

## **MINUTES**

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

**HELD ON THE 8<sup>TH</sup> DAY OF NOVEMBER 2012 AT 9:00 A.M.**

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

**4230 ELKHART ROAD, GOSHEN, INDIANA**

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

2. A motion was made and seconded (*Yoder/Doriot*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 11<sup>th</sup> day of October 2012 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Doriot/D. Miller*) that the legal advertisements, having been published on the 27<sup>th</sup> day of October 2012 in the Goshen News and the 27<sup>th</sup> day of October 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/D. Miller*) that the Elkhart County Zoning Ordinance and Elkhart County Subdivision Control Ordinance be accepted as evidence for today's hearings. With a unanimous vote, the motion was carried.

5. The application for a zone map change from A-1 to a Detailed Planned Unit Development-M-1 to be known as **K2 D.P.U.D.**, for K2 Holdings LLC represented by Marbach, Brady & Weaver, Inc., on property located on the Southwest corner of CR 15 and CR 6, common address of 53111 CR 15 in Osolo Township was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #53111CR 15-120817-1*. He displayed a GIS map which indicated the surrounding land uses and names of businesses. Mr. Burrow pointed out that Eastwood School was located on the south property line of K2, there is an existing house of worship in this area, a series of residential land uses on the east side of CR 15, and American Tire and Wheel which has a significant amount of landscaping behind these residential uses. He noted that the landscaping was very effective and the buildings could not be seen behind the residential uses. Mr. Burrow stated that to the north was Remington Park, which established the design standard for the Specifications E in our zoning ordinance in terms of the landscaping requirements. Mr. Burrow displayed a picture of the property indicating where K2 planned to build. North at the intersection of CR 6 and CR 15 is where they intend to have the driveway constructed and Mr. Burrow stated that the Staff felt the entrance placement would be an adequate distance from the intersection.

Mr. Burrow reiterated because of the tree line to the rear, American Tire and Wheel could not be seen. The landscaping is a mix of existing tree growth with some enhancements.

He stated there were adequate sighting distances to the north and they are not intending to overcrowd on the site plan. Mr. Burrow stated that was part of the justification to why the Staff was reasonably supportive of this type of land use at this location. The proposed use will be for oversized vehicles or large RV's that they are going to store for owners.

Mr. Burrow informed them that Remington Park was originally brought in with the higher end developmental standards. The Staff Report was written based on the public hearings held over the years for that property. He stated that, surprisingly, there was a lot of remonstrations.

Chris Marbach, 3220 Southview Drive, Elkhart, was present to represent K2 Holdings and Gary Price, the owner. He said the property was 9.2 acres. Mr. Price currently has the site off of CR 113 which is the back end of his current facility, Space Source. Mr. Marbach said it is very clean with three levels of boat storage top to bottom. The storage is completely filled from September through May and Mr. Price has no problem finding clients.

Mr. Price would like to take the current facility and transform it over to the new site. The facility is a 71,000 sq. ft. building that sits on the north one-third of the property. All of the vehicles are covered and inside. He said it will contain 88 boats, 44 cars, 30 RVs and 13 other storage bays along the south side will be all indoor storage as well. Mr. Marbach said on one end there will be an office and a display room for some classic cars or boats on consignment that people are trying to store over the winter, but actually want to sell. He may have a spot to display them inside the building and designate a small area in the corner to park a few should the need arise. Most of his sales of boats, RVs and cars are by the internet. People do not usually go to him to purchase the vehicles, although, there may be occasional drive-bys, but the bulk of the sales are from the internet.

Mr. Marbach said there is another building along the west side that almost connects to the southern building. The west building has 21 individual spaces that are all indoors for boats, cars and RVs that are 12' x 35'. He said there are eight more on the southern end that are 15' x 50', so there is a variety of sizes for the customer. Mr. Marbach stated that on the south side there are 26 covered storage spaces and it has three sides, but it is still covered storage for the vehicles. He said on the southeastern corner there are a variety of sizes of heated storage for various types of vehicles. With the placement of all of the buildings it makes a solid wall of building, but there is a small gate for access to the retention area. There is solid wall in the back and a gated area across the front. Basically, it is surrounded with wall on the exterior. There is a fence around the property line that protects all of the retention area and keeps potential children from the east going into that area.

Mr. Marbach said they plan to continue the landscaping plan. They will continue the same mounding theme with the trees on top, but they will leave an opening for the sign and display vehicles. As large as it is the facility operates with two employees. They take care of the vehicles coming in and going out, maintain them during the winter, clean them as they come in or on their way out in the spring and they detail the vehicles. He said this business does not have a noise issue and there is minimal traffic. They may also deliver the vehicles if needed.

Mr. Marbach submitted a color version of the renderings of the proposed building *[Attached to file as Petitioner Exhibit #1]*. He explained Mr. Price wanted to move the facility one-half mile from the current location because of security. The business had been broken into many times at the current site. Mr. Marbach said the violators would continually cut the fence and damage his customers' vehicles. This has been a big problem for them. They also steal the electronics and cause a great deal of damage to the vehicles. Mr. Price would like to start over with the concept of making the exterior wall of the building more secure at the new site. Mr. Marbach stated that he agrees with the

Staff Report and asked for questions.

Roger Miller said there was one corner where there would be displays and asked if that was for sales. Mr. Marbach said it was for sales and classic cars. He said there would be an open parking lot in that area. Mr. Sharkey asked if the entry was on CR 50 and he was told it will be. Mr. Campanello asked about the fence and Mr. Marbach told him there was no fence along CR 6, but there would be fencing on the south and west sides and they will be surrounding the retention pond with the fence. Mr. Doriot said there would be one trip in for the year and one trip out for the year and Mr. Marbach agreed. He calculated there would be around 230 storage spaces and two employees a day. Mr. Doriot thought Mr. Price would be averaging four vehicles a day.

Gary Price, K2 Holdings LLC, 53400 CR 113, Elkhart, the owner of the business, said that during the winter their business increases. He told the Board that he is a good neighbor. Mr. Sharkey asked about the buffer between the business and the school. He thought Mr. Price wanted to remove all the trees on his property and Mr. Burrow stated that the only trees that would be removed are around the house of worship. Roger Miller noted that there was a note that says symbols need to be identified on the base of the drawing. Mr. Marbach told him that was taken care of. Mr. Doriot asked if the pond was wet or dry and Mr. Marbach informed him it is dry and there had been five soil borings done already so it should perk out without a problem.

There were no remonstrators present.

**Motion: Moved by Mike Yoder, Seconded by Blake Doriot,** that the public hearing be closed and the motion was carried with a unanimous vote.

