

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 12TH DAY OF APRIL 2012 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, Doug Miller, Dennis Sharkey, Steve Warner, Roger Miller, Blake Doriot and Mike Yoder. Staff members present were: Chris Godlewski, Plan Director; Mark Kanney, Planner; Duane Burrow, Planner; Kathy Wilson, Office Manager; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Doriot/Warner*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 8th day of March 2012, and of the Special Meeting of the 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 (*Doriot/D. Miller*) that the legal advertisements, having been published on the 31st day of March 2012 in the Goshen News and the 1st day of April 2012 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

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

5. The application for multiple amendments to the text of the *Elkhart County Subdivision Control Ordinance* listed as follows: **Section 3.11 APPLICATION FOR SECONDARY APPROVAL**; **Section 3.15 SECONDARY APPROVAL** by adding Subsection B – ACTION WITHOUT MEETING FOR MINOR SUBDIVISIONS and amending Subsections C and D; **Section 3.16 NOTICE OF DECISION** by amending Subsections A, B, and C; **Section 3.17 PROVISIONS FOR COMPLETION OF IMPROVEMENTS**, Subsection A - COMPLETION OF IMPROVEMENTS; **Section 3.23 RECORDING OF SECONDARY PLAT**, Subsection A – SIGNATURES REQUIRED and **Appendix B SECONDARY PLAT CHECKLIST** - Subsections U and V., for the Elkhart County Advisory Plan Commission for 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.

Mark Kanney stated in previous meetings they had discussed streamlining the Subdivision Control Ordinance process. Currently, it takes roughly 103 calendar days to process a minor subdivision from beginning to end. After discussion with the surveyors, the public, Plan Commission and Staff they chose to explore making it more efficient by eliminating some of the procedures. A copy of the proposed Ordinance was included in their packets along with a copy of the proposed changes.

Mr. Kanney said that Mr. Kolbus reviewed the Subdivision Control Ordinance and made the following suggestions to streamline it. They decided to focus on the Secondary approval of the Minor Subdivisions and he said, essentially, they could streamline the system by over 50 days to

make it a much more reasonable process. A Minor Subdivision is three lots or less and does not include construction of roads. The Minor Subdivision really does not require a long waiting period, but the law had prescribed that time.

Mr. Kanney noted that the majority of Mr. Kolbus' changes came in the form of the addition of a new Section in the Secondary Subdivision procedure. In Section 3.15 an item B action would be added without meeting for Minor Subdivisions. After the proper submittal of a completed application and review of all pertinent information the Director, pursuant to Indiana Code 3674.710, may grant or deny Secondary approval of a Minor Subdivision. In granting Secondary approval, the Director shall sign the plat on behalf of the Plan Commission. No notice or hearing is required and the provisions of these regulations of the Plan Commission Rules of Procedure concerning notice and hearing do not apply to Secondary approvals of Minor Subdivisions by the Director. The Director may transfer without first making a decision when the Director determines that it would be in the best interest of all parties or upon written request of the applicant.

Mr. Kanney stated that today when filing a Secondary for a Minor Subdivision it must be filed for the once a month meeting of the Plat Committee. After that has been accomplished, it has to be filed for Secondary approval by the County Commissioners; and in a sense, what the County Commissioners do is accept the frontage right-of-way. The Staff and Mr. Kolbus came to the conclusion that the County Commissioners do not need to sign off, and the Plan Commission has all of the authority to accept right-of-way. The only thing they need to do is to designate the Director of Planning to have the authority to sign it based on the review of the plat and it would not be done in a public meeting, but would be done in the public office.

Mr. Kanney informed them that they amended it so it would not be effective until July 1st. He explained that this is one of the kind of ordinances where the procedures that go with it, which are not laws, but how the Plan Commission administers, would be more detailed than the law itself. He said in between time, if they chose to accept this, the Staff could sit down with the Surveyors and come up with a workable user friendly system ensuring that everything was correct.

Mr. Doriot said in the 20 years of his business, there had only been a couple of complaints after the notification. After Primary approval, Mr. Kanney said there is a State law that requires a 10 day window for remonstrance. Since a Minor Subdivision does not go to a public hearing, people are notified after the decision is made and they have 10 days to appeal the approval. The State has recently reduced it to five days, but that opportunity to appeal will still be in place. He pointed out that Secondary approval is purely an administrative process. Mr. Kolbus stated that if the conditions of the Primary approval are met it has to be signed off on and granted. He said there is no reason to delay it, so the Director could just sign off on it.

Roger Miller asked what would be the next step and Mr. Kanney told him this is a public hearing right now, so they could take public comment. With the Plan Commission's approval, they could make a recommendation to have the County Commissioners change the Ordinance.

Mr. Sharkey felt streamlining minors would be good, because it takes too long to go through the process.

Barry Pharis, Brads-Ko Engineering & Surveying, 1009 S. 9th St., Goshen, said he does not do a lot of Primary and Secondary Minor Subdivisions, but strongly encouraged the Plan Commission to give this request consideration and pass it forward with a favorable recommendation for several reasons.

