

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 12TH DAY OF MAY 2011 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, Mike Yoder, with the following members present: Jeff Burbrink, Meg Wolgamood, Dennis Sharkey, Roger Miller, Blake Doriot, and Tom Lantz. Staff members present were: Robert Watkins, Plan Director; Mark Kanney, Planning Manager; Duane Burrow, Senior Planner; Robert Nemeth, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Burbrink/Doriot*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 14th day of April 2011 be approved as submitted and the motion was carried unanimously.

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

4. A motion was made and seconded (*Doriot/Lantz*) that the legal advertisements, having been published on the 29th day of April 2011 in the Goshen News and the 30th day of April 2011 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

5. The application for Primary approval of a Detailed Planned Unit Development to be known as **REPLAT OF LOT 9, EASTLAND INDUSTRIAL PARK – PHASE VI – PART ‘B’**, for My Properties Elkhart, LLC represented by Wightman Petrie, Inc., on property located on the Southeast end of Fremont Court, 900 ft. South of Verdant Street, 800 ft. West of CR 17 in Concord Township, zoned DPUD-M-1, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #1178FremontCt-110404-1*.

Peter Schnaars from Wightman Petrie, Inc. 4703 Chester Dr., Elkhart, was present representing Norm Yoder, the property owner, on behalf of this request. According to Mr. Schnaars, Mr. Yoder has discovered the difficulty of owning two businesses and two buildings on one property so he would like to convey one of them.

Mr. Doriot clarified that they are just putting in a lot line and there are no drainage changes and Mr. Schnaars said that is correct.

There were no remonstrators present.

When completed and there are three lots, Mrs. Wolgamood asked if they will have to come back to the Plan Commission for any approvals on the vacant lot. Mr. Burrow said they would not because they have submitted a typical approval on the site plan.

It was then clarified that as long as the use is consistent with the approval, a building permit can be obtained. As part of the original agreements with the developer, Mr. Burrow said they would require a release for compliance with the covenants and restrictions so the developer would have to submit a letter confirming the acceptance of whatever uses are on that proposed lot. He then reported that they have not yet turned over the association to the owners of the lot.

A motion was made and seconded (*Sharkey/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, a motion was made and seconded (*Wolgamood/Sharkey*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request to subdivide Lot 9 of Eastland Industrial Park be approved in accordance with the Staff Analysis. The motion was carried with a unanimous roll vote.

6. The application for a zone map change from R-2 to B-3 for *Elena Moreira* on property located on the Northeast corner of CR 20 (Mishawaka Road) and Paul Street in Baugo Township was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #28295CR 20-110404-1*.

Mr. Nemeth then read and submitted a letter in opposition to this request from Susan Elliott and Frankie Higgins [*attached to file as Staff Exhibit #1*] who are concerned about traffic safety. Also read and submitted was a letter in opposition from Sharon Hayes [*attached to file as Staff Exhibit #2*] who in addition to traffic safety is concerned about paint fumes and antifreeze draining on the road.

According to Mr. Nemeth, one option to establish both land uses on the property would be the PUD process. The planning staff has not discussed if they would support a PUD, but he said typically they do not support residential with heavy commercial/ industrial zones. However, he did say that PUDs cost more and the process takes longer. Applying for a Use Variance before the Board of Zoning Appeals would be a second option, which costs less and he said a decision would be made next month. Again, he said the staff has not discussed this, but the staff and Board of Zoning Appeals typically do not support Use Variances as the criteria you have to meet is very difficult.

The use of the B-3 property (Northwest corner of CR 20 and Paul St.) was questioned by Mr. Doriot and Mr. Nemeth said it is a garage and residence. If they apply for a PUD, Mr. Doriot said he believes they would be required to dedicate 60 ft. of right-of-way on CR 20. He is not sure they could go with a PUD unless the Highway Dept. would grant them a variance.

According to Mr. Burrow, the subdivision ordinance does allow for the Plan Commission to have some leeway with the street standards.

Present on behalf of this request was Elena Moreira, 56387 CR 15, Elkhart. She said the proposed use of the property is mainly for storage in the fenced area in the back yard. They are not planning on making any major changes to the property other than putting gravel in the back yard area. They would use the existing driveway with no access off of Mishawaka Road.

