

MINUTES

ELKHART COUNTY PLAN COMMISSION MEETING

HELD ON THE 12TH DAY OF SEPTEMBER 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, Steve Warner, Roger Miller, Steve Edwards, Tom Stump, Frank Lucchese, and Blake Doriot. Doug Miller was absent. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Planning Manager; Mark Kanney, Planner; Duane Burrow, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Edwards/R. Miller*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 8th day of August 2013 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*R. Miller/D. Miller*) that the legal advertisements, having been published on the 2nd day of September 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 (*R. Miller/Lucchese*) 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.

** It is noted that Doug Miller arrived at this time.*

5. The application for the vacation of a county right-of-way known as County Road 24, for **Hubbard Hill Estates, Inc.**, represented by Kindig & Sloat, PC, on property located on Old CR 24 between SR 19 and CR 24, South of Charlotte Avenue, in Baugo Township, zoned A-1, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #cr 24-130805-1*.

Loren Sloat of Kindig & Sloat, PC, PO Box 31, Nappanee, was present on behalf of the petitioner, Hubbard Hill Estates, Inc. He said Hubbard Hill owns everything around the part of CR 24 that was basically abandoned when CR 24 and Charlotte Ave. were realigned and the stoplight was put in. It makes sense for the portion of CR 24 in question to be vacated and for Hubbard Hill to have ownership. He said there are no current plans for the area in question, but the vacation will enable Hubbard Hill “to be more creative in what they can do with the corner because it’s not split [by] the road.”

There were no remonstrators present.

A motion was made and seconded (*Burbrink/Campanello*) 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** Douglas Miller, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for the vacation of a county right-of-way known as County Road 24 be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous voice vote (**summary:** Yes = 9).

Yes: Tony Campanello, Steven Edwards, Roger Miller, Steve Warner, Douglas Miller, Jeff Burbrink, Blake Doriot, Tom Stump, Frank Lucchese

6. The application for amendments to the text of the Elkhart County Zoning Ordinance listed as follows: Article 1 IN GENERAL, adopting definitions, and Article 5 ADMINISTRATION, allowing the Plan Director to require an As-Built Drawing for certain Detailed Planned Unit Development projects prior to issuance of a Certificate of Occupancy, for the *Elkhart County Advisory Plan Commission* on property located in the unincorporated areas of Elkhart County, the Town of Bristol, the Town of Wakarusa, the Town of Millersburg and the Town of Middlebury, was presented at this time.

Brian Mabry presented the Staff Report/Staff Analysis, which is attached for review. He summarized by providing the substance of the proposed change, which is a provision that the plan director can require an as-built drawing prior to issuance of a certificate of occupancy if a drainage-related discrepancy exists. He then said there may be major and minor discrepancies. The following would be considered major discrepancies: instances where drainage facilities are just not provided, instances where what is on the ground is able to hold less water than the amount approved on the DPUD, failures in previous phases that affect a development's whole watershed, and illicit discharges having occurred in a previous phase. He commented that the last two discrepancies relate to a project's past problems and the first two relate to immediately observed problems.

Mr. R. Miller asked what an illicit discharge was, and Mr. Mabry said the most common instance is continual tracking of dirt onto a road. Stormwater rules spell out other types of illicit discharge. He said an illicit discharge is basically an instance of water going where it is not supposed to go.

Mr. Doriot then asked whether there is still talk about turbidity coming down the pipe and whether turbidity numbers have been set. Mr. Burrow responded by saying those numbers have been withdrawn from consideration. Mr. Doriot then said that turbidity is cloudiness of water and that Stormwater had some numbers that were so restrictive that water was almost clear, adding that "we all know there's going to be a little bit of suspended solids in it." Mr. Mabry commented that instead of trying to define *illicit discharge* in this amendment, we are relying on and referencing our existing County stormwater rules.

Mr. Mabry went on to describe minor discrepancies, which include a drainage failure occurring in a previous phase that affected only the site itself, absence of or inadequate drainage-related stabilization landscaping during construction, and absence of or inadequate drainage area maintenance during construction.

Mr. Doriot asked whether drainage-related stabilization is already addressed in MS4, and Mr. Mabry said it was, but he didn't know whether their rules called for triggering of an as-built. Mr. Doriot said they trigger disapproval.

