

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 13TH DAY OF NOVEMBER 2014 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, Steve Warner, with the following members present: Tony Campanello, Lori Snyder, Steve Warner, Roger Miller, Steve Edwards, Tom Stump, Frank Lucchese, and Blake Doriot. Jeff Burbrink was absent. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Planning Manager; Mark Kanney, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board. Liz Gunden, Planner, was absent.

2. A motion was made and seconded (*Miller/Stump*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 9th day of October 2014 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Doriot/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.

4. The application for a zone map change from A-1 to B-3, for **Marion L. Schrock (owner) and Prestige Sales, LLC (developer)**, represented by Marbach, Brady & Weaver, Inc., on property located on the South side of US 20, 750 ft. West of CR 27, common address of 17406 US 20 in Jefferson Township, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #17406Us Highway 20-141001-1*.

Chris Marbach, Marbach, Brady & Weaver, Inc., 3220 Southview Dr., Elkhart, was present on behalf of the petitioners and said that he began discussing this rezoning three or four months ago with now-retired planner Duane Burrow, who suggested rezoning to B-3. The business has been present since the early 1960s, and various businesses have occupied the subject property since then, Mr. Marbach said, but the Staff Report implies that the petition is for a new B-3 use. Were the use new, he said, he would have agreed with the report's findings.

Prestige Sales, operated in Goshen since 2001, was founded by Jim Davis, a wholesale mobile home dealer. Thus most business activity occurs offsite. The business has nine employees, seven of whom arrive at the site in the morning, pick up supplies including repair parts, cleaning solutions, and cleaning equipment, and go to sites to repair units and transport them to other locations. "He has told me that two to three times a year" the company might park a unit onsite for fewer than 60 days before its move somewhere else, Mr. Marbach said, adding that the site is not a display yard. The business, whose site contains mostly an office and a storage building, operates from 7:00 a.m. to 5:00 p.m.

** It is noted that Frank Lucchese stepped down from the Board at this time.*

Returning to the Staff Report, Mr. Marbach noted that the business predates the

comprehensive plan, which the report states the business does not follow, and said, "The fact that it was never rezoned to a business use was either left off or whatever over the course of the past 50 years." Calling attention to Staff Report paragraph 4c, which addresses prohibition of outside storage in the B-3 zone, he said that the report fails to acknowledge the written commitment that accompanies the request. The commitment basically divests the B-3 zone of every permitted use except the five noted, so the request is not for a straight rezoning, he said, and proceeded to read the commitment provisions from page 2 of the Marbach, Brady & Weaver cover letter included with the application, mentioning that retention of the portion concerning billboards is negotiable.

Mr. Marbach then said, in response to Staff Report paragraph 4e, that there are no wetlands on the subject property, indicating an area southeast of the subject property instead as featuring wetlands. In response to the same paragraph's reference to the need for buffering, he then distributed to the Board a color photo *[attached to file as Petitioner Exhibit #1]* showing the existing opaque white fence separating the subject property from the residential use immediately west.

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

Tom Stump asked whether the subject property is the former site of Sylvester Tree Service, and Mr. Marbach said yes. Mr. Stump then said he did not know how the property was used after the Sylvesters' move, and Blake Doriot mentioned that the Sylvesters were using it for such things as truck storage as recently as five years ago.

Responding to Mr. Doriot's question about Prestige Sales's operation, Mr. Marbach further explained that the company buys manufactured and mobile homes, removes them from parks, and moves them to other parks. During this process the company refurbishes them, usually at their places of origin or destination. The supplies for this work are stored at the subject property.

Tony Campanello asked whether any complaints on the property have ever been received, and Mr. Marbach said no. The rezoning process was begun because Indiana law states that wholesalers must operate on properly zoned property; the validity of the owner's dealer license was at question because of the property's current zoning.

Lori Snyder asked whether the suggested commitments would remain effective in the event of future sale of the property, and Mr. Marbach said they would. "It's a written condition that goes with the property until someone comes back here and asks for a change," he said.

Roger Miller asked for confirmation that the lessee will not do anything with the property that he is not already doing, and Mr. Marbach confirmed.

Kevin Troxel, 213 S. Elkhart St., Wakarusa, who has worked for Jim Davis for five years, specified that crews arrive at 5:00 a.m. or 6:00 a.m. on Mondays "to get the toters gone." The two trucks used for transporting mobile homes are usually stored at their drivers' homes on weekends, as work does not finish until Saturdays or late in the day on Fridays. The company does not want to store trailers onsite either because they need to be available in case of damage to a home in transit or in case the company has to remove a home from a site quickly. Mr. Troxel, who runs the office on the subject property, added that he does not normally see crew members the remaining weekdays. He sees them four hours a week at most and perhaps one or two more hours if they are working locally. Jim Davis himself was out buying homes the day of the rezoning hearing and was not onsite either. Mr. Troxel said he is present alone onsite 25 or 30 hours during a 50-hour workweek. The company is small and quiet, and all business is Internet based, Mr. Troxel said. Clients do not come

to the site because there is nothing to see.

