

MINUTES

ELKHART COUNTY PLAN COMMISSION MEETING

HELD ON THE 12TH DAY OF DECEMBER 2013 AT 9:00 A.M.

MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING

4230 ELKHART ROAD, GOSHEN, INDIANA

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

2. A motion was made and seconded (*Doriot/D. Miller*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 14th day of November 2013 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Warner/Doriot*) that the legal advertisements, having been published on the 30th day of November 2013 in the Goshen News and the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

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

5. The application for Primary approval of a one-lot major subdivision to be known as **NICHOLS REPLAT IN BON-AIR PARK**, for Joel W. Nichols Trust represented by B. Doriot & Associates, on property located on the East side of Kreighbaum Street, 265 ft. South of Ruskin Street, North of Charlotte Avenue (CR 24), and West side of SR 19, 1,825 ft. North of CR 24, common address of 58164 Kreighbaum Street in Baugo Township, zoned B-3, was presented at this time.

** It is noted that Blake Doriot stepped down from the Board at this time.*

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #58164 KREIGHBAUM-131104-1*, and the Technical Committee Report. Mr. Kanney restated the health department's septic system comments, saying that if the original septic system fails, connection to sanitary sewer will be required.

Charles Buzzard of B. Doriot & Associates, PO Box 465, New Paris, was present on behalf of the petitioner. He stated agreement with staff comments, said he has been in contact with the owner of the property where the current well is located, and said B. Doriot & Associates is willing

to drill a new well in order to achieve the required 100 ft. separation.

Mr. R. Miller asked whether there were any problems vacating the alley shown between current lot 86 and current lots 70, 71, and 72, and Mr. Buzzard said no. He has been in contact with the North property owner, and the entire alley will be vacated, not just the portion within the boundaries of proposed lot 1.

There were no remonstrators present.

A motion was made and seconded (*R. Miller/Warner*) 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: Action: Approve, **Moved by** Roger Miller, **Seconded by** Douglas Miller, that the Advisory Plan Commission approve this request for Primary approval of a one-lot major subdivision to be known as ***NICHOLS REPLAT IN BON-AIR PARK*** in accordance with the Staff Analysis provided the deficiencies listed with the Technical Committee Report are made conditions of approval.

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

Yes: Douglas Miller, Jeff Burbrink, Roger Miller, Steve Warner, Tom Stump, Tony Campanello.

6. The application for a zone map change from M-2 to R-1, for ***Thomas K. & Gwendolyn Phyllis Groves*** represented by Lisa Groves-Forbes, on property located on the North side of Elkhart Street (CR 8), 3,700 ft. West of CR 27, common address of 1002 E. Elkhart Street in Washington Township, was presented at this time.

Brian Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #1002EElkhartSt-131104-1*.

** It is noted that Frank Lucchese arrived at this time.*

Tony Campanello asked Mr. Mabry how long the subject property has been zoned M-2, and Mr. Mabry said it has been M-2 since the county adopted a zoning ordinance, in the late 1950s or early 1960s. Mr. R. Miller asked for confirmation that the entire area surrounding the subject property is zoned M-2, and Mr. Mabry indicated that all areas immediately East and South of the subject property are M-2. Mr. Campanello asked about the areas North of the subject property, across the railroad, and Mr. Mabry noted the mix of R-1 and B-2 uses there. Mr. Campanello asked how old the house is, and Mr. Mabry said it dates to the early 1900s. Mr. Campanello then asked about the zoning history of the subject property, and Mr. Mabry said that the house was built before zoning was applied in the county and that M-2 was the first zoning designation applied to the subject property. The house constitutes a nonconforming use that may continue. Mr. R. Miller asked whether other houses in the immediate area are the same age as the house in question, and Mr. Mabry was able to say only that the structure immediately West of the subject house is another house. He did not know its age.

Lisa Groves-Forbes, 15315 CR 18, Middlebury, daughter of the petitioners, stated that the subject property has seen residential use for many years and that the house has been present since approximately 1851. She also said that the storage facility East of the subject property has been present only the last 5 years.

Blake Doriot, B. Doriot & Associates, PO Box 465, New Paris, came forward to state that though he performed a survey of the property many years ago, he was not and is not being paid. He asked whether he may present information to the Board on that basis, and James Kolbus said that while he may give factual information, he may not “testify as to opinion because you’re still a member of the Board.”

Mr. Doriot proceeded and stated that many conflicts were discovered during the survey. The original Bristol 1851 deed needed to be consulted, and the subject property appears to have seen uninterrupted residential use since 1851. The lone reason, he said, for the current zoning is the railroad. Mr. Campanello asked what size the tract is, and Mr. Doriot said that what he has as the occupied area is 1.56 acres. Mr. Doriot added that this survey, beset by overlaps and gaps, was one of the most complicated he has ever done. The property has been subject to occupation and overlap claims.