He stated that the 103 days really becomes four months. When a client comes to the surveyor/engineer the Minor Subdivision is not submitted immediately because there is also field

work to be done. He said in some cases it takes up to five months. If they show up the day after filing, they would have to wait a month for the next filing. He said the process still keeps the public very much involved. When the surveyors come to the Plat Committee and the request is approved, the neighbors within 300 ft. receive a written notice, so they have an opportunity to appeal that decision. After Primary approval is granted that allows them to come back for Secondary approval.

Mr. Pharis stated he had not heard anything about a time limit set for the Staff, so that if it is submitted they would have 10 to 15 days to respond. He said he was fortunate to be in this business when the Plan Commission meetings had 30 subdivision requests submitted in a day and he had days where he had given seven presentations. If they get to that point again, without some definitive date or timeline from submittal, the petitions could be put at the bottom of the stack. He suggested some requirement be placed on the Director to respond within a reasonable period of time.

Mr. Campanello asked what the delay for Staff would be. Mr. Pharis informed him they would have to review the plat, the application, the Primary, the findings of the Plat Committee, and then sign it.

Mr. Doriot and Mr. Pharis discussed the need for a reasonable timeline for the Staff to review the Secondary. Some plats will be simple and some will be more complicated with some issues such as drainage. Mr. Pharis reiterated that he strongly encouraged them to approve this item today.

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

Mr. Yoder asked about the time to respond and whether it is in the Ordinance. Mr. Kolbus stated that if this was approved by the Commissioners they would have to amend the rules. In the packet of material that Mark Kanney distributed where the changes are highlighted in red, the last page is a proposed amendment to the Plan Commission rules which authorizes the Director to grant secondary approval of minor subdivisions. He did not think it was appropriate to do that at this time, until they knew if the Ordinance would pass. He suggested they could add a sentence to that imposing a reasonable time limit. He would rather it be in the rules that way if the Plan Commission finds it is too long or too short it would be easier to correct going through the rules rather than changing the Ordinance. He recommended that the Staff meet and come up with a timeline to bring that proposal back to the Plan Commission.

Mr. Kolbus pointed out that there were a few minor corrections that needed to be made to the amended Ordinance to make it consistent with what they have.

In Section 6, 3.16 and 3.17 is to be deleted as they now exist. He asked that they add to that to delete 3.23 A. as it now exists. He then submitted a copy of that change for the record *[attached to file as Staff Exhibit #1]*.

The second change is on Section 8 where it says delete 3.23 A. He said that is actually the new 3.23 A. so he asked that be changed to read, *add* the following text *[attached to file as Staff Exhibit #2]*.

Mr. Kolbus clarified that Mr. Godlewski's title is actually Plan Director, so on Page 2 of the highlighted handout under 6.02 Definitions, add the word *Plan* Director. Then in the proposed draft Ordinance, he said a new Section 12 should be added where the current definition is deleted, and replaced with the new definition, which adds the word Plan Director. A copy of that change was also submitted for the record *[attached to file as Staff Exhibit #3]*.

On the last page of the ordinance, Mr. Kanney had Section 12 establishing the effective date as July 1, 2012 and Mr. Kolbus advised that be changed to Section 13 *[attached to file as Staff Exhibit #4]*.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Yoder/Doriot*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved including the clarifications as outlined by Mr. Kolbus.

Prior to voting on the motion, Mr. Sharkey pointed out that the document states Plan Director or his or her duly authorized representative. Mr. Kolbus clarified if someone would be approved for a Minor Subdivision and Mr. Godlewski is out of the office, he can designate one of the other Planners to sign off for him.

The motion was carried with a unanimous roll call vote.

It was noted that the Commissioner's meeting would be held the third Monday of May.

6. The application for a zone map change from A-1 to a Detailed Planned Unit Development-B-3 to be known as **AGDIA DPUD**, for E & C, LLC represented by Wightman Petrie, Inc., on property located on the Northeast corner of CR 1 and CR 10 in Cleveland Township, was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 1-120305-1*

Mr. Yoder asked the name of the company in the M-1 area (shown on the aerial) and Mr. Burrow stated a three season enclosure business was at that location. He said there had been some expansion at that location beyond the scope of County standards.

Mr. Sharkey asked about the location of the well field. Mr. Burrow pointed it out, and said the time of travel would not be a problem for that well field.

Ken Jones, Wightman Petrie, 4703 Chester Drive, Elkhart, was present representing AGDIA. He noted that Chet and Jane Sutula, founder and past Chief Operating Officer of AGDIA, Inc., were present along with Matt Shuster, engineering designer of Wightman Petrie; Dave Ogle from EDC; and Jim Skillen, who has been working as a real estate consultant on the project.