Mrs. Moreira feels this is a reasonable rezoning request as there are business and manufacturing properties in the surrounding area. They also would like to rezone the property because they need the space and they want to comply with all of the county's rules and regulations. They have had complaints so they want to be considerate of their neighbors, but still be able to use the property for their auto repair shop.

With regard to the complaints, Mrs. Moreira said they do no work whatsoever on the road. The work is either done in front or inside the building, which is not on the subject property. The M-1 zoned property where the building is located was then pointed out on the aerial photo. She also pointed out where delivery trucks pull in and where people park. She said it's not true that they spill antifreeze on the road because they do nothing on the roads. She then reported that one of the complainants is actually the owner of the junkyard located to the north. They have been trying to

buy that property for more space for their business, but she said they are not financially able to do so at this time.

Mrs. Moreira said they were not aware they could not have anyone living in the house in the front of the property. They bought the property in 2007 and she said the house has been rented since that time. Since they are just planning to use the back yard she requested they be allowed to continue renting the house. If the property is rezoned, they would be able to put more cars in the back yard and have the driveway free for anyone to pull in. She is at the property quite a bit and she does not recall ever having the road blocked. She did say, however, that delivery trucks pull in at times where it is convenient for them.

Mr. Yoder asked if all of the cars parked in front to the street side of the building are for employees. The petitioner said some of the cars are waiting to be worked on or for customers to pick up. Since the complaint was filed, she said the parking area (north of the subject property) has all been cleared out and there are no vehicles on the property with the house. She also clarified that the parking along the road on the property to the north is for customers.

When the number of employees was questioned, the petitioner said just one.

Mr. Sharkey's concern is that the petitioner has been told about a lot of different options about living in the residence, and if rezoned to B-3, he feels they need to be consistent by saying it should not be used as a residence. He then asked Mrs. Moreira if that changes her decision on wanting to rezone the property and she said no because they need the space for the shop. She said it benefits them more to have the property zoned B-3 than it does to have someone living there. However, she did point out that the owner of the B-3 property on the opposite (west) side of the street lives in that residence so she was under the impression they would still be able to have someone occupy the house on their property.

Mrs. Wolgamood asked Mrs. Moreira if that property is completely used for residential purposes with no business and she said yes. Most likely, Mrs. Wolgamood said that property is considered legal non-conforming so living in the residence would be permitted as long as it continues to be a residence in that B-3 zone. If they change the zoning like the petitioner is proposing, Mrs. Wolgamood said they would have to choose and be in compliance with one or the other and Mr. Nemeth said that is correct.

Mr. Burrow said it was their understanding the petitioner wanted to be able to display cars for sale and that is the only reason she needs a B-3 zone. She would be allowed to store vehicles that are part of a business in a B-2 zone and he said residential is also allowed in a B-2 zone.

Mr. Sharkey wondered if the petitioner needs some time to decide on which option she would like to pursue.

If they could find a zone that would allow her to store the cars there prior to and after they are worked on and allow her to rent the house, Mr. Yoder asked if that is what she would like to do and Mrs. Moreira replied yes.

Mr. Kolbus advised that she would not be able to sell vehicles from this site and the petitioner said that is fine. When asked if they sell cars, she said it is just auto repair.

After consulting with Mr. Kolbus, Mr. Burbrink said the petitioner could voluntarily ask to amend her request from B-3 to B-2 at this hearing. Mrs. Moreira then requested to amend her application to rezone the subject property from R-2 to B-2 rather than B-3.

Present in opposition to this request was Rosa Winings, 57559 Paul St., Elkhart. She said there is a hazard because Paul Street is always blocked and there have been times when she has been unable to turn. She then indicated that there is currently a car on site for sale and she has also

seen them working on cars in the street. She agrees with the owner of the junkyard (Frankie Higgins) and said she is opposed to this rezoning request.

In rebuttal, Mrs. Moreira said they do not have cars there and they do advise their customers to pull up into the parking area in the front. She said they do not let anyone sit out on the street. If the property is rezoned, she said there would be room to park all of the cars in the back yard and there would no issue of anyone having to park on the side of the street. They do not block that road, but she pointed out that you can have that on any side road at any business.

Ms. Winings was asked by Mr. Doriot if she ever called the Sheriff's Dept. when the road was being blocked and she said no.