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

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

1. That the Specifications E “Landscape and Screening Requirements” be established as a developmental standard along CR 6 (north property line), along CR 15 (east property line) and along the property line adjacent to the Eastwood School (south property line).
2. That the “Landscape Plan” as described in the Specifications E “Landscape and Screening Requirements”, along CR 15 and the Eastwood School be submitted with the Development Plan (PUD Plat).
3. That the “Landscape Plan” and the PUD Plan be considered by the Plan Commission and not the Plat Committee.
4. That the only permitted land uses be specified by the DPUD Ordinance as the following:
  - a. Sales of Boat, RV, and Car as demonstrated on the Site Plan Support Drawing.
  - b. Boat, RV, and Car display as demonstrated on the Site Plan Support Drawing.
  - c. Indoor car, boat and RV storage as demonstrated on the Site Plan Support Drawing.
  - d. Vehicles wash area as demonstrated on the Site Plan Support Drawing.
  - e. A maximum of 26 vehicles permitted as outside storage and shall be under cover as demonstrated on the Site Plan Support Drawing.
5. That the following land uses be prohibited:
  - a. All uses specified in the M-1, B-3, B-2, B-1 and R-4 zoning district unless permitted by the adopted DPUD Ordinance.
  - b. No temporary, short or long-term occupancy of RV’s (i.e. no overnight residing).
  - c. The use of this real estate as a vehicle assembly or transfer yard, including vehicle chassis or the finished product, boats, RV’s or cars.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 6).

**Yes:** Doug Miller, Blake Doriot, Tony Campanello, Dennis Sharkey, Roger Miller, Mike Yoder.

**Action:** Approve

6. The application for a zone map change from R-1 to R-3, for *Ideal Acres LLC* on property located on the North side of East Lincoln Street (CR 42), 150 ft. East of Jackson Street, 350 ft. West of SR 13, common address of 409 E. Lincoln Street in Clinton Township, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #409ELincolnSt-120924-1*.

Marlin Miller with Ideal Acres, 26404 CR 52, Nappanee, requested this rezoning. He purchased a couple of properties in Millersburg from the same owner, but he did not realize how they were zoned at the time.

Mr. Miller said he went to the bank to get a mortgage and found out that the properties he purchased were zoned R-1, but the bank requires that one of the properties should be properly zoned at R-3 in order to get a mortgage. Mr. Miller informed the Board that there is a residence and two apartments in a separate building on this property. He said there is parking along the front of CR 42 or Lincoln Street in Millersburg and there is a carport that will park four cars. He informed the Board that parking has not been an issue and the previous owner has had these parking arrangements for 30 years. Mr. Miller stated that when he bought the property he assumed it was zoned properly and did not see any problem with the parking as it is. Mr. Yoder asked him if he was trying to rezone the property simply to get a bank mortgage and Mr. Miller said that was correct.

Roger Miller asked if there was space available to park between the sidewalk and the road. Mr. Miller replied by pointing out on the map where the parking areas would be in the front and back. He said there were no issues with the neighbors and noted that the back unit of the apartment has two bedrooms and the actual residence has one bedroom upstairs and two bedrooms downstairs.

Mr. Sharkey asked how long the houses had been there. Mr. Miller stated that the houses were originally built in the early 1900s, but the previous owner converted them into separate living areas in the 1970s and made them into a three unit rental building. However, the previous owner did not tell Mr. Miller whether he got permits and nothing was ever rezoned. Mr. Miller said he bought the property earlier this year and found out about the situation a couple of months ago.

Mr. Yoder stated that the curious thing to him was that the current R-1 is non-conforming and the Staff indicates that the R-3 is going to be non-conforming, so he did not understand what that changes for the bank. Mr. Doriot said he realized it is non-conforming because they would have to get a lot size variance, however, he thought if the bank saw that the R-3 zoning was approved they would probably accept it. Mr. Miller believed the bank just required that the rezoning be changed to R-3 and that would make it acceptable to mortgage.

In discussing the need for a lot size variance, Mr. Mabry clarified that a lot size variance would not be needed unless the bank required it or if he were making any kind of improvements that required a building permit. Roger Miller reminded them that if the structures were to burn down they could not be rebuild without approval from the BZA and Mr. Kolbus stated that was correct.

Mr. Miller said there was an empty lot next to him and an alley in the back, but the Board told him he still did not have enough square footage without a variance. Mr. Sharkey asked him if he had any plans for the empty lot, but he does not own it, so he cannot combine them. Mr. Miller explained that the church owns the vacant property to his west. Roger Miller thought the mortgage

company would find the R-3 zone to be acceptable and Mr. Doriot agreed.

There were no remonstrators present.

**Motion: Moved by** Dennis Sharkey, **Seconded by** Mike Yoder, 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:

**Motion: Moved by** Blake Doriot, **Seconded by** Tony Campanello, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from R-1 to R-3 be approved.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 6).

**Yes:** Doug Miller, Blake Doriot, Tony Campanello, Dennis Sharkey, Roger Miller, Mike Yoder.

**Action:** Approve

7. The application for a zone map change from M-1 PUD to M-1, for *J J Incorporated* represented by Nuway Construction, on property located on the East side of Charlotte Avenue, 2,000 ft. South of CR 20 (Mishawaka Road), 2,000 ft. West of SR 19 (Cassopolis Street), common address of 58050 Charlotte Avenue in Baugo Township, zoned M-1 PUD, was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #58050CharlotteAve-121001-1*. Mr. Burrow stated that essentially the only thing that actually got implemented was the 50 ft. landscaping easement and that was established under the platting, so subsequently, there is no value in continuing on with the Planned Unit Development zoning.

Andy Nesbitt, Nuway Construction, 2119 Carmen Court, Goshen, represented the petition. He said they were planning to construct a 1,000 sq. ft. office addition and as the Staff indicated, they did not feel that the PUD needed to exist.

There were no remonstrators present.

**Motion: Moved by** Blake Doriot, **Seconded by** 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:

**Motion: Moved by** Blake Doriot, **Seconded by** Tony Campanello, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from M-1 PUD to M-1 be approved in accordance with the Staff Analysis.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 6).

**Yes:** Blake Doriot, Tony Campanello, Dennis Sharkey, Roger Miller, Mike Yoder, Doug Miller.

**Action:** Approve

8. *2013 Planning Calendar – Duane Burrow*

Mr. Burrow indicated that every year as part of the Rules of Procedure this Board adopts, for the BZA and for the Plan Commission, the application deadlines for the meetings. He said this calendar is the same as the last three years with the exception of one item being removed which is the Secondary for Minor Subdivision submittal. He said that was deleted from the Planning Calendar, so there will only be one date for filing applications. The reason the Secondary application deadline was removed was based on the fact that the minor subdivisions no longer require going to the Plat Committee, and the Plan Director can now give approval. Also, the Subdivision Control Ordinance requires that if a major subdivision is submitted the compliance requirements must be submitted for the street plans, and the bonds have to be in place, so three days is not going to give someone time to prepare.

Mr. Doriot said if he was going to submit a major subdivision today and completed all of the compliance requirements in order to file by next Monday, he would be heard at the January meeting, but after the deadline date he would not be able to file until the following month and it would not be heard until February. Mr. Burrow said that was correct. Mr. Sharkey did not think it sounded like anything had been streamlined. Mr. Burrow stated they had to get the compliance requirements published.