Mr. Mabry went on to describe the plan director's options when an as-built is triggered, which are enumerated in the Staff Report/Staff Analysis. Regarding the first option listed, Mr. Mabry said that if the engineer or surveyor submits an as-built along with sealed and certified calculations proving that what's onsite is adequate, we can issue a certificate of occupancy, which is the document that lets a company open up for business. Mr. Mabry concluded by noting that the petition to approve the text amendments in question did require a public hearing and did need to go before the Board of County Commissioners for its approval.

Mr. Doriot asked about landscaping problems found during a month like December. He asked whether a certificate of occupancy hold would be placed until a time when the landscaping can be done. Mr. Mabry said such a hold would not be an intent. Mr. Doriot said he's tired of bureaucracies that call for "the letter" when the intent is what should be called for, and added that something should be added to the amendment saying there could be seasonal delays for certain installations. Planning should not have to tell someone that his or her business must be held up because of weather.

Mr. Stump asked Mr. Mabry how what Mr. Doriot was talking about is handled in a residential case. He asked how issuance of a certificate of occupancy would be affected in cases where called-for residential grass or shrubbery isn't in during winter. Mr. D. Miller answered by saying it's not a requirement in Elkhart County, but it's been an issue in the city of Goshen. He said theoretically lenders have discretion with respect to holding funds, but such a matter doesn't preclude move-in. He then said he works in other Indiana areas where temporary certificates of occupancy are issued based on outstanding conditions. Once the conditions have been met and reviewed by the relevant governing body, actual certificates of occupancy are issued. Owners are not kept from moving in. Mr. Mabry responded by saying the draft could be worked to account for seasonal problems, but cautioned that he's worked in places where temporary certificates of occupancy are issued then forgotten about. We would have to make sure that doesn't happen.

Mr. Doriot asked whether this matter might create the need for more staff, and Mr. Mabry said no.

Mr. Godlewski mentioned that of all the things that could be added regarding as-builts, we're just trying to "pick one aspect and see what causes the most issues." The amendment is not going to be rigid; it will only address cases of 2 minor issues or 1 major, blatant issue. It is meant not to catch anybody off guard.

Mr. R. Miller asked about cases of minor discrepancies that trigger an as-built. He asked whether those cases would have to be brought to the Board or whether they could simply be looked at by the staff. Mr. Mabry said only an administrative review is called for. The Board would only be involved when a petitioner wants to amend a DPUD to match what is done onsite.

Mr. Campanello then said this seems like a common sense matter. Planning should be doing this already without having to amend anything. Planning should want to work with surveyors, contractors, and businesspeople instead of having "triggers." Mr. Mabry indicated Planning would not have the authority to request an as-built without the amendment. The staff can request one, but a

petitioner could simply respond, “No thank you.”

Mr. R. Miller asked what would happen if an as-built were triggered by a landscaping discrepancy but the discrepancy were discovered in December, when planting cannot be done. He asked what the procedure is for returning to check on conformity when the weather improves and the landscaping should be present. Mr. Mabry responded by saying we are not talking about decorative landscaping but drainage-related landscaping. Mr. Doriot said a definition for *landscaping* needs to be included. When the public hears “landscaping,” they think bushes. If stabilization is achieved some other way, like straw matting or hydroseeding, that’s probably OK. Mr. Kolbus pointed out that the amendment currently says “drainage-related stabilization landscaping” and asked whether that is sufficient. Mr. Doriot said he guessed so, and Mr. Mabry said we could take it a step further and define *stabilization landscaping*. Mr. Doriot stressed that when the word *landscaping* continues to be presented, everybody thinks bushes. Mr. Mabry added that checking a site when weather improves and providing a permanent certificate of occupancy is a matter of internal tracking.

