

MINUTES

ELKHART COUNTY PLAN COMMISSION MEETING

HELD ON THE 9TH DAY OF MAY 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: **Present:** Steven Edwards, Roger Miller, Douglas Miller, Jeff Burbrink, Blake Doriot, Tom Stump, and Frank Lucchese. **Absent:** Tony Campanello, Steve Warner. 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. The minutes of the regular meeting of the Elkhart County Plan Commission held on the 11th day of April 2013 were not completed for review and approval by the Board.

3. A motion was made and seconded (*Doriot/Lucchese*) that the legal advertisements, having been published on the 27th day of April 2013 in the Goshen News and on the 29th day of April 2013 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

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

5. The application for Secondary approval of a Detailed Planned Unit Development known as **BRISTOL PARK FOR INDUSTRY, PHASE 2A, DPUD M-1**, for Wagner Land Development Company, Inc. (Owner) and J. A. Wagner Construction (Developer) represented by Marbach, Brady & Weaver, Inc., on property located on the South side of Commerce Drive, 3,600 ft. East of SR 15 in Washington Township, zoned GPUD-M-1, was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #COMMERCE DRIVE-130304-1*. Mr. Burrow explained that the Plan Commission gave a favorable recommendation to the rezoning last month, but due to some technical issues, they had to hold the approval of the subdivision plat until they complied with the Storm Water Pollution Protection Plan (SWPPP). He then pointed out the area where development will occur, which he said includes the dedication of the right-of-way and the establishment of the retention area that will basically be used by the entire development.

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

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Frank Lucchese, that the Advisory Plan Commission recommend to the Bristol Town Council that this request for Secondary approval of a Detailed Planned Unit Development be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous vote (**summary:** Yes = 7).

Yes: Blake Doriot, Douglas Miller, Frank Lucchese, Jeff Burbrink, Roger Miller, Steven Edwards, Tom Stump.

6. The application for an Amendment to an existing Detailed Planned Unit Development to be known as *AMENDMENT TO CLAYRIDGE SQUARE FIFTH D.P.U.D.*, for JB Martin Properties, LLC (Owner of Lot 10) & LDM Real Estate, LLC (Owner of Lot 9), and Southwest Welding (developer) represented by Brads-Ko Engineering & Surveying, Inc., on property located on the North side of CR 42, 650 ft. West of SR 19, common address of 28125 CR 42 in Olive Township, zoned DPUD-M-1, was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #28125CR 42-130401-1*.

Roger Miller asked if there is enough room for the entranceway and Mr. Burrow said yes, according to the standards of the Town of Wakarusa. The County's position, he explained, is that all of the right-of-way of CR 42 is within the jurisdiction of the Town of Wakarusa so their standards apply to the curb and accesses. Mr. Burrow said he was informed there is some outside storage, but Greg Shock of Brads-Ko Engineering has indicated that he will ask the owner to take care of that issue. Therefore, Mr. Burrow said the application in front of the Plan Commission today is in compliance with the original intent that the homestead would be removed upon the development of Lot 10 to an industrial use.

Mr. Doriot informed the Board that he did some work for the people who had originally split off the west half years ago, but said he has no interest in the property at this time. Mr. Kolbus clarified that he had no work that would be contingent on this request passing today and Mr. Doriot said no. It was therefore determined that Mr. Doriot would have no potential conflict of interest.

Gregg Shock of Brads-Ko Engineering and Surveying, 1009 S. 9th St., Goshen, was represent representing JB Martin Properties, LLC, the owner and developer of Lot 10 (westerly portion) and LDM Real Estate, LLC, the owner of Lot 9.

After describing the location of the subject property, Mr. Shock explained that Lot 9 currently has the Southwest Laser business, which will remain unchanged with this amendment. Their plan is to remove the existing farm house from Lot 10 and replace in approximately the same location a 15,000 sq. ft. structural steel building to be known as Southwest Welding, LLC. Southwest Welding has been a fabrication and assembly of steel components business since 1990, and they plan to move their entire facility from their current location on SR 19 to this site.

Mr. Shock went on to say that there is currently a cross-easement and maintenance agreement in place between Lot 9 and Lot 10 for the existing driveway to Lot 42. Both buildings will use the existing driveway, and they have a common drainage easement. The proposed building will be similar in size, shape and color as the existing building. They will be connected to the Town of Wakarusa's municipal sanitary sewer and water. Mr. Shock said they met with the Wakarusa Technical Review Committee on April 27th and they forwarded a letter to the Elkhart County Planning Department advising that they are in favor of this project.

Mr. Shock reported that he and Mr. Burrow talked with an adjoining homeowner today about the outside storage that was previously mentioned. He indicated that he will talk to the owner about that issue, and then noted that Tim Martin is present representing John Martin, the owner of JB Martin Properties, to address questions. Mr. Shock clarified that they are planning on no outside storage of either raw materials or finished product on this property.

