informed him that is his recommendation when he brings it back to the Board in January and it should be one of the first agenda items. Mr. Kolbus was aware that Mr. Sharkey will be leaving County Government and asked him if he knew who would be replacing him. Mr. Sharkey informed them that an official decision would not be made until the 1<sup>st</sup> of January, but he is trying to get Tom Stump on the Board, who is also taking Mr. Sharkey's position on the Goshen City Council. Mr. Stump was on the Goshen City Council and is the President of the Redevelopment Commission. Mr. Sharkey felt he would be an excellent fit and he has a great deal of experience.

Chris Godlewski stated that Mike Yoder has had 8 years of service with the Plan Commission and he will also be leaving. His replacement on the Plan Commission will be Frank Lucchese. Mr. Burbrink and the Board members expressed their appreciation to Mr. Sharkey and Mr. Yoder for the contributions they made to the Plan Commission over the years.

13. *Zoning Ordinance Update – Chris Godlewski*

Mr. Godlewski stated that the Policy Committee met early this month to discuss residential and agriculture zonings. They came to the same conclusion as the previous meeting which was to maintain current regulations and they addressed land use conflicts with setbacks. The Technical Committee reviewed the Module 1 Draft that Mr. Mabry created and they will review it again Monday of next week. Mr. Doriot asked if he was sending the Modules to everyone. Mr. Godlewski stated that there will be some changes made that they will pass on to the Policy Committee for review the first week in January and at that point it could be published. He thought it was a very raw version at this point. Mr. Mabry said he will be putting the finished product of each Module on the website and then it will be distributed to the Policy Committee. Mr. Godlewski assured them that they would make it a public document and make sure it is available to everyone. Mr. Doriot asked when the Plan Commission would be able to look at it and Mr. Godlewski informed him that the Plan Commission would be last to see it. He thought it would likely be at the February meeting. However, he told him that the Plan Commission would get it well in advance for review.

Mr. Mabry informed them that they are sectioning off this project into four Modules. Module 1 consists of General Provisions and Development Review which covers procedural steps, the Purpose Statement, and the legal aspects. The Development Review procedures have to do with who approves and reviews whatever the issue is at the time. He said Module 2 relates to the zoning districts and uses. Module 3 has to do with development standards; such as access, signs, etc. Module 4 has to do with enforcement, non-conformities and definitions.

Mr. Doriot asked when the Plan Commission could see the amended zoning ordinance. Mr. Godlewski told him the Plan Commission would be the last to review it and that the second Module will not begin until February, so right now they are working on the basic provisions. He assured the Plan Commission they would have the zoning information well before approval is requested, so they would have time to review it. He thought at this point, it is very raw and there were so many comments and changes that he did not think reviewing it would be worthwhile.

Mr. Godlewski said that recently the Commissioners made a statement to follow through with how to approach residential use in agricultural areas. He wanted to know what the Staff's viewpoint is for that portion of the ordinance and specifically expressed that he needs the Plan Commission's guidance in moving forward with the zoning ordinance, because they cannot move on to Module 2 until decisions for Module 1 are made.

Mr. Burbrink asked what options had been reviewed. Mr. Godlewski informed them that the first option discussed by the Policy Committee was the existing subdivision ordinance for development standards in an agricultural zone which allows for a 20,000 sq. ft. minimum size lot. In addition, imposing setbacks as part of that development in order to minimize land use conflicts and giving notification, whether it is a zoning ordinance or permit, would give the applicant an indication of any conflicts.

Mr. Godlewski stated that the second option is the rezoning approach for new residential development and agricultural zones. He assumed rezoning would be for major subdivisions only and Mr. Kolbus said they would define what 'major' is. Mr. Doriot noted the third topic called for rezoning for heavy animal use. He said agricultural users with large businesses are not opposed to residential, but they did not want rezonings for what they do. For instance, Brookins tries to meet with his neighbors to let them know what he is doing and when he is doing it. If there are conflicts at some point, they are not opposed to being a good neighbor and comply with their request. Mr. Doriot recalled that Dwight from Farm Bureau suggested rezoning for developments that were 20 to 30 lots and larger. Mr. Godlewski responded to the Policy Committee that he did not know if that

would have been effective because there may be a lot of phases of 19 lots that would be requested.