Mr. Stump said he understood from Mr. Godlewski that over 50 percent of projects have deficiencies. Mr. Godlewski said the percentage is debatable and depends on how the problem is looked at. There is a small percentage of projects that are blatantly wrong and a larger percentage that are marginal. A large percentage of projects potentially have issues. Mr. Stump responded by saying Mr. Doriot said the percentage was considerably less than 50. Mr. Doriot said his concern is not with the current Planning staff but with “nitpickers.” He said that construction projects are fluid; things continually change. He said he would like to avoid responses from petitioners such as “Why do I need to spend \$5,000 on an as-built? This retention pond is over here, it’s the same, go away.” Mr. Kolbus said that is what appears as number 1 of the review process, and Mr. Doriot said he’s been through the same process with another agency and “it’s just a bunch of nitpicking.” Mr. Doriot called Mr. Godlewski’s 50 percent figure “bull” and said the majority of builders want projects done right. He said builders receive projects from, meet with, and discuss plans with owners, who are ready to pay, in some cases, millions of dollars. He again stressed that they want projects done right. He said he knows the amendment will pass, but this is just another instance where “government reacts to 2 percent of the people.” Mr. Campanello added that government isn’t always right and creates more problems. He said that fixing something that doesn’t need to be fixed just because a piece of paper says we have to and we voted on it doesn’t mean it will be fixed right. Mr. Doriot said he just worries about unintended consequences.

Mr. Godlewski stepped in to say the question is, is the amendment reasonably written to cover those blatantly wrong situations? It addresses the minority of situations, not the majority, and does not “tax” the majority of people. The provisions of the amendment plug into situations where there are real failures. He said this is how we’ve guided this through the process. Mr. Campanello said that before a decision on the amendment is made, the Board should see a list of blatantly wrong projects whose needed changes can be identified. Mr. R. Miller said the alternative to passing the amendment is a case where a project is completed, somebody moves in, the work is not done properly, and neighbors come forward and say, “There ought to be a law.” He said Planning currently has nothing that says, “We need you to go back and write this up.”

Mr. Doriot said he goes out to visit a lot of sites and has heard from owners of property near

subdivisions who say, “This subdivision’s flooding me; it wasn’t built right.” He warned against the scenario where an as-built is triggered and it is then discovered that the area the subdivision is on has flooding problems that predate the subdivision. He said as-builts could be triggered by misdirected complaints.

Mr. Stump asked Mr. Mabry whether he got a cost from the surveyors who had been contacted, and Mr. Mabry said as-builts related to drainage and impervious surface would be \$1,500 to \$2,000. He said the costs quoted do not pertain to signs and decorative landscaping. Mr. Doriot asked Mr. Mabry about acreage, and Mr. Mabry said he did not know.

Mr. Burbrink asked for confirmation that as-builts are triggered as a result of failure to follow approved plans and that builders are going to incur a \$1,500-to-\$2,000 penalty because they did not follow what they agreed to follow, and Mr. Mabry confirmed. Mr. Campanello then asked for confirmation that original plans have calculations for drainage, and Mr. Mabry said DPUDs’ site plan support drawings have drainage facilities, topography, and drainage calculations. Mr. Campanello asked why, in cases where site plan support drawings are approved but mistakes follow, the site plan support drawings themselves are not used as bases for repairs. Mr. Mabry said we could do that, but that action is not common. Code enforcement is complaint driven and is more related to lot-by-lot projects than to DPUDs. It’s harder to have builders address problems when everything is done and business is being conducted than it is to do so during construction or before the opening of business. Mr. Doriot said he still thought what the amendment seeks to address is covered in postconstruction with John Heiliger. He believed Mr. Heiliger and the stormwater board were told that they do have the authority to require as-builts. He said this is covered under MS4 Rule 5. Mr. Burbrink asked Mr. Doriot whether he would prefer the Board or Stormwater review as-builts, and Mr. Doriot responded by saying he “would prefer that it was a one-stop.” He expressed concern over the scenario where a builder is told by MS4 that an as-built is not needed but is told later by Planning that one is needed, at the time of certificate of occupancy request. He just wants the process to run more smoothly. He said [the public services] building was designed as a one-stop, but with growth of government, simple building projects have to go to State or Highway or Soil and Water. He did add that huge projects do need oversight.

Mr. Godlewski added that Mr. Doriot is right to say there are specific MS4 rules that exist outside the purview of this Board, but if people improperly represent drainage on plans approved by Planning, the Board is accountable. Whoever appears on a plan is accountable. He said we’re focusing on what is represented on a plan that is approved here, not on enforcing a specific postconstruction rule. The reviews at these stages are similar yet different.

