

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 9TH DAY OF FEBRUARY 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: Tony Campanello, Steve Warner, Roger Miller, Mike Yoder, and Blake Doriot. Staff members present were: Chris Godlewski, Plan Director; Mark Kanney, Planning Manager; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Kathy Wilson, Office Manager; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Yoder/Doriot*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 12th day of January 2012 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Doriot/Campanello*) that the legal advertisements, having been published on the 28th day of January 2012 in the Goshen News and the 29th day of January 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/Warner*) 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. A request for a minor change to the site plan / support drawing for **THE WAKARUSA BUSINESS CENTER DOLLAR GENERAL DPUD-B-1** was presented by Robert Nemeth. This property is located on the Southwest corner of Kemar Street and SR 19, in the Town of Wakarusa in Olive township. Last month the Plan Commission gave a favorable recommendation for the rezoning of property in the Town of Wakarusa for Dollar General. The rezoning was for a Detailed Planned Unit Development and the use and development standards are tied to the site plan. Mr. Nemeth provided a slide presentation to view the site plan which also functions as a primary plat. He said there has been minor changes to the site plan / support drawing, and if it is approved the next item will be the Secondary plat.

He said the first change was in the northwest corner, a cross access easement, which was to allow the adjacent property access through one entry point. Brads-Ko Engineering and Surveying, 1009 S. 9th St., Goshen, supplied a letter dated January 30, 2012, that was included in the Board's packet explaining that Dollar General wants control over their own site. Mr. Nemeth deferred to the Town Engineer based upon their development standards, on the spacing requirements, and it was determined that it meets their development standards. There will be adequate spacing so that another driveway can be located on the west adjacent property. Mr. Nemeth said Staff is supportive of the Town Engineer's recommendation to remove the cross-access easement.

Mr. Nemeth said another change on the site support drawing is a bike/pedestrian access easement that would be tied with an existing utility easement that will run down the west side of the property. He noticed that it was not located on the plat at this time, so he deferred to Mr. Pharis for

an update on the bike/pedestrian easement.

Barry Pharis, Brads-Ko Engineering and Surveying, 1009 S. 9th St., Goshen, was present representing Dollar General LLC and the Kemar Group. Kemar is the owner of the Wakarusa Business Center and the seller of the property. He stated that the cross-easement/cross-access agreement, as provided by Dollar General and addressed by their Counsel as unrevokable and unchangeable, clearly stated that his client would not be able to sell any property in this subdivision similar to their work. Dollar General sells just about everything including frozen food, and his client's Attorney thought that was an unreasonable request and it severely limited his client's ability to market property. Therefore, he approached the City Engineer of Wakarusa and they have submitted a letter that says that a second entrance can be created, so that cross-easement/cross-access agreement has been eliminated.

Mr. Pharis stated that along the west side of the subject property is a 30 ft. easement with 20 ft. of it being reserved for a proposed future walking/bike path. The other 10 ft. will handle the sanitary sewer connection. He worked with the Town Engineer again and Dollar General does not want any of that 20 ft. path on their property; therefore, Mr. Pharis created a new easement that moves 7 ft. to the west on the Dollar General property, so the entire 20 ft. will be designed as the west 20 ft. of the 30 ft. and the entrance portion will have 7 ft. added to maintain the 20 ft.

Mr. Pharis reiterated that the Town Council and the Town of Wakarusa Technical Review required the walking path/easement and it is their responsibility to obtain access to Waterford Street through two private owners' properties. Also, the commercial subdivision that was platted prior to Mr. Pharis' involvement has no sidewalks; therefore, they agreed to make these changes. They also included sidewalks on every lot in the residential portion of the subdivision.

Mr. Doriot asked if the easement would be straight on the Brown's property and Mr. Pharis stated it would be 30 ft. on the Brown's property with the west 20 ft. being the walking path.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Campanello*) that the Advisory Plan Commission determined this request to be a minor change to the site plan / support drawing.

Mr. Doriot then moved to approve the minor change to the site plan / support drawing. Mr. Miller seconded the motion, which carried with a unanimous roll call vote.

6. The application for Secondary approval of a Detailed Planned Unit Development known as **THE WAKARUSA BUSINESS CENTER DOLLAR GENERAL DPUD-B-1**, for Kemar Properties LLC (seller) and Wakarusa DG LLC (buyer) represented by Brads-Ko Engineering & Surveying, Inc., on property located on the Southwest corner of Kemar Street and SR 19, in Olive Township, zoned GPUD-B-1, B-2, B-3, was presented at this time.

Robert Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #0Kemar Street-111205-2*. The Secondary plat is consistent with the site plan / support drawing just amended and it meets the subdivision regulations.

The Board examined said request and after due consideration and deliberation, Mr. Yoder moved to grant Secondary approval in accordance with the Staff Analysis. Mr. Miller seconded the motion, and with a unanimous vote, the motion was carried.

7. The application for a zone map change from A-1 to a Detailed Planned Unit Development-A-1 to be known as **MARTIN ANIMAL BEDDING DPUD**, for Carl and Amanda Martin (Owner) and Kevin Martin (Developer) represented by Brads-Ko Engineering & Surveying, Inc., on property

located on the East side of CR 17, 2,200 ft. South of CR 38, common address of 65448 CR 17, in Elkhart Township, zoned A-1, was presented at this time.

Robert Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #65448CR 17-120103-1*.

Mr. Nemeth pointed out the petitioner owns the residence to the west; however, the petitioner does not own the surrounding property. He also noted that if wood grinding is allowed, there is no limitation placed on hours or days of the week.

Roger Miller questioned the access through residential areas and Mr. Nemeth pointed out on the map where the access area would be through the residential areas and crossing into agricultural areas. Mr. Yoder said that was one way to gain access, but they could use SR 19 and US 20. Mr. Yoder also indicated that CR 17 and the bridges were designed to handle the additional traffic and that issue was not a concern for him.