Mr. Warner said he was not present last month and asked if they were basing the new zoning off of the current ordinance or Draft E. Mr. Godlewski explained Mr. Mabry combined the good features from both documents. He based it off of the current ordinance, but brought provisions from both documents into the one he has created and noted in the Module which part came from each ordinance. It was very clearly laid out. Mr. Warner asked if the ease of use would be from Draft E. Mr. Godlewski said there was some, but Mr. Mabry did not indicate that everything presented in Draft E would meet our standards. He informed him that one committee reviewed the ordinance so far and there were some minor changes, but for the most part it is good. Mr. Warner said he would like to see a comparison between the proposed ordinance and Draft E, because the County paid \$100,000 for it and he did not want to see it go to waste. Mr. Godlewski said he would send the draft out to everyone by email. Mr. Kolbus agreed that even though it may seem premature it would be good to get Module 1 out to the Plan Commission so they can look it over.

Mr. Burbrink had distributed a sheet concerning setback requirements that were adopted for the fertilizer rule. He said the State Chemist's Office came up with the fertilizer rule and adopted IDEM's requirements along with a few of their own and the manure regulations will be instated in February. Mr. Burbrink thought if they are looking at Option #3 and Option #2 in some regard that is another set of setbacks the Plan Commission could take into consideration. Mr. Sharkey asked who would regulate this and Mr. Burbrink informed him that it will be managed by complaint. He said the fertilizer rule would give complainants some guidelines.

Mr. Yoder stated that the County Commissioners have discussed all of this and they will be receiving a letter on this particular issue of residential and agricultural zonings. He was going to share with the Plan Commission what will be in the letter they will receive. Mr. Yoder said he wanted to do this cautiously because it could be perceived as being a little heavy handed on the Plan Commission's part.

As far as the County Commissioners are concerned, it is their responsibility to establish land use policies in the County and the Plan Commission is an Advisory Board to the Commissioners. He said they have been watching carefully the Plan Commission's progress and Mr. Yoder has personally reviewed all the information over a decade of land use work in this County. The Commissioners went back to a letter that was sent to the Plan Commission in 2007 which addressed the subdivision ordinance and asked that it be revised. He said the letter also talked about zoning and substantial changes in land use. In the letter it said that residential in an agricultural use was not the direction they wanted to continue with.

Mr. Yoder explained as elected officials it is their job to listen to and to the best of their ability, understand all of the positions in the County. From the feedback he received he could argue every single side on this issue from 20 years of experience. From the Commissioners perspective, there have been two countywide strategic planning efforts that have involved hundreds of people in this community. They have passed a County Comprehensive Land Use plan that has gone through public hearings and public input. Everything indicates that this County is not happy with the current zoning ordinance and land use policies. In fact, the public input from hundreds of people have been that they value the agricultural industry and agri-business community and they need to do more to protect and maintain that industry, both from an economic development standpoint that it adds economic diversity to our County and secondly, it is considered a part of the high quality of life, this rural feel of our community. He used a couple of quotes from a couple of people on the Board that they appointed because they represent a very important view in this community.

1. Every acre in the County should be available for development.
2. The thought that this current zoning ordinance works very well.

He said those two viewpoints are not widely held in this community from the perspective of the Commissioners and from the perspective of the input they have had over the last decade. They are also concerned that this Board seems to be stuck on this issue. The Commissioners are a little frustrated that after \$100,000 of expenditures and five years of work the County is not making a lot of progress. This new zoning ordinance is really critical for a variety of efforts in the County, from economic development to the tourism bureau. A variety of things are hinging on a modern zoning ordinance.