Kenneth Jones, Jr., of Jones Petrie Rafinsky, 4703 Chester Drive, Elkhart, stated he was not sure whether he was present to speak against or in favor of the petition. He first called attention to the phrase “the plan director *may* require” and asked whether it gives builders, owners, and petitioners the comfort of knowing some discretion is available and that reasonableness can be inserted into a situation. He then said Jones Petrie Rafinsky has been involved in some of the projects that have contributed to need for a discussion about as-builts. Since the turn of the century, Highway has been requiring an as-built on any public improvement that has drainage features, such as a street a petitioner is building and dedicating to Elkhart County. He said this has been with good reason; the county wants to know that anything it is taking ownership of is going to function. The

cities of Elkhart and Goshen have this requirement as well. He then said JPR recently had a project where the retention area associated with a building and parking lot was not built according to the size indicated on the PUD drawing and the Rule 5 Stormwater plan. Sometimes JPR is involved as a consultant and sometimes it is not, but the pond constructed for the project in question was still functioning. Mr. Jones has brought this up with the policy committee he is serving on with respect to stormwater calculations. The highway department does not allow use of the straight, rational method and does not allow use of soil permeability in the math. He said it's simply a volume calculation, so in many cases ponds have excess storage capacity, assuming proper building, and any engineer will want some level of excess. This is why it is possible to drive down the CR 17 corridor and see retention areas that are almost dry even after a heavy rain. Mr. Doriot added that a similar retention pattern can be seen at the church site at CR 6 and County Line Road, which site he's never seen water in. Mr. Jones continued by saying that other ponds have cattails in them because of the hiding and sealing of topsoil, which effectively creates a water feature. He said, though, that even those ponds seem to function. This is the case he has made to the Rule 5 folks, saying that while retention may not be as big as indicated, it's functioning without flooding. He said these cases have been worked out on a case-by-case basis. Some retention areas serve both private and public interests, and the requirement for as-builts in those cases is logical. He said streets draining into such retention areas must continue to function and the building of large structures next to shared retention areas should be avoided.

Mr. Jones then said that JPR has been asked in the past for an as-built when Rule 5 was trying to get a notice of termination to close out a Rule 5 permit several months after construction, and JPR responded, "Where do you have the right to ask for an as-built? It's not in the ordinance, and we can't find it in the state laws that deal with Rule 5." He also stated that in some such cases, the improvements were private and flooding of parking lots in question was the owners' problem. Discussions over this matter have been productive, and Mr. Jones said he thought the proposed amendment arose from these discussions, adding that at some point a Rule 5 permit needs to be terminated. Otherwise "it sits there forever and the guy pays a \$100-per-year annual renewal for nothing, for just a stack of papers sitting somewhere . . ."

Mr. Jones repeated that the phrase "the plan director *may*" gives him some level of comfort, but comfort level depends on the consultant reading the phrase. Quoting a possible future plan director, he said, "Hey, it's a little smaller than it's supposed to be, but it's functioning." He said he wanted to give a little background having worked on private projects and on public components of private projects.

Mr. Stump asked whether Mr. Jones saw some need for the amendment, and Mr. Jones said he did, but there is already coverage on the public improvement side. He said we should "focus it down to just the private development," where, for instance, a pipe to a regulated drain is not at question but where the building of a retention area is. He said in many cases retention areas have been built smaller than called for, but they function as long as the soils are good. He added that there are many ways to calculate the size of a needed retention area; different engineers would provide different opinions. He said generally the rational method is used nationally, which considers permeability, runoff coefficients, and 3 inches of rain in a 24-hour period.

Mr. Stump asked whether the method described is what is applied to private developments,

and Mr. Jones said yes. Mr. Stump asked whether JPR is allowed to take soil permeability into account, and Mr. Jones said no, the Highway standard is different. Clarifying his question, Mr. Stump said he was referring to private development, and Mr. Jones said that on the face of a DPUD “that’s what we generally run with.”