There were no remonstrators present.

A motion was made and seconded (*Lucchese/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: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Doug Miller, that the Advisory Plan Commission recommend to the Wakarusa Town Council that this request for an Amendment to an existing Detailed Planned Unit Development be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

Yes: Blake Doriot, Douglas Miller, Frank Lucchese, Jeff Burbrink, Roger Miller, Steven Edwards, Tom Stump.

STAFF/BOARD ITEMS

7. *Extend GPUD for Pecan Plantation – Duane Burrow*

Duane Burrow stated that this property was established in 2005 as a B-3 GPUD. He said they indicated in their letter that they have found difficulty in developing commercial property over the last few years so they would like the General Planned Unit Development to remain in place. Mr. Burrow indicated that the Plan Commission has the right to extend it for another two years. He felt Pecan Plantation was very conscientious about requesting the extension every two years.

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Tom Stump to extend the General Planned Unit Development for two years for Pecan Plantation.

Mr. Kolbus asked if there were in changes in the area which would necessitate coming back for a public hearing. Mr. Burrow said they will have to come back with the Detailed Planned Unit Development anyway. Subsequently, under the Ordinance when the GPUD goes to a DPUD they have to comply with changes that have been established since the original approval. Mr. Burrow stated they did a minor thing to accommodate the DPUD A-1 and that was to grant a temporary drive across the property so they could fill the low lands in order to raise the ball diamonds up out of the seasonal high water table. They haven't taken advantage of it yet, but, hopefully, when they finish up the SR 19 project that is where some of the borrow fill will come from. Mr. Kolbus agreed that the Board knows it will come back when they go to a DPUD.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

Yes: Blake Doriot, Douglas Miller, Frank Lucchese, Jeff Burbrink, Roger Miller, Steven Edwards, Tom Stump.

8. *R & R Property Leasing, Inc. - Approval of Written Commitment – Brian Mabry*

Brian Mabry is asking for approval of the Written Commitment which would certify that the Written Commitment recommended for approval at the April 11th meeting is correct. It will not be recorded on the property until and if the rezoning is approved by the County Commissioners. If this petition is approved by the County Commissioners the Written Commitment form will be ready for recording.

Mr. Kolbus said they had gone through this in the portion of the minutes dealing with the motion and he believed it is accurate.

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Tom Stump for approval of the Written Commitment.

The motion passed unanimously.

9. *Update on Projects Not Built to Approved Plans – Brian Mabry*

Brian Mabry emailed and submitted to the Board members a copy of the matrix he created pertaining to “Projects not Built to Approved Plans” which included potential solutions to that issue and indicated a proactive side and a reactive side *[attached to file as Staff Exhibit #1]*. Mr. Mabry said at the last workshop they had a discussion pertaining to projects not built to approved plans; usually non-residential DPUD’s that are approved with a site plan, in which they construct the buildings, but the Staff finds that what was built was not built according to the site plan that was approved. He said they were trying to find a way to alleviate this problem. The workshop members had asked the Staff to talk to surveyors to get some costs for an as-built. Mr. Mabry talked to Chris Marbach and Ken Jones to get input from them. He indicated that they thought these two items would be most effective:

1. As part of the approval of the DPUD, to require an as-built related to drainage only. They thought that would be a fair way to reduce costs for the property owner and to ensure some of the more common problems related to drainage are addressed; therefore, an as-built for a non-residential DPUD that is related only to the drainage activity on the property would be required.
2. The other item is to allow the Plan Director to require the as-built subject to certain criteria, but he thought this may need some more discussion at a workshop. After meeting with the surveyors, it was determined that the cost for an as-built would come to a range from \$2,000 to \$4,000 for a large non-residential project, for drainage only the estimate was about half as much, \$1,000 to \$2,000.

Mr. Doriot thought they should leave it up to the owners to see if they want to pay this. Roger Miller asked why a building would be larger than what it was approved for. Mr. Mabry believed, a lot of times, it is because there may be a disconnect between the engineer and the owner. The engineer may have reasons for designing a building a certain way and in the chain of development when the structure is actually getting built that link gets broken and the builder may see a way to make it more affordable or have a better way to do the project, so there can be consequences that were not foreseen at the time, such as, a problem with drainage or erosion. Therefore, if people know they will have to provide an as-built to show what was actually built, they would be less likely to take shortcuts.

Mr. Doriot felt they always made these rules for the bottom 5%. 95% of the people that do their job right have to pay.