Barry Pharis, Brads-Ko Engineering and Surveying, 1009 S. 9th St., Goshen represented Carl Martin, owner of the property and Kevin Martin, in attendance for the meeting, is purchaser, operator and petitioner. He displayed a site plan and aerial photo for the Board to view. Mr. Pharis believed the Staff's position is based on their definition of industry and applying that to the ordinance. He looked up 'industry' in the dictionary which was defined as manufacturing activity as a whole, with the third definition of industry as a distinct group of productive enterprises. His conclusion is that the animal bedding for agricultural uses is an agricultural industry. He stated that agricultural industry is noisy; it is dirty, loud with long hours from daylight to sunset, and creates odors from the spreading of manure and fertilizer. If the manufacturing industry requires an M-1 zone, he wonders why an agricultural industry isn't required to be in an A-1 zone. He believed it was a leap of logic to state that animal bedding must be in an M-1 zone. Staff recommended that wood grinding should be in an industrial zone. His interpretation is that Martin Animal Bedding is an agricultural use in an A zone and that is why they filed their DPUD without requesting any change from the A-1 zone. It was implied that there are other grinding operations in Elkhart County and they are located in an M-1 zone.

Mr. Pharis stated that Kevin Martin's history and the neighbors' reactions are based on conditions that Mr. Martin has at his existing site. The existing barn is very close to CR 36 and Ms. Scott's home. He is not sure it needed a setback because it was built long before the road was improved. He said the barn is elevated and the opening is on the west. The predominant air flow in Elkhart County is from the west and the southwest. This barn was constructed long before this business was placed there and the height does not permit all trucks to enter to do their work; therefore, some loading and unloading must occur outdoors. With those predominant winds and the opening to the west, he said the wind comes, grabs the dust, and takes it over the building onto CR 36 and Ms. Scott's residence.

According to Mr. Pharis, the proposed building offers solutions to all of the issues at the existing site. First, the constructed height of the proposed building would be such that all trucks would be able to enter for unloading, loading and exit. The opening will be on the east end, so any of the prevailing winds from the west or the southwest would be blocked by walls. If they have all inside activity the disbursement of dust would be limited. Secondly, the building they are proposing is over 500 ft. from the east property line, approximately 150 ft. from the north line, and there is an area higher than the proposed building. He said the distance and the hill would help eliminate fugitive dust.

Mr. Pharis mentioned Martin Animal Bedding does not have fire suppression; however, Mr. Martin has rubberized all metal parts of his grinder that can come in contact with metal to help eliminate a spark. He said all day long they inspect locations that the sparks could occur to make sure no fire will start. At the end of the day a thorough inspection of the site is completed and one hour later they reinspect it. Mr. Martin has built a 2,500 gallon tank that holds water with a retractable hose next to the building, so that in the event of a fire, he can bring the hose from that tank. He has proposed to move the existing 2,500 gallon tank and add a second 2,500 gallon tank with a hose to the new site. That will provide 100% coverage to the building at the new site.

Mr. Pharis did not think they could find another site that fit the use as well. There are only two curb cuts on CR 17 between CR 38 to CR 40, which is one mile. The properties are served by either CR 38 or CR 40. County Road 17 has been constructed by the County from the state line south and will conclude the last phase this year. Elkhart County Highway provided specifications for what they wanted done. They want a passing blister; a wider entrance for Mr. Martin's parcel and additional right-of way; relocate two power poles on the west side, and relocate the driveway from the residence to be out of the right-of-way. The previous requests were due to the Highway Department wanting to construct the balance of CR 17, remove the hill opening the line of sight, and then pave it, including the blister Mr. Martin is going to create.

Mr. Martin's building will be 13 to 20 ft. below the elevation of CR 17, so predominate winds would be 13 to 20 ft. above elevation. There are no piles of wood, dust, dirt and no outside storage. He stated that the property does not have prime tillable or grazing land. He said they are trying to find the best use for this property and the proposed use is perfect for Mr. Martin's operation. The primary suppliers are in Goshen and the relocation is closer to Goshen.

Mr. Pharis stated that waste disposal is a critical component of the manufacturing industry in this county. Keeping those costs in line and providing available and functional use for the by-product will continue to create new factory jobs in Elkhart County whether it be existing business or the relocation of businesses. After the last few years, anything that helps bring jobs and keep jobs in Elkhart County is responsible development and growth. Mr. Martin supports the manufacturing and agricultural industry in Elkhart County. He recycles waste from manufacturing units to a use for bedding by farmers and then that bedding is tilled back into the soil. There are 300 to 400 farmers in Elkhart County using his product.

Mr. Pharis went on to address the five criteria the Staff based their recommendation on in the Staff Analysis. He pointed out from the 2006 Comprehensive Plan for Elkhart County Goal 2, sentence two says, "Agricultural zoning districts should be used for agriculture and related business activities." Martin Animal Bedding is a related business and the Comprehensive Plan now clearly states that they are in compliance.

He said they have provided everything the Elkhart County Highway Department requested, including a Traffic Impact Vehicular Study, which he submitted for the Board to review *[attached to the file as Petitioner's Exhibit #1]*. He stated that CR 17 improvements have been designed and constructed for the use of all traffic.

Mr. Pharis believes this proposal clearly demonstrates that Mr. Martin is integrating with neighbors and the use by isolating the operation, taking advantage of the prevailing winds and topography, and constructing a proposed building that, based on experience, will eliminate the issues they had at the other site. As for the element of noise, Mr. Pharis went to the site and suggested to Mr. Martin to turn the grinder on so he could hear the noise. Mr. Martin told him the grinder had been on all morning and Mr. Pharis said he could not hear it. Mr. Pharis decided to

drive down to CR 36, get right next to the barn and the road, and listen for the noise. He said he could not hear any noise; however, there was a low hum. Mr. Pharis noticed the snowblowers, lawnmowers and tractors were louder than the grinder.

The Staff Report indicated they would unload trucks from early morning to late at night 7 days a week; however, Mr. Pharis stated that the hours were 6:00 a.m. to 6:00 p.m., Monday through Friday, when they accept trash which is converted into bedding; Saturday is a catch-up day to clean up, fix, repair, etc., and they are never open on Sunday.

Mr. Pharis stated that they have previously presented and demonstrated consistency with the Zoning Ordinance. The detailed plan is thoroughly consistent with the Ordinance.

Mr. Pharis and Mr. Martin agree with the comment that the 300 acres that has been rezoned to M-1 at the American Countryside site would be a great location for a grinding operation. He said they hope Himco creates an operation at that site. Recycling of wood waste is good for everyone and eliminates the wood base going into the landfill. Mr. Pharis said if it is not going into the landfill, it saves money creating new landfills in the future. Competition is good for everyone; it keeps the prices lower, the manufacturers happy, and it keeps the farmers happy.