A motion was made and seconded (*Doriot/Lucchese*) 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** Tom Stump, **Seconded by** Roger Miller, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for amendments to the text of the Elkhart County Zoning Ordinance listed as follows: Article 1 IN GENERAL, adopting definitions, and Article 5 ADMINISTRATION, allowing the Plan Director to require an As-Built Drawing for certain Detailed Planned Unit Development projects prior to issuance of a Certificate of Occupancy, be approved in accordance with the Staff Analysis.

Vote: Motion passed (**summary:** Yes = 6, No = 3, Abstain = 0).

Yes: Frank Lucchese, Jeff Burbrink, Roger Miller, Steve Warner, Steven Edwards, Tom Stump.

No: Blake Doriot, Douglas Miller, Tony Campanello.

7. The application for a zone map change from a Detailed Planned Unit Development-E-3 to a Detailed Planned Unit Development-E-3 to amend the site plan support drawing for an existing Detailed Planned Unit Development known as *ELKHART EAST AREA ‘D’ PHASE III*, for Elkhart East, LLC, represented by Jones Petrie Rafinsky, on property located on the West side of CR 17, 2,000 ft. South of CR 6, in Osolo Township, was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 17-130802-1*.

Kenneth Jones, Jr., of Jones Petrie Rafinsky, 4703 Chester Drive, Elkhart, was present on behalf of the petitioner. He said a third phase was being considered for area D around 2006. He said it included the development of the “balance” of area D, which was the backwards L shape shown on the aerial. He said everyone knows what happened after that, and that is why the project never came to fruition. JPR was part of a 2005 corridor study that included CR 17, and the phase in question is an extension of the roadway that features a cul-de-sac. The site plan support drawing shows future connections on CRs 6 and 17 that constitute full-build intersections. The intersections were based on a traffic impact study (TIS) done specifically for area D, and the highway department approved the study. JPR then did a full-blown engineering design of roadway water and sewer, and that design’s plans were approved, but nothing was built and the plat was never finalized and recorded. In the areas that do not include the future primary access points, which are out of the functional limits of the intersection indicated, no nonaccess easements were ever created, as no recorded plat exists that creates them. A couple of old farm entrances, however, do exist but are not really used except for property maintenance and agricultural activity. Mr. Jones noted that such use will probably continue until the market demands that the development go to the build-out phase.

He then said the petitioner is OK with the recommended staff conditions, but some clarification was needed. He said the county has the right to be concerned with how CRs 6 and 17 are accessed as future development occurs, but he asked whether JPR will someday be held to the

geometry shown on the graphics of page 6b of the Staff Report or whether the graphics are shown simply for informational purposes. He then said the geometry of the right-side graphic of page 6b is taken from the corridor study done for the front of what is now Amberwood Terrace. That study was done as a suggestion for the indicated type of access at Amberwood Terrace; Amberwood Terrace was not built as shown. The other graphic shows an area that is in the vicinity of the current project, but the corridor study for that area shows 2 access points, whereas the current site plan support drawing shows only one. He said we've eliminated 2 and replaced them with 1, which lessens the interruption to CR 17, adding that he understands that when we get to the point of build-out, the county highway department will have to give approval.

Mr. Jones then went on to a second question, concerning condition 2 on page 6c of the Staff Report/Staff Analysis. He said he wanted the flexibility to build another 500 or 600 feet to make a closed block and build intersections before going out to here (indicating), given favorable future market conditions. Mr. R. Miller asked what rule or suggestion is keeping Mr. Jones from doing such building now, and Mr. Jones said he takes the meaning of condition 2 to be "The next submission better be the rest of the project" and asked what would happen if his next submission were just a couple of hundred more feet of road to accommodate an end user. Mr. R. Miller said he understood the question, and Mr. Jones went on to say the end user could plan to bring a million cars per day in, which would be cause for denial at that time, and preferred not to deny today, "when we don't really know." Mr. Doriot said that was how he would look at it. Mr. Jones also posed a scenario where the million-cars-per-day end user could be told, "If you guys want to do another little plat here . . . , you need to demonstrate that this additional traffic isn't going to warrant another entrance." JPR would then have the burden to make that demonstration. The project in question could also just be a storage building housing a couple of cars per day.

Mr. Burbrink asked Mr. Jones the closest he could come to the intersection of CR 17 and CR 6, and Mr. Jones said the site plan support drawing reflected the closest he could come, which was about a quarter mile.

