

## MINUTES

### ELKHART COUNTY BOARD OF COMMISSIONERS MEETING

**September 3, 2013**

President Terry Rodino called the meeting to order at 9:00 a.m. in room 104 in the County Administration Building, 117 North Second Street, Goshen, Indiana. The other two (2) Board members, Mike Yoder and Frank Lucchese, were also present. Others present were Sheriff Brad Rogers; Gordon Lord, County Attorney; Tom Byers, County Administrator; and Kathy Erschen, Executive Assistant.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved the Minutes of the August 19<sup>th</sup> & 26<sup>th</sup>, 2013 meetings and placed them on file.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved the Allowance of Claims that were presented to the board president by the county auditor's office.

Brian Mabry from planning and development presented a request for Larry Eugene & Judith Ann Farver, represented by B. Doriot & Associates, for a zone map change from A-1 to a DPUD-A-1 known as Farver's Farm DPUD located on the west side of CR 21, 2,300 feet south of CR 40 in Elkhart Township. This was tabled from the August 19<sup>th</sup> meeting because there were no addresses provided from the county planning staff or the developer for the new proposed lots. The Plan Commission sent this to the Board with a recommendation of approval.

Blake Doriot from B. Doriot & Associates, P. O. Box 465, New Paris, Indiana, who is representing the petitioners addressed the concerns from the last meeting. Mr. Farver will be maintaining his residence at the back of this property and this will be a private road PUD. The entrance will be gated and allowances will be made for police, fire, & ambulances to enter the gate. The plan for the post office for mailing is to have a mailbox at the entrance for each home. They will number 66231-1; 66231-2; 66231-3 on the north side and then on the south they will be 66231-4; 66231-5; 66231-6 and Mr. Farver's will be 66231-7. Mr. Yoder questioned if the planning department was okay with this and Mr. Doriot said yes. He also has "Declaration of Covenants and Restrictions of Farver Farm PUD" that Mr. Farver's attorney is reviewing that will be a part of the development. There is no rush to develop this property so Mr. Doriot said it may be 3 years before ground is broken. Mr. Yoder questioned the maintenance of the roads and Mr. Doriot said there will be a Homeowners Association with 2 types of assessments. One assessment will be for routine maintenance and one for road reconstruction. There no other comments or concerns from anyone in the audience. On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board closed the public hearing.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved the rezoning request and adopted an ordinance establishing this zoning change. The Site Plan/Support Drawing and Development Plan are incorporated into this Ordinance and shall be maintained in the files of the Elkhart County Plan Commission.

The Ordinance is as follows:

ORDINANCE NO. PC 2013-11

**AN ORDINANCE TO AMEND THE ELKHART COUNTY CODE 36-7-4-600 MORE SPECIFICALLY ARTICLE 2, DISTRICTS AND ZONE MAPS, FOR REAL ESTATE DESCRIBED IN THIS ORDINANCE FROM A-1 TO DETAILED PLANNED UNIT DEVELOPMENT A-1, TO BE KNOWN AS FARVER'S FARM DPUD; AND BY CHANGING THE ZONING MAPS INCORPORATED BY REFERENCE IN ARTICLE 2, DISTRICTS AND ZONE MAPS, OF THE ELKHART COUNTY ZONING ORDINANCE.**

**WHEREAS**, Larry Eugene and Judith Ann Farver submitted a petition to change the zone maps for the real estate described in SECTION 1 of this Ordinance from A-1 to DPUD-A-1 on May 6, 2013;

**WHEREAS**, The Site Plan Review Committee did critique the petition as submitted and made those comments part of the file for consideration by the Elkhart County Plan Commission;

**WHEREAS**, The Staff for the Elkhart County Advisory Plan Commission did cause the publishing of the legal advertisements for the Public Hearing in **The Elkhart Truth** on June 30, 2013, and in **The Goshen News** on June 29, 2013, and did mail as prescribed by Rule and Law the Notice of Public Hearing to all persons of record within 300 feet;

**WHEREAS**, The Elkhart County Advisory Plan Commission did hold a public hearing as provided by law on July 11, 2013 and did take public input at that meeting;

**WHEREAS**, The Elkhart County Advisory Plan Commission did give reasonable regard to the criteria established by IC 36-7-4-603 and Specifications I - Planned Unit Development of the Elkhart County Zoning Ordinance; **And**

**WHEREAS**, The petition was sent to the Board of County Commissioners for Elkhart County with a Favorable Recommendation and reasonable Conditions as outlined in this Ordinance.

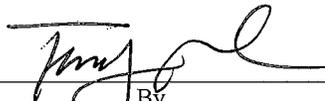
**THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR ELKHART COUNTY INDIANA, AS FOLLOWS:**

**SECTION 1.** That the legal description of the real estate attached hereto as Exhibit A is made part of this Ordinance and incorporated herein by this reference.

**SECTION 2.** That the real estate described in **SECTION 1** of this Ordinance be rezoned from **A-1** to **DPUD-A-1** effective immediately and the zone maps adopted by reference in Article 2 of the Elkhart County Zoning Ordinance be amended and ordered amended and changed to reflect the said rezoning of said real estate.

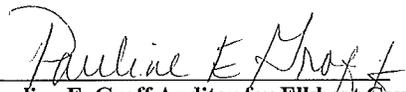
- SECTION 3.** That the Detailed Planned Unit Development be granted for the real estate described in **SECTION 1** of this Ordinance. Unless this Ordinance specifies to the contrary, all Development Standards for the A-1 Zoning District detailed in the Elkhart County Zoning Ordinance will be enforced and govern the use of the real estate, though the Development Plan and Site Plan / Support Drawing will supersede all otherwise applicable **Permitted Uses, Special Uses, and Development Standards** under the A-1 zoning district.
- SECTION 4.** That the Site Plan / Support Drawing and Development Plan are incorporated into this Ordinance by reference.
- SECTION 5.** This Detailed Planned Unit Development limits the use of this real estate to what has been shown on the Site Plan / Support Drawing.
- SECTION 6.** The submitted and attached Declaration of Covenants and Restrictions are adopted by reference.
- SECTION 7.** This Ordinance shall be in full force and effect from and after its passage and approval in accordance with the law.