Mr. Pharis stated that they want to create a favorable environment for factory growth and relocation of factories to Elkhart County. He believes they have successfully addressed the five Staff comments or positions demonstrating they are consistent and it is responsible development and growth. He said Mr. Martin not only needs Elkhart County approval for this project, he must also comply with IDEM; obtain an Air Quality Control permit and a Solid Waste Disposal permit. Mr. Martin has those permits at his existing site, but he cannot do anything without those permits at the property in question, and each of the permits require inspection and compliance.

Mr. Pharis feels they would be creating a negative precedence by setting this agricultural use in an agricultural zone, so that is why they submitted a Detailed Planned Unit Development. A DPUD tells them exactly what they want to do and how it will be done. He tells his clients before it is processed that a DPUD does give them some abilities, variances and flexibility, but they need to know from the beginning that a PUD makes Elkhart County their partner in business. As a business owner, they would not only have their bank, their insurance company, the Federal government, but also have Elkhart County Planning as their partner. He said they need to understand that any deviation would require them to go back to the Plan Commission for permission. He said a DPUD does not set any precedence, because every single petition comes before the Board and they have the opportunity to review it, discuss it, and decide if that application is appropriate for that site. Mr. Pharis stated that Mr. Martin's application is demonstrating it is good for this site and he hopes the Plan Commission would forward this request to the County Commissioners with a favorable recommendation.

Roger Miller stated one of the items mentioned on the Staff Analysis was that the dust collector was not installed at the current site and there is none proposed for the new site. Mr. Miller said he had not seen a grinding operation that didn't have one and asked what was different about this operation. Mr. Pharis stated if IDEM or Air Quality Control says it is required they will get one; however, he pointed out that VIM has a dust collector, and they still have problems with dust and the neighbors. He explained that Mr. Martin has taken a piece of property that is perfectly suited for their operation and designed a building that allows them to handle the dust without installing that system, unless IDEM and its Air Quality Control permit says a dust collection system must be installed.

Mr. Miller said the other concern had to do with no municipal fire suppression, but recalled Mr. Pharis stated he has water tanks on site. Mr. Pharis reiterated they have a 2,500 gallon water tank on a retractable hose at his existing site.

Mr. Campanello asked if the water tank was heated in the winter to keep it from freezing.

Al Currier, 22331 SR 119, Goshen, stated he lives about three houses west of Mr. Martin and he knew for a fact that Mr. Martin kept a separate garage building that has a high pressure pump with a 2,500 gallon tank and it is heated so it does not freeze. Mr. Pharis said the existing water tank would be relocated if the petition is approved, and because of the size of the building, the petitioner would construct a second 2,500 gallon tank with a retractable hose so he can provide coverage to the entire facility.

Mr. Miller said he totaled around 59 truckloads per day and a comment was made by the Staff about going through housing additions or properties where people live with these trucks. He understood they proposed to go through CR 17. Mr. Pharis said the trucks would come from CR 38, CR 36 or CR 40 from Goshen to get to the site. He said they would go SR 19 to get to Wakarusa, probably go CR 38 or CR 40 to get down to Nappanee. Mr. Pharis said they would be going down the county roads, past the 3 acre parcels, but pointed out they are the same trash trucks that ride the county roads regardless, whether they are going to Mr. Martin's site or someone else's site. He clarified they are not going through a residential subdivision.

Mr. Doriot asked if the majority of their raw product supplier is coming from the Goshen industrial area. Mr. Pharis stated that they accept wood waste from anyone that can provide it, but right now the majority of clients are in the Goshen manufacturing area. Mr. Yoder said the average traffic count east of SR 15 is 11,000 to 12,000 vehicles a day, on the west side of SR 15 it drops down to about 9,000 vehicles a day, on CR 40 the count is closer to 200 day, however, CR 38, which has been determined to be a residential area, has a high volume of traffic. He just wanted to give them some perspective of what 118 vehicles meant and semi's would also be involved.

Roger Miller's last item dealt with the implication of the American Countryside land and asked if it would be possible for them to utilize that land for this purpose. Mr. Pharis replied that Mr. Martin is trying to create a business to support his family. He has four sons, so the objective is to create that business in such a way that his sons can continue to support their families in the future.

Mr. Pharis would encourage them to start a grinding operation because the competition is good for them, the manufacturers and farmers. He did not think it would be fair for his family to have to take the American Countryside property, nor would it be fair for the competitive issues to be raised. Mr. Martin just wants his opportunity with his little piece of land, right in the center of what should be the future growth pattern for Elkhart County's traffic, to bring that product to us, and allow them to take it where it needs to go.

Mr. Pharis explained that Mr. Martin has a barn in Middlebury that is filled with animal bedding. Three hundred to four hundred farmers come with wagons drawn by horses, pickups, and semis and they take what they want. They tell Mr. Martin how much they took and that is what he bills them for.

Even though there has been negative publicity, Mr. Martin was offered a piece of property to purchase in Shippshewana for his operation. The owner also offered to build Mr. Martin a barn where he could bring the bedding so it would be easier for them to get it.

At this time, Mr. Burbrink explained the public hearing process to the audience.

Wayne Stutsman, 29862 Cardinal Avenue, Elkhart, was present to speak in favor of the petition. Mr. Stutsman pointed out problems with VIM/Soil Solutions and that this same type of

operation located in a corn field would be less harmful to adjacent properties as people would be further away than at the US 33 location. He asked how they could explain the issues in the December 13, 2011 article in the The Elkhart Truth where the BZA motion on the matter said Martin Animal Bedding would cause substantial and permanent injury to other neighboring properties due to fugitive dust, truck traffic, and noise, according to meeting minutes.

Mr. Stutsman stated that Daniel Plant with Soil Solutions spoke against Mr. Martin at the October 20, 2011 Board of Zoning Appeals meeting . He feels the Plan Commission protected Soil Solutions by denying Mr. Martin the opportunity for his family to earn a living. He felt Elkhart County governing bodies made conflicting decisions. In the February 8, 2012 issue of The Elkhart Truth he read that, “the Plan Commission rejected Mr. Martin’s request; the agricultural category is meant to protect agricultural operations. The wood processing is an industrial land use that would potentially disrupt farm activity.” Mr. Stutsman continued to compare Mr. Martin’s petition to the VIM issues. He felt Elkhart County was doing everything possible to deny any possible competition to VIM/Soil Solutions. Mr. Stutsman asked why the dust would be bad for agriculture, and if they were afraid of contaminants getting into food sources by being ingested into or absorbed by animals or consumed. He mentioned dust could coat farm equipment which would impede efficiency and usefulness like homeowner’s furnaces and air conditioners, cars, children’s toys, outdoor furniture, etc.