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

During discussion, Mr. Nemeth felt that tabling this request would be a good idea so the staff can make sure they can comply with the standards of a B-2 zone.

Although relevant to the hearing, Mr. Kolbus explained that a number of the issues brought up by remonstrators are really Code Enforcement or Sheriff's Dept. issues that may be handled through other avenues.

When you make changes to property, Mr. Burrow said the ordinance requires a site plan to review and evaluate whether or not they can meet the criteria. If the petitioner cannot demonstrate that she has adequate area for unloading and loading, he said technically she is not suppose to establish that use on that property. Because it is a commercial use, he said the staff will ask them to comply with the commercial standards.

When Mrs. Wolgamood asked the petitioner if there is city water and sewer to this property, she replied no. On any use change, Mr. Burrow said the Health Department would check to see if they comply with the septic code.

Mr. Yoder advised the remonstrators that it is appropriate to call the Sheriff's Department if the road is blocked, and if there are issues as to how the site is being used, it is also appropriate to contact Code Enforcement. Rezoning this property would not solve that issue, but he thinks that approving the rezoning would have a good chance of improving the situation based on the petitioner's comments.

Mrs. Wolgamood wondered how one employee can acquire and work on that many vehicles at one time where they need additional storage. It was then clarified that there is one employee in addition to the petitioner's husband working on the vehicles. Mrs. Moreira also explained that some of the cars sit there while they are waiting on parts to repair them.

The Board examined said request and after due consideration and deliberation, a motion was made by Mr. Yoder that the Advisory Plan Commission recommend to the Board of Commissioners that a zone map change from R-2 to B-2 be approved as voluntarily offered by the petitioner.

Prior to a second, Mr. Nemeth again recommended they table this request to allow the staff time to verify that the standards can be met.

Mr. Yoder's motion then died for lack of second.

A motion was then made (*Wolgamood/Doriot*) that this request be tabled by the Advisory Plan Commission until the June 9, 2011, Plan Commission meeting. With a unanimous roll call vote, the motion was carried. It was also clarified that the petitioner has indicated the R-2 property is now vacant of all vehicles.

7. The application for a zone map change from B-1 to B-3 for *Henry & Martha Towne* on

property located on the West side of Nappanee Street, 146 ft. South of Pennsylvania Ave. in Baugo Township was presented at this time.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #1405SNappaneeSt-110404-1*.

In the future, Mr. Doriot asked if the staff could provide the zoning of adjacent city property and Mr. Kanney said yes.

Present on behalf of this request was Henry Towne, 1405 S. Nappanee St., Elkhart. He operated Towne, Inc. for 26 or 27 years as a restoration company. Two of his sons are also involved and the business grew so they had to move out of the building to Osolo Road. For the last year and a half he has rented the building to Greg Weaver, the owner and operator of Autobahn. Mr. Weaver repairs all of his vehicles and Mr. Towne said he has numerous accounts with repair shops in the area.

Mr. Towne wants to rezone this property so Mr. Weaver can continue his business on this site. He would like to purchase import cars, and after repairing them, he would offer them for sale. This lot is only 100 ft. wide so he said there could only be four or five cars there at the most. Mr. Weaver also sells cars on the internet and Mr. Towne feels this business is a good fit for the area as Nappanee Auto Sales is next to this property, which is probably zoned B-3. Not only would this be a very lucrative business for Elkhart, he said it would also provide more jobs for the Elkhart area.

The location of Nappanee Auto Sales was questioned and Mr. Towne said it is north of the subject property on the corner.

Also present was Greg Weaver, owner/operator of Autobahn Automotive. He explained that the proposed change he would like to see take place would help expand operations for Autobahn. He recently started a separate entity, Autobahn Imports, LLC, and his primary goal is to buy and sell a small volume of compact European vehicles to the community. Basically, he currently operates with the repair and Autobahn Automotive in the back third of the building. He said there is ample parking at this facility for 12 to 13 vehicles, but the lot remains empty as shown in the photos (aerial). His turnover time is excellent and he said they never have cars piled up waiting to be repaired.