**ORDAINED AND ADOPTED THIS THE 3<sup>rd</sup> DAY OF SEPTEMBER, 2013 BY THE BOARD OF COUNTY COMMISSIONERS, ELKHART COUNTY, INDIANA.**

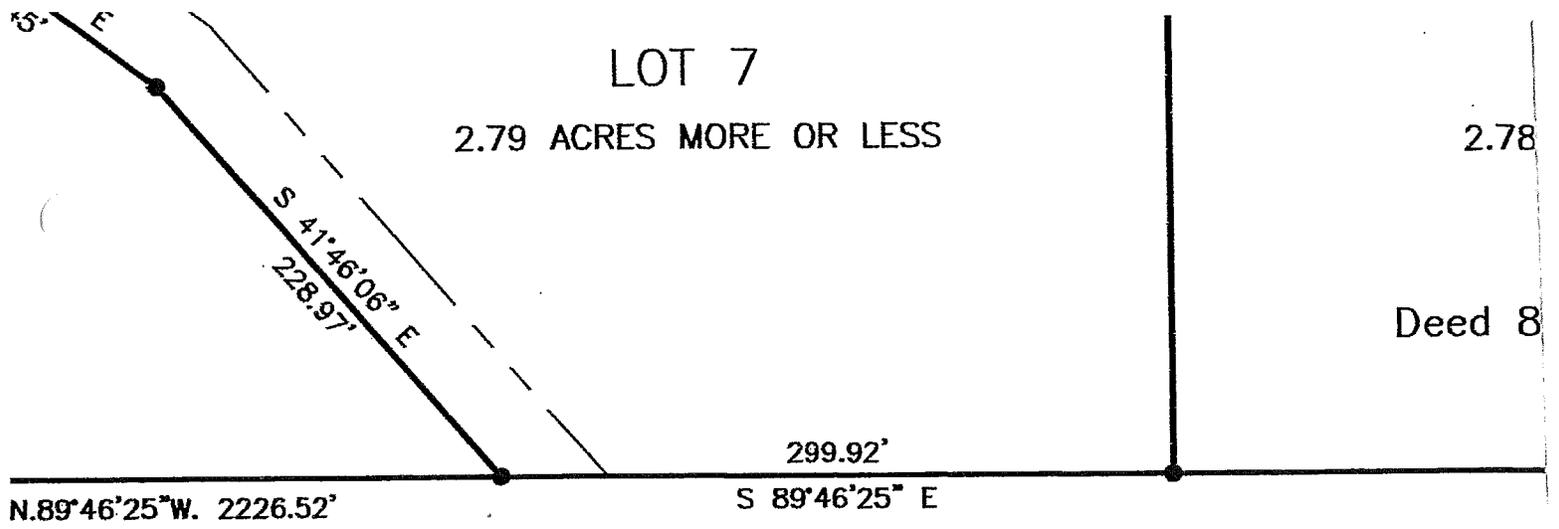
  
\_\_\_\_\_  
By  
Terry Rodino

  
\_\_\_\_\_  
By  
Mike Yoder

  
\_\_\_\_\_  
By  
Frank Lucchese

Attest:   
Pauline E. Graff Auditor for Elkhart County

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1909

DESCRIPTION

A part of the North Half of the Northeast Quarter of Section 32, Township 36 North, Range 6 East, Elkhart Township, Elkhart County, Indiana, and more particularly described as follows:

Commencing at a railroad spike marking the Northeast corner of said Section 32; thence South, 664.19 feet, along the East line of said Section 32 and County Road 21, to a railroad spike marking the point of beginning of this description; thence continuing along the last described line and bearing, 657.37 feet, to railroad spike; thence North 89 degrees 46 minutes 24 seconds West, 1900.0 feet; thence North, 665.43 feet; thence South 89 degrees 31 minutes 50 seconds East, 1900.05 feet, to the point of beginning. Subject to all easements, restriction, drain tiles, legal drains, public highway and right of ways of record.

ALSO:

A part of the North Half of the Northeast Quarter of Section 32, Township 36 North, Range 6 East, Elkhart Township, Elkhart County, Indiana, and more particularly described as follows:

Commencing at a railroad spike marking the Northeast corner of said Section 32; thence South, 1321.56 feet, along the East line of said Section 32 and County Road 21, to a railroad spike; thence North 89 degrees 46 minutes 24 seconds West, 1900.0 feet, to the point of beginning of this description; thence continuing along the last described bearing, 733.68 feet, to an iron stake over a stone; North 00 degrees 25 minutes 17 seconds East, 668.52 feet, to an iron stake; thence South 89 degrees 31 minutes 50 seconds East, 728.78 feet; thence South, 665.43 feet, to the point of beginning. Subject to all easements, restriction, drain tiles, legal drains, public highway and right of ways of record.

I, C. Blake Doriot, a licensed Land Surveyor in the State of Indiana, do hereby certify that a survey of the real estate described hereon was made under my direction, and that the Plat made this survey to the best of my knowledge and belief conforms with Title 865 of the Indiana Administrative Code 1-12 and its revisions, and that the field work was completed April 6, 2013.

C. Blake Doriot RLS, #890028

PRELIMINARY DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
FARVER FARM PUD

THIS DECLARATION, made this day of \_\_\_\_\_, \_\_\_\_\_, 2013, by Larry Eugene Farver and Judith Ann Farver, who are hereinafter collectively sometimes referred to as the “Declarant”

WITNESSETH

WHEREAS, the following facts are true

A. Declarant is the owner of the fee simple title to the real estate located in Elkhart County, Indiana, more particularly described on Exhibit” A,” attached hereto and hereinafter referred to as the “Property.”

B. Declarant by execution of this Declaration assures that all Home sites in the Property shall be conveyed subject to the terms and conditions of this Declaration which shall run with the land and be binding upon all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner, the Declarant, and the Association.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

- (a) “Articles of Incorporation” means the Articles of Incorporation of the Association as initially adopted or as from time to time amended. The Articles of Incorporation are incorporated herein by reference.
- (b) “Association” means The Farver Farm Homeowners’ Association, Inc., its successors and assigns, a not-for-profit corporation whose members shall be the owners of Home sites.
- (c) “Board of Directors” means the governing body of the Association appointed by the Declarant or elected by the members in accordance with the Bylaws of the Association.
- (d) “Farver Farm PUD” is the name by which the Property, which is the subject of this Declaration, shall be known.
- (e) “Bylaws” shall mean the Bylaws of the Association and shall provide for the election of directors and officers and other governing officials of the Association. The Bylaws as established and amended from time to time are incorporated herein by reference.
- (f) “Common Area” means that portion of the Property designated as common easement areas, landscape easements, “Farver Farm Road,” or “Common Area” as shown on the Flat of Farver FarmPUD, and all other Common Expense areas or other property acquired by or owned by the Association.