Mr. Campanello asked Mr. Troxel how important the commitment allowing billboards or signage is to the company, and Mr. Troxel said that while Mr. Davis would like onsite signage, removal of the billboard provision would not be a deal breaker. The business on the subject property is unknown to most people, Mr. Troxel said. Mr. Miller asked Mr. Troxel to specify the location of the subject property, and he said 1.25 miles east of SR 15, across the street from a Buddhist temple, whose administrator has no problems with the business.

Richard Miller, 17438 US 20, Goshen, lives immediately west of the subject property at the home pictured in Petitioner Exhibit #1 and said that he sees employees of the business coming and going on a continual basis. They have been good neighbors, he said, and he had no problem with the business.

Marion Schrock, 17420 US 20, Goshen, owner of the subject property and much surrounding property, said he bought the subject property less than one year ago. He said that the company pays the rent on time, seems to be good in every area, and has done everything he has asked it to do. He added that he will abide by the commitment and has always done everything the Commission has asked him to do.

Mr. Marbach then came forward again to clarify that the owner of the business would like to put up a Prestige Sales, LLC, sign, which is permitted even if the portion of the commitment addressing billboards is stricken. Mr. Doriot asked whether *billboard* in the commitment means a Burkhart Advertising-type sign, and the Board agreed that it does. Mr. Doriot then asked how much signage the petitioner is permitted, and Mr. Mabry replied that the square footage limit for a lighted sign is equal to three times the frontage of the property.

There were no remonstrators present.

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** Blake Doriot, **Seconded by** Tony Campanello, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from A-1 to B-3 for *Marion L. Schrock (owner) and Prestige Sales, LLC (developer)*, be approved with the following commitments:

The following uses are permitted on the subject property:

1. Offices, business and professional, including medical clinics.
2. Trailer sales or rental of house trailers or mobile homes on an open lot or within a building.
3. Uses customarily incidental to any of the above uses and accessory buildings if located on the same premises.
4. Wholesale business if conducted wholly within enclosed buildings.

All other uses in the B-1, B-2 and B-3 zoning districts are prohibited.

Vote: Motion passed (**summary:** Yes = 7, No = 1, Abstain = 0).

Yes: Blake Doriot, Frank Lucchese, Lori Snyder, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello.

No: Roger Miller.

5. The application for a zone map change from M-1/A-1 to B-3, for **Jack L. & Gloria J. Neff (sellers) and RLC of Michiana, Inc. (buyer)**, represented by MRV Architects, Inc., on property located on the South side of US 20, 364.18 ft. West of CR 35, common address of 14392 US 20 in Middlebury Township, was presented at this time.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #14392Us Highway 20-141006-1*.

Mr. Campanello asked how planning staff was able to make the assertion appearing at the end of paragraph 2 of Staff Report page 5b: “Additionally, there is no space on the site plan for a commercial septic system and reserve area.” Mr. Mabry replied that the assertion was a professional judgment call made by the staff, and Mr. Campanello then asked whether such an assertion is normally made by the health department. Mr. Mabry replied that the health department determines what kind of septic system is needed after assessing the needs of the proposed use of the property and the soil types present.

Mr. Miller asked whether the uses immediately north of the subject property are mostly commercial, and Mr. Mabry said two areas zoned M-1 and one zoned B-3 lie north of the property. Mr. Doriot commented that Lippert Components occupies some of the area north of the subject property.

Mr. Campanello then asked whether both lots at question, 1 and 2 of Neff Minor, were to become the Taco Bell site, and Mr. Mabry said they were. The house onsite would be demolished.

Mario Valentini, MRV Architects, Inc., 409 N. Wille St., Mount Prospect, IL, was present on behalf of the petitioner and began by expressing appreciation to planning staff for its help in preparation of the petition. He said also that because some commercial uses are nearby, a Taco Bell restaurant would not create a discrepancy.

Addressing the Staff Report’s concern about septic system placement, he said that “Michiana,” the restaurant operator, which operates approximately 50 locations in Indiana and other states, is not new to operations, is aware that the use will require septic installation, and understands the health department’s requirements. The soil scientist who has been hired has completed his report and determined that the soil conditions that will support a septic system are present.