If rezoned so he could start a small used car lot, Mr. Weaver said he would definitely have the need for more employees right away. He and his stepson currently operate Autobahn Automotive, but they cannot do the import business and used car sales legally so this zoning request is absolutely necessary to move forward. Autobahn Automotive currently puts thousands of dollars into the local economy, both through their parts, suppliers, and professional services they need to operate their business daily. By having a separate entity opened up, he said that revenue that will come back into the local economy would be two-fold so he feels this makes good business sense.

There were no remonstrators present.

Mr. Doriot clarified there would be no more than five vehicles for sale on the property at a time and Mr. Weaver said that is correct. With the construction projects currently planned for SR 19, and the fluctuation in the automotive repair market, he said this would allow him to expand and make up some of his lost revenue.

Mr. Doriot then questioned the weekly volume of vehicle repairs and Mr. Weaver said currently 25 to 30.

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

When Mr. Weaver was asked if he understood the difference between a straight rezoning

and a DPUD, he replied no.

Mr. Kanney explained that part of their concern is that the area is completely paved right now. It is difficult to ascertain where the septic is or to determine if there is hook-up to the sewer. He also stated that he has been informed that the building is not used solely by one business and at one time there was a tanning salon in the building. If true, this would result in more customer and employee parking. Mr. Kanney pointed out that property zoned B-3 can have a wide range of uses, although he cautioned that there are limitations. The property in question is two small residential lots that they are trying to convert, which has been done up and down Cassopolis Street.

Mr. Sharkey commented that they are trying to control the future of what might be there, but Mr. Kanney said he doesn't want anyone to leave thinking they can do anything they want under the B-3 zoning. Because the site is so small, he said it's probably in violation of every building setback.

It was then clarified that B-3 does allow for sales, but not residential uses.

Mr. Towne was asked how many business are currently operating on this property. He replied that while a tanning business had been operating on that property, the business owner had since closed the business and left. He then went on to share with the Board his belief that this building was well-suited for a car repair business. He explained that the septic is in the rear and is pumped every two years. He also provided an explanation for the paved lot, which is because he did not want to do any landscaping. He expressed his belief that there is no reason why this property cannot be rezoned from B-1 to B-3, regardless of who occupies the building, as there are other businesses in the area. He stated that he was seeking a B-3 zoning so that autos could be repaired, and occasionally sold, from that location. Mr. Weaver then interjected that there would be no other business there and Mr. Towne agreed.

Mr. Kolbus questioned if the Board's concern could be handled through the use of a commitment restricting the property to one use.

Mr. Miller indicated that he is concerned with the size of the lot itself. According to the staff, he said the property is already limited as far as size and usability. Mr. Towne explained that currently there is space for up to twelve vehicles. He informed the Board that there is access from the back alley which dumps out onto another road eliminating the need to go out on S.R. 19.

Mr. Doriot determined that a fireworks store could be located in a B-3 area and questioned if there was some reluctance to grant the request due to relinquishing total control. He then went on to remind the board that the petitioner has offered that he would have no more than five cars, and he wondered if that was sufficient basis for a commitment.

A photo of a front view of the business was then displayed.

Mr. Kolbus explained that there are a number of pending changes regarding the State zoning law which take effect July 1, 2011, and one of the changes allows for conditional rezoning. According to Mr. Kolbus, the Plan Commission can now require, or accept, a written commitment from a petitioner on a rezoning. He believes that this might be an appropriate option in cases where there are only a couple of minor issues involved. It would seem that this case, which involves five cars and one business, is ideal for a commitment versus a PUD. Mr. Kolbus relayed that the law states that the commissioners have 90 days to act after the Plan Commission makes a recommendation, which in this case would be August. Effective July 1st, the Plan Commission is allowed to accept commitments while the matter is pending before the legislative body. He went on to explain that the request can be tabled or it can be sent on to the commissioners. It is possible that the property could be rezoned, without going through a full-blown PUD at the July meeting, if the commissioners accept the commitment. He cautioned that a commitment is an option only if there

are a couple of simple conditions. However, it is Mr. Kolbus' understanding that Roger and his staff have additional concerns, involving the overall intensive use. If there are just a few simple conditions, Mr. Kolbus thinks the request can be accommodated on July 1st.