Mr. Jones said he is requesting a B-3 DPUD for this agri-technology business which operates a high order lab and provides services worldwide. They have a significant group of offices and a small assembly operation where they are putting test kits together and shipping them. They selected a B-3 zoning because it allows a mix of professional office, laboratory work and a minor assembly operation. He said the site is a substantial property in Cleveland Township and all together the company is buying over 50 acres, but they are rezoning only 45 acres with the remaining acreage to be used for farming. The current site is a 7.5 acre parcel and there are adjoining properties that have been well developed residentially. He felt for their ability to grow to the point where they may have an impact on those property owners, it seems logical that they move.

Chet and Jane Sutula started AGDIA around 30 years ago. The focus is to serve worldwide customers in agriculture through development and production of practical high quality products and services to detect and identify plant pathogens, plant traits and insect or pest and manage crops. They work closely with USDA and Animal and Plant Protection Service. They currently have around 55 employees, but they need to grow this business to 100 employees and that would not be possible at their current location. Their average compensation is significantly higher than the average in Elkhart County. Most of their employees are scientists, engineers, agricultural specialists and highly trained technicians. This is the kind of company Elkhart County needs and they are planning a multi-million dollar investment in Cleveland Township. According to the formulas that the EDC uses 100 jobs will generate 74 collateral jobs adding another \$5.4 million in salaries and

benefits. There will be over \$20,000,000 annually coming into the local economy because of this thriving business.

The building design will include about 40,000 sq. ft. on the footprint and there will be additional square footage on the second floor where the professional offices and management will be located. In addition to the main building, there will be a small accessory building for maintenance equipment and a number of greenhouses where specific plants will be propagated and tested. Mr. Jones said the site would be redeveloped using a prairie mix low grow, low maintenance grass specifically planted to be compatible with this site and they are working with Ancon on the planning scheme.

Mr. Jones stated the access point would be to CR 1 directly due west. They are employing the latest design techniques in managing stormwater on the site and they are not planning to have any release to any county or public water on the site. He said they might consider having some discussion with the Stormwater Board about the potential of a waiver of the current assessment, because they are going to plan that feature and be able to control the stormwater.

Mr. Jones said the B-3 DPUD would have all the surface drainage collected onsite.

Mr. Jones said the only requested deviation is to allow them to specifically design the site and vary from the B-3 standard that requires one space per every 300 ft. for parking. He said they would have another 40 or more parking spaces they do not need.

Since there may be 100 employees, Mr. Sharkey asked if they worked different shifts. Mr. Jones said they are not different shifts, but the company feels comfortable that the 72 parking spaces plus 4 is all the parking they will need and they specifically designed it that way.

Mr. Jones believed that the company requires a rural setting, because they are an agricultural related business. The business has a logistics constraint that requires a west/northwest Elkhart location. The work that occurs in the AGDIA lab affects logistics for agricultural products worldwide. For example, if they have a customer waiting for a test that has a shipload of potatoes in Newfoundland, that shipload of potatoes cannot move until AGDIA says they pass the disease screening test.

The location on the northwest side of Elkhart is ideal because they are sent samples that have to go to the lab immediately and go through an eight hour process. If they do not get the delivery within the first two hours of the day they would have a problem, because the ship in Newfoundland would be left sitting there and the eight hour test process will go into the second day. They have talked extensively to their delivery people and if they would move east into Elkhart or into the city the delivery could be delayed two hours. The business needs untreated water in their laboratory and their future plans include greenhouse development, which may not be compatible with business parks. They need their operation to be isolated from other industries.

Mr. Jones said they get around five deliveries a day with five semi trucks per week. He said they currently operate a well under IDEM standards and that operation will be moved over to the new site. As far as sewage treatment, he said they are producing less wastewater than the State Board of Health says they should, but they will be sizing the system for the maximum development at 100 employees. For the onsite system, they have had the prerequisite conversations with the local Health Department and the State Board of Health and have received the design criteria that matches what has been provided on the concept plan. He said they would employ some anaerobic treatment technology on this site in addition to the standardized septic system. They are not asking to downsize the absorption field, as there is plenty of room for that and there is room to provide multiple reserves.

Mr. Jones pointed out that they do comply with Elkhart County's Comprehensive Plan. He addressed the concern about the current AGDIA site and reiterated that they cannot build this project in a redevelopment area because they need to be able to control the environment for this particular business. Mr. Jones said it would be difficult to find a 45 acre site or duplicate this site in a redevelopment scenario.

He said the Staff is concerned about what will happen to the former AGDIA building, so they are beginning a detailed planning effort with Jim Skillen of Cressy & Everett to determine the best uses for this building. Once AGDIA leaves the current site no one will be able to move into that building unless they have a special use, because the current special use does not run with the land, or the new owner may have to go to the Plan Commission for a GPUD.

Mr. Jones went on to explain how the proposed AGDIA site would comply with the Elkhart City and Elkhart County Comprehensive Plans referencing the definition of the office park use requirements. The plan growth category for Elkhart County was set aside to respect the wishes and plans of the local municipalities and the AGDIA plan represents it.