There were no remonstrators present.

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

Following Board deliberation and a desire of Mrs. Groves-Forbes to speak again, a motion was made and seconded (*Campanello/Stump*) that the public hearing be reopened, and the motion was carried with a unanimous vote.

Mrs. Groves-Forbes stated, “We commit to keep the setbacks as-is, and then we can . . . come back and rezone to M-2.”

A motion was made and seconded (*R. Miller/Stump*) 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: Action: Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello, that the Advisory Plan Commission recommend to the Bristol Town Board that this request for a zone map change from M-2 to R-1 for *Thomas K. & Gwendolyn Phyllis Groves* be approved.

Vote: Motion passed (**summary:** Yes = 5, No = 2, Abstain = 0).

Yes: Douglas Miller, Roger Miller, Steve Warner, Tony Campanello, Frank Lucchese.

No: Jeff Burbrink, Tom Stump.

7. *Zoning Ordinance Draft—Modules 1 & 2 Review*

** It is noted that Blake Doriot returned to the Board at this time.*

Chris Godlewski said drafting is halfway done; there is a total of 4 modules. Changes have been presented to the policy committee and the Technical Review Committee, and review of the changes is also desired during today’s Plan Commission meeting. He said that Mr. Mabry had prepared for the Board a consolidated changes guide in table format and that Mr. Mabry would like to go over the table with the Board at this time.

Mr. Burbrink asked Mr. Godlewski to provide background concerning development of the draft. Mr. Godlewski began by saying the Technical Review Committee includes representatives of Planning, Health, Highway, the Plan Commission, and Surveying, who view the zoning ordinance draft from a technical perspective. The policy committee, which comprises diverse members of the

community, then views the draft from a policy perspective. Following review of both groups, the draft must be reviewed by the Plan Commission, and the 3-step review will continue for all modules and occur again for the whole document when all modules are finished.

Mr. Mabry said the table illustrating the ordinance changes has also been used during the other review steps and explained the content of the table. He also reminded the Board that modules 1 and 2 have to do with procedures, such as how variances and rezoning are approved, and use standards, such as what uses are permissible in certain zoning districts.

Mr. Doriot added that the ordinance draft will only be half to two-thirds as long as it is now once stricken items are removed and called Board attention to section 1.1.2 of the ordinance draft, saying such interest in protection of the rights of private property owners is rarely found in zoning ordinances.

Mr. Mabry then continued, noting that the addition of by-right uses, those permitted following simple administrative approval rather than Board of Zoning Appeals approval, does lengthen the document. Mr. Mabry then called Board attention to section 3.1.10, cited on the table, which permits administrative approval of minor amendments to site plans that accompany such projects as DPUDs or special uses. He said movement of a proposed building away from and not toward a road is an example of such a minor amendment.

Mr. R. Miller voiced concern over the ordinance's creation of illegal uses, and Mr. Mabry said the ordinance will not make anything existing illegal but could make some uses nonconforming, in which cases rezoning or variances would only be required in the event of new building projects. The agricultural district has become less agricultural and more open ended as a result of the ordinance rewrite, so little creation of nonconforming uses will occur. Manufacturing districts, while still principally manufacturing, have also seen more permitted uses added. Mr. Godlewski added that notes accompany the changes marked in the ordinance draft.

Moving on to section 4.3.5, Mr. Mabry indicated that review of the developmental variance process was needed. While the ordinance requires that lots upon which improvements will be made have a depth-to-width ratio no greater than 3:1, developmental variances allowing ratios greater than 3:1 are routinely granted, with the average permitted ratio being 13:1. Mr. Mabry said that as a result of discussion, 7:1, which does work with Elkhart County's township/range/section system, seems to be the most appropriate maximum by-right ratio, and variances are still available for lots with ratios greater than that. Mr. R. Miller asked for confirmation that this change was due to the routine granting of such variances, and Mr. Kolbus replied, saying that any time an ordinance is varied from frequently, the ordinance itself must be reconsidered. Matters of routine variance have come up in many areas, of which the 3:1 depth-to-width ratio is only 1 example.

Mr. Mabry then went on to sections 4.3.6.B.2 and 4.3.6.B.3 and stated that setbacks are now considered to terminate at a structure's foundation rather than at its nearest projecting point. This change will allow for encroachment of such features as eaves and chimney bump-outs.

Section 5.1.4 contains a modified use table illustrating the more open-ended nature of the zoning districts. More uses are permitted now in the A-1 and M-1 districts, for example, than were under the previous ordinance, though M-2 remains almost purely industrial.

