

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 8TH DAY OF MARCH 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: Doug Miller, Steve Warner, Blake Doriot, Tony Campanello, Roger Miller, and Mike Yoder. Staff members present were: Chris Godlewski, Plan Director; Mark Kanney, Planner; Duane Burrow, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Warner/Doriot*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 9th day of February 2012 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Doriot/Doug Miller*) that the legal advertisements, having been published on the 25th day of February 2012 in the Goshen News and on the 26th day of February 2012 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Roger Miller/Doriot*) 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 the *Elkhart County Advisory Plan Commission* - multiple amendments to the text of the Elkhart County Zoning Ordinance listed as follows:

ARTICLE 1 – IN GENERAL, SECTION 2 – Definitions: by amending the definition of KENNEL and adding the definitions of HOBBY BREEDER and COMMERCIAL BREEDER; **SPECIFICATIONS A – AGRICULTURAL DISTRICTS AND USES:** by adding HOBBY BREEDER and COMMERCIAL BREEDER as permitted uses under certain circumstances; and **SPECIFICATIONS F – SPECIAL USES:** by adding HOBBY BREEDER and COMMERCIAL BREEDER as special uses under certain circumstances, on 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.

Chris Godlewski, explained that in Section 2 they are amending the definitions of kennel, hobby breeder and commercial breeder. Section 3 added commercial breeder with a minimum of 40 acres as a permitted use. Section 4 allowed for Special Uses for hobby breeder in A-1 and A-3 districts and commercial breeder in all A zones with parcels of land less than 40 acres.

Mr. Godlewski said some other suggestions came up last week during the Planning Workshop between the Staff and Board members. He said there were two recommendations from the Planners, which he went on to review with the Board:

Kennels Permitted In A Zones:

- The definition of a kennel was any lot or premises or portion of it on which a combined total of more than five (5) dogs or domestic animals over six (6) months of age are kept.
- The permitted use is in A-1, A-3, A-4 zones at a minimum of ten (10) acres with a setback of 200 ft. from property lines.
- Special use by the Board of Zoning Appeals in the following zones:
 - Kennel with indoor pens and /or runs in A-1, A-3 and A-4 District on less than ten (10) acres.
 - Kennel with outdoor pens and/or runs in A-1, A-3, and A-4 Districts on less than ten (10) acres; and in B-1, B-2, and B-3 Business Districts.

Overall Recommendation:

- The number of dogs be changed to five (5) and the age be six (6) months or greater, permitted in M zones, but to keep it a special use instead of making it a permitted use.

Roger Miller asked for the reason to change the age of the dogs. Mr. Godlewski said it was his understanding that (6) six months is considered to be the minimum age for breeding of dogs. Mr. Kolbus agreed that was the distinction, generally, for the age. He noted in his research it talked about 1½ to 2 years as the best age to breed them, but they are capable of being bred at (6) six months.

Mr. Yoder recalled during the discussion at the Planning Workshop A-3 was included, but that zone was primarily focused on open space and contemplates cropping operations, so they thought it may not be an appropriate use in an A-3 district. Mr. Kolbus thought they could still get a special use for a residence, so A-3 was left in. He said the distinction that was made in changing the kennel, commercial breeder and hobby breeder is the current definition includes boarding, training, breeding and sale of. The new definitions would separate out those that keep the dogs from those that breed them for sale.

Mr. Kolbus stated, for the record, the information the Board received in their packet put into evidence the comments from Staff and the comments from the workshop. *[attached to file as Staff Exhibit #1]*

Mr. Yoder asked that the letter that was received from the Elkhart County Farm Bureau Inc. also be entered into the record. *[attached to file as Staff Exhibit #2].*

Gina Oliver, 54503 CR 19, Bristol, heard if a landowner had so much acreage they would not be required to appear before the Board even though they owned more domestic animals than the ordinance allowed. She opposed that change if that is allowed.

Ms. Oliver does not subscribe to the Elkhart Truth or Goshen News, but does subscribe to the South Bend Tribune and there was no notification published in that paper. She requested that the Board look into other means of notification for public hearings as she did not feel her needs were being addressed.

This is not a farming or non-farming issue, because very few people need to access a large number of animals on their facility, which is often referred to as a puppy mill. Ms. Oliver gave the definition of a puppy mill as: ‘. . . sometimes known as a puppy farm, a commercial breeding facility that is operated with the emphasis upon profits above animal welfare and is often in substandard conditions regarding the well being of dogs and their care.’ She noted people may be offended by that definition, but she needed to call it what it is. She feels that Elkhart County was known for being the RV capital of the world, but is now known for puppy mills. If someone were

to Google puppy mills it comes up Indiana and she is offended by that and does not want to do anything that would lend more notoriety to that issue in Indiana.

Ms. Oliver said she was raised with the compassion and knowledge to know the difference between livestock and domesticated animals. The issue she is concerned with is the domesticated animals, not livestock.

Mr. Yoder asked if she would prefer that this issue stay the same as now and every operation would have to appear before the Board of Zoning Appeals to be allowed to operate. Ms. Oliver said that was correct and clarified the issue was the domesticated animals that are being bred in large scale facilities. She stated it was not about the care of the animals.