The Commissioners routinely, and it is to the point of a complaint every week from constituents, come down to land use conflicts out in the County. It could be traffic, odor, dust, etc., and for the people that have been around the last five years this Board heard from Sheriff Mike Books and the County Highway Department about the increased expenses that our Development and Land Use Planning have created for the County. This Board and the County Commissioners at the time have approved residential subdivisions in the County that have added 200 to 300 miles of roads that have to be maintained and there are no additional tax revenues. He said that is just one example of the additional costs. There is an increase in crime and he said the list goes on, but he is not here to debate the issue.

Mr. Yoder said the County Commissioners are 3-0 in this position and the Plan Commission needs to move forward with residential use not being a permitted use in an agricultural zone, in the sense of the major subdivisions. He reminded the Board that one of the things they created when they previously considered a new zoning ordinance was Rural Estate zoning. Residential use in an agricultural zone as it stands now is not a policy the Commissioners want to see come forward. If they have that in a zoning ordinance it is not really a good use for moving forward. He reiterated that the Commissioners want to see that residential use and the agricultural use are separated. Mr. Yoder said they made several appointments last year so that the new zoning and new regulations would be as friendly as possible for the housing and development industry. The Commissioners also wanted to reaffirm that this is not in the letter.

Mr. Yoder believed that there were some very good items in Draft E they should continue with, such as:

1. They strongly want to affirm the ability of starting a business at home, but the business at home needs to be streamlined and made easier.
2. The issue concerning Amish dawdy houses needs to be revised and there are some good options for that as well.
3. The Commissioners discussed Pyramid zoning and Mr. Yoder just does not like it. Mr. Godlewski has convinced him, however, with some modification they could keep that position, so the Commissioners decided to grant that to the Plan Commissioners. Mr. Doriot agreed there needs to be some modification on that issue. Mr. Yoder said he felt, from a communitywide perspective, that there just is no way he could vote yes to Pyramid zoning and feel like he was doing his job. He talked with the other Commissioners and they felt the same way, so he thought the best thing for this Board was to say, this is where your policy body is and hope the Plan Commission makes some decisions.

Mr. Doriot was told recently that not enough of the agricultural producers are involved with the rezoning issues. He acknowledged that they need to have big farmers involved, so he went out and talked to the larger farmers in the County. Lowell Stoltzfus raises 299 steers and farms thousands of acres, the Brookview Farm was asked, the poultry producers were asked, Newcomers from Wakarusa, and the Reeds from Nappanee gave their input, so they could express their viewpoint pertaining to their property and what they need to be protected from.

Mr. Doriot explained that they do not want their rights taken away, they said they would be as good of neighbors as they can but they realized, however, it is not a conflict free world. Unfortunately, they all have different opinions and no one can regulate everything they want. He was aware of a letter that had been circulated on the internet to Farm Bureau and it indicated that the County is totally wrong and Indianapolis needs to get involved, however, Mr. Doriot believes the County does try to get people involved. He agreed perhaps they do need rezonings on subdivisions that require streets.

Doug Miller asked what is acceptable to the County Commissioners. He felt that Mr. Yoder had been clear about the County's position, but what did the Commissioner's think is an acceptable approach to them. Mr. Yoder replied that the Commissioners liked the approach in Draft E to be the minimum farm size for residential at 10 acres. He stated that they would take some direction from the Plan Commission as to where they would want to draw that line.

Mr. Doriot suggested using Horizon Place as an example, and Mr. Yoder asked him how many homes there are per acre in that subdivision. Mr. Doriot said there were approximately 1.5 homes per acre with the road, because they were approximately ½ acre lots. Mr. Yoder said that is not an agricultural use at all; that is a residential use, so those areas need to be rezoned. He thought it was puzzling that there was hesitance to go through the simple rezoning process. He said they would not have to be concerned about setbacks necessarily, depending on the next use, but it is a way to mitigate future problems. He explained currently this is the way it is, if there are 40 homes on 20 acres and there is a 40 acre agricultural barn field next to it with our current zoning they could have a 1,500 cow dairy there and there is nothing those 40 homes can do to stop the IDEM permit. Mr. Yoder went on to comment on the IDEM permitting process, which is not that difficult. He stated that IDEM would only have hearings on manure storage. He reiterated that right now there are residential and agricultural conflicts and it will get worse or the agri community will be forced out of the area eventually. Mr. Yoder explained that, generally, the Commissioners have come to the realization that there needs to be two zonings; one for residential and one for agricultural; however, there are several residential uses and several different ag uses.