Moving on to pages 4 and 5 of the table, Mr. Mabry said that section 5.5.8 contains an adjustment to permitted square footage of accessory storage area on A-1 parcels greater than 3 acres in size, and noted that accessory square footage is another area where variance is routinely granted

by the Board of Zoning Appeals. Accessory storage square footage on such parcels may now be up to 200 percent of total living area, or primary structure, square footage. Agricultural building square footage remains unlimited on such parcels. This change is reflected in section 5.5.7, which contains home workshop/business standards, as well. Mr. R. Miller asked whether this matter comes up frequently, and Mr. Kolbus said it comes up a few times every month. Mr. Mabry added that the rationale behind the change was the fact that a large agricultural tract is able to accommodate added accessory storage space.

Mr. R. Miller then asked Mr. Mabry to explain the difference between a home workshop/business and an ordinary business, and Mr. Mabry said the main difference is that a home workshop/business is accessory to a residential use and added that home occupations cannot have signs. Mr. R. Miller then gave the example of a retired person who made cabinets at his home, and Mr. Mabry confirmed that while such activity as a hobby is acceptable without a special use permit, home cabinetmaking for retail could constitute a home workshop/business, despite the misleading term *workshop*. A home workshop/business may have a showroom, and a home workshop/business has a limitation on the number of employees and the size of signs. Mr. Godlewski added that home workshop/businesses are small in scale but allowable by way of special use permits.

Mr. Campanello and Mr. Stump both told Mr. Mabry he had done an excellent job with the ordinance draft, and Mr. Mabry said the policy committee and the technical committee have been good to work with and willing to give and take. Their work has been done in camaraderie and friendliness, and the last policy committee meeting was well attended, he said. Mr. Mabry also said modules 1 and 2 could appear as a staff item again for the January 2014 meeting if the Board had other questions, and Mr. Godlewski recommended that the Board members read through the use table of ordinance draft pages 5-2 through 5-6.

Mr. R. Miller said he liked the new ordinance's elimination of the need for variances granted routinely, and Mr. Campanello said he was proud of the fact that the rewrite has been performed in-house and with public input.

8. *Zoning Ordinance Draft—Professional Services*

Responding to Mr. Campanello's statement above regarding the in-house work of the Elkhart County zoning ordinance rewrite, Mr. Godlewski said the work is in-house but that some assistance is needed. He said the contract for professional services that he and Mr. Mabry prepared would result in professionally prepared graphics and illustrations that show, for example, the location of a house on a lot and its observed setbacks, and review of section 4.4, "Residential Developmental Standards," for "appropriateness and [to] make sure it makes sense." Regarding graphics services, Mr. Doriot asked whether the company would create pictures based on our word and number data, and Mr. Godlewski said yes, where necessary. With Plan Commission approval, professional services would then have to be approved by the Board of County Commissioners and counsel, and the services would cost \$12,000–\$15,000.

Mr. Campanello asked whether Planning was considering a local company, to keep monies local, and Mr. Godlewski said no, the company being considered, a planning firm, was Kendig Keast, whose closest location is in Sturgeon Bay, Wisconsin.

Mr. R. Miller asked whether the ordinance rewrite would create conflicts between county

and state regulations. Mr. Doriot asked Mr. Kolbus whether zoning was “ours,” and Mr. Kolbus said yes. He said that some things are beyond Planning’s control, such as the pipeline easement established on today’s Peaceful Acres site plan, a federally imposed easement, and there is no reason to address such easements in a local zoning ordinance. But Elkhart County does set its own zoning ordinance, Mr. Kolbus said, and he has been reviewing the ordinance to ensure it meets the state enabling statute.

Mr. Doriot asked Mr. Godlewski what items in section 4.4 concern him, and Mr. Godlewski said one item is cluster housing in any district. Rules governing cluster housing therein should be reviewed by the contracted firm. He said he would like to avoid creating something that would go unused or require variances. Upon request from Mr. Doriot for an explanation of cluster housing, Mr. Godlewski said an option for design of a subdivision is cluster-style development, a new concept for Elkhart County that has been the subject of discussion frequently for the policy committee. Mr. Doriot asked whether in cluster housing smaller lots are permitted provided that the extra open space be designed to handle drainage, and Mr. Godlewski said yes. Mr. R. Miller asked whether cluster housing is not currently permitted due to lack of space for wells and septic systems, and Mr. Godlewski said such housing is permitted, though by way of a PUD. Mr. Godlewski’s interest, though, is in making the cluster housing option available without a PUD. Mr. R. Miller asked whether the open space provided in a cluster development is for the purpose of wells and drainage, and Mr. Godlewski said it is only for the purpose of providing residents with open space containing natural elements like water features.