Mr. R. Miller said he assumed it would be possible for Mr. Jones to do alternative work on the project and build interior roads and was surprised at Mr. Jones's "read" on condition 2.

Regarding condition 2, Mr. Burrow said he thought JPR would just have to ask for a deviation for cause, and provide a reason, if 1 more lot were needed. He said he had no problem with JPR saying it only wanted to do 1 lot. Mr. R. Miller told Mr. Burrow that Mr. Jones seems to be saying if 1 lot is requested on the South side, Planning wants something that says how traffic will get out on CR 17 and CR 6. Mr. Burrow confirmed this, noting that any future phase should trigger such a plan. He said a traffic flow pattern needed to be established in the area so that development can be anticipated and reminded the Board that E-3 GPUDs are on the North and East sides. The developments are owned by the same person but may not be later. Either people are riding on others' improvements or people may be forced to make improvements that are not justified by the restrictive size of their developments. If Ludwig Investments, for example, sells off the East side, we have no way to understand what kind of intersection should have been placed at CR 17. Mr. Burrow also reminded the Board that JPR is asking that the development be shown as commercial, not industrial. Since JPR is requesting that the development in question be commercial, JPR at some time will have to provide a plan for access.

Mr. Campanello asked Mr. Burrow whether what was in the packets was sufficient for Planning, and Mr. Burrow said the packets only contain what the petitioner is proposing on its road. No improvements to CRs 6 or 17 are proposed. He said Planning is asking that Highway be added at the front of the request. If the petitioner does not want to bring in the intersections in question, the project should be submitted with a request for deviation, with cause shown, from condition 2. The extension of the development to the South with only 1 proposed access point is a problem, and Planning's concept of development includes the showing of alternative access. It will be difficult to ask a developer to make improvements at the intersection of CR 6 and Elkhart East Blvd. Mr. Doriot asked whether Highway has approved the petitioner's road plans for the 1 addition being done for the current phase, and Mr. Burrow said yes and suggested that the road plans be moved into a planning document such that Planning could assist the highway department with the creation of an access management plan. Mr. Burrow said that open access will not improve flow through CR 17 and that Highway standards do not require anything beyond demonstration by the petitioner of direct access to CR 17. He said Planning is asking that the Board "take it to the next step" and follow the 2005 access management plan, which was a good plan even though it was never developed, so that the developers to the North and East can be asked to participate in the maintenance of service along CRs 17 and 6. A gross estimate of the number of sq. ft. of commercial development that could be established under the ordinance would be 1.6 million; development is encouraged, but we don't want to destroy CR 17's capacity to be an arterial.

Mr. Burrow then said the original concept was right-in/right-out along CR 17, and the property's commercial value will be based on whether left turns into the property can be made. Direct access will not be important if the area is not commercial. He added the right-side graphic of page 6b, which shows right-in/right-out with isolated left turn, because it is likely the developer will want to signalize the intersection at CR 17. A passive pattern could also be considered, to help drivers navigate the area at a proper speed. The level of service along CR 17 is degrading, and unless developers are asked to participate, we're going to end up with a Grape Road scenario. Mr. Burrow reemphasized that any deviation desired by the petitioner just needs to be submitted with acknowledgment of the original conditions.

Mr. Doriot then asked whether the future submissions referred to in condition 2 would be design or construction submissions, and Mr. Burrow said they would be design submissions. DPUDs may be done in phases, and petitioners must show the entirety of expected traffic patterns. This way the property owners with new projects to the North and East know what they're supposed to be participating in when they come in. Mr. Burrow said he understood it is not cheap to put in boulevards and left-turn lanes, but doing this now will prevent a serpentine-type road along CR 17. JPR does not have to do this now; Planning is only asking that documents be submitted for the Board's review.