Mr. Valentini was not sure whether the linear footage required for piping was available, but if the building shown on the submitted site plan, which will require revision, is shifted east, enough room for installation of a septic field should be made. He said that the project must now be considered by a septic engineer, but a simultaneous step is rezoning.

Mr. Valentini then distributed to the Board four exhibits: an artist’s rendering of the proposed Taco Bell restaurant [*attached to file as Petitioner Exhibit #2*], a site plan labeled SP1.0 [*attached to file as Petitioner Exhibit #3*], the first page of an elevations diagram, labeled A4.0 [*attached to file as Petitioner Exhibit #4*], and the second page of the elevations diagram, labeled A4.1 [*attached to file as Petitioner Exhibit #5*]. A planning staff member then distributed a second copy of the site plan labeled SP1.0 [*attached to file as Staff Exhibit #1*]. Mr. Valentini also mentioned that the landscaping shown on the artist’s rendering and other materials is not final. It will need to be adjusted as the site plan is adjusted.

He then indicated awareness of nearby residential uses and willingness to work with nearby homeowners on matters like increased traffic and late-night drive-through menu ordering, suggesting window ordering at that time of night instead and fencing and shrubbery that will shield residential uses from sound and light generated by the new restaurant. Mr. Valentini also stated that projects like the current one, which requires a well and a septic system, have been done before and

are not uncommon, and the operator is confident that the project can be undertaken at the subject location.

Carl Miller, Hilltop Restaurant, 14330 US 20, Middlebury, who is at his restaurant's location all day and is familiar with area traffic patterns, expressed concern over US 20 traffic. Most Hilltop customers access the site by CR 35, the restaurant's "saving grace," and access for customers traveling west on US 20 is a challenge. The intersection of US 20 and CR 35 already sees heavy flow because of traffic generated by a nearby school, and traffic presently backs up west of the intersection past the US 20 entrance to Hilltop Restaurant. He was not sure how a new US 20 entrance west of his would work out. He said also that the petitioner can expect disappointment over the soil conditions, which are the reason for Hilltop Restaurant's costly connection to city sewer, and admitted that he does not want competition.

Mr. Campanello asked whether the reason for Hilltop's sewer connection was soil conditions or the city's willingness to extend sewer to Hilltop's location, and Mr. Miller said the city was not willing to extend sewer to Hilltop's location. He was asked to pump sewage more than a quarter mile to the entrance of a nearby subdivision.

The subject site is much too narrow to accommodate the traffic to be generated by the proposed use, especially as US 20 has only two lanes at the location, asserted Leona Yoder, 57341 CR 33, Middlebury, and "the drawing" makes the property seem bigger than it is. She said that the unusual number of traffic accidents already occurring along US 20 between CRs 33 and 35 and the number of school buses coming from the nearby school contribute to an amount of area traffic too high for the proposed use.

Mr. Valentini began his response by indicating appreciation for the remonstrators' comments. Septic system installation is among some unknowns, he recognized, and the state's driveway permitting process will outline what the petitioner needs to do to accommodate traffic. Mr. Lucchese commented that the driveway permitting process might present a bigger hurdle than the Plan Commission, and Mr. Valentini agreed.

Mr. Doriot worried that if the rezoning to B-3 is approved, the subject property will remain zoned B-3 until a new rezoning request is made and, if the petitioner cannot make the proposed use work, any permitted B-3 use can occupy the property. He did comment, however, that the proposed use would not be a bad fit for the area. James Kolbus added that a commitment can be imposed providing that the use be limited to a restaurant with a drive-through.

Lori Snyder said that the intersection of CR 35 and US 20 is bad, Mr. Doriot expressed that as part of its approval INDOT might require that the petitioner pay for lengthy turning lanes along US 20 from CR 35, and Mr. (R.) Miller said that he has seen traffic backed up west of the Hilltop US 20 entrance.

M-1 and B-3 zones lie across from the subject property, and a gravel pit lies north of the property, commented Mr. Doriot. Mrs. Snyder pointed out that no occupants of adjoining residential uses appeared at the hearing, and some Board members expressed surprise at their nonappearance. Responding to a Board query regarding hours of operation, Mr. Valentini said that the restaurant would not begin as a 24-hour operation. Taco Bells, except some truck stop locations, do not typically operate 24 hours. The Taco Bell at question would close around 2:00 a.m. or 3:00 a.m. and reopen around 8:00 a.m. or 9:00 a.m., as it would serve breakfast items, Mr. Valentini said. Mrs. Snyder said that Taco Bell hours probably vary.