Tom Stump asked if as-builts would be required for every commercial building. Mr. Mabry clarified the proposal is for a non-residential DPUD. Mr. Stump asked if it is a building that was built on a lot in an industrial subdivision would it be included. Mr. Mabry stated if it is a basic M-1 no PUD, B-3, etc. it does not apply. Mr. Stump thought \$1,000 to \$2,000 would be a small expense for big projects like that. He did not remember how often this type of issue occurs. Mr. Mabry said his duties do not pertain to the day to day drainage related problems, but the MS4 Supervisor, John Heiliger, felt this is a frequent problem and he thought it was a problem 65% to 75% of the time.

Mr. Godlewski said these plans are seen by the Plan Commission and the drainage components are on the plans and approved.

Mr. Stump asked Mr. Doriot if this was his perception as well and he said it is not. Mr. Doriot felt they need to take the reactive approach. The problem they have is that there are people that go out to the site to check the construction and if it does not exactly match then there is a problem. He asked for clarification if they would have a slight change in the plans if they would have to come back to this Board. Mr. Doriot believed that this may be from overreaction to MS4 regulations. He has an issue with that and he hears from other people that also want to know what the problem is. Mr. Doriot agrees that there are some companies that do not follow through correctly, but he is tired of the person that does things right having to pay for the person that does not do them right. Mr. Stump felt that happened all of the time in government.

Mr. Burbrink thought there may be an issue if we bill the owner for \$1,500, for example, but the person that did not do the work correctly was the excavator. Mr. Stump said there is always someone monitoring what the excavator is doing like Mr. Doriot and, hopefully, they are out there for a reason such as, checking to make sure the swale is in the correct place. He said he would not necessarily blame the excavator, but someone is responsible. Mr. Doriot felt that things change and he could look at the plans and see perhaps it is not the way it should be.

The other thing Mr. Burbrink thought they need to look at are minor things, such as, having to move the building over one foot because of drainage, and then there are major issues like the contractor not putting the swale in. Mr. Doriot agreed if they did not put a swale in that is a major issue and that deserves an as-built, because then they would have to fix it. Mr. Doriot said at that point the owner will have to come back on the developer or the contractor and that is why he feels they should go with the reactive approach.

Mr. Mabry thought if this was the direction they want to go and if the Plan Director had the ability to request an as-built, if something major is really wrong, then that would be an automatic requirement, and if there are a bunch of little things built up than an as-built could be required as well. He said before the Certificate of Occupancy could be issued, which is the document that is needed for the business to open; the as-built would need to be submitted.

Mr. Mabry said if the Plan Commission chooses to empower the Plan Director to require an as-built subject to criteria, than they could work it into the Zoning Ordinance rewrite. He did not see it as a pressing amendment to the existing Zoning Ordinance in place now. Roger Miller asked Mr. Mabry how he would handle a proactive approach to that. Mr. Kolbus said it would require the as-built immediately for the drainage on these commercial type projects.

Mr. Edwards was in favor of the reactive approach as long as it is stern enough, but he believed requiring an as-built up front would be a burden that he did not think is fair.

Mr. Lucchese agreed and thought they would run into smaller things that seem to add up toward the end. For instance, there was an issue with a Middlebury hotel. Mr. Doriot agreed in that case they would have needed an as-built and then they could have pointed out what was not done properly, but was included in the plans. Mr. Godlewski believed as-builts would trigger something done in error and the excavator or contractor would have to show how they will correct the error.

It seemed to Mr. Doriot they would be bringing the bottom 5% down instead of bringing the 95% down. Roger Miller did not think it is 5%, but it is more like 25% or 30%. Mr. Doriot totally disagreed with Staff on that. Mr. Godlewski thought it was just a different path to the same result and if it changed anything the as-built would show it. Roger Miller did not think you have a shot at really changing things if you work within the proactive steps.

Mr. Doriot stated that the as-built would be done when it is finished. So the only thing is that the MS4 Supervisor, who does drainage, would have to drive out to the site and sign off on it

anyway. At that point he could be at the site and tell them they did not do something correctly, so they would have to call an engineer and tell them an as-built is needed for the project. He felt there would be more leverage on the contractor because he would know his "opening" may be held up and the C of O would be held up for a couple of weeks.

Mr. Stump indicated that he could tell them what will happen and then the contractor will call a Board member or Commissioner and complain to them about it. Why does this contractor have all of those problems, it may get fixed and it may not and he may be overstepping his authority. Mr. Doriot said that is why there are Board members, because they are supposed to support the laws. He has gotten a lot of complaints in the past month on water. He told Mr. Stump he hit the nail on the head with government avoiding the issues.

Mr. Burbrink explained that they have a disagreement in what the scope of this issue with the as-builts is. He said there is a big difference between 5%, 50%, or 75% , so how do they resolve that. Mr. Mabry told them that there are other things on the proactive side that may be less costly, such as inspections during construction. He thought that was kind of a win-win because both the County would be aware of potential problems and the property owner and contractor as well. He thought it could be similar to MS4 as they inspect mid-point and that can be done with more planning related and drainage related aspects.