Mr. Jones reviewed his PowerPoint presentation indicating how the Elkhart County Land Use Plan compared to the AGDIA proposal. A printed copy of the PowerPoint presentation was submitted for the file *[attached to file as Petitioner's Exhibit #1]*. He stated the Plan Commission may not be able to find compatibility with every policy under Goal #1, but they come very close to complying with the principle topic, which is planned growth. He said the site would conserve open space, respect the environment and acknowledge that all of the agricultural uses would continue. There is half of the 45 acre site and the site south of the ditch that will continue to be farmed. He said they would also meet every requirement that the Elkhart County Highway Department requires them to meet.

Mr. Jones introduced Chet Sutula, 11026 Birch Lake Drive, Granger, the owner/developer, to address the neighboring property owner issue. Mr. Sutula interviewed the neighboring property owners and left contact information with them so if they had any questions they could contact AGDIA. He also offered to conduct a tour for them if they wanted to see how the company operates. He submitted a letter dated March 25, 2012, that he and Mrs. Sutula sent to their neighbors *[attached to file as Petitioner's Exhibit #2]*. Attached to this letter was a list of those neighboring property owners with their responses to their project. Out of 21, only four of the property owners did not approve.

Mr. Sutula indicated that the neighbors commented that they were relieved he was not going to develop a subdivision on that site. He said the second concern was noise, dust and hassle, but he assured them that his company would not generate any of those issues. Mr. Sutula stated that the neighborhood has a very large diversity in building type and is in an agricultural setting with no functional zoning. He feels it is important to locate the business on this property, is pleased with the compatibility, and looked forward to approval by the Plan Commission.

Dave Ogle, Economic Development Corporation, 102 W. Lincoln Avenue, Suite 210, Goshen, felt that AGIDA is one of the premiere businesses in Elkhart County. He asked for the Plan Commission Board to have the flexibility and open-mindedness to understand the impact this business has. He said it is not just about AGDIA, but the business complements other initiatives from the economic development perspective that are ongoing. Mr. Ogle felt it was important to be able to retain the intellect and wages in this marketplace. He asked that the Plan Commission decide in favor of AGDIA's request and said it would be very helpful in the world of economic development to encourage this type of growth in the marketplace.

Mr. Yoder asked if the company would be asking for any tax phase-ins. Mr. Ogle said they

are going through that process right now and they have solicited several meetings with the State of Indiana and local municipalities for that purpose. Mr. Ogle said he has been working with Mr. Sutula for about two years now on what they will be doing. He also mentioned that many of the workers come from the Kalamazoo/Galien area, so their proximity to the toll road is imperative for transportation back and forth.

There were no remonstrators present.

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

Mr. Yoder affirmed Mr. Ogle's comments from his position on the Economic Development Commission. He said he could not think of a more perfect example of long term goal for this community. This is a home grown company that is growing and providing the types of jobs that we want to provide in the community. The salary average is \$74,000 compared to the current average of \$14.00 to \$15.00 an hour. From an environmental standpoint, once this project is completed it will become a model for every industrial site. He said there would be no MS4 fee in the County. He felt they were 'hitting everything on all four cylinders', but understood the Staff's concerns. He has been to the facility a number of times and found it to be a wonderful work environment with excellent neighbors, so he recommended that they approve it. Mr. Yoder feels that this development would increase the value of the properties in the area.

Mr. Burbrink said he has been to the old site many times and recalled a few years ago they came in to request an expansion, however, the current site was too small and the Board denied the request. The Plan Commission said if they wanted to expand they would need a larger site, so AGDIA has followed that advise.

Roger Miller disagreed with Staff that it would lower the property values. He thought it would be quiet, nicer than a subdivision, and would actually increase the property values. He said the environmental impact would be very little and traffic is minimal. He mentioned, however, that he did not know how they would fit 100 employees into 76 parking spaces.

Mr. Sharkey agreed that it would be an attractive business, the location is good, and he is self conscious about his neighbors and he cares.

Mr. Yoder questioned if they should address whether there would be enough parking spaces for 100 employees or move to approve it and go forward. Mr. Kolbus noted the site plan does show expansion for parking. Mr. Jones said there is plenty of space for expansion of parking, but they would be glad to change the site plan as part of the motion. Mr. Sharkey requested that they set the space aside for additional parking if they need it.

Mr. Warner asked if there were sites for additional greenhouses, if needed. Mr. Jones pointed out on the site plan they did set aside some spaces due east of the facility where they might develop additional greenhouses and that future development was represented in the DPUD support drawing.

Roger Miller asked what assurances there were to keep pollution from getting into the stream. Mr. Jones said they would be happy to meet with anybody that they have concerns with. He said his design concept assures that they kept the parking lot discharge and roof discharge completely out of the creek. Mr. Sharkey stated that was the responsibility of the storm water department, so he expected they would address those issues. He felt this business is environmentally sensitive.

Mr. Yoder was ready to move forward with a favorable recommendation, but he was unclear on the need for the variance from the Highway Department and how it relates to potential

requests from the Plan Commission to plan for more parking.