Mr. Burrow informed them that streamlining was based on the fact that for Minor Subdivisions a filing deadline is no longer required, they would no longer have to go to the Plat Committee, and the Plan Director can give approval. Mr. Yoder agreed that they need an amendment to put the deadline for Major Subdivisions back on the calendar.

**Motion: Moved by** Blake Doriot, **Seconded by** Roger Miller to amend the Secondary filing date for Major Subdivisions to be the following Monday or Tuesday, depending on holidays, after the Plan Commission is held.

Mr. Burrow recommended that they add to the motion. He stated that a lot of the surveyors misunderstood the Secondary deadline to be the filing deadline for development plans under a PUD. The Planned Unit Development requires that the PUD plat development plan go to the Tech Committee. Motion passed unanimously.

9. *Amendatory Declaratory Resolution for the amendment of the Millersburg I TIF District*  
*And*
10. *Amendatory Declaratory Resolution for the amendment of Millersburg II TIF District*

Craig Buche, Elkhart County Board Attorney, 130 North Main Street, Goshen was present on behalf of the Redevelopment Commission. He explained there are two TIF Districts. The Millersburg I TIF District is where Forest River is located and the Millersburg II TIF District is the old Carriage complex, which at this point is vacant or in the process of being redeveloped and sold. In 2002 and 2006 the Redevelopment Commission created these two TIF Districts. The Millersburg I TIF District with Forest River was developed in order to assist with some improvements to the wastewater treatment operations of the Town of Millersburg in order to facilitate and provide expanded sewer service for the Forest River TIF District.

The Millersburg II TIF District was created a few years later and, similarly, was developed to assist with expansion of water utility operations to serve the Carriage TIF District and its expansion at that time. Mr. Buche felt these TIF Districts have functioned very effectively and provided funds to the Town of Millersburg for these utility improvements and have essentially completed those needs.

Mr. Buche said the Town still needs some additional assistance or improvements at their wastewater operation. The Tax Incremental Financing process was changed a few years ago in such a way that if they ask for an amendment of the Economic Development plan, an explanation of what the funds will be used for, they would have to go through the process in its entirety as if creating a new TIF District and that is why they came to the Plan Commission. Mr. Buche said the TIF process is that the Redevelopment Commission creates a Declaratory Resolution in which they determine what it is they are declaring that they are going to do, it goes to the Plan Commission for approval that the project conforms to the Comprehensive Plan for the County, and it will then go to the Elkhart County Commissioners to approve the actual TIF District and the development plans. The next step is for it to go back to the Redevelopment Commission for a public hearing to confirm and finalize.

Mr. Buche said in this case the Town of Millersburg has requested some additional funding from

the TIF revenues to assist with some wastewater utility improvements. He said the plan is to use TIF revenues from both Millersburg I TIF District, which will close out that TIF District, and the Millersburg II TIF District which will assist with redeveloping that Carriage facility so it may become usable again.

The project is approximately \$440,000, which is not a huge amount. The plan is the Redevelopment Commission seeks to use the remaining funds in the Millersburg I TIF District, that will end next year, and any additional funds that would be needed to pay off the \$440,000 for that improvement would come from the Millersburg II TIF District. He anticipates there will be available TIF revenues that would be usable in that District if it is needed for redeveloping the Carriage facility.

Mr. Buche asked for the Plan Commission's approval of the Economic Development plan which says that the Redevelopment Commission would be able to use those TIF revenues from the two TIF Districts for the last wastewater utility improvement. There is no change in the size of the TIF Districts, no change in the real estate that is included in them and no extension on the times. He said it is to expand or allow the existing TIF revenues that are coming in to be used for this additional project.

Mr. Sharkey asked who was in charge of the monies, either the Town of Millersburg or the Elkhart County Redevelopment Commission. Mr. Buche replied that it is actually the Redevelopment Commission's funds. The Redevelopment Commission goes to the Commissioners and the Council for funding and appropriations. He said there is an Interlocal Agreement that would be used to actually get the money to the Town which would be able to be used for the project itself.

Mr. Doriot asked if it was an extension for the wastewater treatment plant and Mr. Buche stated it was for the wastewater operations and it was for the actual utility. Mr. Buche explained that this comes from their engineer and it is a draft of the Interlocal Agreement. He said the project is defined as a restructuring of the primary plant operations, reconfiguring the facility with a new aeration tank and clarifier, piping electrical work, which would allow increased flow of wastewater in the future and it would also enhance the efficiency of the plant by having less utility needs for electricity, so there is a reduced operational cost in the future.

Mr. Doriot thought this would benefit the entire town, and would not be just an extension for a certain area. Mr. Buche said it has peripheral benefits for the town. Mr. Sharkey said it would benefit the possible new owner and Mr. Buche explained it would benefit the two TIF Districts also. He informed the Board that Forest River is planning for an additional plant on their facility and on the Carriage project the bank or receiver intends to put it in to rearrange that site so it could be sold in parcels. He thought there may be some additional needs such as utility extension and roadway improvements. The Redevelopment Commission wants to be in a position that they could assist if there were some needs in addition to the utility need and the expectation is that this will not require all of the TIF revenues.

Mr. Sharkey stated that TIF Districts make an impact on property taxes now, but they did not use to. He said they make an impact now because people are hitting the 1%, 2%, and 3% limits. Mr. Sharkey explained that once they go through the property tax phase of the assessment and come up with the property tax fees, anything that is over and above the 1%, 2% and 3% comes right out and the County does not receive that anymore. Before the tax, TIFs were just taken out and all of the rest of it was divided, but it does not do that anymore. Mr. Sharkey felt they should be careful of TIFs and where they are putting them.

Mr. Yoder understood that one of the TIFs will be finalized, which is Millersburg I. Mr. Buche stated that was correct and next year will be the last year. He said the Redevelopment

Commission does have to use the money that comes in for the benefit of that TIF District one way or another, even after it ends. Mr. Buche explained that their primary feeling is if they have a good project such as this, it would allow them to use the funds and not have to find another project which would be better than just having the money sit there for a long period of time.

Mr. Doriot said he agreed with this because it would help everyone in the community. Mr. Sharkey asked about the expiration of the second TIF and Mr. Buche informed him that it would expire in 2034. Mr. Sharkey suggested that in the future they needed to look at TIFs a little closer, the same as right now they are looking at tax abatements a little closer. Mr. Buche agreed that anything that takes assessed value out of the formula does impact taxing entities. He said they did a preliminary look at this particular one, and because the tax rates in this area are relatively low, it does not appear as though it would have the kind of impact that would apply if it had a high tax rate and they would end up with more loss from the property tax caps, but it is still an issue.

**Motion: Moved by** Roger Miller, **Seconded by** Tony Campanello to approve the Amendatory Declaratory Resolutions for the Millersburg I TIF District and Millersburg II TIF District to assist with improvements to the wastewater treatment operations for the Town of Millersburg (see attached).