Mr. Towne was asked how many employees he had when his business was located at that address. He estimated approximately seventeen employees, with only eight to ten on a daily basis as the others were out in the field, checking in only on Mondays and Fridays. Mr. Towne stated that the location is serviced by city water, but not sewer. Rather, he has a septic tank which is pumped out bi-annually or sooner, if the septic starts flowing out.

Mr. Doriot expressed some concern that once this goes to a PUD and is reviewed by the Health Department they will inquire about his septic system. When they become aware that the septic system is paved over and it will then become necessary to hook up to municipal sewer. Therefore, he believes a PUD would ultimately be detrimental to the proposed business.

Mr. Kolbus stated that the other option is to send the request to the commissioners with the expectation that the commissioners will require him to give a commitment on July 1st.

Mr. Yoder asked if it was appropriate to ask for the commitment letter today. Mr. Kolbus responded that Mr. Towne would need to know what he was looking for and felt that it would be appropriate for the Board to table the request. Doing so would allow the petitioner to work with the staff on the conditions they want.

Mr. Weaver acknowledged that there are questions and/or concerns on both sides of this meeting. He expressed a little frustration, as time is of the essence for his business and he states that he has been waiting to find out if he can move forward and become a valuable member of the Elkhart Community or whether he will ultimately have to leave Elkhart County because he is unable to do business here. Mr. Weaver stated that he would like to be given the opportunity to address any concerns so that he could continue to do business in a reputable manner. He inquired if there was anything he could possibly do, including a verbal commitment. Mr. Kolbus advised Mr. Weaver that while he could work on preparing the commitment, the commitment could not be accepted until July 1, 2011.

Mr. Yoder stated that he is not prepared to move forward with a commitment at this time. He indicated that if the Board could decide on what conditions are expected, a commitment letter could be drafted for consideration by the Plan Commission after July 1st. He proposed that they be allowed to start using the property based on those conditions up to the point that the commissioners rule that it is not allowable, which he feels is not likely to occur if the Board has given prior approval.

Mrs. Wolgamood asked Mr. Weaver if he was currently operating from that location. Mr. Weaver indicated that at this time, he repairs vehicles in the back 1/3 of the building. He wishes to add sales, which means he would rent the entire facility.

When asked if he wanted to add two employees, Mr. Weaver clarified that it was his desire to add four employees. He would like to add two employees to assist with sales and two additional mechanics.

Mr. Doriot offered suggestions for items to be addressed in the commitment letter. He suggested that there be no more than five cars for sale and that vehicles on site, including employee vehicles, not exceed the number of parking spaces. Petitioner stated that there would be no more than six employees. He clarified that he would be the only tenant and that his plans are to purchase this property.

Mr. Kolbus suggested the request be tabled until June. This would allow time for the

petitioner to work with the staff in establishing appropriate conditions. The conditions can be presented at the June hearing, at which time the petitioner can convey his belief that the conditions seemed appropriate based on the public hearing last month. If the Board agrees that the conditions are appropriate they could require those conditions in a commitment form. Mr. Kolbus stated that the commitment letter cannot be designed today.

Mrs. Wolgamood agreed and acknowledged that the request should be a DPUD. However, she recognized that the commitment letter is another option. She asked if the zoning ordinance would need to be amended to accept this new law. Mr. Kolbus indicated that the Rules of Procedure would need to be amended rather than the zoning ordinance. He advised the petitioner that while the law does not take effect until July 1, the request can be tabled and the petitioner can begin to work on the commitment letter.

Mr. Yoder recommended that the item be tabled, and further recommended that the petitioner work with the staff concerning conditions to be included in a commitment letter. He stated that there would be some restrictions on the rezoning and indicated that when it is brought back next month the Board will review the letter. If approved the commitment letter will go to the County Commissioners sometime after July 1.

Mrs. Wolgamood asked if that was a reasonable option. Mr. Kolbus stated that the petitioner would need to work with the staff to complete a site plan and come up with conditions which would then be presented to the Board for final approval. Upon final approval the conditions would be put in a letter form that has been approved as part of the Rules of Procedure and can then be presented in July for formal approval. Mrs. Wolgamood was concerned that there may be some misrepresentation about what could be accomplished by July 1.