Roger Miller noted she had mentioned earlier if a person owned so many acres a kennel may be allowed. Ms. Oliver said if someone owned around 20 acres they would not have to appear before any Board for approval. However, she noted puppy mills are not only on 20 acres, because they can be one acre, which is a major concern to her.

Mr. Kolbus clarified that if they approve the amendments, the proposal for commercial breeders would be permitted on a minimum of 40 acres in an A-1 zone and 40 acres is the proposal that is currently advertised. He said there have been recommendations by the Staff that through a workshop, with various members, it be decreased to 10 acres. He asked her, whether it is 10 or 40 acres, if she felt it should be a permitted use and that landowners should always come before the Board. Ms. Oliver confirmed that was correct.

Anne Reel, Elkhart County Humane Society, 54256 CR 5, Elkhart said her concern is the clarity of the definitions of the kennel and breeders, what the County is planning to approve and what effect it would have on animal welfare. She was hoping there would be a meeting between the Plan Commission and County Commissioners to look at the animal ordinances and what the Plan Commission is proposing.

Ms. Reel said when they originally looked at the animal ordinance they specifically did not include any definitions for breeders, commercial breeders or hobby breeders, because it was indicated it would be covered in the Zoning Board's definition. She felt there needed to be some preliminary discussions about it because they want to ensure whatever is decided that the welfare of the animals is not overlooked or neglected. She acknowledged that the Plan Commission has been indicating their position is about land usage; however, land usage cannot be totally separated from welfare and wellbeing of animals that are being bred and sold. There have been a considerable amount of situations where there is no oversight other than a Federal or State agency that doesn't have the ability to keep 'tabs' on all of the specific groups. Ms. Reel feels the Plan Commission needs to make the ordinance compatible with what they want to see in terms of animal welfare in this area. She stated that without any preliminary work she did not want to see the Plan Commission forge ahead and allow usage based on total acreage. Also, she was concerned that there is no intersection between what is done with the animal ordinance and what the Plan Commission is doing with zoning.

Mr. Yoder understood that she wanted the Plan Commission to closely relate the animal care ordinance with the zoning. He asked if she thought the definition was important. Ms. Reel said in looking at the State of Indiana, the Board of Animal Health and the USDA, there are specific definitions for commercial breeders and hobby breeders and she feels there needs to be some consistency in the definitions. She said in terms of numbers and welfare of the animals there needs to be that intersection of the animal ordinance so there is assurance if there is zoning for these numbers that piece is somehow connected. She noted that there is no specific group that will accept

accountability if the animals are not being cared for. After researching the USDA website she could see kennels that repeatedly had violations, but there is no one that says how many times the people will be allowed to create an unsafe and unhealthy environment for animals and told they cannot do that anymore. She stated that is part of the frustration their groups are feeling because there is no authoritative body that tells them if they are in violation so many times they can no longer operate a kennel because they have consistently shown that they are not taking care of the animals.

Ms. Reel said they have had animals that come in the shelter from breeders that are beautiful, but they are so aggressive they are not able to be adopted out because they have not been properly socialized. They have also had animals that have had crude veterinary care that has not been given by a vet. She stated that she understood the Plan Commission is trying to focus on land usage, but there needs to be some way when they see these inappropriate occurrences continually happening that an action can be taken.

Mr. Kolbus stated the definition of commercial breeder and hobby breeder, based on Indiana State Law Commercial Dog Breeder Regulations, is where the Plan Commission got the number of dogs; however, the age of the dogs was different. He said there is consistency with the State Law, but not entirely.

Setting aside the animal care, Mr. Yoder asked if it was important, from a land use only standpoint, to include the breeder, the hobby breeder and commercial breeder operation. He inquired whether there was a land use decision to be made based upon the number of dogs that would be on the property. Ms. Reel did think there was a decision to be made based on the number of dogs. However, she felt each site should be looked at individually.

Lonnie Burkholder, 5355 B Road, Bremen, came to the meeting to support the kennel operators. He has seen their operations as he is in the feed supply business. He feels they are a vital part of his business and appreciates the work that goes into their facilities and the concern that they have for their operations. He asked that the Plan Commission remember that no one has more invested in their business than they do, and he feels they are trying to do the best thing possible.

He heard the definition of a puppy mill and thought a lot of the owners should be eliminated from that group. He said putting profit ahead of vet care and the health of the animal is not correct. He stated the people he knows that have kennels work very hard and the Commission would be surprised to see how much they spend on vet bills. They know that the better they take care of their animals, the better return they will have. He also thought they were trying to socialize their animals. The organization ICAW is trying to collect information on every kennel and breeding kennel in the State of Indiana and inspect them.

Mr. Burkholder said he is against substandard kennels and does not support them. He said he does support the group of people at this meeting that are trying to do the right thing and enjoy what they are doing. Mr. Burkholder mentioned he had seen some nice facilities on five acres that are easily able to operate and have proper exercise rooms. He feels that five acres is a nice size for a kennel.

Mr. Yoder asked Mr. Burkholder, since he works in a regional area, what some of the other counties are doing with this issue. He asked if it was a permitted use in an agricultural zone or if it varies from county to county. Mr. Burkholder did not know, but said that John Newsome may be able to answer that. However, he knew that kennels are not an issue for some of the counties and they did not have a hearing or special use for them.