Mr. Doriot asked Mr. Valentini to say more about his offer to have the restaurant change the

ordering location from the outside menu to the window after a certain time of night, and Mr. Valentini explained that the outside order confirmation board can display a message instructing drivers to drive up directly to the window to order. He was concerned that he might be offering something that the future property owner would not agree to, however, and said that the hours of operation have not yet been set. Some Taco Bells in urban areas are open until 4:00 a.m., but the proposed location would probably be open only until 2:00 a.m. He also indicated openness to an approval condition limiting the hours of operation, in accommodation of neighboring property owners.

The operator is aware of means, including shields and deflectors, to control the spread of light onto neighboring residences at the rear of the subject property, Mr. Valentini added, and light will mostly be needed at the front of the property, where the walkways are planned.

Mrs. Snyder then asked whether the owner has considered locations closer to town, east of the subject property, where there is more commercial activity and a plaza that frequently has vacancies and has one occupant that uses a drive-through. The seller's broker, Mr. Valentini responded, has stated that locations closer to town are not going to be an option, despite Mr. Valentini's expression of concern to the broker over the subject property's lack of public utilities. Interest in the location at question is the result of thorough consideration of the area by the broker and the franchisee. "That developer has an eye on a lot of the retail and will make recommendations, and they've been trying to work this out for quite some time now," he said.

Responding to Mrs. Snyder's question about whether a plaza location had been considered, Mr. Valentini said that the parent company, Yum! Brands, looks for outparcels along the roadway, drive-throughs, and freestanding buildings, not interior build-outs or strip center end caps.

When Mr. Campanello returned to the subject of the proposed commitment that the use be limited to a restaurant with a drive-through, Mr. Valentini said that any such use will see the challenges faced by the proposed Taco Bell. He mentioned also that the number of seats in the proposed Taco Bell is considered "medium," as some locations have up to 90 seats. If approval is based on a certain number of seats, then the proposed number of seats will need to be reduced, but 65 to 70 percent of the new location's business will be drive through. Though 54 seats are proposed, "the owner would have different issues to worry about" if 54 people were in the restaurant at once. Mr. Valentini said also that the site plan makes a generous allowance for onsite traffic flow.

Mr. Miller understood the developer's interest in the subject property, as it has visibility, and said that his concern was over traffic, which is not something for the Plan Commission to work with. Sewer concerns have to be addressed by the health department, he added. Mr. Valentini mentioned that the subject property's location off the intersection of US 20 and CR 35 is helpful, as there is room to work with in addressing traffic.

Mr. Doriot asked Mark Salee, Middlebury Town Manager, 418 N. Main St., Middlebury, to confirm that Hilltop Restaurant's sewer extension is private, and he confirmed. The extension is a private two-inch force main from an existing pump station, he explained. He also attested to the search conducted by the broker, with whom he has been talking for over a year, for an adequate location for the restaurant and to the location requirements imposed by the parent corporation, which ruled out Middlebury locations with access to public services.

Mr. Stump asked Chris Godlewski whether the subject property is within a TIF district, and Mr. Godlewski said no and confirmed that none is planned for the area. Mr. Stump commented that the subject area looks like an interesting area for a TIF district, as Lippert Components recently

invested in the building across the street from the subject property and the area could use improvements. Mr. Campanello and Mr. Lucchese agreed that improvements will be made if the restaurant is approved.

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** Blake Doriot, **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 M-1/A-1 to B-3 for *Jack L. & Gloria J. Neff (sellers) and RLC of Michiana, Inc. (buyer)*, be approved with the following commitments:

1. Restaurant with drive-through only.
2. That exterior lighting be downcast lighting.

Vote: Motion passed (**summary:** Yes = 6, No = 2, Abstain = 0).

Yes: Blake Doriot, Frank Lucchese, Roger Miller, Steven Edwards, Tom Stump, Tony Campanello.

No: Lori Snyder, Steve Warner.

6. The applications for an amendment to the Site Plan/Support Drawing for and Secondary approval of an existing Detailed Planned Unit Development known as **REPLAT OF LOTS 13 & 14 OF ELKHART EAST AREA D PHASE III**, for Almac, Inc. (owner), and Copperrock Construction (developer) represented by Progressive Engineering, Inc., on property located on the South side of Challenger Drive, 470 ft. East of Columbia Drive, South of Elkhart East Boulevard, South of CR 6, in Osolo Township, zoned DPUD-M-1, were presented at this time.

Mr. Mabry presented the Staff Reports/Staff Analyses, which are attached for review as *Case #000CHALLENGER DRIVE-141006-1* and *Case #000CHALLENGER DRIVE-141024-1*.

Rob Letherman, Almac, Inc., 3414 CR 6, Elkhart, expressed excitement over the project, a 70,000 sq. ft. building to be built using a new system. Almac has required that buildings have three sides of block and metal paneling above them. New federal energy codes, however, call for a far more energy-efficient building system, which the new structure will utilize.