After a brief discussion regarding increasing the parking, Mr. Jones explained it would be a variance to the developmental standard in the B-3 area. He reiterated that they already show an area for growth on the site plan and Mr. Kolbus clarified if they find the need to increase the parking they would not be required to come back to request it.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Yoder/Campanello*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved with the requested Variance to the parking area standards. The motion was carried with a unanimous roll call vote.

7. The application for a zone map change from A-1 to B-1 for **Cory N. Myers**, on property located on the East side of S. Indiana Avenue, 250 ft. South of Waterford Street (CR 40) in Olive Township, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #104S IndianaAve-120228-1*.

Cory Myers of 104 S. Indiana Avenue, Wakarusa, stated that the primary use of the property is to store indoor vehicles in the two structures referred to in the Staff Analysis. He said there would be one to two cars maximum housed inside the building for auto sales use. The housing of the vehicles will be on a very low scale without much overhead. He mentioned that he will need to obtain a dealer's license also. He said no vehicles will be sitting on the property with 'For Sale' signs.

Karen Housour, 208 Indiana Avenue, Wakarusa, lives directly south of Mr. Myers' residence. Mrs. Housour said she and her late husband had done significant development on Indiana Avenue and rezoned an area just east as residential. She stated that the two buildings on the property are zoned commercial/industrial, but are used only as a residential storage for boats and equipment. She has a significant investment in her residence and her neighbors have made many improvements to their property. She stated that she would not like to see a dealership come into this area. She does not see that they can maintain it with just the two buildings, with two cars on a lot, and actually have a true dealership there. She did not think the use Mr. Myers is asking for was compatible with everyone else in the area, so she suggested that the Plan Commission oppose changing the designation on this property.

Mr. Burbrink asked Mrs. Housour to point out on the aerial where her property was located. She pointed out that she has two lots combined for six acres. These two commercial/ industrial buildings are used for residential purposes and she spent over \$1,000,000 construction cost for a residence. She did not want to see more industry in this area and indicated that all of the industry currently is south, such as Monaco Coach, and there is a little on the west side of Indiana Avenue. She wanted to leave the commercial/industrial to the south end of Indiana Avenue with the north end being residential.

Kerry Hoffman, 109 S. Indiana Avenue, Wakarusa, lives directly across the street from Mrs. Housour's other property. Mr. Myers is located directly across the street from part of her property. Mrs. Hoffman has five children and a grandson, so she does not want any increased traffic. She also has some environmental concerns because he will be working on vehicles on that property and there is a creek right behind it. She said there are already large barrels there and Wakarusa does not allow burning, other than plant material, but she has seen burning at that property. She informed them that

until today, she had never seen Mr. Myers and did not know anyone actually lived on the property. She reiterated she did not want to see anymore incoming traffic, considering she has small children.

Chad Hahn lives at 413 E. Waterford Street, Wakarusa. He also has small children and noted on the aerial it illustrates that all of the back yards kind of blend together. In addition to the five children already mentioned, he said there are an additional six in the adjacent homes. He pointed out his residence on the aerial had a swimming pool. His concern was increased traffic also.

Mr. Hahn said he used to be in the used car business and did not think Mr. Myers would be able to avoid having people go to his address and thought there would be more traffic, even if he only has one or two units on the site. He thought Mr. Myers' intention would be to have one or two vehicles in the garage, but it may increase and he was concerned the vehicles could end up in front of the property. Mr. Hahn felt that Mr. Myers' house was in a state of general disrepair and he was not sure anyone lived there. He thought Mr. Myers was currently running a business out of the house and he has seen industrial trucks in and out quite often. He was not sure how long Mr. Myers owned the property, but assumed two to three years.

At first Mr. Hahn was glad that someone would be moving in to clean the property up because it is in a dilapidated state, but at this time he has not seen any repairs or improvements. Mr. Hahn said the last thing he wants is used cars in the neighborhood, but understood it is a fine business to be in. He was concerned that the business may be buy here, pay here and was worried about what kind of people would be going to the property. He also wondered if Mr. Myers would be selling on Ebay, but either way he was concerned because there would be increased traffic.

Cory Myers, addressed his neighbors' issues and could not understand how they did not know he lived at that residence for the past four years. He stated that he is in the process of remodeling the residence, but has been working on the interior so people may not be aware and the standards are very livable. He has purchased new roofing and there will be new siding, however, until work was begun on the outside people would not be aware.

Mr. Myers has talked to the County about burning materials and was informed that he can burn wood, cardboard, etc., but no plastics. He does not burn any hazardous chemicals.

Mr. Myers stated that they would not be working on any vehicles on this property. He mentioned the two buildings would be used to store one car and two cars at a maximum. He does not intend to have any exterior storage. He reiterated his main objective was to obtain a dealer's license for tax purposes. Mr. Myers said he had no intention to harm the area. He said there would not be much traffic, because he will have internet based sales. There will not be any exterior changes that would be harmful to the area either. He made it clear that there will not be mechanical work on the automobiles at this location. If any mechanical work needed to be done he has a mechanic shop at a different location for repairs. He explained these buildings will be used for storage only and improvements to the property are continuously being made and will become noticeable.