Mr. Campanello asked since he does deliver on different sites, how he would want a breeder regulated or 'policed'. Mr. Burkholder said there have been inspections and the organizations, such

as ICAW, would like to visit every kennel. He mentioned when House Bill #1468 passed, that was one of the stipulations and the breeders promised that they would police themselves to a certain extent. Mr. Burkholder said there are some kennels they are trying to shut down and they will continue to shut them down. He said the first step is trying to help them, and if that does not work, they recommend that they go out of business completely because some people are not capable of doing the proper thing for the animal.

Mr. Campanello thought it would be wise to work together as individuals and as a community instead of having a county government regulate it. People that are activists for the animals and the breeders could work together to take care of this issue. Mr. Burkholder agreed and stated that they do have forms and records of the kennels that have been inspected and how they are graded. He said they could sit down with the Commission to be accountable and bring that information back to them. Mr. Burkholder said they want to get some of the kennels up to where they will be appreciated. He realizes some people are against the private ownership of animals; however, as long as they have an open-minded Board to work with they can operate. He said care and standards are very important to breeders and they encourage raising the bar.

Mr. Burkholder then noted there was a misprint in the Elkhart Truth article pertaining to inspections. He clarified the inspections are actually unannounced because they want to see how the breeders operate on a daily basis.

Devon Troyer, 14885 CR 20, Middlebury, said he contacted 14 kennels in Elkhart County to get acreage information and there are four (4) kennels under 5 acres, one (1) kennel that is 5 acres, one (1) kennel is 5 to 9.1 acres, five (5) kennels that are 10 to 15 acres, two (2) kennels are 15 to 30 acres, and one (1) kennel is over 30 acres. He requested kennels run from five acres to 10 acres. He was also concerned about setbacks and suggested they be 25 to 50 ft. Mr. Troyer explained that one kennel is narrow and deep, so the 200 ft. setback probably would not work because his property is not over 400 ft. wide. He said the kennel business is part of their livelihood and in the last two years he has had over \$20,000 in vet bills for anything from 'C sections' to regular vet care. Mr. Troyer sees his vet at least once a month at the kennel and once a week in her office or at his facility. He worked with Lagrange County seven or eight years ago and in an agricultural zone it is a permitted use.

Roger Miller asked about the kennels he listed with the acreage. He wondered if that was all the kennels in Elkhart County or is there an organization of kennels. Mr. Troyer said he listed kennels they are aware of, but he thought there were more toward Nappanee. However, he was told there are 36 USDA licensed kennels in Elkhart County, but he only knew about 14.

Mr. Miller asked if he was a member of an organization that was working to police kennels. Mr. Troyer said he is a member of NIPBA, which is Northern Indiana Pet Breeders Association and ICAW, which is Indiana Council on Animal Welfare. He explained that those two organizations work together to do inspections called KMA, Kennel Management Assistance program, and anything that pertains to USDA and the wellbeing of the dogs, facilities, exercise areas, etc. is graded from a one (1) to a five (5). If the average number falls below a three (3) or above a three (3), they will work with the kennel to see how they can help them. If the kennel owner will not raise his standards, the organization will advise them to move on and discontinue the business.

Mr. Campanello asked if the USDA standards are considered to be minimum, so they can be exceeded. Mr. Troyer said that is correct.

Mr. Warner explained that the 200 ft. setback was determined due to a noise concern in the neighborhood. He asked how Mr. Troyer would deal with that issue. Mr. Troyer stated if they

install a privacy fence, shrubs, etc. around the kennel so they cannot see other animals it helps. He has privacy fences 20 ft. back where they cannot see out, however, they have to be careful because of ventilation issues. According to Mr. Troyer, the privacy fence must be 2 ft. or 3 ft. off the ground so they have ventilation, but he agreed that is a concern.

At this time the "Comparison of Kennel Regulations in Adjacent Indiana County Zoning Codes", prepared by Robert Nemeth was submitted to the Board *[attached to file as Staff Exhibit #3]*.

Mr. Yoder stated that the Lagrange County Zoning Ordinance stipulates that outdoor runs or any other facility not within an enclosed building shall be set back at least 200 ft. from a property line abutting residential or an institutional use, and at least 50 ft. from any other property lines. If they were against another agricultural zone the setback would be 50 ft., but against a current industrial or residential use it would be 200 ft. Mr. Troyer agreed with those setbacks and he could see where they would need more of a setback if abutting a residential district or industrial use. He asked Mr. Yoder for the setback on a hog, duck barn, etc. Mr. Yoder thought it was 5 or 10 ft., but Mr. Burrow informed him that there is no agricultural building setback in an A zone. He clarified that an agricultural building can sit up to the property line.

Nicole Weber, 4600 East Fox Run Drive, Syracuse, is part of the Indiana Council for Animal Welfare (ICAW), and the vice president of the Northern Indiana Pet Breeders Association (NIPBA). She vouched for the fact that there are many kennels throughout the state of Indiana that are far above the USDA standards and are raising the bar even further. She, personally, has been involved with the State Board of Animal Health (BOA), and going out to kennels that have had complaints. Ms. Weber said the people are not always a member of any of the organizations; however, she lets them know who she is and what the organizations are about and their standards. She offers membership into the organizations to them and encourages them that if they want to stay in that business, membership would be a good choice to make. Ms. Weber lets them know if they do not raise their standards they will be put out of business. She also is a kennel owner and has gone to the BZA at Kosciusko County to set up her kennel facilities.