- (g) "Common Expense" includes but is not limited to expenses for administration of the Association; for the upkeep, maintenance, replacement, repair, taxes, insurance, and other expenses of the maintenance and landscaping on the Common Areas, or for Farver Farm Road; for walls, lights, entrance improvements and landscaping; and for all other expenses of the Association; Farver Farm road and drainage structure shall be fully warranted by developer and developer's contractors for 3 years after the original construction.
- (h) "Homesite" means any plot of ground designated as a lot upon a recorded plat of the Property or any part thereof. When Homesite is used, it shall be deemed to include the lot and the Dwelling Unit, if any, located thereon. "Homesite" may from time to time also be labeled or called "Lot" in the Articles, Bylaws, or this Declaration
- (i) "Member" means a member of the Association
- (j) "Mortgage" means the holder of a mortgage lien on a Homesite.
- (k) "Owner" means a person, firm, corporation, partnership, association, trust, or other legal entity or any combination thereof who owns the fee simple title to a Homesite.
- (l) "Plat" means the plat of the Property prepared by B Doriot & Associates, Inc. dated \_\_\_\_\_ 2013 and recorded \_\_\_\_\_, 2013 in Plat Book \_\_\_\_\_, page \_\_\_\_\_ office of the Recorder of Elkhart County, Indiana, and also refers to additional and supplemental plats covering the Property.
- (m) "Dwelling Unit" means the structure used as a residential living unit located upon a Homesite, including the garage and any appurtenances.
- (n) "Declarant" shall mean and refer to Larry Eugene Farver and Judith Ann Farver, or their successors in interest.
- (o) "Institutional Lender" shall mean and refer to any bank, mortgage banker, insurance company, savings and loan association or other financial institution or pension fund, which is the record owner of a mortgage loan which encumbers any Homesite.
- (p) "Lots" mean those Lots, totaling seven (7) in the initial F Larry Eugene Farver and Judith Ann Farver plat, shown and designated on an ultimately recorded, secondary (final) plat of Farver Farm PUD (to include Plat defined above).
- (q) "Farver Farm Road" means the private and mutual drive and roadway servicing the Lots of the Property which shall be owned and maintained by the Association subject to perpetual ingress and egress rights to the Lots for the Owners and users thereof subject to the provisions of paragraph 29 below, Farver Farm Road shall be deemed and considered a Common Area and shall be preserved and maintained as a Common Expense.
- (r) "Pond" means the Pond shown on the Plat and forming part of the Property; it is acknowledged that the Pond extends the boundaries of the Property; it is further acknowledged that the Pond is itself a Common Area to be preserved and maintained as a Common Expense.

2. Declaration. Declarant hereby expressly declares that the Property shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of the Property. The Property subject to and impressed with these covenants, agreements, easements, restrictions, limitations and charges is the real estate described on Exhibit "A" is attached hereto and made a part hereof. Said description of the real estate maybe amended from time to time pursuant to the right of amendment hereinafter set forth in paragraph 30.

4. Association. In order to provide for the maintenance, repair and replacement of the Common Areas and such other functions as may be delegated and designated for it, the Association has been formed. Each Owner shall become a Member of the Association when a deed to a Homesite is delivered to the Owner and recorded in the records of the Recorder of Elkhart County, Indiana, conveying title to a Homesite to an Owner. The Association shall have \_\_\_\_\_ class of members who shall be all Owners of Home sites (to include Declarant). Each person holding an interest in any Homesite shall be a Member; provided, however, that each Homesite represented shall be a Member; provided, however, that each Homesite represented shall have only \_\_\_\_\_ vote. No person or entity other than an Owner may be a Member. Membership shall also be regulated by the Bylaws and Articles. Upon recording of a deed to a Homesite, membership in the Association shall for all purposes be deemed to have passed to the grantee in the deed from the grantor without any requirement of endorsement or assignment of any certificate of membership. No Member other than Declarant shall have any right to vote on any matter until the first to occur of the following events: (1) the date upon which the written turnover of control of the Association by Declarant is recorded in the records of the Recorder of Elkhart County, Indiana; (2) the date the Declarant no longer owns any Hornesites; or (3) \_\_\_\_\_, 2030. (The first of the above three events to occur being herein referred to as the "Turnover Date").

The initial Board of Directors shall be as designated in the Articles of Incorporation, or thereafter appointed by Declarant, and such Directors; notwithstanding any provision in this Declaration or the Articles or the Bylaws to the contrary, shall be the Directors until the Turnover Date or any of them are removed by Declarant or the resignation of one or more of them, and in the event of any vacancy or vacancies occurring in the Board of Directors for any reason prior to the Turnover Date, every such vacancy shall be filled by a person appointed by Declarant, which person or persons shall thereafter be deemed a member of the Board of Directors. So long as the Declarant owns any Homesite, the members of the Board of Directors do not need to be Owners.

Within thirty (30) days after the Turnover Date, the Association shall elect a Board of Directors and shall continue to do so annually in accordance with and as prescribed by the Bylaws, and the Members shall be entitled to vote for the election of the Board of Directors in accordance with the procedure outlined in the Bylaws. The Board of Directors shall be the governing body of the Association representing all of the Members and being responsible for the functions and duties of the Association, including but not limited to, the management, maintenance, repair, replacement and upkeep of the Common Areas and the payment of all other expenses pertaining to the Common Areas,

In addition to Common Areas within the Property, the Association may own or accept ownership of common pathways, signs, entryways, drainage retention areas, easements, trails, lakes, ponds, recreational facilities, and other property in or near by the subdivision from the Developer, or from any other person or entity, to be used and considered as Common Areas for the benefit of the Owners of the Home sites.

5. Real Estate Taxes and Utilities. Real estate taxes are separately assessed and taxed to each Homesite and/or to the Common Area. Any real estate taxes or other assessments or utilities which are chargeable against the Common Areas shall be paid by the Association and treated as a Common Expense. Each Owner shall pay for his own utilities (of any type) which are to be separately metered.

6. Maintenance of the Common Areas Assessments. The Association shall be responsible for the maintenance, repair, and replacement of the Common Areas and the improvements thereon. Additionally, the Association may, from time to time, as its Board of Directors or membership may determine, undertake such other and additional responsibilities, programs, activities, and expenditures, in furtherance of the common good, development, and preservation of Farver Farm PUD, consistent with this Declaration and the Articles of Incorporation and Bylaws of the Association. The Association shall be responsible for such additional general maintenance activities in the Property as the Board of Directors shall approve from time to time, and shall generally supervise the appearance of the Property and Home sites therein with authority to enforce this Declaration as herein stated or as permitted by the Bylaws and Articles. The Association shall also resolve disputes among the Owners of Home sites and Dwellings subject to the Association, all as more particularly set forth in the Articles of Incorporation and/or Bylaws. The expenses of all such foregoing activities and responsibilities of the Association shall be expenses of the Association, and shall thus be a Common Expense, as defined above. Consistent with the Bylaws of the Association, there shall be established an annual budget of the Association. Prior to the Turnover Date, as defined within this Declaration, the annual budget of the Association shall be established by the Board of Directors. After the Turnover Date, the annual budget of the Association shall be voted upon and approved by the Members at the annual meeting thereof at which annual meeting the Members shall adopt an annual budget. After the Turnover Date, but prior to an annual meeting of the Members of the Association, the Board of Directors shall cause to be prepared and shall furnish to each Member a proposed annual budget for the ensuing fiscal year estimating the total amount of the Common Expenses for the ensuing year and the amount of "Regular Assessment" per Homesite contemplated to be paid by each Owner for that year.