Mr. Campanello noted that 'indoors' on the staff analysis is underlined which indicates indoors only. Mr. Myers said B-1 only allows for indoor use. He said he cannot have anything outdoors and he has no plan to do that. There are no plans, anywhere on the outside of the property, to line up three or four vehicles, because it is not allowed. He applied for the B-1 as recommended for this use, but he could have applied for the B-2 or B-3 which would have allowed for outside storage, but does not intend to do that. He reiterated that the vehicles will be kept indoors in the large pole structures on the property.

Roger Miller asked if he was applying for a dealership license at this location. Mr. Myers

said an auto dealer's license is required and he has to have a zoned lot for it. The main purpose for this rezoning was to obtain that license.

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

Mr. Sharkey was concerned that this property is completely surrounded by residential. He stated that even the property zoned M-2 on the aerial is actually a large residence with the remainder of the zoning surrounding this property being A-1 and R-1 across the street. He said Staff indicated that, "It is in the best interest of the Town to eliminate the use of agricultural zoning within its boundaries", but he did not see a problem with that. Mr. Kanney explained that many of the small towns in this area zoned A-1 will not allow animals, but he did not know if Wakarusa does. For instance, Bristol will not permit agricultural animals in Town. Mr. Doriot did not think Wakarusa allowed it. He said residents he knew always had their 4-H animals in Town, but once a resident ceases having animals for a period of time in Wakarusa they will not be allowed back; even though the property may be zoned A-1.

Mr. Sharkey wanted clarification whether they were recommending this petition to the Town of Wakarusa. He was told the Plan Commission would be recommending whether or not to approve the request to the Town of Wakarusa, but the Commission was not making the decision. The Board clarified that was the decision.

Mr. Yoder asked if the zone was kept A-1 and he wanted to sell cars without a dealer's license, could he store them outside in an A-1 zone. Ann Prough, the Elkhart County Zoning Administrator, informed them that the County Zoning Ordinance classifies a Used Car Sales Lot as, any premises on which three or more used or new cars are offered for sale or sold during any calendar year. If he would sell two vehicles and offer a third, he would be deemed a used car lot and that would require a B-3 zone. Mr. Yoder questioned whether a B-1 would create a better atmosphere for the community, because the cars have to be inside; however, an A-1 might allow them to be outside. Mr. Kolbus stated he could still only sell up to two a year in an A-1 zone.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Yoder/D.Miller*) that the Advisory Plan Commission recommend to the Town of Wakarusa that this request be approved in accordance with the Staff Analysis. The motion was carried with the following results of a roll call vote: Doug Miller – yes; Warner – yes; Doriot – abstained; Campanello – yes; Sharkey – no; Roger Miller – yes; Yoder – yes; Burbrink - no.

8. The application for a zone map change from M-1 PUD to M-1 for ***Jed Realty LLC c/o Daniel & Betty Ganger***, on property located on the West side of SR 13, 975 ft. North of CR 2 in York Township, was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #50571 State Road 13-120221-2*.

Doug Pedler of JED Realty, 50571 SR 13, Middlebury, was present on behalf of this request. He offered no additional comments at this time.

There were no remonstrators present.

A motion was made and seconded (*Starkey/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 (*Doriot/Yoder*) that in accordance with the Staff Analysis, the Advisory Plan

Commission forward this request to the Board of County Commissioners with a favorable recommendation. The motion was carried with a unanimous roll call vote.

9. The application for multiple amendments to the text of the *Elkhart County Zoning Ordinance* listed as follows: **ARTICLE 1 – IN GENERAL, SECTION 2 – Definitions:** by amending the definition of KENNEL and adding the definitions of HOBBY BREEDER and COMMERCIAL BREEDER; **SPECIFICATIONS A – AGRICULTURAL DISTRICTS AND USES:** by adding HOBBY BREEDER and COMMERCIAL BREEDER as permitted uses under certain circumstances; **SPECIFICATIONS F – SPECIAL USES:** by adding HOBBY BREEDER and COMMERCIAL BREEDER as special uses under certain circumstances, 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.

Duane Burrow presented the proposed amendments (form of Ordinance) to the Elkhart County Zoning Ordinance. He informed the Board that three more emails had been received and recalled that the Plan Commission had closed the public hearing.

Mr. Burrow was requested to take the recommendations that had been made from the last meeting and apply them to the Ordinance. The proposed Ordinance was included with the packet for the Plan Commission Board members review. He mentioned that the three emails were received after the fact, so it was up to the Plan Commission to decide whether they wanted those emails entered into the record; however, that would require re-opening the public hearing.

Roger Miller wanted assurance that what the Plan Commission would be dealing with at this meeting is the land usage, how the land is zoned, and what restrictions they would put on property being used for a kennel. He asked for any other discussion before they proceed.