Mr. Mabry suggested as part of the Staff recommendation, they can have a requirement in the template that any commercial DPUD requires an as-built. He suggested if Staff did not think it was appropriate for that particular project than they should exclude that from the motion, but there is flexibility in a DPUD, so could require the as-built.

Mr. Doriot stated he likes the midpoint inspection concept, because if an owner has hired a contractor that is not complying with the proposed plan than the inspection at midpoint would reflect that. He thought the owner would be made aware of this and would realize what he is paying for is not what is being built, and Mr. Godlewski, the Plan Director, would be empowered to request an as-built.

Mr. Edwards questioned whether it would be burdensome to come up with a minor vs. an automatic trigger to major and that it be something that is used as a tool. Mr. Mabry said they could definitely do that. Mr. Kolbus agreed and added that along with the midpoint inspection. Roger Miller thought they could not charge the additional monies for this and still have the midpoint inspection. He asked if the additional monies they are looking to charge, the \$1,000 or whatever amount, is for the inspection. Mr. Mabry clarified that the cost of the as-built is for the surveyor, it is not a County fee.

Mr. Mabry said in reality, our zoning code enforcement officer may be doing the inspection. He informed them that a few things have been added to his plate recently and he does a great job. Mr. Mabry thought right now they have a low enough level of nonresidential DPUD's where that could happen.

Mr. Doriot volunteered to make his Staff available if there are any questions he cannot answer. Doug Miller asked at what point during the building process does the retention, that is the point of contention, get staked so that the excavator knows where to put it. Mr. Mabry said he could not tell him that. Mr. Godlewski thought it would be at the beginning of development.

Mr. Doriot said he would do the site stripping, then once the topsoil is stripped and any filling that needs to be done is completed, then they will start removing that material from the retention area to build it or double handle the dirt and stockpile the retention material.

Doug Miller stated he wanted to be sure that the midpoint inspection would adequately

verify where that retention is, and the parameters of the retention are set, so that we are not unnecessarily requiring an as-built. Mr. Doriot said the as-built would still be triggered at the end. He said the midpoint inspection will allow the inspector to put them on notice that they are not doing things right. Mr. Mabry added, also to try to catch it sooner so that it can be corrected, rather than at the end of the project.

Mr. Mabry informed them that the next workshop is in June and he thought that would be a reasonable deadline or time frame to put this together.

Roger Miller questioned whether the Board members understood how fast this happens, with the equipment they have today the footers could be poured before there can be an inspection. Mr. Doriot said an inspector is required to go out and inspect the footers before they pour.

10. *Zoning Ordinance – Module Two – Chris Godlewski/Brian Mabry*

Mr. Godlewski said the Policy Committee will meet again on May 29th and June 26th. The Committee requested that the meeting be held monthly so they have enough time to review the detail and come prepared for the meeting. He submitted a document titled, “Zoning Ordinance Review” with a list of topics that will be discussed at the meeting *[attached to file as Staff Exhibit #1]*. The Technical Committee already finished the Module Two review, and the Plan Commission is reviewing Module Two at this meeting. He said they will take the next two months to go over Module Two in detail. He submitted a copy of the Module Two document and distributed it to the Board members *[attached to file as Staff Exhibit #2]*.

Mr. Godlewski informed the Board that Mr. Mabry is also going to hand out some highlighted topics of discussion that the two Committees reviewed. He then submitted “Module 2 Executive Summary” *[attached to file as Staff Exhibit #3]*. Mr. Godlewski stated that once Module Two is completed, the change with the schedule will be to review Module One and Module Two together, because they would be at the halfway point. This will give them an opportunity to bring all the edits and changes together.

Mr. Godlewski pointed out that on the residential and agricultural topic, which will be part of Module Three, Mr. Burbrink and Mr. Moudy suggested letting the Policy Committee come up with the specific details of what that looks like. He asked if the Board members received the email of the Module Two draft. The Board members confirmed they received it.

Mr. Godlewski said they had discussed around six months ago that money may be needed for the graphics and the formatting. He thought they were still at a point that they may need to outsource that to do the graphics for the documents. He thought they may have to outsource the table in Article 4, as well, the dimensional table for setbacks, lot sizes, etc. Mr. Godlewski said it is very technical, so that is something they may want to outsource. He said it would be \$10,000 for all of the graphics and tables, so he asked them to consider it. He knew they would have to take it to the Council for approval. He did not want a decision today, but just wanted them to take it under consideration.