Concerned about the cost quoted by Mr. Godlewski above, Mr. Campanello asked that quotes from 3 different companies be presented so that the Board can see where the companies “come from and see what their philosophy is.” Mr. Godlewski stated that Kendig Keast provided only an hourly rate, not a quote, and that the cost he stated above was simply a cap. Kendig Keast would provide services based on what Planning can spend. Mr. Godlewski also said Mr. Campanello’s request is fair.

Mr. Burbrink mentioned that the previous version of the ordinance had no illustrations and that illustrations would make the material easier to understand. He also seconded Mr. Campanello’s request for bids.

Mr. Kolbus asked whether the Board had reached consensus regarding the securing of the 2 separate types of professional services, those for creating illustrations and those for review of section 4.4. Mr. Doriot stated he wanted the illustrations, which make explanation to clients and the public easier. Regarding section 4.4, he said that while sometimes a fresh pair of eyes is good, he is “on a seesaw” on the matter. He asked how section 4.4 is viewed from a legal perspective, but Mr. Kolbus told him no legal review is sought for section 4.4. Mr. Mabry gave examples of what does require review in that section of the ordinance draft, citing lot sizes, lots widths, and setbacks, which differ between conventional housing and cluster housing. He also said a review firm could help determine whether cluster housing would be used at all and whether “bonus lots” should be permitted in such developments to compensate developers for the extra research required. A single cluster-style development could also contain different housing types, such as zero-lot-line, single-family attached, and cottage, each of which has its own set of numerical restrictions that governs its use. The review firm would assist in the review of those restrictions. Mr. Doriot agreed with Mr. Mabry’s above defense of the securing of professional services. Mr. Kolbus asked for confirmation

that Planning should provide 3 company options, and the Board and Mr. Godlewski said yes.

Mr. Stump said he thought the graphics were needed, but he said he was not sure about the analysis. Mr. Campanello said the analysis should be performed in house and by those affected by the rewrite, such as builders, developers, and landowners. Mr. Godlewski said that though section 4.4 will be written in house, it still should receive third-party review because of its many “moving parts.” Mr. Warner agreed that the securing of multiple quotes was a good idea and said we need to get this right the first time. Mr. Kolbus repeated Mr. Campanello’s request for background on the companies, and Mr. Godlewski said he would provide it.

Nancy Wait, 23604 River Lake Court, Elkhart, came forward to express worry over draft review. She said that at the time of third-party review of old zoning documents, before draft E was made, 2 Commissioners told her that “everyone would be allowed to see red-line changes and . . . could contact the company” and that all that was to be done was removal of outmoded language. She said the Commissioners understood that a document like draft E was not what was to be returned and is fearful about sending the new document out after all the hard work put into it by the community. Mrs. Wait said Kendig Keast’s approach appears to be similar to that of the American Planning Association, and asked the Board to review Kendig Keast’s website and philosophy.

Jim Kuhlenschmidt, 22468 Spicewood Drive, Goshen, seconded Mrs. Wait’s statements by adding that the ordinance draft, a local document derived from local input, should not go to an outfit that has an agenda or will try to “redo” the draft. He said review for graphics and illustrations is reasonable, as is area-specific document review, such as that for section 4.4, and encouraged the Board to look at the contractor’s philosophy.

Gene DeMorrow, 17020 CR 18, Goshen, said he had expected to see some “radicals” on the Board but has been impressed by the Board members, who, he said, seem to thoroughly care about the county. He asked that the county take 1 step at a time and said Mr. Campanello had the right idea requesting more than 1 quote. Mr. DeMorrow, a property owner and lifelong Elkhart County resident, said this is “our area” and wants “the right thing done for the right reason.” He cautioned against acting on opinions of those from outside the county and asked for protection for Elkhart County and the environment.

Randy Wilson, 59725 CR 9, Elkhart, called Board attention to the new use table of section 5.1.4. He said the policy committee, which emphasizes getting things right the first time and wants to avoid going through the review process again at a later time, spent 2 meetings just on review of the table, determining what uses should be permitted by right and what uses should be special uses. The technical committee wanted waste-related service uses to be permitted by right in more districts than did Mr. Wilson, but because of the waste facility problems experienced by the county, Mr. Wilson insisted that “we have to have extra eyes looking at these types of facilities.” He took responsibility for the many Ss, or by-special-use-only indications, now appearing in the corresponding row of the use table. In an attempt to assuage those concerned about third-party review, he said that any changes to the draft made by a planning firm would come before the policy committee for review, but Mr. Godlewski stated that though the policy committee would be able to weigh in, the Plan Commission would make final decisions. Mr. Kolbus, in response to Mr. Godlewski, said the policy committee would indeed review the firm’s comments. Mr. Wilson added that the committee is open for and encourages public attendance.