**Vote:** Motion carried by unanimous roll call vote (summary: Yes = 6).

**Yes:** Blake Doriot, Tony Campanello, Dennis Sharkey, Roger Miller, Mike Yoder, Doug Miller

**Action:** Approve

11. *Walnut Hills Easement Vacation – Mark Kanney*

Mr. Kanney stated in 1977 the plat was recorded for Walnut Hill Estates Section Two. He noted that within that plat there was a 20 ft. perimeter utility and drainage easement platted. The owner, Henry Hammes, of lots 8 and 9 has requested that the easement be vacated [*Attached to file as Petitioner Exhibit #1*]. Mr. Hammes owns the adjacent properties to the west and this easement is a barrier between the use of both properties. Mr. Kanney said that all of the utilities have been contacted and they are not interested in using this easement. The designer of the drainage portion of this subdivision, which was Brads-Ko Engineering & Surveying, Inc., has looked it over and found that there is no need for it to be a drainage easement and the Elkhart County Highway Department, John Bowers, has concurred that there is no practical use for that easement. Mr. Kanney requested that the Board recommend approval of a vacation of a platted easement along the west side of lots 8 and 9 in Walnut Hill Estates.

**Motion: Moved by** Blake Doriot, **Seconded by** Tony Campanello to recommended approval of vacation of a platted easement along the west side of lots 8 and 9 in Walnut Hill Estates.

**Vote:** Motion carried with a unanimous roll call vote (**summary:** Yes = 6).

**Yes:** Blake Doriot, Tony Campanello, Dennis Sharkey, Roger Miller, Mike Yoder, Doug Miller.

**Action:** Approve

12. *Zoning Ordinance Update – Chris Godlewski/Brian Mabry*

Mr. Godlewski had two items for the zoning ordinance discussion, including the critique of the denied Draft E ordinance and the existing ordinance.

He explained that Blake Doriot, Mike Yoder, Doug Miller and Jeff Burbrink met a couple of weeks ago to discuss residential uses in Agricultural zones. They had a meeting was to discuss the November 20<sup>th</sup> Policy Committee meeting and then come to a conclusion or have a discussion at the December 13<sup>th</sup> Plan Commission meeting. The topic of discussion at this meeting was to review livestock operations as mandatory zoning districts where agricultural zoning would be and rural



residential with the inclusion of most existing agricultural uses in that district. In the meantime, they have been trying to stick to the schedule.

Mr. Doriot said he had talked to some of the producers, Miller Poultry, Maple Leaf and he thought Mr. Burbrink was going to talk to Drew Fry at Culver Duck and Mr. Doriot is trying to get with Brookins, a hog producer, and Mr. Hibschman to get a little more feel for what the producers think.

Mr. Godlewski stated that Mr. Mabry was going to go over the critique and he has created a template of the zoning ordinance draft. He offered to email the PowerPoint to the Board members and said that Mr. Mabry could email the template.

Mr. Yoder said one of the things that changed his position was that it was not residential that would affect agricultural, it is agricultural that will affect residential. He said with the current zoning ordinance they could put a 1500 cow dairy next to a subdivision with no zoning.

Mr. Mabry said he was going to give a shorter presentation of the material covered in the Technical Committee and submitted a printed template of the zoning proposal *[Attached to file as Staff Exhibit #1]*. He said there are four groups of people involved in this project and they are the Technical Committee which is made up mostly of Staff, that looks at each draft and comments on the enforceability, practicality and detail of the rewrite. The Policy Committee which offers a bigger picture includes people from the community and does not include staff members for the most part. Mr. Mabry stated the next level is the Plan Commission who will make a recommendation to the County Commissioners and, hopefully, they will adopt the rewritten zoning ordinance.

Mr. Mabry reviewed the zoning ordinance basics and the critique itself covers five different sub areas. He thinks of it as a 'to do' list of things that need to be accomplished in the rewrite. He wanted the Board to be aware of what they do not want to happen out of what is being presented to them. Mr. Mabry has been involved in projects where they have given a critique on a rewrite and no one said anything, so they moved forward because they thought everything was good, but then there were issues they had not been aware of. He felt it would be good to take care of any issues before moving forward with the project, so they do not waste any time going back and working through things.

Mr. Mabry wanted to discuss a proposed outline in which he will give the Board a sample of a reformatted version of the first three articles of the ordinance. He said it is only taking the existing language and making it easier to read and use.

He said the purpose of a zoning ordinance is to implement the Comprehensive Plan or the Land Use Plan for 2008 and it is the big picture of policies, goals and objectives that has to do with how the County wants to grow in the future.

The zoning ordinance implements the land use portion of the plan by setting up laws that have to do with land use, the impacts of land uses on other properties and on community character, for instance, parking, signs, landscaping, etc.

Mr. Mabry said platting or subdivision is the next level that is intertwined with zoning, because the plat has to comply with the zoning ordinance. However, platting has to do with subdividing land and public infrastructure like streets or sidewalks while zoning is more related to the private use of property.

He said the final step in the building process is permitting. Permits have to comply with the zoning ordinance and the certificate of occupancy which indicates that they built what they said they would build.

Mr. Mabry said this critique is heavier on the existing ordinance. He went on to discuss ease of use and formatting the zoning ordinance. He wants a clickable Table of Contents and Index.

Clicking on the item would take the person to that part of the ordinance. There will be heavy use of graphs and tables along with simple illustrations that will be worked into the new draft. There will be headers and footers on the document. He wants to separate the procedural information in the ordinance from the standard requirements in the ordinance. Mr. Mabry stated that there would be an article relating to how a rezoning is done, how a planned unit development is done, etc. and then there will be other articles related to actual standards for a sign setback, how a setback is measured for a sign or how driveways are measured. He also felt they needed to clear up who is responsible for what. They will make the document easier to read and understand.

Roger Miller stated that so often when people read these, they are read as absolutes and there is no way to get around it. Mr. Mabry agreed that an ordinance is law and so there are absolutes in it. However, there will also be what he calls 'measurements and special cases' that will cover how things are measured, and the special case part of it is where there are built-in exceptions, such as, if someone has a certain percentage of the building past the setback then it would be possible to approve it without a variance, or some similar situation. He said he is proposing flexibility.

For Draft E, as far as ease of use he thought most agreed it was an attractive and well formatted document. Some concerns were that there was a very long Table of Contents, but that can be easily fixed and the district names are not spelled out; for instance, instead of the zoning being R-1 on the document he felt it would be nice to know what that really means in the Table of Contents. There are a large number of new zoning districts added and he thought they could look at accomplishing some of the ends of the new districts with just different development standards that would apply in the existing districts.

Mr. Mabry liked the colored graphics, but the County uses mostly black and white, so he suggested having more line drawing style graphics that are clear and easy to reproduce. He said for all graphics there is a provision that the written word controls over the graphics if there is a discrepancy.

Mr. Mabry said there is a portion in each of the zoning districts in Draft E called "Additional Development Standards that Apply" and he found it to be hard to read in the print version, but it is a good idea to try to carry forward in some way in the new version, so they will need to click on the items and it will take you to where you want to go.