Mr. Yoder inquired if the staff was clear about what the concerns are as relating to the petitioner's request. Mr. Kanney acknowledged that there is some concern about the need for variances due to the fact that the lot is extremely small. He went on to say that he is in support if the petitioner wants to do certain things. However, if they violate setbacks the Plan Commission cannot overturn that.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Miller*) that this request be tabled until the June 9, 2011, Plan Commission meeting. The motion was carried unanimously.

8. Mr. Burrow presented a request to allow for a minor change to an assigned plat for *Michiana Vinyl*. He stated that a minor change to the easement is noted on page two of the plat. The change requires deleting the easement and moving a drainage easement, as noted on the document dated May 3, 2011. He stated that this request is a little unusual because everything is signed.

Mr. Doriot moved to accept this request as a minor change and Mr. Burbrink seconded the motion.

Prior to voting, Barry Pharis said it is his opinion that this is a minor change; however technically it goes beyond this. He went on to explain that the original plat was signed by a PLS who previously worked for him. He is no longer in practice in Indiana. Therefore, in his opinion, changing the line drawing without changing the signature block causes them to be in violation of Title 865-012? Therefore, he requested that they ask the commissioners to re-sign the plat so that it can be re-signed by the clients and recorded.

Mr. Doriot added to his motion that the plat needs to be resigned. Mrs. Wolgamood

seconded the amended motion, which carried with a unanimous vote.

9. Copies of a proposed text amendment to *Specifications L – Flood Hazard Control* in the zoning ordinance were submitted to the Board [attached to file as Staff Exhibit #1]. Mr. Burrow proposed that the Plan Commission set this amendment for public hearing on June 9, 2011, which would allow time to get the commissioner's signatures on July 5th. It would then take signatory ordinances to the town of Bristol and town of Middlebury. He stated that for unknown reasons, Millersburg and Wakarusa are treated as separate entities so he has added them to the text of the ordinance.

Mr. Yoder asked what would happen if the county commissioners fail to act and Mr. Burrow said everyone in Elkhart County would have to seek private mortgages, as their mortgages would all become due. He went on to say that they would lose their right for SBA loans, as well as any kind of federally secured mortgage system.

Mr. Yoder asked if it was possible for the commissioners to modify the zones that are being designated. Mr. Burrow stated that if they wish to spend the time and money they may request that FEMA modify the zones. He went on to explain that such a request would require a new hydrologic design and modeling and submission to FEMA and through the DNR.

In explaining the procedure that happens now, Mr. Doriot said when you go for a mortgage and they look at a map, if your acreage touches water they can say it is in a potential flood zone and then you are required to have flood insurance. At that point, you either give an elevation certificate that the mortgage company may accept, or they may require you to get a Letter of Map Amendment. That permanently takes the structure out of the flood zone so the next person getting a mortgage does not have to go through this.

To add to that delay, Mr. Burrow said an underwriter can require flood insurance, even if you're not in a floodplain as they are responsible for the insurable risk.

Mr. Yoder said this would very likely put a large amount of homes into a flood plain; however, Mr. Burrow said as many houses are being taken out as have been put in.

Mr. Sharkey said this is just the first step of coming up with new maps and Mr. Burrow said yes, and a new ordinance. Mr. Doriot said we have new maps, but Mr. Burrow said they have not been adopted. This will adopt the new maps and the model ordinance required by FEMA.

According to Mr. Burrow, there are very few areas where they did actual modeling. He also said that FEMA requires the local county to review all floodway approvals, and they are suppose to certify that it is in compliance with our ordinance and the safety aspects of the national flood insurance program. He then indicated that a fee will probably have to be established, and that a consultant will have to be hired to assist the staff with the review of those applications. The staff does not have the ability to review hydrologic modeling and he said it would take time for them to get that certification.

Mr. Burrow said they are making strides in enforcement because the cost associated to the individual homeowners is substantial. Once the foundation is in, he said they will now have to have an elevation certificate, which is not required at this time. When Mr. Doriot asked if they need elevation certificates for every single structure, Mr. Burrow clarified just in the floodplain areas.

Barry Pharis was in the audience and he went on to explain the process he went through on the last two that he submitted.

Mr. Doriot moved to set the proposed text amendment for public hearing at the June 9, 2011, meeting. Mr. Miller seconded the motion, which carried with a unanimous vote.