Mr. Stutsman asked why Mr. Martin is not worthy of a DPUD. Mr. Martin has obtained his Air Quality permit and has a Solid Waste permit, but it is difficult for Mr. Stutsman to understand why Mr. Martin’s request was turned down, yet VIM never did get their permit and Elkhart County supported them 100%. Mr. Stutsman stated that Mrs. Prough provided pictures of cars with dust. One of the requirements of IDEM is that all material that is brought into the ground must be ground up each day; they cannot store material on site. He asked that Mr. Martin continue his efforts and felt Mr. Martin follows all of the rules and has a right to operate his business.

Arnold Zimmerman, 67631 CR 13, Nappanee, uses Martin’s Animal Bedding to help keep his cows clean so they can send quality milk. He needs this product to keep the animals clean and in good health. He feels that competition is good and makes everyone try to do a better job.

Ron Paul, 63356 CR 15, Goshen, said that Mr. Martin and his father have been his supplier for sawdust since he was a child. His farm is located at the intersection of CR 32 and CR 15, and that location has been in the news lately due to traffic issues. Mr. Paul gave his support to Kevin Martin, but one issue of concern was traffic. He said Meijer is just north of him and the traffic is unbelievable since they moved in.

Mr. Paul used to collect sawdust and it would blow around in the city, but he said they did not have to worry as much about it in the country. Sawdust will go back in the ground in the country, and if it is used for bedding it will go back out into the field.

Henry Quist, 29618 Wild Cherry Lane, Elkhart, lives right behind VIM/Soil Solutions. He agreed with the comments made by Mr. Stutsman. He felt they would have to answer to IDEM and follow the rules, so he did not think Mr. Martin’s operation would be an issue.

Randy Wilson, 59725 CR 9, Elkhart, was not for or against the petition, but wanted to provide history. He has been involved with solid waste for 10 to 12 years and VIM has been a problem for that long. Mr. Wilson has lived with the problems VIM creates daily; however, he could sympathize with VIM. He said Soil Solutions has put a lot of engineering time, money and effort into their dust collection system.

Mr. Wilson mentioned when Blue Spruce was in Bristol, they did their best to keep dust piles down. He said they had so many fires that the fire department gave them an old pumper to put the fires out themselves. Mr. Wilson said he was sure Mr. Martin was going to try to do it right, but the lack of a fire department concerned him the most. He said with fugitive dust it doesn't take much of a spark to create fire. Even though it is in an agricultural setting the fire ball could get away from him.

Phil Geise, 53644 Reid Court., Elkhart, works at Jayco, which is a provider of the waste material that Mr. Martin has been processing. He said in the past 3 years he has recycled 5,300 tons of material that did not go to the Elkhart County Landfill. Mr. Geise stated as a responsible manufacturer, Jayco takes great pride in always trying to go out and find people that can recycle the material in a proper and safe way. He said in all the years of doing this, he found that Kevin Martin has done the best job and has been the most reliable of anyone of the people that have been processing this wood material. Mr. Geise said in terms of sustainability, Mr. Martin's application is perfect because he turns wood waste into animal bedding, which goes back into the soil and it is a perfect circle. He asked the Plan Commission to approve his application.

Daniel Plant, Soil Solutions Co., 29861 Old US 33, Elkhart, said he did not have anything to say against Mr. Martin's business. He stated that there were a lot of things said about Soil Solutions and he asked that questions and comments be directed to them instead of Mr. Martin.

Present in opposition to this request was Kathy Coffman of 21924 CR 38, Goshen. She lives in the house north of the subject property and is the daughter of Kenlyn Sorg who owns all the property surrounding it. She has no problem with Mr. Martin having a business and it sounds like he is being eco friendly, but she does not want that business right behind her house. Mrs. Coffman said if there is a fire the line of cedars north of the barn would catch fire quickly, go all the way around the woods, and back to the old Kercher farm. She was aware that CR 17 is right on the corner, and she is concerned about the increased traffic on CR 38 with all the trucks driving through. Mrs. Coffman did not want to hear the noise right in back of her house. She said the sound amplifies with the hills and they can hear everything that goes on right now.

David Jamesen, 21708 SR 119, Goshen, said he has lived with the dust problem for a long time. He called Mr. Martin once because there was dust all over his vehicles and his house. He buys and sells lift trucks and has lift trucks lined up by the road. He said trucks come by in the morning and there is loose sawdust all over them and it looks like a desert sand storm. Mr. Jamesen said they are hard working people, but there is a proper place for this type of operation. It takes special equipment like dust collectors for this operation, and it is his feeling that this business needs to be in a heavy industrial area.

In rebuttal, Mr. Pharis said he did not ask any of the people to speak in favor of this petition and he thanked the newspaper for making people aware of this public hearing.

Mr. Stutsman raised the issue of permits, but Mr. Pharis said Mr. Martin has acquired the necessary permits. He said that relocating this business will require them to go through new permitting, which means they will have to provide all the data for this site to his consultant who will assist with the permitting and inspection process.

Mr. Wilson talked about a fireball and how it might explode into other barns. Mr. Pharis pointed out the site on the aerial map and it indicated that 500 ft. to the east of Mr. Martin's building is a property line. The closest residence to the north is over 1,900 ft., to the northeast 1,900 ft., and to the east is over 300 ft. In terms of their impact to those neighbors, combined with a distance and the natural topography, he said the business's impact will not be an issue; it will be no different than

if his property were farmed and the dust was generated from that.

He said what Mr. Martin has taught him about farm bedding is that the most critical negative issue is getting it wet, and that is why there will be no outside storage. If it is wet it is called black bedding which sells for less. Farmers do not like it, and cows do not like it, so the solution is to keep it inside. He has learned from the existing site how to address this and they have the perfect site for it. He said they are 13 to 20 feet below winds.

Mr. Geise indicated that 5,300 tons was kept out of the landfill, but Mr. Pharis thought it could be up to 10 times higher than that.

Mr. Jamesen lives next to the existing site, so Mr. Pharis thought he would want Mr. Martin to move to another site. The new location for the business will be a mile from him and will eliminate the dust he is experiencing. Mr. Pharis repeated that they couldn't have found a better site for the business. He was sorry that the Staff Report was negative, but he thought it was due to the basis for the definition of industry and then it follows down to a premise that is negative. With Mr. Pharis' definition of industry, they would have a favorable position to present. He reiterated that Kevin Martin is part of the solution, not part of the problem, and he requested that the Plan Commission forward this request to the County Commissioners with a favorable recommendation.