Two (2) types of assessments may be imposed against Home sites in the Property, to-wit: "Regular Assessments" to deal with the ongoing Common Expenses of the Association, as contemplated by the annual budgetary process, and "Special Assessments" to cover expanding Common Expenses or other expenses of the Association of an unusual or extraordinary nature not otherwise anticipated or included in the annual budget, as such shall be deemed necessary by the Board of Directors to be incurred by the Association. In anticipation of or upon the occurrence of any such unusual or extraordinary expenses, the Board of Directors is authorized to adopt a resolution to make such expenditures and the Board of Directors shall have the full right, power, and authority to make a Special Assessment of an equal amount upon each such Homesite

to pay such expense, without a meeting or approval of the Owners, which Special Assessment shall become a lien (as herein defined) on the Homesite, after approval of such resolution by the Board of Directors, at a special or annual meeting called in accordance with the Bylaws.

All provisions hereof to the contrary notwithstanding, no assessments, be such "Regular Assessments" or "Special Assessments," shall be imposed upon any Homesite until such Homesite has been developed and occupied as a residential property. During the first year of such development and use for a Homesite, any assessment imposed for such fiscal year on a per Homesite basis shall be assessed, pro rata, based upon the remainder of the budgetary year, for such newly developed and occupied Homesite. No Owner may become exempt from paying Regular Assessments or Special Assessments or from contributing towards the Common Expenses or otherwise fulfilling the annual budgetary obligations relative to such Owner's Homesite or otherwise fail to pay any other expense lawfully imposed hereby, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Owner's Homesite. Each Owner shall be personally liable for the payment of all Assessments (Regular or Special) and by accepting delivery of a deed to a Homesite agrees to this provision and other provisions of this Declaration. When the Owner constitutes more than one person, liability for Regular or Special Assessments shall be joint and several. Regular or Special Assessments or any installments thereof which are not paid when due shall bear interest on a fluctuating rate equal to the maximum rate of interest which may be charged under the laws of the State of Indiana for consumer loans, adjusted on the first day of each calendar year. If any Owner shall fail, refuse or neglect to make any payment of any Regular or Special Assessment when due, the Board of Directors may in its discretion declare the entire balance of unpaid Regular or Special Assessments to be due and payable, with interest, and file a written Notice of Lien against the Owner's Homesite in the office of the Recorder of Elkhart County, Indiana, which Notice of Lien shall perfect the lien of the Association and have the same force and effect as, and be enforced in the same manner as, a mortgage lien under Indiana law, and shall include attorney's fees, title expenses, interest and any costs of collection incurred or to be incurred by the Association. Any Member who is delinquent in paying any Regular or Special Assessment may not vote on any Association matter during the period such payment is delinquent. In any action to foreclose the lien, the Owner and any occupant of Dwelling Unit shall be jointly and severally liable for the payment to the Association or other entitled party of reasonable rental for such Homesite and Dwelling Unit and the Association shall be entitled to the appointment of a receiver for the purpose of preserving the Homesite and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied towards payment of the Regular or Special Assessment.

Notwithstanding anything contained in this Declaration, the Articles of Incorporation or the Bylaws, any sale or transfer of a Homesite to an Institutional Lender pursuant to a foreclosure of its mortgage or conveyance in lieu thereof or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Assessment as to any installments which became due prior to such sale, transfer or conveyance, provided, however, that the extinguishment of such lien does not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Homesite and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof from liability for any installment of Assessments

thereafter becoming due and from any lien therefor. Any unpaid Assessments, the lien of which has been divested as aforesaid and expenses related thereto shall be deemed a Common Expense. The Bylaws and/or Articles of Incorporation of the Association may establish additional or supplemental standards or procedures for establishing an annual budget, or imposing Regular Assessments and/or Special Assessments, or imposing penalties or fines for failure to timely pay the same,

The Association shall, upon the request of an Institutional Lender or purchaser who has a contractual right to purchase a Homesite, furnish a statement setting forth the amount of the unpaid Assessments against the Homesite, which statement shall be binding upon the Association and the Members.

Architectural Control Committee. There is hereby created the Farver Farm Architectural Control Committee ("Committee") which shall consist of the Board of Directors of the Association, or the designee or designees of such Board of Directors, who shall serve at the pleasure of such Board of Directors and consistent with the terms and conditions of any appointment for such purpose. As part of any such appointment process, the Committee may designate anyone of its members to act on its behalf. The Committee shall have the authority to approve all plans and specifications for all Dwelling Units, to review and enforce the terms and conditions of this Declaration, and to undertake such other reviews and approvals as herein state. No construction shall be commenced until the Committee shall have issued its written approval. The decision of the Committee shall be entirely within its discretion. The authority of the Committee shall expire twenty (20) years after the date of the recording of the Flat on which the affected Homesite is located. Until the Turnover Date, it is acknowledged that Declarant shall appoint all members to the Board of Directors of the Association and hence the Committee.

#### 8. Architectural Control: General

(a) Plans. In order to maintain harmonious structural design and appearance, no Dwelling Unit or other structure or improvement shall be erected, constructed, placed, maintained or altered on any Homesite, nor shall the natural topography or drainage of any Homesite be altered, until the builder and the construction plans for the structure and/or for the topographical alterations and the landscaping (as more particularly set forth below) have been approved by the Committee. The plans must show floor plan, exterior type and finish, materials, outside colors to be used, harmony of external design with existing structures and location with respect to lot lines. Two (2) sets of complete plans must be submitted. \_\_\_\_\_ will be retained in the office of Declarant and \_\_\_\_\_ will be returned to the builder. The Committee's approval or disapproval as required in this Declaration shall be in writing. No structure or improvements of any kind which do not comply fully with such approved plans shall be erected, construed, placed or maintained upon any Homesite, and no changes or deviations in or from such plans as approved shall be made without the Committee's prior written consent.