Danny Wright, project manager, Copperrock Construction, 601 Sixth St., Grand Rapids, Michigan, stated that the project is expensive, because of aesthetics and energy efficiency, and the owner is aware of the expense, but the payback makes the expense worthwhile.

The roof system to be used, called an energy saver system, is one that is used for preengineered buildings. The roof will be a standing-seam roof, it will produce an R-value of R33, and it will act as fall protection during steel erection. The roof will also provide reflectance from the ceiling because the building's roof support members, or Z-purlins, will be covered. The design will give a nice, white envelope, he said, as though the ceiling were painted, and will help with lighting and provide a finished look.

The wall systems, he continued, will use a two-inch embossed sandwich panel and 26-gauge metal inside and out. Mr. Letherman has received architectural committee approval of the panel, which produces a value R19 on the walls. The design provides a nice white, reflective, full-height interior liner panel

Lighting will be energy efficient, and LED lighting, a rapidly advancing technology, is an alternate means of lighting being discussed. Mr. Wright has asked the owner to consider using T8 or T5 high-bay fluorescent lighting. Such lighting costs 40 percent less than 400-watt halide lighting,

typical for warehouses.

The result of these features is an energy-efficient, long-lasting building for the customer, who has an exciting, growing business, said Mr. Wright.

Mr. Campanello asked whether the building will have an expandable end wall, and Mr. Wright said yes, the project calls for an area of future expansion. There is ample room for another 40,000 sq. ft. Mr. Campanello then asked what the eave height will be, and Mr. Wright said 33 ft., 10 in. He explained that the customer stores and modifies material that when shipped requires 30 ft. clearance around the building.

Mr. Letherman came forward again and said that Holiday Court, on the west side of South Bend, recently built a 100,000 sq. ft. building similar to the building now planned and that one almost has to touch the building to know whether it uses a metal panel system or a traditional tilt-up panel system, the type used in big-city industrial parks. He then repeated architectural control committee approval of the project.

There were no remonstrators present.

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 requests and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Tony Campanello, that the Advisory Plan Commission recommend to the Board of County Commissioners that the request for an amendment to the Site Plan/Support Drawing for an existing Detailed Planned Unit Development known as ***REPLAT OF LOTS 13 & 14 OF ELKHART EAST AREA D PHASE III*** be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: Blake Doriot, Frank Lucchese, Lori Snyder, Roger Miller, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello.

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Tom Stump, that the request for Secondary approval of an existing Detailed Planned Unit Development known as ***REPLAT OF LOTS 13 & 14 OF ELKHART EAST AREA D PHASE III*** be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: Blake Doriot, Frank Lucchese, Lori Snyder, Roger Miller, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello.

7. ***LCM Realty VII, LLC—Review and Approval of Written Commitment***

The Plan Commission recommended approval of a rezoning from M-1 PUD to M-1 in October 2014 for LCM Realty VII, said Mr. Mabry, and the approval required a commitment that is now ready for the Commission chairperson's signature. The rezoning permits the owner to use a driveway on the property, he specified. Mr. Kolbus commented that he worked with staff and listened to the meeting recording to ensure that what appears on the commitment is consistent with the October 2014 Board action.

The Board examined the written commitment, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Steven Edwards, that the Advisory Plan Commission approve the written commitment prepared for LCM Realty VII, LLC,

and presented by Mr. Mabry.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: Blake Doriot, Frank Lucchese, Lori Snyder, Roger Miller, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello.

8. *Zoning Ordinance Final Review and Public Hearing Date Decision*

The policy committee met the week of November 3, 2014, and voted 9–0 to recommend that the zoning ordinance be heard during a Plan Commission public hearing, said Mr. Godlewski. The goal of the Board at this time, he said, is to comment and discuss and set a hearing date, time, and location of Tuesday, December 2, 2014, 6:00 p.m., meeting room of the Elkhart County public services building, 4230 Elkhart Road, Goshen.

Mr. Lucchese said that he would not be able to attend the December 2, 2014, hearing.

Mr. Doriot read paragraph 1.2.2, titled “Property Rights,” and called attention to the word *develop*. Mr. Mabry commented that the farm bureau recently suggested *utilize* instead, and Mr. Doriot then suggested *use and enjoy*. He added that the paragraph currently implies that the planning department is only concerned about property rights when development is at question. Mr. Godlewski agreed that the challenge is to find one word that addresses development and other uses. Steve Edwards suggested the phrase *maintain and/or develop*, which covers maintenance as is and development.