Mr. Wilson then said that if the planning firm advises against concepts that have not worked

in other regions, such as cluster-style development, Elkhart County should accept the advice. Planning needs assistance with graphics and section 4.4, he said, and “we’re doing the rest.”

Mr. Kolbus stated that the document, if referred out at all, will receive review of only the section in question and will come back to the policy committee and the Plan Commission. Mr. Burbrink added that even in the event of third-party review, “it’s not theirs, it’s ours. If they come up with something that’s not Elkhart County, we can reject that portion” Mr. R. Miller said he would not be willing to vote on anything not reviewed by the policy committee.

9. *Review of Bristol Park for Industry, Phase 3, conditions*

Duane Burrow distributed to the Board copies of the Bristol Park for Industry, Phase 3, Site Plan Support Drawing accompanied by the project's drainage plan and grading plan *[attached to file as Staff Exhibit #1]* at this time. He also distributed copies of a 2-page DPUD ordinance draft he had prepared *[attached to file as Staff Exhibit #2]* and reminded the Board that the petition will be forwarded to the Board of County Commissioners with a favorable recommendation. He said that a problem that needed to be addressed was that during November 2013 Board examination, conditions for approval were established, a break in the conditions discussion occurred, then the conditions were respoken differently. The 2 renderings are reflected in the distributed draft, and not all conditions require clarification. Another problem was that the conditions spoken contain terms that are not defined well in the zoning ordinance. Mr. Burrow said he needed clarification of the conditions before the DPUD ordinance could be written.

Mr. R. Miller asked whether the condition interpretation discussion required would affect the use of illuminated signs, and Mr. Burrow said only the subject property is at question at this time. No discussion at this time would go beyond the subject property.

Mr. Burrow began with item 1, saying that one condition imposed was "that we have dark-sky or interior-directed lighting" and that the ordinance contains no definitions for those terms. The lettered items that follow on the draft are proposed substitutions for the condition, all of which could provide code enforcement investigators means to determine whether the project meets lighting requirements. Absent factual statements, code enforcement is "up to somebody's discretion." He said the use of the term *dark-sky* could imply that no light at all should be seen coming from the site, which would be illogical. Mr. Doriot said that what we do not want is for the site to look like the Walmart on the South side of Goshen, and Mr. Burrow agreed. Mr. Burrow said the dark-sky lighting question concerns how much light is projected up, how much light is cast onto the building, and how much light is reflected off the building, and asked the Board what it wanted to place in the ordinance.

Mr. Campanello asked whether a precedent to the petition has been set, Mr. Burrow said no, but Mr. Burbrink said the subject comes up all the time. Mr. Kolbus said discussions over interior-directed lighting have been had before, and Mr. Doriot said, "We know there's going to be some light pollution." He also said the Board has no lighting engineers as members and said there was no way of knowing "what is 5 watts, 20 lumens." Mr. R. Miller asked how the Board could know what it was talking about and said he has no lighting training. Mr. Burrow indicated agreement with Mr. R. Miller's concerns and directed the Board to his note in the ordinance draft stating that the recommendation to the Commissioners should contain documentation stating the lighting design complies with the ordinance. Mr. Godlewski stated that specific lighting concerns were raised by the remonstrators in attendance November 2013.

Tom Stump asked James Kolbus whether the City of Goshen has conditions or specifications concerning parking lot lighting and whether they could be referenced, and Mr. Kolbus said yes, its zoning ordinance does have a section containing such specifications. He added that while Elkhart County could incorporate those conditions at a later time, they cannot be imposed "after the fact on this one [project]." Mr. Burrow reminded the Board that the subject property will be annexed by the Town of Bristol and said that the Board could leave the phrase *dark-sky or*

interior-directed lighting unelaborated if it chose to. Mr. Burbrink, among other Board members, indicated approval of defining the terms no further. Mr. Burbrink asked Mr. Burrow to obtain a copy of Goshen's zoning ordinance, and Mr. Burrow said Brian Mabry should be the person to consider referencing Goshen's zoning ordinance, as he is responsible for the current Elkhart County zoning ordinance rewrite. Mr. Burbrink said he would ask the staff, then, to obtain a copy of Goshen's zoning ordinance, but said that the lighting matter was not a significant issue.