Mr. Doriot asked what Mr. Martin would do to eliminate dust coming off the trucks. Mr. Pharis stated that all the trucks he saw delivering trash and leaving the site were covered and sealed.

Mr. Warner questioned whether the business used any PVC treated wood that comes into their facility. Kevin Martin, 211918 CR 119, Goshen, said no.

Mr. Campanello mentioned the concern about the fireball and where it would go. He asked what fire department would take care of this site and Mr. Pharis said Elkhart Township would. Mr. Pharis did not think it was likely that they would have a fireball go 1,900 ft. Mr. Martin said he never had a fireball.

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

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Warner*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved as presented, based on the following criteria:

1. The petition is consistent with the Comprehensive Plan placing an agricultural related industry in an agricultural area.
2. That due to the reconstruction of CR 17, the filing of the Traffic Impact Vehicular Study, and the proposed south peripheral road, it will not adversely impact the traffic of the area.
3. It will not lower land value in the area as it is presently used today, and it will not adversely impact the health and welfare of the general public due to the separation from populated areas.
4. This proposal is responsible growth as it creates an agricultural product that is being used by the agricultural community.

Prior to voting on the motion, Mr. Yoder said he feels they need to look at the definitions for the zoning ordinance. He stated they have an agricultural product, which is wood, that is being processed. He said it has gone through an industrial use, but being converted to another agricultural use. Mr. Yoder, himself, has used a grinder that is much smaller than Mr. Martin's to grind hay bales on the farm. If he grinds hay commercially and sells it to another farmer, he questioned if that is an industrial use. He feels the Plan Commission has some definition issues and they struggle with

the recycling definition, the process of recycling, and when is it a recycling business and not a landfill.

Mr. Yoder said the other issue is a very basic concept the Staff brought up. They mentioned the 300 acre farmer's market site that already has proper zoning for Mr. Martin's use, so why is the Plan Commission allowing that use somewhere else. He felt there needs to be some consistency. Mr. Yoder said in this particular case he thought they did find a good site and an agricultural use, specifically.

Roger Miller felt it was good that this property is an agricultural property and that it and the property around it should remain agricultural property. His concern was with the next proposal they have where a subdivision wants to move in beside it and then they will have the same problems they had in the past. He thought that is why it's good to have agricultural areas and to designate it that way.

The motion was then carried with a unanimous roll call vote.

8. Mark Kanney received a request to vacate a non-access easement in *S & J Manor*, a two lot minor subdivision located on the North side of CR 24, 390 ft. East of CR 3 in Baugo Township. The Plan Commission had required that they plat a non-access easement along the frontage of Lot 1 with the exception of 15 feet on either side of the common lot line; however, a driveway was built across it, so the contractor, Granite Ridge, would like relief from that plat requirement.

A motion was made and seconded (*Doriot/Miller*) that the Advisory Plan Commission approve this request to vacate the non-access easement along the frontage of Lot 1. The motion was carried with a unanimous vote.

9. *Basements – consideration of memo from Groundwater Committee*

Mr. Doriot stated that he was in conversation with a builder this morning and asked him if he would be attending the meeting to discuss this item. Tim Miller, the builder, said he wanted to be notified if there was going to be any meetings or action on this, but he was not made aware of this meeting and could not attend due to a medical issue. Out of courtesy, Mr. Doriot wanted to inform them that Mr. Miller wanted to be involved. Mr. Godlewski said he had discussed this with Mr. Miller, but at the time no date had been set and no one was contacted for this meeting.

Mr. Burrow stated the reason why this item is on the agenda is not necessarily to establish ordinances; it was to ask the Plan Commission give support or decline support of an item discussed at the Groundwater Committee. He said they were trying to establish a planning function to the problems the Planning Department is running into about groundwater issues.

Mr. Burrow said he went out to a subdivision yesterday where the homeowners. They are still in the process of trying to figure out ways to fix their problems. Mr. Burrow said homeowners located on CR 17 at Sommerset Place Subdivision, went to the Drainage Board trying to seek assistance and relief from drainage issues. The Health Department records indicated that the water tables were running at about 36 to 48 inches. He said certain houses had one drainage issue with a series of pipes going in multiple directions trying to solve this problem. One resident opted for a cleaner approach, but the Highway Department said it was not an appropriate disposal of subsurface water.

Mr. Burrow provided slides of sites he visited and noted a building permit had been issued for a site on CR 4 that has copious amounts of borings for the septic system and not for the structure itself with drainage swales going east and west. He pointed out areas of water pooling and

mentioned the soils are mapped as a flooding soil. Mr. Burrow pointed out a foundation with a walkout, in which the builder recognized that they should not go into the water table. Mr. Yoder noted they started at grade and were building up. Mr. Burrow said that was the answer to it, but as a flooding soil, in a normal year it will have 6 inches of water standing on the surface. He distributed an aerial of the site indicating a square dark section on the property representing the high water ponding soil *[attached to file as Staff Exhibit #1]*. The soil report indicated that it was adequate for a typical mound with no perimeter drain. Mr. Burrow said upon looking at the bore holes he found the water returned to 12 inches, but there should be 20 inches, so there is a problem with that and mentioned that the staff is experiencing frustration with these issues. Mr. Burrow said our building inspector did ask for an engineered report and the report indicated it was all right, but it is approximately 12 inches below the existing grade. He pointed out the grade on the slides he provided and it did reflect the water table. Mr. Burrow said the County is fixing something after the fact, and it should have been excavated out, backfilled with 24 inches of sand and compacted; however, at some time the walkout will be below the seasonal water high water table. After seeing the engineered report, Mr. Burrow suggested that they should have some type of dewatering system, because the foundation will be sitting into the water and the only way they can keep the water away is with an adequate sump system, however, now is not the time to try to fix it.

Mr. Campanello asked if they tried to put some type of drainage system around the foundation before they backfilled, because it was obvious to him something needed to be done. Mr. Burrow assumed they were going to put it in, but there is no plan. Mr. Doriot asked if there was a sump pit. Mr. Burrow said sump pumps are there to catch occasional water, however, this issue is more than occasional. Mr. Burrow stated there is a consulting firm that uses irrigation pumps to keep their basement dry.