(b) Limitations. Neither Declarant, the Committee, nor any member thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence, or non-feasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any structure erected

according to such plans or any drainage problems resulting therefrom, Every person and entity who submits plans to the Committee agrees, by submission of such plans, that the party making the submission will not bring any action or suit against the Committee or Declarant to recover any damages or to require the Committee or Declarant to take, or refrain from taking, any action. All rights of copyright in any plans or specifications or design are waived by the submission to the Committee. Neither the submission of any complete sets of plans to Declarant's office for review by the Committee, nor the approval thereof by the Committee, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no Homesite owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein. Each Owner agrees that the strict enforcement of this Declaration is necessary to maintain consistent quality in the Property.

9. Architectural Control Landscaping. As part of the approval process by the Committee for a Dwelling Unit, the Owner of each Homesite and/or the builder therefore shall be required to submit lawn and landscaping plans (two ) sets, one to be retained in the office of Declarant and one to be returned to the builder) with sufficient supporting documentation and information, to include location and type of trees, shrubs, and plants, and the size, and variety and planned location thereof, all of which must be approved by the Committee in writing prior to undertaking of construction of the Dwelling and such landscaping. If Declarant should not be the builder of a dwelling on the Homesite, any other builder on any Homesite shall coordinate the lawn and landscaping requirements with the Homesite purchaser and the Committee prior to closing on the sale to the purchaser. All lawns and landscaping as ultimately approved shall be maintained and cared for by the Owner consistent with the plans and specifications provided and approved. The provisions of subparagraph 8(b) above regarding "Limitations" shall apply to "Landscaping" and the involvement of Declarant and the Committee therewith.

10. Completion Date. Any Dwelling Unit begun shall be completed within a period of year from the date of beginning, or thereafter completely removed.

11. Lot Division. There shall be no subdivision of any Homesite by an Owner for any purpose whatsoever without the written permission of the Committee;

12. Building and Use Limitations.

(a) Land and Use and Building type. No Dwelling Unit shall be erected, altered, placed or permitted to remain on any Homesite other than one single-family dwelling. (b) Home Occupations. No Homesite shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows, may be permitted: any use conducted entirely within the Dwelling Unit and participated in solely by a member of the immediately family residing in said residence, which use is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is: (a) no sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a Dwelling Unit;

(b) no commodity is sold upon the Homesite; (c) no person is employed other than a member of the immediate family residing on the Homesite; and (d) no mechanical or electrical equipment is used, provided that, in no event shall a barber shop, styling salon, beauty parlor, tea room,

fortune-telling parlor, animal hospital, or any form of animal care or treatment business such as dog trimming, be construed or permitted as a home occupation. All provisions hereof to the contrary notwithstanding, exceptions to the "Home Occupation" limitations herein stated may be expressly made and authorized by the Committee for good cause shown, which good cause shall include demonstration that the proposed additional or heavier use of a Homesite will not interfere with or harm the value of the other Home sites.

13. Dwelling Unit Size. The size of the Dwelling Units to be placed on any Homesite, together with the number, style, placement, and proposed use of any garages or outbuildings, shall be subject to Architectural Control as set forth at paragraph 8 above. It is expressly recognized and contemplated that the Lots in the Property are of substantial economic value, and that sizeable, substantial single-family residential structures are contemplated for each Homesite. All garages, outbuildings, or other facilities contemplated on a Homesite shall be coordinated and collectively acceptable to the Architectural Control Committee, and ultimately be constructed and developed consistent with the requisite plans contemplated by paragraph 8 above.

Type of House Minimum Square Footage Ranch Style square feet 1 ½ - 2 Story  
square feet

14. Nuisances No noxious or offensive activity shall be carried on upon any Homesite, nor shall anything be done thereon which may become an annoyance or nuisance in the neighborhood.

15. Temporary Structures; Vehicles. No structure of a temporary character, nor any trailer, mobile home, tent, shack, garage, barn, tool shed, storage shed, or other outbuilding of any type or nature, except for a construction trailer used during construction of the Dwelling Unit, shall be used or placed on any Homesite at any time, either temporarily or permanently. No snowmobiles, recreational vehicles, motorcycles or dune buggies may be parked outside of permitted structures on any Homesite for longer than forty-eight (48) hours. No Homesite shall be used for storage of lumber, firewood, motor vehicles, materials, junk, waste, debris, or grass clippings. No awnings shall be permitted on a Homesite without Committee approval and no regular or repeated hanging of laundry, rugs, or other items outside a Dwelling Unit on any Homesite is permitted.

16. Tennis Courts and Pools. In-ground swimming pools and tennis courts are expressly permitted, subject to Architectural Control at paragraph 8 above. Above-ground pools are prohibited. Approval of the design, appearance, and location of any swimming pool or tennis court shall also be required and be premised upon the review and approval by the Committee of the design, location, and planned construction methodology for any required fencing and to ensure compliance with requisite zoning, developmental, health and safety standards, in addition to such other standards as shall be required by the Committee.

17. Fencing. Any fencing contemplated for a Homesite shall be subject to Architectural Control pursuant to the provisions of paragraph 8 above.

18. Driveways. All driveways on Homesites shall be approved by the Committee consistent with Architectural Control per paragraph 8 above. It is expressly acknowledged that a consistency and homogeneous appearance of driveways on the Home sites in the Property is desired.

permitted, to include specifically such facilities established or developed on the Common Areas.

27. No leases of any Dwelling Units maybe entered into for more than \_\_\_\_\_ year without the prior approval of the Association. The Owner of the affected Homesite shall remain responsible for all Assessments, and any tenant of any such Dwelling Unit under any lease shall also, by virtue of the leasing arrangements, be jointly and severally responsible for any Assessments occurring during the tenure of such lease or the usage of the Dwelling Unit.

28. On-Street Parking. On-street parking on the shared Farver Farm Road is expressly prohibited, and it is the stated goal of the Declarant, and the duty of all Owners of Home sites, to keep such Farver Farm Road open and free for ingress and egress purposes.

29. Farver Farm Road and other Common Areas

(a) Private Drive, Farver Farm Road, as shown on the Plat, and is located on Lot 1 and extends to the Bridge being a forty (40) feet wide ingress- egress and utility easement area, shall be a private drive, but subject to perpetual, non-exclusive ingress and egress usage rights for the Owners of Lots 1-7 through Fee simple title to such roadway/utility area shall be conveyed by the Declarant to the Association subject to such ingress and egress and usage rights. Farver Farm Road shall be for the ingress and egress to and from said Lots through for the benefit of the Owners thereof; and the guests, invitees, and agents of the Owners. Use for ingress and egress for or by authorized or necessary emergency vehicles, mail and parcel delivery vehicles, and vehicles of governmental officials serving said Lots, is expressly contemplated. Farver Farm Road, and all other Common Areas, shall at all times be and remain open for use for ingress and egress purposes for all such persons or entities. The Association shall hold harmless any duly authorized public or governmental entity, employee or representative for damages they may cause to said Farver Farm Road or other Common Areas in the exercise of their legitimate duties.