Ms. Weber said some noise issues she looked at in Kosciusko County required a privacy fence and she was granted a 30 ft. setback from her property line for the kennel building, not including the exercise rooms. She also looked at having an automated system so during the night at a certain time the automated doors would come down. The animals could come in from their normal outdoor exercise run, but once they are in the building they are locked in until 7:00 A.M. or 8:00 A.M. the next morning.

Mr. Kolbus asked whether the BZA required privacy fencing as part of her permit or if she offered it voluntarily. Ms. Weber said she voluntarily offered to install the fence.

Roger Miller asked if that was a standard in the kennel organizations. He noted there were a couple of organizations that police the care of animals. She said the Northern Indiana Pet Breeders do police not only the members that are part of the organization, but she has been asked to go to non-members' locations that the State has had complaints on. Ms. Weber has physically been in those kennels and let the owners know what the State and Federal laws were, told them they needed to comply, and within 30 days she would be back out to visit to be sure they met the minimum state standards. She also offered becoming a member to enhance their education on their business. In this case, within the 30 days when she came back, he sold out because they could not meet the standards that are required and did not have the funding to bring the business up to the minimum standards. She mentioned she also did not promote the word puppy mill as she feels that is a

derogatory term. She realizes there are substandard kennels, but there are also professional commercial breeding kennels.

Roger Miller asked if any of the organizations set up acreage standards before they could have a kennel. Ms. Weber said they have not gone over acreage, but has been on properties that are approximately 3 acres and she could not believe what a nice facility they had built; however, there was noise. She offered her assistance if anyone wanted to tour some of these kennels. She could show them some of the professional breeding kennels. Ms. Weber mentioned as far as the noise ordinance is concerned, they need to keep in mind that they would not be familiar to the dogs so they may initially cause noise in the first 15 minutes; however, once they were used to them the noise subsides.

Roger Miller inquired about the size of the buildings as it relates to the number of animals. Ms. Weber stated there were State and Federal guidelines and they do have suggestions for increasing that to their members or people in the industry. There are suggestions made about what is better for that animal so that they will produce better, be a healthier animal, and will be able to reintroduce them to a home environment in the future. However, if there are records that show there are 33 USDA kennels in Elkhart County she is not aware of all of them, but she is aware of around 20 kennels. Ms. Weber knows that all of the 20 kennels are not registered with the State Animal Board of Health or with USDA, but you learn who the 'bad' and the 'good' guys are in business. If her association cannot help the 'bad' guys raise the bar to minimum standards or exceed them, that could have a negative effect on her business which could put her out of business and she did not want that to happen.

Carol Mitchell, who resides at 61239-1 CR 21, Goshen, had a question about land use. She feels the decision pertaining to kennels would probably lean more toward the land use than for the breeding and the kennels. She asked if someone met the standards for the land use and they were in violation 1, 2, or 3 times, why were they approved again to operate a kennel. She did not understand if people kept violating the codes, why were they being approved.

Ms. Mitchell commented that one of the people mentioned they paid thousands for vet bills and asked how that would compare to him charging \$700 or more per puppy. She asked the Board how the kennel ordinance would pertain to rescue groups, because most people that foster dogs do not have a regular facility. She also asked if she would be in violation for having temporary dogs. She has her own personal dogs, but also fosters dogs for different organizations. Roger Miller asked if she was a member of a group that is organized as a rescue group and she said she is.

Mr. Doriot informed her that if she has more than four adult dogs or cats on her premises she would be in violation of the current zoning ordinance. Mr. Kolbus advised that there is no distinction between temporary or permanent keeping of animals. Ms. Mitchell asked if there was a way to get that changed or amended and Mr. Kolbus informed her that is what the Plan Commission is working on today. He said Roger Miller was referring to that when he asked if there was a rescue group organized that could get a representative to meet on this issue. Ms. Mitchell said they probably could.

Mr. Yoder asked her if that group normally had more than four dogs at a time that were rescued. She said they are not in any one facility because they are in foster homes, so it would depend on that particular home as to how many dogs they would have.

Mr. Campanello asked if her group had ever been in contact with Nicole Weber's or a similar group so they could work together to reach an understanding and find out what the environmental concerns were, so the Plan Commission could concentrate on the land use aspect.

Larry Miller, 66601 CR 37, Millersburg, commented that he has a kennel and owns a retail feed store to keep employed. He used to work at an RV factory, but it was not for him, and stated that without his kennel he would have to find another job.

Mr. Miller feels that the 15 ft. to 50 ft. range would be good and noted that, with regard to setbacks, big duck barns and hog buildings are close to property lines. With kennels there were more noise issues and perhaps, smell. He has just under 15 acres, but would like to see the requirement lowered to 3 to 5 acres, so some of the smaller landowners could have a kennel.

Roger Miller asked Larry Miller to clarify 'small'. Larry Miller thought a small commercial breeder would have 20 to 40 dogs, which would be breeding females. Roger Miller inquired about how many puppies they would have. Larry Miller assumed each female would average 4 puppies per year. A female dog cycles every 6 months to 11 months, so it varies. Roger Miller concluded that with the 20 to 40 females there would be 4 or 5 puppies per female over the 12-month period.