Mr. Burbrink thought there was a fear that they could take all the agricultural zones and take all the residential out of it, and those people that want to build, want to eventually sell, and make money off of housing will not be able to get it rezoned. Mr. Doriot agreed and told them to look at the history of this Board. For instance, if they would want a rezoning the petitioner would be told they should come back with a PUD. Mr. Doriot stated that rezoning are notoriously difficult and totally up to the discretion of the Board and/or Commissioners.

Mr. Burbrink did not know if rezonings were that difficult. He thought they took more time, but the Board has rarely turned down any rezoning. Mr. Doriot noted that the Board made them go back with a PUD and spend thousands of dollars. Mr. Burbrink mentioned that they have also talked about the fact that they have been doing so many PUDs that they need to revise the PUD process so the Board does not have to do so many. Mr. Kolbus stated the fact that the commitment process has been extended to rezonings should help in that area.

Mr. Warner thought they had seen concern with rezoning because of the land use plan the

County has, whether it is agricultural next to residential or residential next to heavy manufacturing. He felt the County owes the community some protection from the surrounding use and that is why there is concern with rezoning.

Mr. Burbrink thinks within the next five to ten years they will see an expansion in the livestock industry in this community again. He did not think it would be on the dairy side, because dairy may fade a bit, because there are not people that will go to the next level easily. He thought the next level the County will see is something along the lines of poultry, because it has become a meat of choice, so that business will expand. Mr. Burbrink stated that poultry fits in relatively small buildings and could fit between a subdivision the way it is, so the setbacks will be extremely important to protect the people in the homes and to protect the business. He felt they do need to put some thought into that area. Mr. Burbrink said he did not know how protective the restrictions that IDEM and the State Chemist Office have come up with are for both the business and residences. He said they are putting a public water well, which is similar to a municipal well or to Boardman having their own well for their community within 500 ft., however, he knows there are people farming within 500 ft. of that well that were hauling manure on that field.

Mr. Yoder said it may not be the manure application that concerns them as much as the way it is currently designed. A duck barn with a liquid manure system really stinks and a quarter mile setback is not enough. If they were forced to be in an agricultural zone for livestock of that size and he thought they needed something rather than the CFO and CAFO levels. He reiterated it promotes better planning and less conflict by having more modern zones and zones that have uses within them that are similar uses. He thought the intent of the new zoning ordinance also was to create enough zones and standards so they did not have to make people do PUDs. He felt that PUD zoning was required because the present zoning is so broad and allows so many things that protection is needed. Mr. Doriot agreed they need to go through the uses and clean them up. Mr. Yoder said there were also some uses that are not clearly defined.

Mr. Yoder said if properly designed and they have an agri zone that is primarily just crop and no animal production and someone wants to rezone the neighboring property to residential, within those standards it could be called A-1 for cropland. He said there would not be many setback standards because they are not a conflicting use. On the other hand, if there is a livestock district there with a livestock use and the next door neighbor wants to put in residential the standards will indicate that if they are next to a livestock zone there will have to be buffers established or some setbacks. He felt this will make for more orderly development and he felt it is a way for everyone to get what they want and mitigate the land use conflicts that happen. Mr. Yoder said one of the Commissioners intents was to help this Board resolve this so they would not have that close of a split vote on the zoning ordinance and it would allow the Board to know the Commissioners position on this, so you know what the general policy is on it. The Board would know what the policy is so they could move forward and finish it. Mr. Doriot asked that Mr. Yoder forward the complaints to him. Mr. Yoder said the biggest complaint right now is the Land Use Policy which allows stripping out roads and to create developments out of residential areas along side manufacturing and semi-trucks are a big issue. He said it even happens in the rural areas because the larger the farms get the more truck traffic. Mr. Doriot said part of those things may not be stopped, but there could be proper notification given and the landowner moved where they did knowing what is allowed in the country.