(b) Initial Construction. Farver Farm Road initially constructed by the Declarant. Farver Farm Road shall not have sidewalks, curbs, or gutters. The width of the pavement shall be established by the Developer, consistent with planning and development criteria relative to the approval of the Plat. ““Private Drive”” signage and other markings shall be installed by the Declarant and maintained by the Association. Mailboxes for Farver Farm Road Home sites shall be placed near the entrance paved portion of Farver Farm Road in a location or locations approved by the Architectural Control Committee to facilitate regular mail and parcel delivery.

(c) Maintenance. The Association shall be responsible for the perpetual maintenance and repair of Farver Farm Road for the mutual benefit of the Owners and Users of Lots through, to include snow plowing, cleaning, signage, paving, and coating. The Association shall also enforce the standards and provisions of this paragraph 29. The Association shall secure a liability insurance policy covering Farver Farm Road, and naming the Owners of Lots through \_\_\_\_\_ as parties insured, or, shall, to the reasonable satisfaction of the Association, determine that appropriate liability protection is available to the respective Owners of Lots \_\_\_\_\_ through \_\_\_\_\_ through conventional homeowners or related insurance policies for such properties. Such insurance shall also insure and protect the members of the Association from liability or responsibility for their official actions in undertaking the maintenance and governance of Farver Farm Road. The Association shall be authorized to enter into contracts and to pay for all costs associated with the

repair, maintenance, preservation, snow plowing, and other actions or undertakings necessary or appropriate to preserve Farver Farm Road to a standard or condition and quality commensurate with the style and type of Dwellings placed on the Home sites.

(d) Conversion to Public Right-of-Way. By unanimous consent of all Owners of Lots \_\_\_\_\_ through the Association shall hereafter be authorized and empowered to seek the dedication of Farver Farm Road, and such additional width or right-of-way as shall be required, as a public road or right-of-way, such dedication to be to the Board or Commissioners of the County of Elkhart, or their successors in interest in jurisdiction over Farver Farm PUD. It is expressly contemplated that all construction, improvement, maintenance, design, and other criteria imposed by the Board of Commissioners of the County of Elkhart, or their successors in interest, shall be the responsibility of the Owners of Lots through \_\_\_\_\_ as a condition precedent to the establishment of Farver Farm Road as a dedicated public way.

30. Amendment of Covenants. It is expressly provided that Declarant shall have the exclusive right until the Turnover Date to waive and/or amend any or all of the restrictions or covenants contained herein. The amendments to this Declaration may include, but are not limited to, the addition or deletion of real estate to be bound by these covenants and restrictions, whether by reference thereto and/or amendment of any or all of the restrictions or covenants herein contained and/or amendment of Exhibit "A", or by deleting Exhibit "A" and substituting in lieu thereof an Exhibit "A" which shall contain a legal description of the real estate which shall then be subject to and impressed with the covenants, agreements, easements, restrictions, limitations and charges contained in these covenants and restrictions as originally recorded and subsequently from time to time amended. Any amendment shall be evidenced by the recording of a written amendment signed by Declarant and duly acknowledged before a Notary Public and recorded in the office of the Recorder of Elkhart County, Indiana, and shall become effective upon such recording. After the Turnover Date, this Declaration may be amended at any time by the recording of such amendment executed by the Owners of not less than sixty-seven (67%) of the Home sites in the Property. Notwithstanding the foregoing, any proposed amendments to paragraph 29 and/or 30 of these Covenants shall be considered a major change to the Farver Farm PUD ordinance and shall require an amendment to the Farver Farm PUD ordinance through the public hearing process of the Elkhart County Plan Commission and the Elkhart County Commissioners, or their successors in interest, as a condition precedent to the recording of any such amendment in the Office of the Recorder of Elkhart County, Indiana.

31. Duration of Covenants. These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2040, at which time said covenants or restrictions shall be automatically extended for successive periods of ten (10) years, unless by a vote of the then Owners of the fee title of not less than sixty-seven percent (67%) of the Home sites covered by these covenants or restrictions, it is agreed to change such covenants or restrictions in whole or in part.

32. Separation of Covenants. invalidation of anyone of the covenants or restrictions by judgment of a court of competent jurisdiction shall in no way affect any of the other covenants or restrictions and all other provisions of these restrictions shall remain in full force and effect.

33. Enforcement of Covenants. The right to enforce these provisions by injunction, together with

the right to cause the removal by due process of law of any Dwelling Unit, or other improvements, accessories, landscaping, or other property or materials, is hereby vested in each Owner of a Homesite in the Property, in the Association and in Declarant, and their successors and assigns. These covenants and restrictions may all be enforced by a civil action for damages and by any other appropriate remedy at law or in equity. If any person or persons shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons vested with the title to any of the Home sites hereinbefore described, the Association, Declarant, and the successors and assigns thereof, to proceed whether in law or in equity, against such person or persons violating or attempting to violate any such covenants, restrictions, or any part of this Declaration, and to enjoin them from so doing, to recover damages for such violation and to seek all other appropriate relief. In the event that the Association or Declarant should employ legal counsel to enforce any of the foregoing covenants and restrictions, all costs incurred in such enforcement, including but not limited to reasonable attorney's fees, expenses of removing or altering any Homesite which violates this Declaration and any other related expense shall be paid by the Owner of such Homesite against whom such enforcement action is brought, and any such expense shall become a Special Assessment against that Homesite and be enforceable in the same manner as is provided in this Declaration for other Assessments.

34. Any notice required to be sent to any Member, Owner or to the Declarant under the provisions of this Declaration, the Articles of Incorporation or the Bylaws shall be deemed to have been properly sent and given when mailed by United States mail, postage prepaid, by certified mail, return receipt requested, postage prepaid, to Declarant, at 66231 CR 21 Goshen, IN or to any Owner at the address of the Homesite.

DECLARANT:

\_\_\_\_\_  
Larry Eugene Farver and Judith Ann Farver

STATE OF INDIANA )

SS: )

COUNTY OF ELKHART )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the above named Larry Eugene Farver and Judith Ann Farver, and acknowledged the execution of the foregoing instrument this day \_\_\_\_\_ of, 2013.

\_\_\_\_\_  
Signature Notary Public

\_\_\_\_\_  
Printed Name Notary Public

Residing in Elkhart County, Indiana My Commission Expires; \_\_\_\_\_

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved Secondary approval of a DPUD known as Farver's Farm DPUD for Larry Eugene & Judith Ann Farver, represented by B. Doriot & Associates, located on the west side of CR 21, 2,300 feet south of CR 40 in Elkhart Township, as requested by Brian Mabry from planning and development.