Mr. Stump asked how the paragraph at question protects a long-standing farm against a new adjoining subdivision, and Mr. Doriot said that protection is offered by Indiana’s right-to-farm act. Mr. Stump acknowledged the act but doubted that the ordinance paragraph does farmers any good. Mr. Godlewski mentioned that the statement is a one-of-a-kind statement that resulted from discussion held by multiple groups. Mr. Doriot asked for confirmation that the farm bureau and Dave Thwaites assented to the statement, and Mr. Godlewski repeated that the paragraph had been reworked three or four times. Mr. Doriot then stated that *develop* is too singular, and Mr. Miller and Mr. Mabry repeated the suggestion that the word *utilize* be utilized. Mr. Doriot then indicated agreement.

Mr. Warner then asked why the policy committee wanted to retain the use variance, covered by section 3.7, when the staff wanted to abolish it, and Mr. Mabry answered that deletion of the use variance, a route to allow a prohibited use, was considered early enough in the drafting process that current committee members might not remember the consideration. He explained the difficulty the use variance has receiving a positive staff recommendation, that it is the petition type least commonly approved, but that the committee wanted to keep it as a method of approving a prohibited use. Mr. Godlewski added that rezoning was thought to be a suitable alternative to the use variance, but the committee said that the use variance should be kept intact.

Mr. Warner then said that removal of the temporary use permit was on a change list and asked about its status. The staff asked for its removal, said Mr. Mabry, because the addition of its process and standards would have been too much for the staff to take on, in consideration of the new zoning ordinance and the new permitting software the office will begin using. The public will also need to be educated.

Mr. Doriot asked how a church’s setup of a tent for an annual meeting would then be handled, and Mr. Mabry responded that a truly temporary tent would be permitted at the counter for

a limited number of days. A special use must be granted if the tent is to remain longer.

Mr. Warner then raised the policy committee's vote to remove the statements "The zoning district is appropriately applied at the intersection of a local and collector road or of two collector roads" from section 4.2.6 and "The zoning district is appropriately applied at the intersection of collector or arterial roads or adjacent to such roads" from section 4.2.7, and desired explanation for their removal, holding that the statements more clearly define B-1 and B-2 zoning districts' borders. Mr. Mabry recalled only that the committee did not want the statements to appear and suggested it thought the statements too specific to appear in zoning district purpose statements. Mr. Godlewski did not remember the matter being a significant point of discussion, but Mr. Mabry said that there must have been some discussion because the committee took a vote on the statements' removal, an action that has occurred occasionally following disagreement.

Mr. Doriot recalled that Kenneth Jones Jr. mentioned neighborhood lots, right-of-way that is separate from them, and vacations. "That, or it can be an arterial road," said Mr. Godlewski. Mr. Kolbus and Mr. Miller agreed that the stricken statements imply that the districts may only occur at intersections and suggested this was the problem the committee was addressing. Mr. Mabry reminded the Board that a purpose statement serves as a district's "mission statement." No hard and fast rule is imposed providing that the districts only occur at intersections, and the intent of the statements is that the districts generally be appropriately applied at intersections. Mr. Warner then said that if staff is comfortable with the omission, then he is.

Mr. Miller asked whether something someone starts up that grows into his or her garage constitutes the kind of neighborhood business implied by the title of section 4.2.6, and Mr. Mabry said that Mr. Miller's example is that of a home occupation or home workshop/business. Mr. Stump also indicated agreement that the stricken statements restrict the districts at question to corner lots and said that their omission permits the districts on "any lot in that particular block," holding that restriction of the districts to corner lots would be better.

Pyramid zoning makes buffering requirements burdensome, said Mr. Warner, turning to section 7.3.4. The boundary separating a property zoned M-1 that has a building on it and a property zoned A-1 that has a residence on it must feature a class 3 buffer, answered Mr. Mabry, referring to the first table in section 7.3.4. He further specified that three class 3 buffer types are available, each based on a different amount of available space. Mr. Godlewski indicated the clarification the table makes that the A-1 use that must be buffered is a residential use, "not just general A, like a farming [use]."

Mr. Doriot further specified that the rezoning petitioner must provide the buffering, not the person who owns adjoining property that must be shielded, and Mr. Mabry added that adjoining nonresidential A-1 uses do not require buffering. Mr. Warner then indicated clarity.

The Board then expressed appreciation to the staff for a great job, a navigable ordinance, and frequent updates. Mr. Warner expressed appreciation to the policy committee for the amount of time spent getting input from county residents and planning for the future of the county, which reduced the amount of time the Plan Commission has had to spend. On the subject of the policy committee, Mr. Godlewski mentioned that the committee has asked that it remain a standing committee that participates in annual review, and the Board assented.