Mr. Doriot told Mr. Godlewski they were doing a good job compiling all the information. Mr. Godlewski said it is a long process. He did not think the schedule he had given the Plan Commission for the Committee reviews to be done in early fall would happen at that time, but he thought it would be spread out until the end of the year.

Roger Miller was hoping as they went through the different Modules that it may become easier. Mr. Godlewski said what you will see when Module 1 and 2 are combined, the midpoint check, you will have a document that is in final draft form with all the changes made and you will

have the same document with all the red lines, strikeouts and comments. When you read the draft, without the comments, it will be better, plus you will be seeing it a second time. Mr. Doriot explained that the Policy Committee is at the difficult portion of the Ordinance right now.

Mr. Burbrink thought they had very good discussions during the meetings. He felt they have a good mix of backgrounds on this Committee. Mr. Burbrink suggested if they have a chance to sit through a Policy Meeting. Mr. Doriot pointed out that these people are volunteers and it is costing them money to participate.

Mr. Godlewski informed the Board that Mr. Mabry will go over Article 4 and 5 as an introduction and it should be relatively brief, because he will present the Module 2 document, an introduction, and the highlights of what the two committees reviewed, so at the meeting in June the Plan Commission will be prepared to go into more detail.

**Mr. Doriot and Doug Miller left the meeting at this time.*

Mr. Mabry used a slide show to illustrate the Zoning Ordinance Rewrite, Module 2, and District Developmental Standards & Use Standards. The Module 2 Executive Summary memo included questions or points of discussion on the back of the document as well.

Mr. Mabry stated that the Policy Committee is at the Module Drafting & Consolidation 1 & 2, point of the Zoning Ordinance Rewrite. He will give two versions; one with all the strikeouts and then a clean document that is much easier to read, but it does not show the specifics of what has been changed. Mr. Mabry said eventually there will be a consolidated draft of all four Modules.

At the beginning of each draft the first page will define the editing marks. Strikeouts are to be deleted text, underlined represents new text, etc.

Module 2 includes Articles 4 and 5, of the draft and has no Staff Committee feedback. Module 1 was shown to the Tech Committee and comments were given, so changes were made, and then it went on to the Policy Committee for their review. He thought there would be a lot of changes for this draft to the next step, because there will be two committees worth of comments.

Article 4 represents Zoning District & Developmental Standards - This article establishes the zoning districts for the County and gives purpose statements for what those zoning districts try to accomplish.

Measurements and Special Cases - Measurements show how we measure setbacks, lot width, height, etc. Special Cases allows flexibility, such as if there could be an encroachment into a setback or allowing for a little extra height, which would require a little more of a setback, etc.

Residential and Nonresidential Developmental Standards – These are the actual numbers of the setback length for a single family dwelling in an R-1 district, or what the maximum height is in an R-2 district for a duplex, etc.

Article 5 represents the Use Standards – Mr. Mabry said this is the main article of the Zoning Ordinance that indicates what uses are allowed in what zoning districts in a Use Table.

Use Categories – This will group similar uses together so they are treated similarly throughout the Ordinance.

Specific Use Standards – There are specific use standards in certain zoning districts. For instance, the cell tower standards or wireless communications facilities has had an existing Policy in place for around 15 years, but this item has never been part of the Zoning Ordinance, however, now it will be included with minimal changes.

Accessory Uses and Structures – Has to do with how they will treat rowdy houses, solar panels, etc.

Temporary Uses – Deal with uses that are meant to be temporary, but sometimes become permanent and trying to have some control over that.

Mr. Mabry clarified that they would not see agricultural uses in the Use Table at this time, because it has not been decided how they want to treat residential. He said residential in an agricultural zone will be addressed in the next module. However, in the final copy A-1 zoning will end up in the Use Table with all of the other main zoning districts in Article 5. He did not include A-2, A-3, A-4, and A-5 because those specific zonings will end up in Article 6 along with E districts and other zonings.

Roger Miller asked where they should look for digital display signs. Mr. Mabry informed him that will be part of Module 3, with the general development standards, such as signs, buffering, screening, etc.

Mr. Mabry stated toward the beginning of Article 4 is a table listing the zoning districts with some tweaks indicating what has been proposed for them, they are mostly related to how they are named, and they are adding in a few extra zonings; like the Wellhead Protection Overlay, Town Residential Overlay, what would apply to the four municipalities, a Rural Residential District which is between A-1 and R-1, and the rest of the existing zonings that have been modified.

Section 4.2 Purpose Statements - for the zoning districts. He thought of the Purpose Statements being little mission statements for what each zoning district is trying to accomplish. Whether it would be R-1, R-2, B-2, B-3, M-1, or M-2, this would set the tone for what is going to be permitted in those districts and should be providing guidance for the Plan Commission and Board of County Commissioners when there is a rezoning in front of them. He said it is very common to have Purpose Statements in a Zoning Ordinance.