Brian Mabry from planning and development presented a request for James W. & Marilyn S. Cobb, represented by B. Doriot & Associates, for a zone map change from DPUD-M-1 & A-1 to a DPUD-M-1 to be known as SMART M-1 DPUD located on the northeast corner of CR 23 & CR 50 in Jackson Township. The Plan Commission has recommended approval of the zoning map change. This property was approved for Better Way Products M-1 in April 2007 but was never developed. There will be a building of 200,000 square feet, 75,000 square feet of paving and 75,000 square feet of gravel. Permitted uses on this property consist of all uses permitted in the A-1 zoning district and cabinet manufacturing. The facility must connect to New Paris sewer conservancy. No outdoor storage is allowed. Mr. Mabry said there is to be a buffer on the northwest corner of the property. All of the conditions are part of the proposed ordinance. Blake Doriot from B. Doriot & Associates, representing the petitioners, made a presentation on the proposed development. They currently employ 150 employees and intend to hire 55 more employees within 3-5 years. They build residential and commercial cabinets and are out of room at the present facility. Mr. Doriot said they will be rerouting the existing drain for the property. He said there is residential over a quarter mile east and they will be extending their buffer forward as requested. He said there are representatives from SMART here today if there are any questions for them. Mr. Doriot stated his clients will meet all of the requirements set by the plan commission and requests approval of their request for zoning changes.

Michael Harris, property owner adjacent to the proposed property at 70600 CR 23, New Paris, said he is generally opposed to this development because it will change the dynamic of his home. It will block his country view to the north and to the east. He is also concerned it will devalue his residential property. It is significantly larger than the originally proposed project by Better Way Products. The railroad continues to be busier which means trucks will have to be rerouted quite frequently. He added that the berm proposed to have 15 4 foot spruce trees on a 150 foot berm will not create much of a barrier between his property and the development. Another concern is the dust collector and noise from it which supposedly has 35 decibels of sound. Mr. Harris is also concerned about the water usage. If this proposal is approved, he would like to have the deciduous trees left that are there now. Mr. Doriot responded to some of the concerns. There will only be one shift working at this facility. He explained the truck entrance and exit. Mr. Doriot said they will make the density of the spruce trees however Mr. Harris would like them. Terry Sauer, 10079 CR 34, Goshen, who works at SMART, addressed some of the issues of Mr. Harris. He explained the truck entrance. He also said they will not obstruct his view to the north and the dust collector will sound the same as a home vacuum. There were no other comments. On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board closed the public hearing.

Mr. Yoder said it is good to see more manufacturing being built and Mr. Harris is in an unfortunate place to live because of the growth. When the sewer was installed in that area, it was like opening the door for growth. They have made a good buffer and the noise should not be an issue. He understands they will leave the deciduous trees there until the buffer grows and staggering the trees to increase the density. Mr. Yoder added that the buffer will be thin for awhile but they do grow quickly. Mr. Lord questioned if this would have written commitments and Mr. Mabry said there are six written on the ordinance. Mr. Yoder said he is comfortable this company will do as they say and the motion and minutes of this meeting reflecting that they have agreed to do those two things. Mr. Doriot assured Mr. Yoder they will do those things.

Mike Yoder made a motion to approve the rezoning to an M-1 DPUD as requested with the restrictions on the ordinance. In addition to those restrictions, the deciduous trees are to be left for as long as possible to get the barrier trees time to grow and also look at staggering the pine trees for a higher density planting. Frank Lucchese seconded the motion and the motion was unanimously carried. The Site Plan/Support Drawing and Development Plan are a part of this ordinance and shall be maintained in the files of the Elkhart County Plan Commission.

The adopted ordinance is as follows:

ORDINANCE NO. PC 2013-12

AN ORDINANCE TO AMEND THE ELKHART COUNTY CODE 36-7-4-600 MORE SPECIFICALLY ARTICLE 2, DISTRICTS AND ZONE MAPS, FOR REAL ESTATE DESCRIBED IN THIS ORDINANCE FROM A-1 AND M-1 TO DETAILED PLANNED UNIT DEVELOPMENT M-1, TO BE KNOWN AS SMART M-1 DPUD; AND BY CHANGING THE ZONING MAPS INCORPORATED BY REFERENCE IN ARTICLE 2, DISTRICTS AND ZONE MAPS, OF THE ELKHART COUNTY ZONING ORDINANCE.

**WHEREAS**, James and Marilyn Cobb submitted a petition to change the zone maps for the real estate described in SECTION 1 of this Ordinance from M-1 and A-1 to DPUD-M-1 on July 1, 2013;

**WHEREAS**, The Site Plan Review Committee did critique the petition as submitted and made those comments part of the file for consideration by the Elkhart County Plan Commission;

**WHEREAS**, The Staff for the Elkhart County Advisory Plan Commission did cause the publishing of the legal advertisements for the Public Hearing in **The Elkhart Truth** and **The Goshen News** on July 29, 2013, and did mail as prescribed by Rule and Law the Notice of Public Hearing to all persons of record with in 300 feet;

**WHEREAS**, The Elkhart County Advisory Plan Commission did hold a public hearing as provided by law on August 8, 2013 and did take public input at that meeting;

**WHEREAS**, The Elkhart County Advisory Plan Commission did give reasonable regard to the criteria established by IC 36-7-4-603 and Specifications I - Planned Unit Development of the Elkhart County Zoning Ordinance; And

**WHEREAS**, The petition was sent to the Board of County Commissioners for Elkhart County with a Favorable Recommendation and reasonable Conditions as outlined in this Ordinance.

**THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR ELKHART COUNTY INDIANA, AS FOLLOWS:**

**SECTION 1.** That the legal description of the real estate attached hereto as Exhibit A is made part of this Ordinance and incorporated herein by this reference.

**SECTION 2.** That the real estate described in **SECTION 1** of this Ordinance be rezoned from **A-1** and **M-1** to **DPUD-M-1** effective immediately and the zone maps adopted by reference in Article 2 of the Elkhart County Zoning Ordinance be amended and ordered amended and changed to reflect the said rezoning of said real estate.

**SECTION 3.** That the Detailed Planned Unit Development be granted for the real estate described in **SECTION 1** of this Ordinance. Unless this Ordinance specifies to the contrary, all Development Standards for the M-1 Zoning District detailed in the Elkhart County Zoning Ordinance will be enforced and govern the use of the real estate, though the Development Plan and Site Plan / Support Drawing will supersede all otherwise applicable **Permitted Uses, Special Uses, and Development Standards** under the M-1 zoning district.

**SECTION 4.** That the Site Plan / Support Drawing and Development Plan are incorporated into this Ordinance by reference.

**SECTION 5.** This Detailed Planned Unit Development limits the use of this real estate to what has been shown on the Site Plan / Support Drawing.