Mr. Mabry discussed conflicts and consistency within the document itself and with other documents that Elkhart County has that regulate development. The general provisions portion of the ordinance which is the most mundane part includes the purpose statement of the ordinance and the jurisdiction that it applies to which is the County and some Towns. Some things to look at in the new draft is whether to include the purpose statement. He thought the zoning ordinance probably had a purpose statement in it, but people do not look at that they look at the zoning ordinance. He thought it may be modified to fit what the zoning ordinance is trying to accomplish.

On Rules of Construction, he thought it was helpful to set out at the beginning to describe what the word 'shall' means, what 'may' means, what 'day' means if calendar day or working day, and to set the stage about what we mean when we use certain words.

The next part of the ordinance will be review Bodies and Procedures. This item will be spelling out the responsibility as a Plan Commission, the County Commissioners responsibility as far as land development is concerned, Zoning Administrator's responsibility, etc.

Mr. Mabry discussed procedures and how a variance gets done and how zoning is done. Each of those procedures should have an applicability statement that describes what it is and where it is in the chain of approvals. He said you need, generally, to have a rezoning happen first.

Mr. Godlewski asked for clarification about what was meant by new ordinance. Mr. Mabry said he should have said that he was talking about the existing ordinance, Draft E and the new ordinance that will come out of this project. He said they would have to clarify where that permit is and the chain of approvals, a rezoning should happen first, then the plat, the permits and then the certificate of occupancy. He would like to utilize a table to summarize review responsibilities. The table would show the things that the Plan Commission approved and things the Building Commissioner reviews or approves, etc.

Mr. Mabry would like clarification on the Districts purpose statements, because some of them do not have one right now and that should be used whenever a rezoning is applied to a piece of property. He wants it to be clear what Districts are residential and what are considered non-residential and which ones are overlays sometimes it is clear and sometimes it is not. Mr. Mabry would like to see the official zoning map becoming the electronic version. He said it is sort of related to the zoning ordinance, but also related to the zoning office and making sure it is accurate. He wants the electronic map to be as accurate as the paper copies.

Mr. Mabry said there are some zoning districts that aren't mentioned on the district list. He said it is just through 'piece meal amendments' through the years that things do not get comprehensively looked at some times. Therefore, he felt listing all of the zoning districts and purpose statements are important.

More from an enforcement perspective, Mr. Mabry said they have had some problems with the code enforcement people differentiating home occupation and home workshop/businesses, so he wants to make sure those are not conflicting, but consistent and clear.

Mr. Mabry noted that the development standards are signs, landscaping, etc. He wants to make sure other outside ordinances related to drainage or MS4 fit together and are not conflicting with each other. Referencing outdoor display, storage and repair, he felt there are some things that need tweaking so they do not overlap and are consistent. He said the same goes for parking lots and car sales.

Mr. Mabry thought as far as nonconformities are concerned it is good to have a differentiation between nonconforming structures, uses, lots and site improvements, parking lots or landscaping. There is a tendency to be a little tougher on nonconforming uses and then as you get down the scale it is a little easier. Once a nonconforming use is abandoned it cannot be re-established without a rezoning. Communities usually like to allow nonconforming structures to have improvements as long as they are within the existing setbacks. Nonconforming lots or nonconforming lots of record, which are platted lots that complied with the zoning ordinance at the time they were platted, but due to changes in the zoning ordinance, these lots no longer comply. He wants to give direction on that and direction on how nonconforming status is removed either through a rezoning to the correct zoning district or through abandonment where the grandfathering ability is lost and that use cannot be re-established at that location.

Mr. Mabry wants consistency within the ordinance about how things are used and with other documents, such as, the Subdivision Control Ordinance, building codes, Comprehensive Plan, Thoroughfare Plan. He mentioned that Draft E addresses most of the conflicts and consistency concerns previously discussed, so he would like to continue to apply them where it is appropriate.

Mr. Mabry addressed Practicality and Enforceability and wants to be certain references to State law are accurate for what current citations are now. He said the duties for the Zoning Administrator, Plan Director and Commissioner are not clear in the existing ordinance, so there will be an article of the ordinance that defines those responsibilities.

He felt that it would be beneficial to have a temporary use permit. At this time the County

only has a building permit and since he has been here he had something issued as temporary and there were no parameters for conditions of the temporary status and too often temporary becomes permanent, so there will be a new type of permit with limitations of the number of days and if it is a larger event require restrooms, trash areas, etc. There will be provisions for the zoning administrator or plan director to make interpretations for customers at the counter if there is an issue that is not clearly addressed in the ordinance. He would like to keep a record of those and once a year taken those interpretations and make them actual amendments to the zoning ordinance.

Mr. Mabry would like to consider removing Use Variances as a procedure. He said there are only a handful of States that allow them at this time. He stated that a variance is supposed to be a hardship based on property that relates to topography, lot shape, etc. He said it is difficult to justify a use variance from the Board of Zoning Appeals based on the conditions of the property. He has proposed a solution about how to implement some issues that may arise. He suggested that the Plan Department could require that attempting a rezoning be considered first before a use variance is granted. Mr. Mabry said a variance is supposed to be a last resort before an appeal takes place, so there would be that route to go through first and if it is denied then there would be the opportunity for a use variance to be requested. Right now it is similar to a 'mini' rezoning for one specific use and since the towns, Middlebury, Millersburg, etc., are not on the Board of Zoning Appeals they do not have any input on something that is like a rezoning for a specific use.

He felt there should be flexibility in some special cases, such as, encroaching on a setback or height provisions. Code Enforcement has difficulty with some specific uses, such as signs, campers, and garages as residences, and it needs to be clear that some structures are prohibited as permanent residences. It needs to be easier to enforce garage sales, car lots, etc.

Mr. Mabry reiterated that they need to eliminate the use variance. He stated that there are several times that a second dwelling is requested on a large A-1 zoned farm. Mr. Mabry said we could allow those by right, subject to certain limitations, such as a certain lot size, set aside room for parking and perhaps that could be allowed by right.

He informed them of an issue that came up at the counter recently. Two houses are not allowed on the same property, but a contractor showed that the State was about to demolish the existing house because it had been acquired as right-of-way, so he wanted to begin the process on a second house, but to follow the exact letter of the law he would not be able to do that and would need a use variance to allow a second dwelling. However, he had proof that the structure was going to be demolished as part of the right-of-way acquisition, so he allowed the second dwelling.

Mr. Mabry said there are some cases that go to the Board of Zoning Appeals about how much accessory structure exceeds the primary structure. He felt they could work in some flexibility into the zoning ordinance to cut down on the number of this kind of request that is often approved anyway. He wants to look at what the Board of Zoning Appeals frequently approves and if something is mostly getting approved he felt they should make it 'by right' in the ordinance or at least subject to some limitations so they do not have to go through a long variance process.

For definitions, removing standards, he said there are some definitions in the zoning ordinance, such as, home workshop/business, bed and breakfasts that have standards for the use in the definitions, so they would need to be in the use standards of the ordinance.