Mr. Yoder stated that he had received the three emails and several others along with a packet of information, which he has been working through. He did not notice anything in the emails or the packet that was different from what the Plan Commission heard at the public hearing last month. Mr. Yoder said they were reiterating the same concerns about the care of the animals. He felt that all of that information needs to be dealt with as the Commissioners look at the Animal Care Ordinance again this summer. Mr. Yoder stated it was his inclination not to re-open the public hearing to enter these comments, because they were already heard.

Mr. Sharkey stated that he missed the public hearing; therefore, he would abstain from voting.

Roger Miller said he received comments also, but nothing relative to land use, so he had nothing more to add to what they heard at the last meeting.

Mr. Yoder noted that the comments that are relevant are the permitted number of animals that will be allowed on the acreages. He felt that was well presented at the public hearing and what they were proposing is that some limits be placed; for instance, setting a limit to 40 breeding females instead of allowing up to 70.

Roger Miller stated that the task the Plan Commission put to the Staff was to come up with a proposal or Ordinance amendment, which they have done, and he anticipated that the Plan Commission had read through it. He felt that the amendment was well thought through and processed.

Duane Burrow explained that one change was a procedural item of deleting and adding text to the Ordinance. Section 1 takes the existing definition and removes that text. Section 2 will introduce back into that text a similar definition, but adding five dogs, cats, and other household domestic animals over six month of age versus four combined domestic animals and four months of age.

Mr. Burrow stated that the modification objective was to move the process of granting relief for a kennel from use variances to variances in terms of developmental standards.

Section 3 was intended to introduce into the A-1 zoning district the ability to have a kennel, which is as defined under Section 2.

Section 4 will add within that specification, and this is where it will allow for developmental standards to be varied, the standards discussed at the last meeting in the general provisions of that district. He said that would allow the Board of Zoning Appeals to consider variances should there be a justification for it. Subsequently, once a person is defined as having a kennel and they do not have adequate acreage, then they can go to the BZA and ask for relief from that. If there was someone that had six animals and they were on a two acre parcel, instead of subjecting them to a use variance request, they could ask for a variance from the developmental standard that required three acres.

Mr. Campanello asked if he had two acres and he wanted to have a couple of horses, could he go to the BZA and ask for a variance. Mr. Burrow explained that there is a specific special use for that request, but since it has been established in an agricultural zone as a permitted use, that is why standards needed to be established. Mr. Burrow said there are no standards other than the fact that agricultural animals have to be on three acres. He said that was the logic established back in the 60's with the special use in the ordinance.

Mr. Burrow said essentially, they repeat the standards in all the zones that the Plan Commission indicated, such as the A-3 zone and the A-4 zone. He reiterated that kennels become a permitted use in all of the A zones and they will not be required to come in front of any board should they meet the developmental standards, which are laid out in the general provisions: the parcel needs to be three acres, that they have a setback from the principal residence not occupied by the kennel operator, setback 50 ft. from the property line, and there is an existing visual buffer. Mr. Burrow said what this does is it creates numerous non-conforming uses within the county. He said they become permitted, but they cannot meet the developmental standards. Subsequently, they become non-conforming, but permitted or legal non-conforming. Mr. Burrow stated that as long as they continue "as is" they would be able to have a kennel; however, when they want to expand, change structures or move to another site they would have to comply with the standards. He felt that addresses the issues where there is a multitude of parcel sizes. If a kennel exists on a non-conforming parcel size, they will still be permitted once this ordinance is adopted.

Mr. Campanello said if they wanted to change a building the landowner would have to go back to the BZA because they would be non-conforming. Mr. Burrow explained that if they want to increase the size of the building, or intensify the kennel they would not be allowed to have a permit, but if they were going to do minor repairs or anything that would be required for health and safety issues it would be permissible for the Staff to issue the permit. Mr. Kolbus stated that when they would be increasing the intensity of the non-conforming use is when they would have to go back to the BZA.

Mr. Burrow gave an example: if he had 10 animals, but wanted to increase to 20 and he needed to construct a building in order to handle it that would require going to the Board of Zoning

Appeals to seek relief. Once he would go for the variances then a public hearing would be held in front of the Board of Zoning Appeals. He reiterated this amendment does establish kennels as a permitted use in three agricultural zones.

Mr. Doriot pointed out that some of the rescue people were concerned about the number of animals that would be allowed on a property. Mr. Burrow replied that if they are in an agricultural zone and they have more than five animals they are defined as a kennel on the site. He said if they are in an agricultural zone and they don't meet the development standard the kennel becomes non-conforming. Mr. Doriot asked if it would apply to the rescuers that would have six dogs for a while and then they find homes for them.

Mr. Burrow clarified they would not be treated any different and because the definition of kennel uses two statements of fact, the number of animals or whether or not they are doing it for compensation. He said most rescuers are not keeping the animals for compensation, but they will have the number of animals that exceed the limitation of five. Mr. Kolbus clarified if they had up to five they would be fine. Mr. Burrow said the only way it would become an issue for them is if they cease doing that for more than 18 months. If they are a rescue home they would be able to take six in and give them a place to stay, but as long as they don't cease doing that for 18 months or more they would still be considered non-conforming.