Mr. Doriot asked Mr. Burrow about the note at the end of item 1 of the ordinance draft, which states that no lighting height or location has been proposed, and Mr. Burrow said, "We're just relying on experts to certify that they can comply." Mr. Doriot said the height of lighting at interchanges should be considered, and Mr. Burrow indicated that the ordinance cannot rely on his own concept of dark-sky and interior-directed lighting. Mr. Doriot then said that dark-sky lighting differs from interior-directed lighting and that while the project at question will not use true dark-sky lighting, as does Atigun Pass in Alaska, light pollution should be limited. Mr. Burrow then stated that the Board was comfortable with the use only of the unelaborated lighting phrase above, and no Board disagreement was voiced.

Mr. Burrow continued to item 2, stating that while the condition at question requires that the company "limit trucks from CR 29 to Commerce Drive," Commerce Drive does not exist, it will not exist during the construction of the building, and that heavy trucks will use CR 29 during construction. Frank Lucchese and Mr. Doriot added that CR 29 will see heavy truck use "until they build Commerce Drive." Mr. Burrow reminded the Board that Commerce Drive will not be built until 2014, and Mr. Stump said he did not remember hearing that and asked whether that was what the Board agreed to. Mr. Campanello said his impression was that the building of Commerce Drive and the building of the facility would be concurrent, "at the same time to get to the building and not going up and down 29," and Mr. Doriot said his understanding was similar. Mr. Burrow stated Planning has not received any applications for the platting of Commerce Drive property. Mr. R. Miller said the company building Commerce Drive is not the company building the facility, but Mr. Burrow said 1 company is handling both projects.

Mr. Kolbus then called Board attention to item 3, which contains the second November 2013 rendering of the Commerce Drive condition, and Mr. Burrow proceeded to read the item 3 proposed substitutions for the original condition. Mr. Lucchese stated that he had no problem with the builder using CR 29 during construction of the facility and that the Board's concern was with postconstruction use of CR 29 for shipping of product. Mr. Burbrink and Mr. Doriot indicated agreement, but Mr. Stump said he did not agree with such use of CR 29. He said most damage to CR 29 would be incurred during facility construction. Mr. Burrow again said clarification was needed so that the Commissioners and the Town Council understood what the Board wanted. Mr. Stump and Mr. Doriot asked Mr. Burrow what the highway department's comments were, and Mr. Burrow said Highway's comment was simply that CR 29 will be inside the town. Mr. Doriot said, "But it's not inside . . . the town. Not yet."

Mr. Stump said that the City of Goshen at one time required the county to rebuild roads before annexation, and Mr. Burrow said Elkhart has the same requirement. He then repeated his question, asking, "Do you want the staff to issue the building permits to start construction before there is a Commerce Drive, even in construction?" He stressed that the petitioner does not intend to put Commerce Drive in. Mr. Doriot said that if the highway department believes its pavement will

handle the construction traffic, the response is yes. Mr. Stump said he could “almost guarantee” the pavement would not handle the traffic, and Mr. Burrow added that the pavement is chip-and-seal and has been for the last 20 years.

Mr. R. Miller said his impression was that Commerce Drive would be built prior to construction of the new facility, and several Board members said they shared that impression. Mr. Burbrink asked whether, for roads like Commerce Drive, a “first layer” is installed, construction is done, and a final layer is then installed. Mr. R. Miller said yes, builders do not want to tear up new roads themselves. Mr. Burbrink said the process he enumerated was what he anticipated. Mr. Doriot, acting as a “contractor advocate,” said, “I’m not doing that until the end of March. . . . I’m not going to be able to put asphalt down until . . . the temperatures meet the standards.” Mr. Doriot added that the builder could install a temporary construction road and “do it right where it’s at,” but it would be difficult to maintain. Mr. R. Miller expressed the option of requiring that the builder rebuild CR 29 after tearing it up.

Mr. Campanello said the remonstrators of November 2013 would not appreciate construction traffic on CR 29, Mr. Burrow agreed, and Mr. R. Miller added that though construction traffic would travel a shorter distance if it came from the North, the toll road overpass restricts the movement of some equipment. Mr. Burrow repeated his question, asking whether Commerce Drive must be in place before facility construction, and Mr. Campanello said that a construction road beginning at the cul-de-sac should be in place, though it will be difficult to build during the spring. Mr. R. Miller responded by asking how a building can be built if a road cannot. Mr. Stump said the Board told the petitioner that access to the completed facility was to be via Commerce Drive. He said the Board, during the November 2013 meeting, was concerned about construction traffic and said he could not imagine the petitioner would assume the Board’s concerns over traffic involved only postconstruction traffic, adding that Highway is wrong and should be concerned about road damage.