Section 4.3 pertains to the Measurements & Special Cases – This indicates how things are measured and provides flexibility in those measurements. Mr. Mabry said one example we already have in our existing Zoning Ordinance that will remain in the draft is setback averaging. For instance, if you had an empty lot that was on a block between several already built properties and there is a certain setback that is the default for that zoning district, the new house would have to be out of proportion with the other houses existing on the block if it would comply with the new Zoning Ordinance requirements. Setback averaging would allow you to take the existing setback of the structures, come up with an average, and that would be the actual setback for a new house that would be built in this location. It would match what is already on the street, rather than having to comply with the hard rules of that zoning district.

Another big part of Article 4 is the idea of having two different types of subdivisions, Conventional and Cluster - Both would be optional, but the Conventional would remain the most popular. One way to handle residential in an A-1 zone in the future is to have Cluster subdivisions by right. In a Conventional setting, in a rural area, the parcel may be developed for a subdivision and there may be an open space that is being borrowed until the owner of the property decides to develop it.

Mr. Mabry stated a Cluster Subdivision would allow the same lot count, but the lots would be reduced. You would have the same number of units, but permanently preserved open space as part of the development, so that rural feel is retained and in perpetuity. This will allow for a rural environment without borrowing it from adjacent undeveloped land. This concept needs more work which is what Mr. Godlewski was referring to when he suggested a consultant look at the numbers to make sure they are feasible. Mr. Mabry reiterated this will be by right. He said they could do this now as part of a Detailed Planned Unit Development, but there are some special approvals an individual would have to go through with the Plan Commission and the Board of County Commissioners. These numbers would be built into the Ordinance; the lot sizes and setbacks, so this can be done by right as a plat. They would just need to create a subdivision if the zoning was in

place. This would be in an A-1 district which is the default zoning district for much of the County. This is an attempt to make things easier, and an option to consider so special approval would not be required because the standards would be in place in the Zoning Ordinance.

Roger Miller commented that it is one thing for a consumer to buy a lot in which there is a nice space to look at, but there is also a point where a customer or housing developer needs to set aside an area that is supposed to stay that way, so when people would purchase the residence they would also have the right to that extra space.

Mr. Mabry said that is what this concept is supposed to entail, because the property is set aside as permanent open space. Roger Miller thought that the next thing the developer would want to do is to get a permit for a building for that space. Mr. Mabry thought there are a couple of ways to prevent that. One would be a conservation easement, just as a non-access easement would prevent someone from building a new driveway, a conservation easement would prevent someone from building. Roger Miller asked if they would be able to come in to ask for special dispensation to build. Mr. Mabry said there might be something built in to have a pavilion or a low level building, but there would not be the ability to add on after the fact. They could not put more houses on the property. Mr. Mabry said the subdivision requirements would allow each homeowner to own a fractional share of this open space; therefore, the developer would have to have all of the property owners sign off on the proposal to do that. Mr. Godlewski asked the Board to keep in mind that the developer would be initiating this optional choice of subdivision and he would be marketing those lots as a specific small lot with open space. He said there is a subdivision similar to this in Bristol, across from the golf course.

Mr. Mabry thought a simple way to describe this would be as a golf course subdivision without the golf course, because he believed a lot of people want to live in a golf course development with one of the amenities being the permanent open space. The amenity would be the natural open space area. Some would gear it toward, if the environment is right and the soils are right, an agricultural style amenity which would be a larger project than this. He compared it to areas in Texas where he is from; the amenity might have a vineyard built into it or a winery that these people could have free access to. The general idea is permanent set aside open space that preserves rural character and assures that people would be living in a more open environment.

Roger Miller questioned if they would be paying an extra amount of money for the lot, because this view behind them would be included, and if that is the case, would this Board have the ability to say 'no, you cannot put a building back there'. He was concerned because it seemed as though they do not have the ability to deny that type of request.

Mr. Mabry agreed, but said another way to handle it could be built into the Zoning Ordinance to allow certain types of amenities such as, hiking trails, picnic area, pavilion, etc. He understood that this concept is a little out of the box, so there may be a greater cost for an engineer to design this, because it is a little different. He thought they might want to look at a density bonus or working in a few more lots than what they would have normally been allowed, just to compensate for the extra expense for a more nuanced design for this concept. Mr. Mabry asked the Board to keep this in mind when they are talking about residential in an agricultural setting.

Mr. Mabry informed the Board that they have added to the Ordinance draft 4.4.3 Housing Types - which have lot sizes and setbacks spelled out in the Ordinance, so that according to what the market needs a developer could, by right, have different housing types within a subdivision. He thought it would be similar to Tim Miller's development, Pebblestone. Mr. Miller has varying housing types within the subdivision which was a PUD.