Mr. Jones came forward to say he agrees with management of access on CRs 6 and 17 and hopes for continued development along CR 17. He said it's not just Grape Road that should be avoided; Cassopolis Street is our own Grape Road. It has a suicide lane down the middle and a driveway every 50 ft. The purpose of the corridor study was to suggest controlled access, involving fully signalized, fiber-linked intersections, along the portion of CR 17 in question. The geometry of the future roads shown on the site plan support drawing is based on the TIS and Highway-approved

road plans, which include improvements on both roads. He said traffic engineers will say that if signalized intersections can be installed about every quarter mile, the serpentine nature of roadways can be eliminated. If Planning or the Board wanted more assurance that JPR intends to make the plans come to fruition, JPR would be happy to plat the roads and nonaccess easements, but no platting can be done now without building and without platting “a whole bunch of lots in there.” Mr. Jones said that if he could plat all the right-of-way, wait to build the roads until development, and wait to plat the lots until buyers saying they want a certain number of acres are available, then we would have all that before you today, but we don’t. He said we only have the project at question today, but we don’t want to waste the time and effort spent on design.

Mr. R. Miller said he agreed with Mr. Jones. He didn’t see how a road could be designed without knowledge of what’s going in there. He said what could happen is the design of the road followed by someone wanting that whole section. JPR would then have to ask for a change to the initial design. Mr. Jones responded by saying that even on projects close to JPR’s office there is always concern about CR 17, which is a limited-access highway South of CR 18. Mr. R. Miller said he would like to see no access onto CR 17, but Mr. Jones said the key is not to allow a million driveways but to enable controlled, safe access.

Mr. Campanello asked for confirmation that that entrance (indicating) was adequate to take care of the platted lots, and Mr. Jones said it was, based on the zoning, which is not M-2 and does not involve 24/7 operations. The entrance has served everything else so far. He then reiterated his agreement with the Board’s concerns. He said the staff would agree that as long as we are looking back at the corridor studies, we will make the right decisions.

Rob Letherman of Northland Corporation, 3414 CR 6 East, Elkhart, said he wants to build 1,000 ft. of road but understands the staff’s concerns. He said Northland has a good relationship with Highway and the intersections at CRs 17 and 6 have already been agreed to. The commissioners approved a concept plan in 2000 that designated those access points, and Northland is currently working with Highway on the designs for those access points. He said a lot of what is at question now is “minutia” and asked that all conditions except 1 and 7 be dropped because “that will hamstring us if we have to build another 500 ft.” He said that when the market dictates, we will build out to CRs 17 and 6 and work with the county to improve the intersections. He said that was the plan in 2000 and is the plan today.

Laura Coyne, Elkhart County Community Development, 4230 Elkhart Road, Goshen, said she was present not as a representative of Planning but just as an observer. She said she didn’t think that anything being discussed was restricting anything now or that anything was being asked for that couldn’t be predicted. Flexibility has to be built into this whole process; the intersection is dynamic, we don’t know what is going to come in, and we don’t know that what will come in will be the best thing for the area. She said the fiber there is amazing, and we could accommodate even something as big as Amazon distribution because of the area’s proximity to the corner in question and the interstate. She said Mr. Burrow is referring to the ability to keep a conversation about this real estate going and maintain an active public/private partnership during every phase. Mr. Burrow is not looking for the petitioner to come in asking for things and be denied but for opportunities to talk at each phase. She said he talks a lot about phasing—of financing, of communication—and every phase can be improved or stymied by the “minutia of the wrong decision at the wrong time.” The

chances of this are lessened each time the groups connect.

There were no remonstrators present.

A motion was made and seconded (*R. Miller/Campanello*) 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, including mention by Mr. Doriot that, though this development has been designed, in the future Planning needs to reclaim part of the access equation and work with Engineering instead of having projects handed to it:

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Tom Stump, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from a Detailed Planned Unit Development-E-3 to a Detailed Planned Unit Development-E-3 to amend the site plan support drawing for an existing Detailed Planned Unit Development known as *ELKHART EAST AREA 'D' PHASE III* be approved in accordance with the Staff Analysis with the following conditions:

1. All areas designated as future development shall be submitted as an amendment to the DPUD ordinance and will be required to be considered at a Public Hearing.
2. No driveways are permitted to CR 6 and CR 17 that are not permitted by the E-3 zone.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 9).

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

8. The application for Secondary approval of a Detailed Planned Unit Development M-1 known as *FAIRFAX PARK DPUD*, for Southern Cross Investments, LLC, represented by Jones Petrie Rafinsky Corp., on property located on the North side of Charlotte Avenue, 750 ft. West of CR 24, common address of 28255 Charlotte Ave. in Baugo Township, zoned M-1, was presented at this time.