For Draft E practicality is a primary complaint. The more complex an ordinance is the more manpower, staffing and sophistication you will need in enforcement of those rules. There is complaint of micromanaging properties, for instance, colors of buildings, the example of basketball goals. He said there is a section concerning wind farm overlay and he has not heard much about it in the Policy Committee discussions. He mentioned that there also may be health issues related to

wind farms, including glare and vibrations.

Mr. Yoder said there has been a study on wind farms and there are two locations in Elkhart County where they could put them. He said there is just no where to put them, but the only locations are on SR 13 and SR 4 and in Foraker, but that is all. He said there are too many airports spread around this county. Mr. Yoder said Elkhart County also does not have that much wind. Mr. Mabry said they will probably scratch that off the list.

Mr. Mabry said the enforcement provisions of Draft E are more proactive than what our current practice is because we are mostly complaint driven as far as Code Enforcement is concerned the provisions are more proactive than aggressive. The goal is to incorporate workable provisions from Draft E into the new draft, with subsequent vetting through the Policy Committee, Plan Commission and County Commission.

Roger Miller inquired about a solar farm which is not in the ordinance. Mr. Mabry said he planned to discuss that item in his presentation under Implementation of Existing Policies & Practice. He informed them that at the counter we rely on Policy decisions that have been made in the past, so he wants to get that coordinated into the ordinance itself.

Mr. Sharkey asked about private solar panels that residents put on their roof. Mr. Mabry said the practice now and what they hope to have in the ordinance is that the solar panels on roofs that are basically flat, parallel with the roof, and raised slightly, would be to allow those by right and if they are stand alone to require a special use permit. He said that is an interpretation that has been made and is not part of the ordinance, but he would like it to be part of the ordinance. Mr. Kolbus said a lot of jurisdictions are doing that if it is on the building then that is a right, but if they are stand alone they are treated as an accessory structure with certain conditions. Mr. Yoder asked if the farmers that have solar panels on their roof are given a permit and Mr. Mabry confirmed that was correct.

Mr. Mabry would like to spell out the composition and duties of the Technical Review Committee. Set thresholds for what constitutes a minor vs. major change to an approved variance or special use site plan. He said that would be an administrative change. Mr. Mabry said they need to determine how to treat PUDs with no site plans and a lot of times no written rules that were part of that PUD. If someone wanted to add on to it there is no drawing to change or no text to change, so the safest thing to do would be to bring it to the Plan Commission and County Commissioners as an amendment and they would need to provide a new site plan to show what is on the property. Mr. Kolbus said they just rezoned a PUD back to straight zoning because they found it was not needed. He explained that having these guidelines may take that step out of the procedure.

Mr. Mabry stated that there are some towns in Elkhart County that have their own sign provisions. They are stand alone, so working their provisions in is a possibility.

He wants to review the policy for solar panels and other alternative energy forms to make sure we have provisions that give guidance on how to permit them or not permit them. He mentioned that the City of Goshen has a recent amendment about these that we could look at. Mr. Mabry felt that the existing cell tower or wireless communications policy should be incorporated into the zoning ordinance. Mr. Sharkey said there is one across the street from his house that was built 1990's before he was a Councilman. He said at that time the Plan Commission was under the impression that they cannot be told 'no'. Mr. Kolbus said he was aware that since they first began there have been changes where you can deny them in certain situations, so he agreed the policy needs to be extensively updated.

Mr. Mabry said he has experienced at least two cases where a residence was damaged due to fire, they needed to rebuild, and they needed a mobile home to place on the property temporarily in order to live there while the house was being rebuilt. He felt it would be nice to have parameters to

work with rather than just previous policy. Mr. Sharkey asked 'what is temporary'. Mr. Mabry agreed that would have to be addressed and noted he thought presently it was 180 days. Mr. Kolbus said there may be fire damage that they are investigating and it could last a year or more.

Mr. Mabry proposed providing the Zoning Administrator guidance for making use interpretations where if there is a use that does not fit in the zoning ordinance list of permitted uses for parking, intensity of the use, etc. to allow the Zoning Administrator to make those interpretations. He said the other option is to amend the set of permitted uses and add this new proposed use; however, that would take two to three months to happen. He proposes to recognize 'lots of record' and allow limited development.

He noted that pertaining to Draft E, Implementation of Existing Policies & Practice, there was not much mention of the Technical Advisory Committee and minor amendments to a Variance or Special Use site plan was not addressed as well.

Mr. Mabry noted that wind farms were addressed, but after the previous discussion he thought this probably would not be necessary.

The wireless facilities were not mentioned in Draft E and mobiles homes in emergency situations are not addressed. The use interpretation was addressed previously and in Draft E the zoning administrator has the authority in it to make the interpretation, but there is no guidance given for how to make it.

Mr. Mabry stated that Mr. Godlewski showed him a critique written by R. W. Armstrong, a planning and consulting firm, and 90% of what they mentioned in their memo is compatible with his views.

He displayed a table for the 'Implementation of the Comprehensive Plan' portion of his presentation. The table illustrated the policy of the Comprehensive Plan and how it could be implemented into the zoning ordinance. Some of the policies are going to be 180 degrees opposed to some of the discussions that have taken place at the Policy Committee level, but he felt it was important to bring up the policies of the Comprehensive Plan because that is what the zoning ordinance is supposed to be implementing.

The first policy of Goal 1 is to encourage development in Urban Growth Areas (UGA). Mr. Mabry's three suggestions were getting criteria into the rezoning provisions that relate to the proximity of a property that is wanting a rezoning to an urban growth area, having an urban growth area overlay in the parameter of each of the towns, and what the extent of that overlay is that would offer incentives for doing something in those areas rather than farther out in the periphery. He suggested encouraging something like increased residential density or increased intensity for a commercial type use and to possibly get more open space in exchange for that increased density.

The second policy of Goal 1 is to prioritize redevelopment over Greenfield development, similar to the first established criteria in a rezoning related to the availability of land already zoned in the area for the proposed use.

Mr. Mabry stated that Policy 3 is to allow residential subdivisions only in areas zoned for residential uses. He said if that were to happen the way to get it done would be to increase the agricultural zoning districts' lot size, which is something you could not feasibly do, create a subdivision out of three, ten or whatever acreage they determine to be feasible and to remove stand alone residential uses from the agricultural zoning districts.

Mr. Mabry thought buffer yards being required as part of the zoning ordinance would be helpful to support and protect existing residential communities from conflicting land uses. He suggested another way to protect existing residential communities would be to have a Neighborhood Services Zoning District that would allow smaller scale retail uses to be adjacent to or within a residential

development. Mr. Mabry gave an example that most people would not appreciate living next to a bread factory, but a small bakery in the neighborhood is usually an amenity, so they would have to limit the floor area of the building and have specific uses that would be suitable.

Policy 6 would be to consider the resources of public safety, schools, parks, libraries and other public entities in the approval process.

Mr. Mabry stated that Goal 2, Policy 1 concerned uses in the agricultural zoning district to only be for agricultural related business activities and where appropriate, agritourism. He proposed that they would remove uses not related to ag from the ag districts.