4.4.3 of Article 4 would allow different housing types in a subdivision, by right, without a DPUD. The numbers have to be carefully looked at so that they are usable, realistic, and understandable, however, this would allow mixing of housing types in a single development without a DPUD or the County Commissioners approval.

4.4.4 Residential Developmental Standards - Mr. Mabry thought residential standards would be complex because they are proposing four options for residential development: Conventional subdivision with one housing type, a conventional subdivision with a mix of housing types, a cluster subdivision with one housing type, or a cluster subdivision with a mix of housing types. There will be a number of ways that subdivisions can be developed so the standards have to be very well thought out. Mr. Mabry said that is part of what Mr. Godlewski was referring to about having a consultant look at the variety of residential types as well. He said they would have to go through several layers of review for Staff to compile information, and the Policy Committee would review it also. Mr. Mabry planned to have a few surveyors look at the standards and a home builder, Tim Miller, look at the standards to see if they could work with the dimensional standards for each of the housing types.

4.4.7 Standards for Permitted Nonresidential Uses in Residential Districts – The intent is to make it easier to do things different without special approval.

Article 5 Use Table - There are basically three or four symbols in the Use Table that need an explanation:

‘P’ represents a specific use like a bookstore has a ‘P’ in a certain zoning district that means it is permitted by right, it just needs the improvement location permit, building permit, Health Department approval, and Highway Department, therefore, the Plan Commission, Board of Zoning Appeals, or County Commissioners do not need to give approval.

‘L’ is permitted by right, but limited there are specific standards for that use and the Zoning Ordinance requirements have to be met, such as floor area, floor size, an increased or decreased setback, or a certain sign type.

‘S’ indicates it is a Special Use permit and the Board of Zoning Appeals would decide.

‘S/L’ may be allowed by right subject to limitations or would require a Special Use permit, depending on specific standards in the Zoning Ordinance that have to be met such as, floor size, floor area, an increased or decreased setback, or an additional certain sign type.

‘Blank cell’ if there is a blank in the Use Table that would mean it is a prohibited use in that zoning district. Mr. Mabry said they are retaining the ability to go for a Use Variance, so even if there is a blank cell the property owner could request a Use Variance to allow that use in that zoning district even though it is otherwise prohibited.

The overall general picture for the Use Table is for fewer Special Uses across the board. Mr. Mabry said a good example is churches. A Special Use is required in any zoning district for a church. The draft retains that excepting, B-1 through M-2, the commercial zoning districts. He said they are no longer proposed as Special Uses, but by right. Therefore, they are keeping them as needing Special Uses in agricultural and residential districts, but opening them up to being built by right like many other non-residential uses would be in the B and M districts.

Mr. Mabry reported that there was another change for R-4. R-4 in the draft is more of a mixed use district, so that residential and non-residential uses can be mixed if certain standards are met. Residential and non-residential uses will potentially be in close proximity to each other with some safe guards built in. M-2 in the draft is more restrictive and purely industrial with some of the non-industrial uses removed as allowable uses. There is the exchange for having more uses allowed

in B-4 than what is allowed currently.

5.2 Use Categories – Is a way to group similar uses together, so that they are treated the same. He gave an example of overnight accommodations which would include hotels, motels, bed and breakfast.

Article 5 page 5.12 Offices – have many uses, advertising, bill collection, consulting, counseling, data processing, investment or brokerage, real estate, insurance, sales temporary employment, travel, lawyer, accountant, designer, bank, savings and loan.

Mr. Mabry included accessory uses that go along with it such as; day care, inside the building, not a standalone commercial day care; but for children of employees, medical clinic (interior use) for employees; these are interior uses that do not have any outside impact.

There will be a category for Uses Not Included, also. They are limited ‘L’, allowed by right, subject to limitations in R-4 and they are permitted by right as standalone offices in B-1 through M-1. The exception to that is the TV or Radio Studio, because they usually have towers, and news vans that go in and out, so it is more active than the standard office where people come in for the day to do their work and go home. They are allowed in a limited set of zoning districts, B-3 and M-1.

Mr. Mabry pointed out the ‘L’ in R-4 for most offices. He said that ‘L’ indicates that there is a standard in Article 5, 5.3.11 – that sets for R-4 only, some compatibility standards:

- A. The gross floor area of the office cannot be more than 2,000 sq. ft.
- B. The principle building must have a pitched roof.
- C. There is a limited amount of parking spaces in front of the building.

Mr. Mabry indicated that is to keep it more in line with a residential area, small scale building.

He displayed an existing office in the city of Elkhart with limited floor area, a pitched roof, 2 or 3 parking spaces and a sign. He said they could require a monument style sign. The comparison is similar to what you might see if this becomes part of the Zoning Ordinance.