** It is noted that Mr. Campanello stepped down from the Board at this time due to a potential conflict of interest.*

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #28255CharlotteAve-130204-2*. He added that the drainage improvements suggested by the owner are now in and it's a fully developed site.

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

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Roger Miller, that this request for for Secondary approval of a Detailed Planned Unit Development M-1 known as *FAIRFAX PARK DPUD* be approved in accordance with the Staff Analysis.

Vote: Motion passed (**summary:** Yes = 8, No = 0, Abstain = 1).

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

Abstain: Tony Campanello.

9. ***Revisions to Plan Commission Rules of Procedure***

Brian Mabry distributed copies of the proposed amendments to the rules of procedure and said action on them would be sought during the next meeting. He said the amendments were simply minor edits. With respect to exhibits, he said they were renumbered and references to them were changed in the body of the rules. With respect to calendar days and workdays, he said it was not always clear when calendar days and workdays applied. State statutes provide that days be counted as calendar days when the span of days in question is greater than 7, and this has been worked into the rules. With respect to completeness and sufficiency, he said wording that reflects discussion over the zoning ordinance revision has been added to the rules. Sufficiency has to do with things like the number of copies accompanying a submission and accuracy of the soil report. Completeness is more content based. The Technical Review Committee should not be wasting time reviewing projects when the right materials have not been submitted in the first place. With respect to the name of the Technical Review Committee, consistency for the name was needed in the various rules and applications.

** It is noted that Mr. Campanello returned to the Board at this time.*

Mr. Mabry then said that the Primary plat application now contains references to the subdivision control ordinance. The rezoning application and the administrative adjustment application now contain a revised sample site plan. The sample sets a high mark, as it is professionally done, but it does show what needs to be shown, including proposed additions and removals, roads, and a North arrow. A new note now accompanies the sample site plan, which requests that the petitioner show structures, signs, and screening to be removed. The applications also request that the petitioner use a ruler when drawing a site plan. Mr. Mabry added that the new sample site plan will probably appear in BZA applications as well and that it doesn't show more detailed features like topography lines. Mr. Kolbus told Mr. Campanello, who had just returned to the Board, that the revision at question was to the sample site plan and that not everything on the sample will apply to every petition.

Mr. R. Miller asked whether the purpose of the sample site plan revisions was to take away the need for interpretation, and Mr. Mabry said yes and that things are often determined to be missing later on in the process. The new sample allows the staff to get the needed information up front.

Mr. Campanello asked Mr. Mabry whether the Board and staff are responsible for requesting right-of-way and utility locations. Mr. Mabry responded by clarifying that the new sample site plan does not pertain to plats; it pertains to rezonings and administrative adjustments. Site plans drawn with strong detail are needed for plats. Right-of-way widths are helpful on rezoning and administrative adjustment site plans, but they are not as helpful as indication of proposed private property improvements. Mr. Kolbus added that if plats require those things, they will be on there.

Mr. Doriot asked Mr. Mabry why 12 full-size and 12 reduced-size copies are required when Kosciusko County only requires 4, and Mr. Mabry said that while he is in favor of using digital format, a count of who received what for the various applications revealed that 12 was the number

needed. Mr. Doriot asked whether 12 full-size copies were needed, and Mr. Mabry said it seemed that way. Mr. Doriot then asked why 12 reduced-size copies were also needed and said he was asking because he is the only person on the Board who also files applications. Mr. Campanello asked whether a single copy could be submitted by the petitioner and whether everybody could then receive a scan, but no answer was given. Mr. Godlewski said that the quantity is right but that Mr. Doriot's question seemed to concern size, and Mr. Doriot again asked why 12 full-size and 12 reduced-size copies were required. Mr. Mabry said the reduced-size copies were for the Board members' packets and that staff could make those copies. Mr. Doriot said he's thought it's absurd for 20 years and still thinks it's absurd.

10. A motion to adjourn the meeting was made by Mr. Doriot and seconded by Mr. R. Miller. With a unanimous vote, the meeting was adjourned at 10:52 a.m.

Respectfully submitted,

Daniel Dean, Recording Secretary

Jeff Burbrink, Chairman