Mr. Burrow said the reason the Staff met with the Groundwater Committee was to decide whether to continue with the concept of a Seasonal High Water-table Certificate and to add the two items concerning the fact that sump pumps and pumping or subsurface drainage systems cannot outlet off their property (see item #1 on the February 9th Memo from the Groundwater Committee).

Mr. Burrow stated that Item #2 of the Memo focused on new construction with a suggestion that a soil report be required. He said the property owner could not build below the Seasonal High Water Table and if they did they would be given the option of submitting a request to do that, but they would have to demonstrate how they would dewater the site and maintain the water at an appropriate level.

Mr. Burrow said the Plan Commission may not be the appropriate place to make this decision, because the building code actually requires that they address this issue. It is not something that a lot of building departments get into, but Elkhart County has received many complaints concerning this issue. John Heiliger, the MS4 Field Investigator, has gotten complaints from the Highway Department about discharges into the right-of-way, people complaining about basements flooding, Emerald Chase, etc. Mr. Doriot agreed that the ground is as wet as it has been in his 18 years. Mr. Burrow noted that Elkhart County is in a drought at this time, but the high water level will get worse and we are not at the peak yet.

Mr. Yoder said the building code is one option that could be enhanced. Mr. Burrow said the building code could be used to bring the issue forward, but by getting a Board like Plan Commission involved it assists the building department because there is no definition of what an approved discharge is. Mr. Campanello stated that the building code uses the minimum standards and builders should go to the maximum for their clients.

Mr. Miller did not think that Elkhart County had any tools that would alert a property owner, prior to any building that he was in a floodplain and could not build there. Mr. Doriot said now there is information that would make someone aware that they are in a floodplain, but there is nothing for seasonal high water.

Mr. Warner stated this is an ongoing issue that Elkhart County has struggled with for many years and is one of the biggest long term concerns to the homeowner and needs to be addressed in some way that will get their attention. He felt item #2 and the number of mandatory soil borings set would be problem, because they may be required for no reason and he was concerned that the homeowners would be burdened with unnecessary costs. Mr. Warner stated unless the soil type changes radically, there is no need for 3 or more borings, but only 1. Mr. Burrow stated that was why, as a Soil Scientist, he thought the report should be done by the Soil Scientist and if he thinks one would be appropriate that is what they accept.

Mr. Doriot asked what causes Weaver Woods from not happening, because the Staff had platted lots and had required that they should be built without basements, yet the permits were issued. Mr. Doriot said the builder would need to sign a disclaimer that he assumes all liabilities. Mr. Burrow pointed out, however, that a permanent structure would be in place now. Mr. Miller did not think there was a way that the builders could be held responsible for it. Mr. Burrow said if an Ordinance requires that the property owner had to be above the Seasonal High Water Table, then the Plan Commission would become the 'bad guys'. Mr. Miller thought the builder or property owner could sign a statement making them aware that they are in a Seasonal High Water Table and they would most likely have flooding. Mr. Burrow said the only reason why the Certificate would not fit well is that the 'owner' could not be defined. He explained that it is not unusual for a contractor to take possession of the property as part of the construction process; subsequently, a spec home or parade home would not be the end user.

Mr. Doriot asked if a boring would be required for every single person, even if the property owner is in soils greater than 6 ft.? He wanted to be sure this process would not put a cost on someone who should not be bearing the cost.

Mr. Burrow said one of the other functions of the building code said all construction has to be on natural ground. How would a contractor or inspector know if it was natural ground. Mr. Doriot said he could tell that. Mr. Burrow stated when the Soil Scientist might say it is naturally occurring soil, and the building departments response to natural soil is that it has an appropriate load bearing so an engineered report would not be required, but it is when the finding is fill that engineered soils need testing. He stated that the reason why he is here at the Plan Commission has more to do with the function of the building code. Mr. Burrows was told by Mr. Gard that the building code could be changed, but it would have to be sent down to the State for approval. Mr. Gard said they would adopt the International Code Council, and if we were going to add to it we would have to send it down to State. Mr. Burrow stated the previous Building Commissioner, Larry Harrell, indicated to him that the State is resistant to allow a local entity to add standards. Mr. Kolbus said he, Craig Buche and Larry Harrell amended the County Building Code in the past and the majority of changes they wanted to their standard code were rejected by the State.

Mr. Yoder said after reviewing the Groundwater memo, the decision would be whether to choose Option#1, #2 or a mixture. He stated that he disliked additional mandatory requirements. From a public policy standpoint, they are at the point where the entire tax-paying populace is paying to fix these problems because there is an expectation that if they have water in the basement, Elkhart County needs to fix it, whether or not there is an expectation that his neighbor is filling up the

retention area in the subdivision someone has to fix it so it does not happen anymore. There could be flooding on the street that is now an ice patch in the winter, so someone has to fix it at someone's County government. It seemed to him the best practice if he was going to spend \$100,000 to \$250,000 on a home he would spend \$1,000 for a soil boring to be assured there was no problem. It seemed like the best practice to him.

Mr. Yoder felt with item #2, there be mandatory soil borings. He thought this would be the best practice and even on soils with the water table down 30 ft. soil borings should be done. Mr. Warner inquired whether it would have to be required in any building permit; residential, commercial, etc. and Mr. Yoder confirmed that would be the case.

Mr. Burbrink asked if the County was getting the information, but no steps were taken to build above grade level. Mr. Doriot clarified that they get the information where the septic area is going to be. Mr. Doriot stated that his septic area was 15 ft. below his basement, so that boring was not representative of where his residence was built. He wanted to see what the cost would be for the homeowner. He asked how many houses had a water problem and he wanted to know the cost for each site. Mr. Doriot said he had a basement in Wakarusa and he had to have two sump pumps and a certain time of the year one sump pump would be running within two minutes of the other. However, he did not think it was necessary to make an individual pay when there is no reason to believe it was needed. Mr. Burrow pointed out there was no reason to believe the houses given in the previous examples would have groundwater problems. Mr. Doriot asked if there was a soil boring for the septic that indicated that. Mr. Burrow said no, that is what the map said and that is why they never looked at the septic, because they had no reason to believe that there was a problem. However, when the Health Department did the boring for the septic, it indicated it was 36 inches, 48 inches or greater than 60 inches; he said that was the response. He stated it would be great if the Health Department wanted to do these, but the problem with that is if they would start doing that the Health Department would be, not so much competing with Soil Scientists, but establishing a liability to the County for not catching it. He said the Health Department only looks at one function of the Seasonal High Water Table; they look at gray, they do not look at the iron concretions and rust; they only look at what their Ordinance requires.