Policy 2 of Goal 2 assists the towns within the County's jurisdiction to sustain compact style of development. The Draft E has a Village Commercial and Village Residential zoning district that intends to accomplish that, so he would like to carry that over.

*\*\* Mr. Doriot left the meeting at this time.*

Policy 3 would intend to protect undeveloped green space with the use of conservation easements. They could allow optional conservation subdivisions or cluster subdivisions by right, subject to permanent open space, density and design requirements.

Some people think of a conservation subdivision as a golf course development without the golf course. He said the golf course, in this case, is the open space and the natural preserved amenities there that are set, under a conservation easement, cannot be developed in the future. Mr. Mabry stated that the key is to make sure that the density of this development matches the lot count or exceeds it. He reiterated that open space would remain permanent and then people would not lose their rural atmosphere.

Goal 3, Policy 3 would be to encourage city and town based growth, and discourage sprawl and leap frog development. This goes back to the urban growth area overlay and the rezoning criteria he mentioned several times. He wants to integrate other County agencies into the process. They could include the Park Department, when appropriate. There is a major subdivision with several residential lots to make sure Park Department needs are taken care of.

Mr. Mabry discussed Goal 4, Policy 1, which specifies to reduce the results of human activity, such as the nuisance of excessive light or visual clutter that takes away from the experience of being in the country. He said that goes back to the conservation subdivisions again in promoting development that preserves natural resources and natural landscapes.

Goal 4, Policy 4 would allow high intensity commercial and industrial development only where municipal utilities are available. Mr. Mabry said there could be criteria in the rezoning process related to that promoting design and management practices that ensure recycling and air quality there are ways to incentivize environmentally sensitive buffering, building design, or paving, etc. For instance they could reduce the parking area required by using something that is more permeable.

Mr. Mabry thought it would be helpful for the Board to have the printout showing the proposed outline of the new ordinance. Mr. Kolbus understood that what Mr. Mabry was saying was based on the critique of the existing ordinance and Draft E and staff has come up with an outline of what they think should be in the new ordinance.

Mr. Mabry agreed that was accurate and the Proposed Outline is what they would see on the table of contents at the beginning of the ordinance if it all goes as suggested. He said that Article 1 - General Provisions will come first where the legal things get taken care of pertaining to authority to have a zoning ordinance and what our jurisdiction is.

Article 2 – Development Review Bodies specifies what each of the groups or individuals; such as, County Commissioners, Plan Commission, Board of Zoning Appeals, etc. has review over. He said there is a table with columns for each situation; such as, variance, special use, rezoning, PUD, etc. and the rows will indicate the procedure for that situation. For instance, the landmark commission, which is the historic preservation commission, has a final decision on a procedure and they make the recommendations, which will be identified with an initial, such as ‘R’. Mr. Mabry explained it is a way to summarize conveniently what action needed to be taken at the beginning of the article and what the responsibilities were.

Article 3 – Development Review Procedures lists all of the existing requests, uses and actions along with what is proposed; such as, the temporary use permit he mentioned before and the written interpretation. The Conditional Industrial Unit Development, which is kind of rare and seems to be like a special use, but instead goes to the Plan Commission and the County Commissioners, rather than the Board of Zoning Appeals. He said this administrative adjustment is something that he has talked to the Plan Commission about in a workshop that will be brought up next month as an amendment to the existing zoning ordinance. This would allow a minor variance to be granted administratively for an encroachment in the setback, so that if there is a 75 ft. setback required, and someone wants to encroach seven ft. into it, which is within 10%, and if they can meet the other criteria then they could be approved administratively rather than taking them through the variance process.

Concerning Article 4 – Zoning Districts, Mr. Mabry stated that the Plan Commission would be establishing the zoning map, doing the Measurements and Special Cases, measuring setbacks, height and special cases where setbacks or heights may be exceeded. The Agricultural District will spell out the dimensional and purpose statements. The housing types give an illustration and definition for what is meant by single family detached, zero lot line, a duplex two units on one lot vs. a single family attached which is an attached building on two different lots. The vocabulary needs to be consistent with what they are meaning by the different housing types. It can be more sophisticated by allowing these to be mixed at different levels. In a cluster style subdivision you can do more, but at a minimum we would have a common set of terms and visuals with what he means by each of them. He said they would do the same with single family residence, commercial and industrial with the purpose statements and dimensional standards and no housing types anymore.

Mr. Mabry said Article 5- Use Standards would include a use table. Right now the ordinance has listings for the districts. He displayed a sample use table with each of the districts and uses with ‘S’ to indicate a special use, ‘L’ would mean it is permitted subject to some limitations and those limitations are listed in the ordinance and blank indicates a prohibitive use in that particular zone. Specific Use Standards would include kennels, bed and breakfast, and other uses. He stated that the rules for Accessory Uses category would include a second residence on an agricultural property. Other categories in this article would be Wireless Telecommunications Facilities and Temporary Uses.

Mr. Mabry considered Article 6 – Special Purpose and Overlay to be their own mini zoning ordinances. He gave an example of a case with District E that had some lengthy landscaping provisions that were part of it. He felt these were self contained because they are very specific. He mentioned there will be various ‘A’ districts and the ‘non-A-1’ which will be the more niche style agricultural zoning districts will be special purpose. There is a question whether there will be a Manufactured Home Park District and he believed there was that type of district. Planned Unit Developments would be part of this category. He said the Planned Development Corridor has never



been utilized, so they should think about whether they want to keep it. Mr. Mabry said there had been discussion in the Policy Committee about the Wellhead Protection Overlay District, which would protect drinking water.

Mr. Mabry stated that Article 7 - General Development Standards include access, circulation, driveways, landscaping, buffering, possibly incompatible uses, sign standards, environmental standards, like flood protection.

Article 8 – Nonconformities is where they would take care of the uses, structures, signs.

Article 9 – Enforcement, Violation and Penalties, would be referenced to the overall County Code. The violation of a zoning ordinance would be addressed elsewhere in the County Code and penalties, as are as well.

Article 10 – Definitions where definitions will be consolidated into one Article and it is good to have abbreviations, so they can be looked up and understood.

Mr. Yoder suggested they look at K-2 DPUD. He stated if they would not have pyramid zoning and they would have more zones for them to choose from, an existing zone and they had development standards, K-2 could have bought the property, came in for a building permit and skip the entire PUD process. Mr. Mabry agreed that could happen if they had buffering built into the zoning ordinance that would be required at the time of the improvement location permit and building permit process.

Mr. Yoder said that is what he wants it to be. He wants to make the process easier. He said they previously reviewed the zoning ordinance and eliminated some of the uses such as haberdashery, furniture store, etc., because there were so many uses in one zone. Mr. Kolbus said also a lot of times there is a conflicting land use, so you want to be able to provide protection to land use adjoining, like the buffer zone. He said if they would do a straight rezoning they would not have that. If there is a zoning ordinance that says when you have an M-1 next to a school you must have a certain buffer which would be one of the requirements in the definition so they could just rezone to M-1.