Roger Miller stated that the limitation of the sign would be based on the square footage of the frontage of the building. Mr. Mabry agreed and added that they could say in R-4 for non-residential use they would need to have a monument sign that is a certain size in order to keep it compatible with what would be surrounding residences.

Mr. Burbrink asked if the LED signs would be incorporated in the Ordinance. Mr. Mabry confirmed it will and if they go that direction with having a smaller style sign in R-4 they could make it part of the standard for an office or the LED signs could be addressed in the overall signs portion of the Ordinance in Module 3. Mr. Mabry believed that they could prohibit LED style signs in R-4 as another way to promote the compatibility between the residential and the non-residential.

5.5 Accessory Uses and Structures – Addressed in Article 5. One thing they wanted to accomplish in this draft was to allow accessory dwelling units subject to limitations, instead of requiring that they get a Use Variance, which is difficult to get approved by the Board of Zoning Appeals.

5.5.3 Accessory Dwelling Units – Mr. Mabry clarified that this would include dawdy houses or for having a smaller unit on a residential property. He said they had a long conversation with the Policy Committee about how this issue would be treated.

Accessory Dwelling Units will be allowed by right, subject to lot size standards, being in A-1 and potentially the R districts with a large lot.

A limit would be set on how big the accessory dwelling unit could be. Make sure that the property owner lives in either the main house or the accessory dwelling. There cannot be a separate

driveway for the accessory dwelling, both have to use the same driveway, and accounting for a parking space for that driveway. He felt the parking space for the driveway would be important, especially for the residential districts.

Mr. Mabry said the Ordinance will allow the accessory dwellings, subject to standards in association with a main dwelling on the property. There is a 600 sq. ft. minimum and a 1,000 sq. ft. maximum for the building, and can be a garage apartment.

Article 5, 5.6, Temporary Uses and Temporary Use Permit – Mr. Mabry said there will be a Temporary Use Permit which is procedural in Article 3. Article 5 has the standards that will go along with getting the permit. The point is to make sure that what is proposed as a temporary use doesn't end up becoming permanent.

Mr. Mabry gave an example of a permit in Wakarusa that was supposed to be a temporary Quonset hut, but six years later it was still there. He had to work with the Town Manager to get that removed, but it would have been easier if there had been a temporary use permit in place at the time to set the limitations so that everyone was aware it was for a 90 day term.

Mr. Mabry stated that these standards have built in a requirement that trash gets cleaned up after the event is over, that there are restroom facilities, and then there are some standards for some specific temporary uses.

Roger Miller asked if there was any kind of requirement that when someone puts up a temporary building in a parking lot and they want to have an event, would they have to put up a bond or anything that has an agreement requiring that they clean it up. Mr. Mabry said there is nothing currently and this draft does not have any requirement.

Mr. Mabry pointed out that there are questions on the back of the "Module 2 Executive Summary" that the Plan Commission Board may want to review it and discuss it at the next meeting. Mr. Godlewski believed they were key points and suggested the Board take a look at them. Mr. Mabry mentioned that one of the points was how to measure a front setback location and side setbacks.

As far as setbacks are concerned, Roger Miller liked the idea of aligning houses with the current neighboring houses. Mr. Mabry informed him that is what the 'Special Cases' portion tries to address. He wants to build in flexibility so that special approval will not be needed. He believed if there was a message to this Ordinance, it is to build in administrative flexibility so that fewer special approvals will be needed.

Roger Miller thought one of the things he saw in the optional housing type is people in a housing development getting upset every time someone will want to put up a unique style of residence. He likes subdivisions that don't have cookie cutter houses all lined up in a row, but as soon as there is variation and someone wants to build a two story house when the rest of them are one story they may not like that.

Mr. Mabry stated that there was concern about the length of the drafts, and he pointed out that strike throughs takes a lot of space, pictures take space, formatting and indentation takes space. Also, if they are moving toward having flexibility built into the Ordinance than that will require more words. For instance, instead of just a 'S' on the use table, Special Use will figure out the standards when they get to the Board of Zoning Appeals. He felt you have to have some length built in to have the standards listed out.

Roger Miller stated that if they had not gone through the meetings about the Zoning Ordinance they would not have been getting the participation they have right now. He felt the good thing that came out of that meeting was that they could compile all of the information the way the Policy Committee wanted.

Mr. Burbrink asked about the questions about the front setbacks, and side setbacks and whether Mr. Mabry wanted the Board to review that information. Mr. Mabry recommended that they go over it and discuss it at the next meeting.

11. Mr. Burbrink adjourned the meeting at 10:27 a.m.

Respectfully submitted,

Sandra Herrli, Recording Secretary

Jeff Burbrink, Chairman