Laverne Whetstone, 14304 CR 22, Goshen, did not have any additional information, but is a member of ICAW and NIPBA. He was at the meeting to give support for the kennels.

Devon Schrock, 10551 CR 24, Middlebury, gave his support to Lonnie Burkholder and Devon Troyer. He also had a concern about setbacks. Mr. Schrock has 10 acres, but the property is 3 times as long as it is wide. He said the setback would not allow him to own a kennel, but if he had a square property it would give him the allowed setback; however, it could put him closer to neighboring houses. He thought with the way his property is laid out he could seclude the dogs, still be close to the property line, and not cause a nuisance. He mentioned he does not have any problems with his neighbors. Mr. Doriot asked if he thought, as far as setbacks, if he happened to move in next to a subdivision, it may be advantageous for both of them to have a wider setback. Mr. Schrock agreed in a subdivision that could be. Mr. Doriot stated in an A zone and next to someone with a 5 to 10 acre parcel a closer setback could work. He felt there is a difference in properties.

Mr. Yoder informed them that even with an adjoining property the shape of the property could make it difficult to meet the established setback; however, if it was a permitted use, there would be an option to come to the BZA and ask for a variance on the setback. He said it could be done, but they would need to appear before the BZA and show why you could meet the standards with a closer setback.

Mr. Schrock added that he is a member of the NIPBA and ICAW and he supports what they are doing. He thought it was good that they gave unannounced inspections just to be sure they maintain requirements. Roger Miller asked if he paid dues and Mr. Schrock told him they do pay a membership fee; however, he did not know if the people that inspected got paid or if it was on a volunteer basis. The members confirmed that the service was on a volunteer basis.

Mr. Campanello asked how many breeders would not allow the inspectors from the organizations on their property. Mr. Schrock did not know of anyone that would not allow them on their property. He had heard talk about substandard kennels and owners that only cared about the dollar, but did not know them. He said in order to be prosperous they would have to be considerate of the animal welfare. Mr. Yoder said there could be a variety of operations out there that no one knows about.

Steve Lehman, 59453 CR 33, Middlebury, agreed with what he had heard, but had one concern. He owns 4.67 acres and asked if they would consider going down to 3 to 4 acres for the requirement of acreage. He and his family enjoy having a kennel business.

Roger Miller asked him if he knew of any breeders that do not allow any inspections. Mr. Lehman thought the landowners that were not USDA would not want to be inspected. He thought the USDA breeders do allow it and felt it helped them to have inspections, because it would keep them on track.

Mr. Burbrink stated with USDA, the landowner does not have a choice because they will come in and inspect whether or not the owner wants it. However, the other associations mentioned at this meeting were voluntary. Even though the kennels would not have to follow the other agencies' guidelines, they adhere to professional standards.

Merl Miller, 63322 SR 13, Goshen, was at the meeting to give support. His property is also under 5 acres and he has a kennel business to support his family, which he enjoys. He stated he would appreciate it if the Plan Commission would help them by accepting 3 acres for a requirement. Roger Miller asked him how many dogs he had and he responded 30 dogs.

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

In reviewing "Comparison of Kennel Regulations in Adjacent Indiana County Zoning Codes" [*previously submitted Staff Exhibit #3*] Mr. Kolbus did not think the other county's regulations gave them helpful guidance. There are five surrounding counties, two permit kennels by special use, two permit kennels by permitted use with certain conditions, and one permits them as a permitted use in certain zones and a special use in other zones. There is some consensus that five or more dogs seems to be where the kennel definition begins. There are a variety of conditions and setbacks of 50 ft., 600 ft., 750 ft., and 200 ft. Acreage goes from no minimum to 2 acres to 10 acres. He noted there was no consistency with the conditions, but it does give an overall view of what options they would have in moving forward. Other than the number of dogs defining a kennel, he did not think there was any consensus. He also noted they do not distinguish between breeders and kennels. The only county he found that in was Hendrix County and they have private kennels, which is basically for care and training. The other is commercial kennels which is for breeding and selling.

Mr. Yoder said they do know through USDA registrations that Elkhart County has a fairly high number of kennels and this has been an issue with the BZA. He indicated if there were a lot of kennel issues coming to the BZA it was an appropriate role for the Plan Commission to take a look at the Zoning Ordinance to provide guidance at a minimum. Secondly, they might make a change in the ordinance that would reduce the number of kennel hearings with the BZA.

Mr. Yoder chose to briefly discuss the animal care issue and then encouraged them to move more toward the land use issues of acreage and definitions. Mr. Yoder had a number of communications with the animal care proponents and, from what he understood, there are concerns about the frequency of USDA inspections in the county. He said there have been funding cutbacks at the State and they are under the impression that there are less inspections now than there have been in the past. He said there are also concerns about the Indiana Board of Animal Health and how those standards are being enforced. Mr. Yoder stated that Elkhart County has an Animal Care Ordinance as well, but they have some concerns with how that is being enforced. There is a concern that even though there are regulatory and licensing processes in place, the actual inspections are not being done. Mr. Yoder committed to these groups to ask the other Commissioners to focus on this animal care issue at some point in the next couple of months.

Mr. Yoder stated that he would like to know more about how the Indiana Board of Animal Health regulations, how the USDA regulations, and how the local ordinance mesh together. He needed to know what Elkhart County can do to satisfy their concerns as well as working with the

local volunteer organization. He felt it was difficult when they try to mix those issues with the land use issues.