Mr. Mabry said usually buffers are not locked in so you can space trees closer together in a smaller space and further apart in a wider space and trade space for plantings. Mr. Campanello said K2 had existing trees along the other property, there was no buffering around that retention area and they could not have done that without those trees being there.

Mr. Campanello stated that during the Comprehensive Plan portion of the presentation it became a sort of wish list for a community around Naples, FL or Corpus Christi, TX, but we are a blue collar community. He felt that kind of plan could create a tax burden on homeowners to conform out of their pocket and it would create a problem. Mr. Sharkey felt that he was absolutely correct and he did not think the document presented looked any different than the proposed document from a year ago.

Roger Miller thought the thing that bothered people was that it looked as though there was no way out of it. He explained that it scared them that there were rules and regulations and if he was supposed to build a rectangular house, but he wanted to build a triangular house there would be no way that he could do it.

Mr. Yoder felt Mr. Campanello's observations were correct. He mentioned a comment made by Blake Doriot that, 'Draft E was just dumped on us.' Mr. Yoder said that was not even accurate, because this is a result of several large communitywide strategic planning efforts that are moving this community in a direction that goes back to take charge and Horizon. He said there have been hundreds of people discussing what they want this community to look like or even sitting down and discussing in what direction they are actually going. Therefore, they developed the

Comprehensive Plan which took a lot of community input in order to create it and he agreed it is sort of visionary. Draft E was approved and the Commissioners approved it so zoning needs to flow from that.

Mr. Yoder mentioned that this community has RV's and he is glad they are doing well, but those RV plants do not mesh well with advanced manufacturing because of outdoor storage, so he felt they need to create more zones. In the urban growth areas there are slight issues. He did not feel that Draft E was as bad as some people were led to believe. He reiterated that they need to move toward the Comprehensive Plan because he wants to make it easier for commercial. With the old plan he felt there were too many PUD's, too many home workshop/businesses have go before the BZA, and he did not think they should have to do that. Mr. Godlewski felt that there were also inconsistencies that needed to be corrected and the flow of documents, so it is not all content it could be structure as well.

From the County Commissioner's side there are major residential zones out in the community that they need to address issues with, but they cannot right now because they are in agricultural zones, and he felt they need to be residential zones. What has struck him in the last couple of weeks is how easy it is for ag to have poultry buildings, hog operations and agricultural land and residential areas have no say, no buffers or anything. He felt that they just happen, get their IDEM permit and go on. He actually went to IDEM to figure out how someone may be turned down. If the residents meet the standards we cannot say no, but IDEM can modify your permit a little bit. He said in those Jefferson subdivisions if there is 40 acres next to it with a large dairy, hog operation or poultry operation, it is just created and a building permit is obtained. He said it never comes to the Plan Commission. He felt Elkhart County has a potential problem in the future especially with the growing poultry industries.

Mr. Sharkey stated that the number one thing they were going to look for is pushed development next to urban areas. He said the reason people are moving out of urban areas is that they do not like the crime or congestion. Mr. Yoder stated at a previous ordinance meeting, Mr. Books, a retired Sheriff, discussed how crime was moving to the rural areas because of the subdivisions.

Mr. Yoder considered urban growth areas as saying that is how far they will extend utilities, etc. He liked the idea of conservation areas and thought Jefferson Township would look different today, because it used to be a corn field, but now it is a bunch of residences.

Doug Miller thought the urban growth area was fine if it is a standalone event and potentially, the ag zone is fine if it is a standalone event. The problem is we want to combine them both into our zoning ordinance and so it takes away the possibility of doing either. He said he did not see that it is viable for our community. He also did not agree that if a citizen in Elkhart County wanted to move into a rural area we would tell them they can't build in a rural area. Doug Miller felt we are turning away opportunities for growth and tax base in our community and that does not make sense.

Roger Miller thought the plan put there gave them incentives to go to an urban growth area. He clarified that it does not say they *have* to go to an urban growth area. He said that is what he understood with the last plan. They would not be allowed to build in a rural area, but we would give incentives, such as, using smaller lot sizes. He thought the only way it would work is to give incentives.

Mr. Yoder asked Doug Miller what made him come to the conclusion that the County is trying to eliminate residential in the ag areas. Mr. Yoder asked if they were setting guidelines for what will be required to build in an ag zone, what are those guidelines going to be. Mr. Yoder said

up front it is just a rezone, but now there is a wide open opportunity for the citizen to come in and, providing they meet the criteria to get a building permit, they can build on a rural piece of ground in the County. He said that is where he sees a huge imprisonment on anybody's right to build on a piece of ground. He wants to be as flexible as he can, but he has seen what has happened on the west coast and the northwest quarter of this nation. Doug Miller said if they get the EPA and the State involved and those people pay hundreds of thousands of dollars before they ever put a shovel in the ground, and if they would happen to cut a tree down on that property they would have to replant a tree. He does not want to get to that point in Elkhart County. Doug Miller said he does not want to overreact, but every time they build a house it does make an impact.

Mr. Yoder felt they need to take a look at their current A-1 zones and livestock operations and think about whether that would fit in a residential zone. He did not think it would and thought it would be better to stay with the current livestock zones. He felt they needed to create some ag zones for current livestock operations, but if it is just cropland it could become rural residential with ag uses in it. He said that tells the community the land is all available for residential and they will have some certainty that they will not end up with a poultry operation next to them without a rezoning. However, if it is an ag zone with an existing livestock operation then he thought they should rezone them to a residential use before they allow a house to be built there.

Mr. Kolbus confirmed he was saying if it was zoned A-1 now, instead of taking the residential out of that, take the livestock out and put the livestock in a different zoning. Mr. Yoder said it is exactly the opposite of what he had been saying before and acknowledges, partly, the direction this County been going and at the same time we can protect that residential from a livestock use. Mr. Yoder thought, generally, the livestock owners would be okay with this. He thought corn and soybean operations can live next to a residential area. There will be conflicts of use, but at a different level than hog and cows.

Doug Miller gave an example that in order to get development approved a developer signed a compact agreement with the City of Elkhart, which changed the water rates significantly. With those families that chose to build in that subdivision, after the first few closings, the title company had the owners sign documents acknowledging that their water bills were going to be substantially different than other residents in Elkhart City. Doug Miller stated that in his estimation that tax was unfair in order to live there. He said those two subdivisions sold out, but that still is nothing but a tax for the privilege of building next to the city and that is something he does not want Elkhart County citizens to ever have to deal with. He thought in the State of Indiana they passed laws protecting builders, developers and citizens.

*\*Mr. Sharkey left the meeting at this time.*

Mr. Mabry stated the information he gave the Commission was a reformatted version of existing language to introduce what the ordinance will eventually look like.

**13. Motion: Moved by Douglas Miller, Seconded by Roger Miller to adjourn the meeting.**

**Vote:** Motion passed unanimously.

Respectfully submitted,

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Sandra Herrli, Recording Secretary

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Jeff Burbrink, Chairman