10. *Town of Middlebury Comprehensive Plan.* Mr. Kanney indicated that he had anticipated

seeking permission at today's hearing to set up a public hearing regarding the comprehensive plan for the Town of Middlebury. However, at this time, while he has some working documents, he does not have a copy of the comprehensive plan. He stated that a public hearing will need to be held, just as it was for Syracuse and Wakarusa. He advised that it does include some land outside of the town limits. After the public hearing, the plan will be taken to the commissioners and the Town of Middlebury for adoption.

Mr. Nemeth presented the plat of Farmington Subdivision that was approved in 2007, but never recorded. He sought permission to have it signed which would enable him to present it before the commissioners and have it recorded. According to Mr. Nemeth, nothing has changed and it does meet the ordinance.

Mr. Kolbus explained that there have been a number of changes in State zoning laws. He asked the Board if they wanted to review the changes during a workshop in June or if they would prefer to have this information presented at the Plan Commission meeting in June. Mr. Kolbus advised that there are a number of issues that impact the Plan Commission besides the commitment issue. He stated that he could present the information in approximately fifteen minutes.

Mr. Doriot suggested they schedule the presentation for the June meeting.

Mrs. Wolgamood asked if the information would be pertinent to BZA members. Mr. Kolbus advised that the BZA members have their own set of changes which he will review with them at their June meeting.

Mr. Pharis has a potential client with a 1992 PUD and he would like to seek an amendment. He discussed the situation with the staff who suggested that they either upgrade to a DPUD or ask for a straight rezoning. While he likes DPUDs, he finds it difficult to work with DPUDs when dealing with a retrofit, due to the fact that it requires working with the Health Department, Highway Department, and Soils and Conservation. He states that those situations are very demanding and involve a great deal of work for which the client cannot be charged. He asked if it was possible to file an appeal with the Plan Commission to amend a PUD. If the Plan Commission doesn't agree, they could deny it, leaving him with two other options, rather than starting with a DPUD.

Mr. Burrow replied that it is possible to request deviations from the PUD and developmental standards. He went on to say that people have done that and applications have been accepted. However, he cautioned that an explanation is required concerning why the applicant cannot comply with the PUD. He explained that it is filed as a fresh DPUD, which should include an explanation concerning why they are requesting permission to be non-compliant.

Mr. Pharis explained that his potential client would like to put two billboards on the property, which is permitted. Mr. Burrow explained that the zoning district that they are within would allow them to put billboards on that property, although it is generally required that they apply for a site plan. This requirement was based on the comprehensive plan that prohibited billboards on the by-pass. However, Mr. Burrow advised that there is no longer a comprehensive plan that specifically with those specifications. While he understands Mr. Pharis' position, he stated that it has generally been the Plan Commission's view that adding a billboard to the site plan would be considered a major change.

Mr. Kolbus clarified that the PUD was approved under the old PUD ordinance.

Mr. Burrow explained that deviations can be requested, and in fact have been approved. He went on to say that the PUD does not clearly state if they can have signs, and acknowledged that Mr. Pharis is asking for guidance in this matter. He advised Mr. Pharis that he should file for a DPUD. He went on to say that the structure of the original ordinances, at that time, said that once

the use is established, permits could be issued as long as the intent of the original PUD was being followed.

Mr. Kolbus asked if the original PUD restricted uses. Mr. Burrow indicated that it did not restrict uses nor the placement of a billboard. He stated that there was a site plan that was adopted. Mr. Kolbus asked if it was possible to amend the site plan. Mr. Burrow responded that there was no process for amending the original PUD. He went on to say that it stressed that if there was a change or an amendment it was necessary to go through the new process. He clarified that he has no objection to the submission of a site plan showing just the signs.

Mr. Kolbus confirmed that Mr. Burrow was recommending to Mr. Pharis that he file under DPUD, with a site plan and statement that the other items will not be included because the site plan is already developed. Mr. Burrow stated that the platting fee would be waived since it is already platted. Mr. Pharis indicated that he would submit a new CAD site plan to the Plan Commission.

11. A motion to adjourn the meeting was made by Mr. Sharkey and seconded by Mr. Miller. With a unanimous vote, the meeting was adjourned at 10:47 a.m.

Respectfully submitted,

Teresa McLain, Co-Transcriber

Kathleen L. Wilson, Recording Secretary

Mike Yoder, Chairman