Mr. Yoder said he stated #2, as his preference where item C. indicates, the foundation cannot be below the identified seasonal high water table depth. Mr. Burrow stated that the Groundwater Committee did stress, because that is what they felt they were being directed to do, that it would be for new construction only and residential (he forgot to add residential) and elaborated that if he wanted to be conservative about it he would have said any foundation would require a soil boring.

Mr. Campanello said every commercial building he had ever built they always had soil borings and they paid for them. Mr. Burrow clarified that those are usually engineering borings, so that would add another report to it. Mr. Campanello suggested if they were only having problems with residential, to keep it residential. Mr. Burbrink believed that somewhere in Indiana this has occurred before and they must have dealt with it somehow. Mr. Yoder stated that they require soil borings. Mr. Burrow said he could not find anyone else that requires soil borings; he said Elkhart County would be blazing a trail here. Mr. Burbrink suggested asking Mr. Godlewski if he could put out an email to the list service mentioned at the previous meeting to see how they deal with this issue in some other communities. Mr. Doriot said he had two individuals that each put out more than a thousand lots in this County in design.

Chris Marbach, Marbach, Brady & Weaver, 3220 Southview Drive, Elkhart said the fundamental issue is whether the County is trying to remove their liability by having the property owners acknowledge that they are aware of the situation, which is basically the certification letter. He felt if the goal is just to relieve the County's liability so they do not get sued later on, then just do the certification letter and try to get notification to property owner, builder, etc. However, if the goal is to solve everyone's problems then you would have to do as many soil borings as the Soil Scientist think is needed on every foundation, because you will not know which one. He felt the second option is overkill, because every house will not need this scenario, but some will. He did not know what triggered this inquiry, other than the pictures, but the fact is the County should not have to fix that problem. Mr. Marbach felt it should not be taxpayer's money fixing the footing issues in the house in the picture they are working on right now. He felt they should get the liability off their back, get a certificate or something and continue with it; and not require all of that extra work. Mr. Yoder said in some instances there is no fix, because they could not dig a big enough retention area. Mr. Marbach did not think it was the County's problem.

Mr. Yoder said there homeowners that bought homes that never knew they were going to have water in the basement. The previous owner did not disclose it and perhaps they did not have water in two years, but suddenly a wet spring develops water and they have a disaster in the basement. He said this is not one or two, but a number of people have experienced this and they are quite angry. Mr. Yoder stated from a public policy standpoint, there are people that expect the County to do something about it. He has public safety issues and that is a safety issue. If there is an ice patch on there and someone skids and hits something the County is liable. Mr. Miller asked where the house would put the water. Mr. Marbach said they would have to dig another hole back there. Mr. Yoder said the water would go into the hole and back into the basement, so it was irresponsible by the builder to build it. Mr. Miller thought if they put sump pumps in and they are running they would be undermining their foundation of their house. Soil could be moved under the wall and they would have trenches under their house and the foundation would start cracking.

Mr. Marbach asked if the goal for the government to fix it all. Mr. Yoder said their goal is to prevent that from happening. Mr. Miller thought they were only trying to make the owner of the house aware that they may have this problem. Mr. Yoder said, initially, yes. Mr. Doriot said if they are going to the boring issue what they are doing is react to the 1% or 2% and the 98 out of 100 that do not have the problem are going to reach in their pocket and he asked what the charge would be. Mr. Burrow said it would be about \$200. Mr. Doriot continued that there would be 98 people, even though \$200 may be nothing to his house, the \$1,500 to \$2,000 per site for the new erosion control standards are nothing, but now we have added \$200 to it; where does it stop. He agreed this is a problem, but he did not know about making 100% of the people pay for 2% of the population. Mr. Campanello asked who gave permission to build that house on that piece of property in the first place, in the total scheme of that subdivision. Mr. Burrow stated the Plan Commission. Mr. Doriot said this Board deemed that because it was a buildable lot. Mr. Campanello stated, exactly, so why don't we require soil borings before we make a decision on allowing houses to be built on a piece of property. Mr. Miller stated because Mr. Doriot does not want 2% of the problem being paid for by everyone. Mr. Doriot agreed. Mr. Yoder was not certain if it was 2% or 20%, because there are homes that have sump pumps that run continually and they do not have wet basements, but is that an ideal situation. Mr. Marbach said all of them are not in subdivisions.

Mr. Kolbus asked if there was some type of trigger that would indicate a problem. Mr. Burbrink agreed there should be. Mr. Doriot stated that, technically, his basement is below the

seasonal high water table, but he was able, with his site characteristics, to fix it. He just does not think the mass should pay for it.

Mr. Warner asked for Mr. Pharis' thoughts and he indicated that \$75 for the boring on a single lot, seasonal high water was reasonable. Two subdivisions, Weaver Woods being one that they took over and Deerfield, indicated strange soils mapped. He said on each subdivision they did a boring on every lot, because they were doing 50 borings at Deerfield and 28 at Weaver Woods, they got a special price at \$50 a boring and then they created plot plans for every lot. They said, on this lot, 37, the minimum elevation for the lowest habitable floor is 816.47 and they gave a set to the builder and brought a set to Planning so they would have it when they were getting ready to issue a building permit at either one of those subdivisions.

Mr. Pharis stated that in a subdivision, if there is a problem, his firm would be the first law suit because they carry errors and omission insurance. For those that know about errors and omission, he said they could get it at a reasonable price as long as they do not ever have a claim. He spends \$6,000 to \$9,000 a year not to have a claim, but he spends that money every year. He is trying to prevent anyone going after his insurance and protect his client. He felt to ask for an extra boring if getting them for \$50 to \$75 each is not unreasonable, but not sure about \$200; however, there is not a lot of competition in Elkhart County. Mr. Pharis suggested some combination of the certificate and the boring would be appropriate. He thought the builder could have their signature notarized, and the buyer could have their signature notarized indicating they are accepting the fact that no information has been provided whether or not he would have water problems in the basement. He suggested the second level is those who are concerned that would pay the \$75, \$80 or \$200 for a boring because they want to know and the surveyors would take care of it. Mr. Pharis also asked if the Plan Commission was trying to solve all the problems in the County and is it your responsibility, or do they feel it is their responsibility with the subdivisions, because now everything is a subdivision. He noted everything now, has to come through this Plan Commission and then go to the Commissioners. He felt some merge for the certificate to the borings, is the solution.