Mr. Burbrink asked Mr. Burrow whether he had the desired consensus, and Mr. Burrow mentioned Mr. Doriot’s initial structuring of the Commerce Drive condition and cautioned that the item may have to return to the Board for another hearing. Mr. Stump asked whether a sign prohibiting through trucks is posted at CR 29 now, and Mr. Burrow said his understanding from Katie Niblock is that there is not. Mr. Burrow and Mr. Lucchese pointed out that construction trucks would not be considered through trucks. Mr. Stump added that CR 4 provides another means of access from a state road.

Mr. Doriot then stated, “In my thought train, I was thinking, *During manufacturing processes.*” He said that if the Board did not interpret his motion that way, it should say so, and said that he was more worried about “the daily grind,” apologized, and said he had not been considering the construction process. Mr. Lucchese said he agreed with Mr. Doriot; he was not thinking about the construction process but about traffic occurring after construction. Mr. Campanello said there must be something in the November 2013 minutes documenting discussion about “them crossing,” and Mr. Burrow said J. A. Wagner “doesn’t think that it’s restricted” and does not intend to build Commerce Drive until the facility is built. He also said, “But there’s no movement through the application process for us to know that.” Mr. R. Miller concluded that there is no current requirement that the builder build Commerce Drive and avoid CR 29, and Mr. Burrow agreed. Mr. R. Miller asked how the builder can be prevented from using CR 29, as construction trucks do not

constitute through traffic. Mr. Doriot asked for input from Mr. Kolbus on the matter, and Mr. Burrow asked Mr. Kolbus whether a condition prohibiting the use of CR 29 for construction traffic would be enforceable. Mr. Kolbus said a specific statement indicating prohibition must be included in the DPUD ordinance. Mr. Burrow responded by asking the Board whether it wanted that prohibition as part of the recommended conditions or whether it wanted to leave the matter open, subject to Highway's enforcement upon a finding that the road is being destroyed. Mr. R. Miller, indicating the shared duties of Planning and Highway, stated, "Them is us," and Mr. Burbrink asked whether the Commissioners could close the road. Mr. Burrow's response was that one of the most inexpensive means of enforcement was the holding of a building permit.

Mr. R. Miller said the petitioner should at least build and utilize a construction road and seconded Mr. Doriot's comments regarding construction and postconstruction traffic, adding that during the November 2013 discussion he was not thinking about construction and "assumed that they would be building Commerce Drive to utilize it for the construction of the building." Mr. Doriot then asked how many Board members believed his motion "involved construction traffic," and Mr. Stump, Mr. Lucchese, Mr. Campanello said they believed so, with Mr. Campanello indicating he thought Commerce Drive "would be there." Mr. Doriot added that his understanding was that construction of Commerce Drive and construction of the new facility would be concurrent, and Mr. Kolbus mentioned that item 3 of Mr. Burrow's ordinance draft implies that the 2 projects are required to be concurrent. Mr. Kolbus then read item 3, and Mr. Doriot said that while a requirement for simultaneous building seems implicit in the item, he did not know when the builder must begin using Commerce Drive. Mr. Burrow said that Planning cannot control that and that road construction can only begin after submittal of the appropriate plans and establishment of the appropriate zoning. He said a road cannot be built under a GPUD, and Mr. R. Miller said the petitioner has not plotted out Commerce Drive yet. Mr. Burrow explained that improvements are not allowed until a project is moved into DPUD status and asked whether application for and approval of a DPUD, which would help J. A. Wagner know what to comply with, would be the "trigger." Mr. R. Miller said that if the Board can legitimately say J. A. Wagner needs a construction road, he would like it to do so, and Mr. Lucchese said the requirement can be made part of the Board's motion.

Mr. Kolbus told the Board it may legitimately interpret a motion and that Mr. Burrow is asking for such an interpretation in this case, and Mr. R. Miller stated his interpretation is that "they utilize Commerce Drive for the construction of that plant." Mr. Burrow asked for confirmation that that means that it has to be dedicated and ready to be constructed, and Mr. Stump, Mr. Burbrink, and Mr. R. Miller all said the builder could install a temporary road. Mr. R. Miller said construction companies prefer to install temporary roads rather than tear up their new roads during construction, and Mr. Burbrink said that the Board should not "be dumping that traffic onto CR 29" and that repair of damage to CR 29 would be costly to taxpayers. Mr. R. Miller added that if temporary roads can be built for access to windmills placed in swampy areas to the North, a temporary road can be built in this case.

Mr. Stump, wondering whether annexation should influence the Board's motion concerning Commerce Drive, asked for confirmation that the Town of Bristol intends to annex the subject property, and Mr. Kolbus said that annexation will occur after the end of the time limit for certification of the project to the Board of County Commissioners and Board action. He said the

Board must proceed as though the subject property were staying in the county.