Mr. Campanello commented about when the large farms were brought up and he said even the small farms right now will be strangled by more taxes coming up and now the Plan Commission

and Commissioners are telling the landowners what they can and cannot do with their land. Mr. Yoder did not agree think that was the case, and he said the Commissioners enforce the zoning ordinance, so it is the community that establishes those uses and the community provides input. The Commissioners are the ultimate enforcement. Mr. Campanello said when the Plan Commission comes up with an idea for something, the Commissioners have already decided to say no to it. Mr. Yoder replied that the community is who is saying no to it. Mr. Campanello stated that the Commissioners are, in fact, going to be putting these undue burdens on the landowners. Mr. Yoder agreed that just like for manufacturing or industrial they say no now. Mr. Yoder explained that this was the Commissioners decision and he realized some people are not happy with it, but it was a 3-0 vote. He felt this decision is strongly held by them and the community.

Mr. Yoder commented that with the first process the Commissioners took a look broadly to get input and a Policy Committee has been created that is heavily membered by people that are opposed to Draft E. Mr. Yoder said he approved the committee because he thought if they got all of the people together to look at all of the issues they looked at the first time they would understand that this is more complex. Instead, what they have on the Policy Committee is people acting as lobbyist for their own individual perspectives. He still did not think they were getting a broad spectrum of input from the community on these general policy issues. Mr. Yoder said what they did the first time around is spend years and 14 or 15 meetings with a variety of groups to get input. Therefore, from the Commissioners perspective, and they look at the entire community, the Policy Committee that has been created is pretty narrow in focus, in his opinion.

Mr. Sharkey commented that people want to move to the cities edge or out in the county, they do not want to live in the city. He said people move out in the county to get some space, because they feel safer.

Roger Miller said he called around 100 people and asked them what was the one thing that they see happening in Elkhart County that you want to stop. Their answer was that they do not want to see large subdivisions out in the country. He said that was the overwhelming voice that he got and he told them that means a lot to many people.

Mr. Doriot mentioned Lowell and Tim Stoltzfus, Prairie Dairy Farms, bought their land and there were uses on that land when they bought it and they have underlying value. He stated that now this Board is going to say for the good of the person on South 15<sup>th</sup> Street in Goshen, because they want to drive by, that the County is going to take that underlying value/underlying option away from them. This is something that they paid for and something that they pay taxes for. Roger Miller noted that there are the Stoltzfus people that amount to five votes and the people he talked to with 100 votes. Mr. Doriot said those people with the 100 votes do not own the land. Roger Miller said they are being protected, but they do not want protection.

Mr. Yoder stated that they need to vote on this issue, because Staff needs direction. Mr. Godlewski asked if they want to approve concepts of Draft E with multiple zoning districts.

Mr. Doriot stated what he heard about residential and agricultural zones. He said whether it is major subdivisions in agricultural zones, whether it is four lots and above, any lot with internal streets, or one, two or three acre lots, is what he heard this is about. Mr. Doriot stated that there are some good things in Draft E and there is this overlying worry that the \$100,000 was thrown away for Draft E, but they need to use what is good about it and get rid of what was not good. He felt it was not a waste of money, because they learned from Draft E.

**Motion: Action:** Approved, **Moved by** Mike Yoder, **Seconded by** Steve Warner to separate out the residential uses from agricultural uses as generally outlined in Draft E.

**Vote:** Motion passed (**summary:** Yes = 5, No = 4, Abstain = 0).

**Yes:** Jeff Burbrink, Mike Yoder, Roger Miller, Steve Warner, Steven Edwards.  
**No:** Blake Doriot, Dennis Sharkey, Douglas Miller, Tony Campanello.

Mr. Godlewski had a closing note in regard to a Planning Workshop and wants to have a short educational discussion at the next meeting for the new Board members.

14. The meeting was adjourned at 11:29.

Respectfully submitted,

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Sandra Herrli, Recording Secretary

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Jeff Burbrink, Chairman