Mr. Yoder recalled the question from Carol Mitchell about the BZA decision, and why they continue to approve kennels when there have been violations. He related that as a dairy farmer, he is inspected twice a year by the Indiana Board of Animal Health and also occasionally, the federal government comes in and does a survey. He said in 30 years, he had one inspection where he had a clean sheet, but every inspection they will find something and people improve it. He explained that the BZA renews those special uses because it is reasonable to expect that you can't have a clean inspection all of the time. Mr. Kolbus agreed it is a temporary situation and it is corrected.

Mr. Doriot had stopped by a couple of the kennels and said compared to what is seen on television as a puppy mill, showing dog carcasses lying in a pile, crates with dogs crammed in, etc., the kennels he has seen are clean. He said when he stopped, the children were normally carrying around a puppy, so the dogs are being socialized. He said his family has raised Dobermans and he has been a part of the AKC Retriever Hunt Test and have been big proponents in helping the Humane Society through memorials in his family. Mr. Doriot said he is not seeing a puppy mill when he stops out at one of the operations, he is seeing a clean operation and healthy dogs. He clarified that with the group before the Plan Commission at this time, he did not see it as a health issue, but a land issue, size, setbacks, etc.

Roger Miller asked Nicole Weber if she knew of any kennels that would not allow inspections. Ms. Weber responded that if they are a member of NIPBA, they realize coming into this organization that as a board they can elect someone from the KMA and normally there is no less than three inspectors on an inspection, so they are aware that they can stop in at any time. As a member of the NIPBA, she sees it as the state organization looking at adopting the same regulations as a guideline statewide and that is where she comes in with BOA, because NIPBA does not have the funding to do the inspections. At this time, they are getting some money built up in that fund, however.

Ms. Weber gave some examples of kennels she had visited and mentioned an incident where there was a landowner on CR 20 near the Elkhart County/Lagrange line that had approximately 50 dogs. They were not a member of NIPBA, BOA or ICAW and she informed them they were violating regulations. When she called them 38 days later, they told her they sold all of their dogs. She did not know whether to believe him, so she stopped by unannounced and he did only have 7 or 8 dogs left. She suggested that the Plan Commission keep the approval for a kennel on an individual basis, and feels the setbacks and noise have to be dealt with according to how the property is laid out.

Roger Miller stated that the Plan Commission's concern is about the land. He thought there were more than adequate organizations that are regulating the animal's welfare. Mr. Miller said, actually, a kennel totaling more than 5 dogs and cats would include about half of his friends. He concluded that there should be at least 20 dogs, because with four dogs at a litter a year, 4 to 5 puppies per litter, they would need at least 20 to 30 dogs to make any money with this process. Ms. Weber agreed.

Mr. Warner asked how many breeders were not Federally or State registered. Ms. Weber said they have approximately 80 members of NIPBA which is northern Indiana; however, she said there are members in the middle and southern part of the state. She said she is not USDA licensed herself, because she does not sell wholesale. She sells directly to the public and if she cannot please

the customer that comes to her facility she would not get repeat business or a word of mouth customer.

Doug Miller feels that kennels for the Plan Commission is a land use issue on a very simple basis. He listened to the testimony and found the dynamics interesting in Elkhart County, even on the BZA. There is a distinct group of Elkhart County's population that comes from the very conservative side and his father was raised in that community, so he understands it. He said as a person on this Board, it is not his job to get involved in ideological differences, but to recognize them and make sure that the land use allows all of those ideological issues to take place. He was convinced, based on testimony he heard, that there are groups in place that inspect and monitor dog kennels; therefore, those details can be worked out. He believes this is simply a land use issue and appreciates all the testimony.

Mr. Yoder asked the Board for decisions reached concerning the definition issue, number of animals, whether they thought kennels should be permitted in an agricultural zone; if so, which agricultural zone, acreage, and setbacks.

Looking at the kennel issue from an agricultural perspective, Mr. Burbrink feels it would be an agricultural use and did not see a problem with kennels in most of the agricultural zones. He thought 200 ft. was excessive for a setback, and suggested 50 ft. in an agricultural zone. Mr. Doriot recommended that within an 'R' zone, or next to a subdivision, the setback should be greater. Mr. Burbrink said the only problem with that is that a subdivision can be created in an agricultural zone.

Mr. Yoder said he had been out on a couple of the operations and had not heard anything. He pointed out that noise was one of his main concerns. However, he said his neighbor was raising puppies for a while and he did hear those, but it was always when the cows were brought in from the pasture and the dogs could see them. He agreed that 50 ft. in an agricultural zone was acceptable, and if there needs to be a variance, that could be taken care of through the BZA and with visual barriers. The Plan Commission concluded that 50 ft. would be acceptable in an A zone and 200 ft. in an R zone, and the BZA could take care of any variances. Roger Miller said they could not really plan if a subdivision moved into an A zone. Mr. Doriot said it could be a condition when they start a kennel and it would be a pre-existing condition.

As far as acreage, Mr. Kolbus stated in terms of land use, the minimum acreage is a setback and noise issue, and whether or not that can be controlled on smaller parcels of land. The "Comparison of Kennel Regulations in Adjacent Indiana County Zoning Codes" was reviewed again to see how other counties handled this issue.