The committee from the beginning felt that the zoning ordinance project, which holds the future of the county, could not be allowed to fail, said Dwight Moudy, policy committee member. Mr. Godlewski, Mr. Mabry, Mr. Burbrink, and Mr. Moudy were asked at the farm bureau meeting

whether the draft was as good as it could be, he said, and though he could not say it is perfect, he said a better ordinance could not have been written. It will, though, have to be a “living document” because some things are not going to work, and the annual review will support the intent of the committee and allow mistakes to be fixed. He agreed that a goal of the committee was to reduce the amount of time spent by the Commission over the ordinance and commended Mr. Mabry and Mr. Godlewski, professionals who “have become Elkhart people,” for their work.

Mr. Miller pointed out the inability of the county to address the arrival of a high-intensity milking operation in a backcountry area populated by only small dairy operations, and Mr. Moudy responded that the state governs such operations, of which Brent Martin’s operation, large enough to require a biodigester for manure processing, is an example. The policy committee stepped back from the issue because anything it wrote on the matter would be superseded by state governance, he said. Mr. Godlewski said that the state requires a facility with over 300 cows to have a manure plant and that such a facility in Elkhart County must rezone to A-4 or A-5.

Mr. Miller then said that the planning department needs tools to refuse such operations set up outside Middlebury, for example; “we can’t just say we don’t like it.” A Marshall County confined feeding operation for hogs was started and required input from neighbors, who did not like it, said Mr. Moudy. The operation must meet strict standards set by the state addressing such things as manure and traffic or risk being shut down. Any CAFO (confined animal feeding operation) started outside Middlebury would be subject to six to nine months of planning, including state-solicited county input, before ground could be broken and would require something “like a special use on steroids.” CAFOs go outside the realm of what zoning can do, he said, despite the county’s attempt to make the A-4 district’s requirements more conservative than the state’s.

Mr. Warner said that the biggest day-to-day problem, which, he held, is not addressed by the new ordinance, is residential uses in agricultural zones unless other steps taken are sufficient to address it. He identified the area as one that still needs work.

Bob (no surname or address available) commented that he thought those involved in the project had their heart set on it but that there is need for improvement. He said that those involved should not lose sight of the fact that they are creating a document that the public will be using, and he compared the ordinance with the court system. A complaint leveled against the court system is that the average person cannot understand the language of the laws.

Bob indicated an unspecified portion of the ordinance and asserted that it states that no retail sales are permitted. Feedback from staff, he said, led him to believe that his reading of the portion in question, that there will be no sales of grain, hay, or equipment among farmers, is correct. He brought the matter before the farm bureau, asked the Plan Commission to realize that he has sold hay from his farm and that farmers of small operations do better to sell directly to customers, and indicated discontentment with prohibition of such activity.

Mr. Mabry responded that casual sales among neighbors and friends do not constitute retail sales but called Mr. Doriot’s example of bales of hay made from a hay patch at a private home, advertised by a sign, and sold for \$5 per bale “a little gray.” He raised the example of the sale of a car at a property, which does not constitute a car lot, and said that that logic could be applied to hay sales among friends and neighbors. Mr. Doriot then raised the additional example of sales of squirrel corn, and Mr. Campanello asked whether the sale of a car, which is not produced by the owner, is different from the sale of hay or squirrel corn, which is. No response to the question was offered.

Mr. Stump said he did not know why farmers should be kept from selling, and Mr. Doriot said such a restriction is not the intent of the ordinance. Mr. Miller held that the present discussion also addresses the example of a perpetual garage sale, which is akin to continuous, one-at-a-time sales of farm tractors, and Mr. Moudy indicated agreement.

Bob then said that he and the Commission share a common feeling about the handling of the type of sales at question but disapproved of “all these different personalities” involved in such things as the approval recommendation for the above fast-food restaurant rezoning petition. A farmer affected by such a rezoning would only have staff to deal with, and the staff’s response to the affected person will be, “In plain black and white it says *this*.” Farmers need protection, he said, which can be provided, in part, by a statement on paper providing a limit on casual sales. Otherwise a farmer’s neighbor who does not like the farmer’s agricultural activity but cannot file a complaint on the basis of that activity alone still has a basis for a complaint against the farmer, if the farmer is conducting hay sales. The staff member receiving the complaint is obliged, Bob held, to validate the request for enforcement. He also raised the scenario of Mr. Mabry’s move to another job and asked whether the farmer would have to find him and determine what he meant at the time of drafting.

Mr. Doriot said he saw no problem, and Mr. Warner did not think the ordinance was intended to limit the kind of sales at question. If such a limit were implied by the language, it would have been changed early in the review process, he said. Mr. Mabry then said that agribusiness, which currently requires agricultural zoning and a special use permit, is allowed by right, subject to limitations, by the new ordinance. Agribusiness, he explained, takes into account large-scale sales of “farm-related things.” He said the change would be helpful and that agribusiness restrictions will be more lenient. Roadside stand use is available also, by way of special use.