Mr. Burrow said the commercial zone was the next modification that was suggested. He said they were removing kennels with the concept of indoor/outdoor runs, which is in Section 9.

Section 14 is where kennels were inserted as a special use within a commercial zone. Mr. Burrow said he tried to follow the Specifications A through F. He explained that they removed kennels as a permitted use out of the commercial zone and inserted it as a special use within a commercial zone. He said it used to be permitted in a B zone, but now it will need a special use.

Mr. Doriot asked if this would effect veterinarians. Mr. Burrow said for a veterinarian a kennel would be classified as an accessory use. Mr. Kolbus said the primary use would be the veterinarian medicine, so boarding the dogs would be an accessory use. Mr. Burrow said it should not trigger a requirement for anything. At this time, he thought there was only one kennel in a B zone in Elkhart County and that was in the town of Bristol. Mr. Burrow said after this change it will become legal non-conforming and if they wanted to expand they would have to come back for a special use.

Mr. Burrow went on to state that in Section 11 they are deleting kennel with outdoor runs or pens and reinserting the permitted use called kennel. He said they would not be regulating indoor/outdoor runs when it comes to a kennel. In Specifications F they are taking out the concept of indoor/outdoor runs in A-1 and A-3, because kennels will be permitted. Also, they will take out the kennels in the B-2, B-3 and no change between indoor/outdoor runs. He said that is why Section 13 is there. He said due to numbering sequence in the Ordinance Item 15, is blank at this time and will be reserved for the future.

If this amended Ordinance is adopted it would be sent to the May 21st County Commissioners hearing. Mr. Burrow said if the Plan Commission accepts it as submitted he will be removing under the fourth "Whereas", the term "Modify", but if the Plan Commission needs to make any modifications to this, the word "Modify" will be left in the preamble. It is just so people know it was modified at the public meeting.

Mr. Kolbus stated that what Mr. Burrow prepared was consistent with his notes:

(1) Kennels will be permitted in A-1, A-3, and A-4 zones and the M zone, but a special use will be required in B zones.

- (2) Setbacks will be 200 ft. residential; otherwise, the setback will be 50 ft.
- (3) A minimum of 3 acres is required.
- (4) There must be fencing with a visual barrier.
- (5) More than 5 dogs will be considered to be a kennel.

Mr. Burbrink said fencing with a visual barrier would mean that they could use a plant barrier. Mr. Kolbus clarified that what they want is to obstruct the vision, because with the testimony the Staff heard at the hearing, it was determined blocking the dogs' vision beyond their property would deter barking. He said if that if blocking their vision works that is fine, if not, Staff would request that the kennel come up with something else.

Mr. Sharkey noted that in the past, they have had barriers planted that were about 2 ft. high, which would take 10 years of growth to become a barrier. Mr. Kolbus said it would have to be effective immediately.

Mr. Burrow requested that the Plan Commission decide whether or not they wanted to modify the form he submitted or send it as it is to the County Commissioners. He suggested that it go to the Commissioners May 21st.

Mr. Kolbus suggested if the Commission felt they did not need any more public input they could discuss and vote, but if they needed more public input they could open the public hearing.

An audience member requested a point of order. Roger Miller informed her that since the public hearing was closed her input could not be heard.

Mr. Kolbus informed her that she would have an opportunity for her input to be heard May 21st at the County Commissioner's meeting.

Mr. Campanello felt they did a good job and it should go to the Commissioners. Mr. Warner felt they gained a lot of knowledge last month at the public hearing, so he was happy with the results. Roger Miller asked if that was a consensus with the Plan Commission Board and they confirmed it was.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doug Miller/Campanello*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for multiple amendments to the text of the Elkhart County Zoning Ordinance be approved as presented. A roll call vote was taken and the motion carried with Mr. Sharkey abstaining.

The audience was then advised that this request would be heard by the Elkhart County Commissioners on May 21, 2012, at 9:00 a.m.

10. In presenting the department updates, Mr. Godlewski informed the Board that Brian Mabry will begin May 21st as the new Planning Manager. He is from Temple, TX, where he has served as the Plan Director for the last year and a half. Mr. Mabry has a good planning background and Mr. Godlewski is looking forward to having Mr. Mabry join the Planning Department.

Mr. Godlewski distributed a summary of the March 12th Retreat. He suggested that the Plan Commission review the summary so they could discuss it next month. Roger Miller said he appreciated the monthly email updates Mr. Godlewski sends them.

11. A motion to adjourn the meeting was made by Mr. Doriot and seconded by Mr. Yoder. With a unanimous vote, the meeting was adjourned at 11:08 a.m.

Respectfully submitted,

Sandra Herrli, Recording Secretary

Jeff Burbrink, Chairman