Mr. Burbrink recalled Ms. Mitchell's concern about the number of dogs allowed, and including rescue dogs, which should be addressed as well. Right now the number of animals is four, but he thought there were many people over that number from time to time. Mr. Campanello also stated a 'temporary' dog needed to be defined.

Roger Miller suggested that Ann Prough, the Zoning Administrator, attend the meeting to talk about the 'temporary' dog or cat issues and provide input on the other issues. Mr. Yoder said he would prefer that Mrs. Prough offer suggestions on the 'temporary' issue with the Staff between now and the next meeting.

Mr. Yoder felt they may be able to push the acreage down to 3 acres, but the smaller acreage would need to be protected with the setback. Mr. Doriot agreed to have 50 ft. in the A zone and 200 ft. residential. He said they would not be able to get a 200 ft. setback on 3 acres without a variance. Mr. Kolbus noted there is also a comment, fenced as an acoustical noise and visual barrier, which should stay in the ordinance.

Mr. Burbrink asked about the definition and Mr. Kolbus stated a combined total of more than 5 dogs is the proposal, over 6 months of age.

Mr. Burbrink requested a definition for a ‘temporary’ dog or cat for rescue. Mr. Kolbus felt they needed input from Ms. Mitchell, Ms. Reel and Ann Prough between now and the next meeting. He said in a past BZA meeting, there was an individual on a zoning case who brought in rescue dogs, but she kept them to raise, which is a different situation from what Ms. Mitchell and Ms. Reel were talking about. He wanted to meet with them to come up with some factors that they needed to look at to propose and suggested opting out a rescue operation if they can sufficiently define it. He said State law opts out, but they have a definition for it.

Mr. Burbrink recommended that the welfare, veterinarian care, inspecting and regulating should be addressed in the Animal Care Ordinance. Mr. Kolbus said the parameters for a kennel would be for permitted uses; otherwise, they would have to get a special use or a variance.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Campanello*) that this request for multiple text amendments to the Elkhart County Zoning Ordinance be tabled until the April 12, 2012, meeting of the Elkhart County Plan Commission to allow for further staff review. The motion carried unanimously.

6. The application to correct scrivener errors to the text of the Elkhart County Zoning Ordinance, specifically subsection “Specification L – ORDINANCE FOR FLOOD HAZARD AREAS”, for the Elkhart County Advisory Plan Commission, was presented at this time. The geographic areas affected by this Amendment are all lands within Elkhart County, including all the Townships: Cleveland, Osolo, Washington, York, Baugo, Concord, Jefferson, Middlebury, Olive, Harrison, Elkhart, Clinton, Locke, Union, Jackson and Benton; and including the Towns of Bristol, Wakarusa, Middlebury, and Millersburg, but excluding the jurisdictions of the City of Goshen, the City of Elkhart, and the Town of Nappanee.

Duane Burrow requested that a correction be made to “Specifications L – ORDINANCE FOR FLOOD HAZARD AREAS” to include the Town of Wakarusa into a line within the definition. Mr. Burrow stated Craig Buche would have normally treated this error as a typographical error and it could have been taken directly to the Commissioners, but because FEMA requested that this be corrected, a public hearing needed to be held.

Mr. Burrow indicated that under Section 2 of the proposed Ordinance, line 5, the Town of Wakarusa should have a comma after it, so he requested that the comma placement be included as part of the text. He said after the public hearing is held, the Ordinance can be sent to the Commissioners. Mr. Burrow said the staff is still trying to get the Town of Wakarusa included, because they were never officially adopted in 1980. Mr. Doriot asked if Wakarusa agreed to that and Mr. Burrow told him that Wakarusa signed the agreement, so the agreement does indicate that they have identified the Elkhart County Plan Commission as the municipal Plan Commission for the flood plain ordinance.

There were no remonstrators present.

A motion was made and seconded (*Doriot/Roger 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/Roger Miller*) that the Advisory Plan Commission recommend to the Board of County Commissioners that the corrections to the text of the Elkhart County Zoning

Ordinance, specifically subsection “Specification L – ORDINANCE FOR FLOOD HAZARD AREAS”, be approved as presented by Duane Burrow. The motion was carried unanimously.

7. *Basements – memo of findings from statewide requests*

Mr. Godlewski was tasked to report findings from other communities to see whether or not they require soil borings to prevent wet basements. Mr. Godlewski sent out a memo, but only two communities responded. The two communities had different types of approaches. He stated that one response referenced the building code, because some regulations already exist about this; such as, foundations need to be one foot above the groundwater table. He mentioned that Mike Gard of the building department has a plan review process for homes, so if the soil boring process is implemented they may be able to catch some issues before they become problems.

Mr. Godlewski said the other response came from a gentleman from St. Joseph County. They have an informal review that if there are issues during the subdivision process a note is made on the plat so they can address the issues.

He said Mike Yoder and Doug Miller responded with their thoughts on this issue as well. Mr. Godlewski felt the Seasonal High Water Table Notification Certificate and soil boring requirement warranted further discussion. He felt it is difficult to identify if this is a very broad problem or if it is specific to certain sites.

Roger Miller stated the issues that are uncomfortable for him are when the residents come in and tell him their house is continually under water and ask why the Plan Commission approved it. Mr. Miller said his response is that there was no evidence to disapprove it; however, he was hoping to address this issue at this meeting.