Picnic tables set up by the road for pumpkin sales were the basis, in part, of extensive policy committee discussion over roadside stands, said Mr. Moudy, and safety is an issue without a parking limitation. The ordinance, he said, must allow some control in the interest of safety, but the special use provisions must not be so rigid that special use permits, which are never the same and are based on unique situations, are never granted. “We’re walking a fine line,” Mr. Moudy admitted.

Mr. Mabry proceeded to read the new ordinance’s definition of *roadside stand* and suggested that one’s operation could be limited to a certain number of days per year, above which a special use permit would be required. Such a limitation would serve to capture casual sales, he said. Mr. Miller responded that “it’s really difficult to restrict it or to open it and not be too restrictive and not too open.” Referring to the perpetual garage sale example above, his neighbor, upon whom the example is based, ran the sale for 30 days, was told to shut it down, and then reopened it after 30 days, and the activity was considered casual sales. He sympathized with Bob and said that, by design, the affected public is watching the Plan Commission, which in turn is watching staff. If any staff member moves on to another job, entities like the farm bureau remain that “are supposed to use their brains . . . and not overdo.” An attempt was made to overdo at one point, he added, and it was canceled. Mr. Kolbus added that today’s discussion began with the understanding that “we’re going to have to see how this plays out practically” and an expectation of changes over time.

Bob then noted that any agricultural use other than basic crop growing requires a special use, including greenhouses. He read paragraph C of section 3.6.3 and said he could not think of any farming-related activity that substantially serves the public convenience and welfare. A petition for a commercial greenhouse could, then, be denied on the basis of the paragraph, he stated, as the purpose of a commercial greenhouse is to make money.

He went on to say that others he has talked to agree that the paragraph presents a problem and that he recently contacted a real estate developer who has applied for special use permits. When asked whether the special uses substantially serve the public, the developer responded, "That's kind of vague." Because Bob could not see clearly what is approved and what is not, he then asked the developer whether he knew, and the developer responded, "It's basically whether the Board likes it and wants to go along with the project." He said that a "little guy" petitioner, who has no feel for what the Board likes and does not like, should be spared the expense of filing a petition that has no chance of approval. The petitioner should be able to determine whether his or her request will "fall in there" by reading the ordinance, he held. Current practice, he said, sounds like a popularity contest and should be more cut and dry.

The Board of Zoning Appeals, Bob continued, has a difficult job because it hears requests for exceptions from the rules, and new Board members, he said, are told not to simply issue a rubber stamp as long as the appropriate fees are paid. Such action would deprive the ordinance of meaning. He alleged that because the Board members are trying to "walk that tightrope," they say, "We have to give somebody a pass but we have to give somebody else a fail to look like we're doing our job." Mr. Campanello replied that the Board of Zoning Appeals determines land use and nothing else and that Bob's description of how the Board works is incorrect, and Mr. Godlewski replied that the Board goes by the merits of the petition.

Mr. Doriot mentioned that the Board in the past was adversarial but is now less so, and Mr. Campanello added that a commercial greenhouse can be very beneficial to the public. Bob said that he could not say whether it is "substantially beneficial," and Mr. Doriot replied asking whether a greenhouse would feed people. Mr. Campanello replied stating that a greenhouse would feed the tax base.

** Mr. Doriot stepped down from the Board at this time and was not present for the remainder of the meeting.*

Mr. Kolbus's reply was that standards made black and white take discretion, necessary to grant and deny, away from the Board and are tougher on petitioners. A standard that says only "serve the public convenience and welfare" requires a yes-or-no answer, but a standard that says "substantially" gives the Board leeway to find that it does serve. He concluded by asserting that what Bob is asking for will hurt petitioners, not assist them. Several Plan Commission members indicated agreement. Mr. Campanello added that the Plan Commission and the Board of Zoning Appeals have a great responsibility, which the members take seriously, and thanked Bob for his comments.

The Board examined the zoning ordinance public hearing details suggested by Mr. Godlewski, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Steven Edwards, that the Advisory Plan Commission set the following details for the zoning ordinance public hearing: Tuesday, December 2, 2014, 6:00 p.m., meeting room of the Elkhart County public services building, 4230 Elkhart Road, Goshen. The motion was carried with a unanimous vote.

9. A motion to adjourn the meeting was made by Mr. Miller and seconded by Mr. Warner. With a unanimous vote, the meeting was adjourned at 11:14 a.m.

Respectfully submitted,

Daniel Dean, Recording Secretary

Steve Warner, Chairman