Mr. Campanello, paraphrasing the November 2013 Plan Commission minutes, said, “[Chris] Marbach says it does complete Commerce Drive all the way to CR 29. I asked whether the project completes to Commerce Drive. Then it was said . . . the whole thing was supposed to be going . . . West to East the whole time. . . . Then we said, ‘Is it going to complete Commerce Drive?’ and he said, ‘To 29.’” Mr. Campanello said he then told Mr. Marbach that that was when truck traffic will go across Commerce Drive, “during construction.” Mr. Campanello and Mr. D. Miller then added, “Let’s keep them off 29.”

The Board examined the request for clarification regarding the use of Commerce Drive and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello, that the Advisory Plan Commission clarified that utilization of Commerce Drive is necessary for the company to build their plant and it can be in a construction road standard. The motion was carried with a unanimous vote.

Mr. Burrow then moved to item 4 of the ordinance draft, and Mr. Doriot said any rendering stating that the site will meet IDEM standards will be acceptable. Mr. Burrow asked for confirmation that Mr. Doriot did not prefer 1 of the 2 readings over the other, and Mr. Doriot confirmed.

Mr. Burrow then read item 5 and asked whether *curvature* is defined as that of the as-presented proposed parking lot, and Mr. Doriot and the rest of the Board said yes.

Mr. Burrow then read item 6 and asked whether *building* refers to the proposed building or “the future building also.” Mr. Campanello said the petitioner would have to add more buffering if *building* refers to the future building, Mr. Lucchese said extension of the building would require extension of the buffering, and Mr. Doriot agreed. Mr. Burbrink said it would not make sense for the buffer not to extend to the future building because the addition of new trees at a later time would create an odd tree line. He said the petitioner should be required to install the whole buffer at once. Mr. Doriot pointed out that an opening for the proposed railroad spur, or siding, must be allowed, and Mr. Burrow agreed and said he would add *with access to the siding* to the condition. Mr. Burrow asked for confirmation that *the building extended* is an acceptable phrase, and Mr. Doriot confirmed.

Mr. Doriot then read item 7, and gave St. Joseph Valley Rifle and Pistol Association activity as an example of legal use against which the petitioner may not remonstrate.

Passing over item 8, which did not require discussion, Mr. Burrow moved to item 9 and asked whether annexation must occur before issuance of a building permit. Mr. Campanello said the Bristol town manager said the subject property would be annexed, and Mr. Burrow said, “Right, but that’s going to take the 120 days.” Mr. R. Miller said his understanding was that the petitioner would not be required to wait until annexation to build, but Mr. Campanello said no digging in frozen ground is possible. Mr. Doriot and Mr. Burrow told Mr. Campanello the composition of the ground in the subject area is sand, which is easy to cut through.

Mr. Burrow then raised concern over Bristol’s inability to provide sewer to unannexed property, and Mr. Doriot said that is the developer’s risk. He said the Board did not approve private septic; rather approval is based on sewer connection. Mr. Burbrink said that the Bristol town manager himself said at the November 2013 Plan Commission meeting that Bristol does intend to

annex and that the Board is proceeding based on the information presented. Mr. Lucchese added that the Town of Bristol will wait until Board approval before annexation. Mr. Burrow then stated that permit-issuing staff cannot verify compliance with the requirement that the facility be connected to Bristol sewer until annexation, and Mr. Stump asked whether the building can be occupied if it does not have access to a sewer system of some kind. Mr. Burrow said it cannot, and Mr. Doriot said no permit can be issued without proof of a way to dispose of sewage. Mr. Stump said, "Go ahead and issue the building permit," and Mr. Kolbus added, "They just can't occupy it." Mr. R. Miller and Mr. Burbrink said the petitioner should be able to get started but not be permitted to occupy until appropriate connections are made. Mr. Burrow asked for confirmation that building permits can be issued prior to annexation, and the Board confirmed.

10. *2014 Agreement for Legal Services*

Mr. Godlewski asked that the Board adopt the presented 2014 Agreement for Legal Services at this time.

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

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Roger Miller, that the Advisory Plan Commission adopt the 2014 Agreement for Legal Services (see attached). The motion was carried with a unanimous vote.

11. *Nominating Committee for 2014 Slate of Officers and Appointments*

As a result of discussion and recommendations, a slate of officers will be presented during the January 2014 Plan Commission meeting.

12. A motion to adjourn the meeting was made by Mr. Stump and seconded by Mr. Doriot. With a unanimous vote, the meeting was adjourned at 10:58 a.m.

Respectfully submitted,

Daniel Dean, Recording Secretary

Jeff Burbrink, Chairman