Mr. Godlewski believed there were some situations that could have been prevented, but some problems were created after the fact because of adjacent construction, etc. He felt this is not a straight forward issue. This problem does exist in the county and perhaps a good consideration is whether the quantity is enough to warrant a change in any ordinance.

Mr. Yoder agreed and said the Highway Department has been tracking complaints, so there should be some quantitative numbers to work with to locate where these problems have been occurring, why they are causing problems with water in the streets, on sidewalks, and in retention areas where they are not suppose to be, etc. He felt it would be helpful to know where the problems are, the volume and frequency of them. Mr. Yoder said there are definitely problems that need to be resolved and he suggested asking the contractors or the Builders Association, to see if they have any solutions, because he did not think the solution to the problem could be having two or three sump pumps draining into the street or into retention areas. He decided now is the time to move forward and gather more information to see what they can do. Mr. Godlewski suggested to isolate specific areas also.

Mr. Doriot felt some problems may have a simple solution, such as a downspout extension, so they do not dump their water right next to the foundation. He noted, however, that the County did cause problems with CR 17 in certain areas. Mr. Doriot said Elkhart County is dealing with existing homes that are purchased, but the buyer should be responsible for an inspection; otherwise, they are buying the residence ‘as is’. Mr. Godlewski said there are existing problems, but they need to know how to prepare for those problems so they do not exist in the future.

Mr. Doriot said he has a note on all of his plats that reads, “Do not put the basement below the Seasonal High Water Table, as indicated on the soil borings for the septics.” If they want to build it lower than that they would need to consult with a Soil Scientist. Mr. Godlewski said if that

is noted because the situation exists, a plan review with the building department may catch the problem. There would not be any additional fees, however, it may take an extra day or two for review.

Doug Miller did not think there were more than 2% or 3% of all of the homes in the county that have an ongoing issue with water in their basements. He said his membership will try to talk buyers out of putting in a basement if there is a noted water table issue. If they insist on a basement, they put the proper mitigation numbers in and try to educate the home buyer. He said if they are going to come up with a solution it has to be equitable, because homeowners will continue to want to build on an attractive lot that is in low ground where they can have a walkout basement and at some point the community will get a 10 inch rain and it will back up in their basement. Mr. Godlewski felt some situations were hard to identify, because someone could build in a subdivision and cause drainage issues for some of the other lots.

Mr. Campanello suggested the Builders Association could do some regulation. Doug Miller stated that since this issue came up he had been thinking through the process of what is going to benefit the homeowner/end user of that product, and what information could be made available to the second purchaser of that home. He said the person that buys a house from him will have to sign a disclosure, and when they sell that house, it will become their problem if they do not disclose. Mr. Miller stated the current homeowner may not know they have a water problem, but it could occur for some reason after a few years.

Mr. Doriot said a soil boring for a basement is much different from a soil boring for a septic system. He said the septic system is covered up and if there are minor problems with it they would not see it. However, when a soil boring is done on a basement it is open and the liability for that soil scientist is much greater and the depth is much greater, so the cost is going to go up. They may say the fee is just \$500 for the soil boring, but with an additional \$1,500 erosion control charge, soon people could not afford to buy a house or what they would have to buy would be a lot smaller.

Doug Miller discussed other issues he has experienced with seasonal high water tables. He informed them that nationwide the National Home Builders Association is on a huge campaign to educate the buyers, because culpability has to go back to with what the buyer knows when they are buying. He said he was in the home inspection business for 10 years and did over 5,000 home inspections. He educated the buyers and the number one issue was mold in the basement and drainage around the house and this all deals with maintenance. What the county is listening to and having problems with is maintenance problems, not soil problems.

Mr. Godlewski asked if there was enough information to warrant the Plan Commission to make a change either in the zoning or subdivision control ordinance. Mr. Yoder did not think so yet and noted that they would spend a little time discussing this issue at the workshop Monday. Mr. Yoder said that sometimes what a homeowner wants to do effects a variety of other issues. He is not in favor of more regulations, but he wants to talk about this issue a little more and planned to talk to the Highway Department about specific issues. However, there may be times when the homeowner will not be able to put a basement in some area, because there is no way to mitigate.

8. *Streamlining the Minor Subdivision Process*

Mr. Godlewski said that last month Amendments to the Subdivision Control Ordinance, dated January 27, 2012, was passed along to the Plan Commission. Mr. Kolbus stated that Staff is comfortable with the proposed amendments and the recommendation is to follow through with a

public hearing. If this goes to public hearing next month, Mr. Godlewski suggested an effective date of July 1, 2012.

Mr. Doriot moved that the proposed amendments to the Elkhart County Subdivision Control Ordinance be set for public hearing on April 12, 2012 with the effective date of said amendments to be July 1, 2012. Mr. Yoder seconded the motion.

9. Mr. Godlewski reminded the Board members of the retreat to be held Monday, March 12, 2012, 1:00 p.m. at the Commissioner's office, Room 106.

10. A motion to adjourn the meeting was made by Mr. Doriot and seconded by Mr. Yoder. With a unanimous vote, the meeting was adjourned at 11:11 a.m.

Respectfully submitted,

Sandra Herrli, Recording Secretary

Jeff Burbrink, Chairman