Mr. Yoder suggested that Mr. Godlewski do more in-depth research to see if there are any other counties that require borings or would Elkhart County be establishing a benchmark. Mr. Pharis questioned if perhaps there would be an indication of who would take responsibility for this groundwater issue; or if they do not think it is there problem to deal with because they purchased the house. Mr. Burrow said one of the problems was that there was no alternative and a lot of the complaints started when the Highway Department kept telling them they could not outlet. He said some people keep their basements dry, but they do not have an outlet. Mr. Yoder said they asked the Highway Department to allow the people to plumb those directly into the inlet so does not go into street. Mr. Yoder agreed with Mr. Pharis a combination of the certificate and a boring may work, but they do not know what that is yet. He realized they need some direction, so they need to research it. He leaned more toward soil borings because, as a service to the community and citizens to set a little higher standard for our builders to prevent them from wet basements.

10. Mr. Kolbus presented a *Revision to the Elkhart County Advisory Plan Commission Certification of Residency* at this time. He requested that the Plan Commission approve the new language and amend their Rules of Procedure.

Mr. Burbrink asked for a vote to approve the revision to the Elkhart County Plan Commission Certification of Residency (see attached) and to amend the Elkhart County Plan Commission Rules of Procedure. The motion carried unanimously.

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

11. *Streamlining the Minor Subdivision Process*

Mr. Godlewski asked Mr. Kolbus to highlight the points of discussion and Mr. Kanney would elaborate on the document.

Mr. Kolbus stated from previous discussion, he and the Staff were instructed to streamline the minor subdivision process. The Board indicated they wanted to allow the Plan Director to be able to grant Secondary approval of minor subdivisions once the five (5) working day time for appeals lapses or expires. He can give his signature on the Secondary.

Referring to the draft (1/27/12) of the Proposed Amendment to the Subdivision Control Ordinance, in Section 3.15, he made it clear that it is for minor subdivisions only and no notice or hearing is required; however, it can be transferred to the Plat Committee if the applicant wants it or if the Plan Director has any issue with it.

Mr. Kolbus went on to explain that Section 3.15 C. stated it was a five (5) working day appeal period. He said that would streamline this process, because otherwise they would have to wait until the next month for the Plat Committee to meet again. He stated that the rest of the amendments were to add the Plan Director's name where appropriate.

On the second page of the document, Section 3.17, A., Completion of Improvements, the secondary plat was never approved by the Commissioners; the Plat Committee or Plan Commission grant secondary approval. However, there is a place where the Commissioners do sign the plat to accept the right-of-way and improvements, and on Appendix B he limited that to major subdivisions only. Where they have to sign all minor subdivisions now will be signed off by the Plan Commission, Plat Committee or Plan Director to accept right-of-way and improvements.

Mr. Kolbus said he instructed the staff that his changes were legally what needed to be done to allow this process to go forward.

Mr. Godlewski stated said there were some things that would continue to happen internally like holding plats until all of the requirements were met. He said that still may not shorten the process because it depends on what information is provided, so this may speed up some processes, but others may take the same amount of time.

Mr. Kolbus noted that they would still expect the staff to tell Mr. Godlewski whether or not secondary approval is appropriate.

Also, in the definition section, Plan Director is the Director of Planning and Development, or his or her duly authorized representatives. So, in the event that Mr. Godlewski was unavailable, he could authorize one of the other members to sign off on the plat.

When Mr. Kolbus asked if it was ready to go to public hearing, Mr. Kanney said he was not quite ready. It was then determined to bring it back the following month for further discussion and then set it for a public hearing in April.

Mr. Pharis said he will file a two lot minor subdivision in March, and after describing the process, he said it will not go to the Commissioners until June for a final signature. From March to June his client cannot sell his property, which led to the second part of his question about subdivisions. He is submitting 65 acres for his client and several acres have buildings. His client would like to sell those buildings, but keep the farmland. After doing research and conversation with the staff, he decided to present a two lot minor subdivision; one with 2 acres and the other with 63 acres. He explained that if his client ever decides to sell and someone wants to get a building permit, it would have a deed after March 1, 2009; therefore, it is an illegal tract in Elkhart County.

And then if that happens, his Errors and Omissions Insurance will pay for him to have it platted or the difference. Therefore, he will submit this as a two lot minor subdivision so that he and his client do not have issues in the future.

12. Mr. Yoder opened discussion on commercial/hobby dog breeders as described in Option A and Option B, which was included in their packets. He said a hobby breeder was for any lot or premises or portion thereof with a combined total of more than 4, but less than 21 unaltered female dogs, cats or other household domestic animals over 4 months of age kept for breeding, buying or selling. A commercial breeder had the same definition only it is a combined total of more than 20 unaltered female dogs, cats and other household domestic animals over 4 months of age.

Mr. Yoder said he did not see much of a difference, but the kennel would remain a special use, and a hobby breeder would become a special use in A-1 and A-3 zones. A commercial breeder becomes permitted in any 'A' zone where the tract of land contains a minimum of 40 acres.

Mr. Kolbus said they were just options he and Mrs. Prough came up with, but the other members of the Commission had not seen it.

Mr. Yoder thought most of the Amish commercial breeders had less than 40 acres, but for the few that have 40 acres or more, this would allow them to be pulled out of the BZA process. Then, in an 'A' zone, Elkhart County would recognize a commercial dog breeder.

Mr. Kolbus pointed out the other distinction is that Option B just goes to dogs, but Option A is dogs, cats and other domestic animals. He said the regulations at the meeting just applied to dogs.

Mr. Yoder said if the Plan Commission was inclined to amend the zoning ordinance, they would be referring to permitted uses under the 'A' zones to include hobby breeders and commercial breeders. Mr. Kolbus clarified that a hobby breeder would be a special use in an A-1 and A-3 zone. A commercial breeder would be permitted in any 'A' zone with a minimum of 40 acres, and a kennel remains a special use.

Ann Prough, Zoning Administrator, asked if they would also allow a commercial breeder to apply for a special use permit with less than 40 acres. Mr. Kolbus said they would need to add that also.

Mr. Yoder asked to move forward with this and Mr. Kolbus suggested they set it for a public hearing in March.

13. Mr. Burbrink adjourned the meeting at 11:49 a.m.

Respectfully submitted,

Sandra Herrli, Recording Secretary

Jeff Burbrink, Chairman