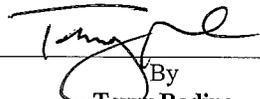
**SECTION 6.** The submitted and attached Declaration of Covenants and Restrictions are adopted by reference.

**SECTION 7.** That the following provisions apply to development on this real estate:

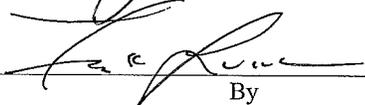
1. Permitted uses on the subject property consist of all uses permitted in the A-1 zoning district and cabinet manufacturing.
2. The facility must connect to New Paris sewer conservancy, as proposed in the submitted narrative.
3. Outdoor storage is prohibited.
4. An As-Built Drawing, prepared by an Indiana registered land surveyor, that shows drainage improvements and impervious surface, must be submitted to and approved by the Plan Director prior to issuance of a Certificate of Occupancy for the proposed building, if the Plan Director determines that a major discrepancy exists between the approved DPUD Site Plan / Support drawing and the built project. For the purposes of this DPUD, a "major discrepancy" consists of misplaced, mis-sized or nonexistent drainage improvements or impervious surface.
5. Outdoor pole lighting within 200 feet of a residential property line is limited to a maximum height of 25 feet. All light fixtures must be full cutoff with no upward glare.
6. The berm (designated as the 30' x 150' x 4' mound with 4' spruce trees on the site plan) must be extended to the west up to the 35 ft. building setback line (along CR 23).

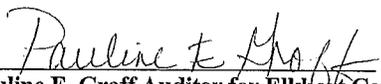
**SECTION 8.** This Ordinance shall be in full force and effect from and after its passage and approval in accordance with the law.

ORDAINED AND ADOPTED THIS THE 3<sup>rd</sup> DAY OF SEPTEMBER, 2013 BY THE BOARD OF COUNTY COMMISSIONERS, ELKHART COUNTY, INDIANA.

  
\_\_\_\_\_  
By  
Terry Rodino

  
\_\_\_\_\_  
By  
Mike Yoder

  
\_\_\_\_\_  
By  
Frank Lucchese

Attest:   
Pauline E. Graff Auditor for Elkhart County

N.89°54'37"W. M

1316.38' M

Iron Set @ Calculated  
Northeast Corner of the  
Northwest Quarter of the  
Southeast Quarter of  
Section 21, T.35N., R.6E.

Harrison Monument Set @  
Northeast Corner of the  
Southeast Quarter of  
Section 21, T.35N., R.6E.

DESCRIPTION

A part of the Northwest Quarter of the Southeast Quarter of Section 21, Township 35 North, Range 6 East, Second Principal Meridian, Jackson Township, Elkhart County, Indiana and more particularly described as follows:

Commencing at a Harrison Section Corner Monument at the Northeast corner of said Southeast Quarter of Section 21 and the North line of said Southeast Quarter of Section 21 to have an assumed bearing of North 89 degrees 54 minutes 37 seconds West; thence North 89 degrees 54 minutes 37 seconds West, along said North line of the Southeast Quarter of Section 21, a distance of 1316.38 feet to an iron rebar capped (Doriot) at the Northeast corner of said Northwest Quarter of the Southeast Quarter of Section 21; thence continuing North 89 degrees 54 minutes 37 seconds West, along said North line of the Southeast Quarter of Section 21, a distance of 209.14 feet to an iron rebar capped (Doriot); thence South 00 degrees 05 minutes 23 seconds West, a distance of 524.19 feet to an iron rebar capped (Doriot) at the POINT OF BEGINNING of this description; thence continuing South 00 degrees 05 minutes 23 seconds West, a distance of 800.00 feet to a mag nail with brass washer (Doriot) on the South line of said Northwest Quarter of the Southeast Quarter of Section 21; thence North 89 degrees 49 minutes 26 seconds West, along said South line of the Northwest Quarter of the Southeast Quarter of Section 21, a distance of 1275.00 feet to a mag nail with brass washer (Doriot); thence North 10 degrees 19 minutes 01 second East, along the monumented centerline of County Road 23 (Old State Road 15), a distance of 671.71 feet to a mag nail with brass washer (Doriot) at the Southwesterly corner of Deed Record 2004-27533; thence South 89 degrees 52 minutes 02 seconds East, along the South line of said Deed Record 2004-27533, being the North line of the South Half of the North Half of the South Half of said Section 21, a distance of 217.58 feet to an iron rebar capped (Doriot); thence North 09 degrees 40 minutes 35 seconds East, along a long held farm fence and being the East line of said Deed Record 2004-27533, a distance of 140.55 feet to an iron rebar capped (Doriot); thence South 89 degrees 49 minutes 26 seconds East, a distance of 914.43 feet to the POINT OF BEGINNING; said above tract contains 21.40 acres more or less. Subject to all easements, restrictions, drain tiles, public highways and right of ways of record. Subject to an easement described in Deed Record 334, pages 226 & 227.

N.00°19'14"W  
1324.55' M

1/4 of the SE 1/4 of Section 21, T.35N., R.6E.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved Secondary approval for SMART M-1 DPUD for James W. & Marilyn S. Cobb, represented by B. Doriot & Associates, located on the northeast corner of CR 23 & CR 50 in Jackson Township, as requested by Brian Mabry from planning and development.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved an Interlocal Agreement with the City of Goshen for fiber optic cable extension, as requested by Jeff Taylor, Manager of Transportation. They are building a new highway garage near the county's highway garage and the city needs to have fiber. The county has fiber available for them to use. There is no cost to the city for the connection. A copy of the agreement is on file in the Commissioners' office.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved and forwarded to the County Council an additional appropriation for \$200,000 from the Highway Local Road & Street fund for fuel for the highway department, as requested by Jeff Taylor, Manager of Transportation.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved and forwarded to the County Council an additional appropriation from the EDIT fund for \$15,000 for catch basin repairs in subdivisions, as requested by Jeff Taylor, Manager of Transportation. Mr. Yoder said he will approve this so the projects can keep moving, but he will ask for this and future projects of this kind to be paid from Stormwater funds.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved and forwarded to the County Council an additional appropriation from the Motor Vehicle Highway fund for \$155,384 for road maintenance and construction, as also requested by Jeff Taylor, Manager of Transportation. This is for additional paving/chip seal. The additional funds are from the August funds from the new legislative action providing more funding for roads.

The three (3) above additional appropriations are as follows:

**ELKHART COUNTY  
ADDITIONAL APPROPRIATION REQUEST**

DATE: 08-27-13

DEPARTMENT

Highway  
NAME

114-222  
NUMBER

	AMOUNT REQUESTED	PROJ. NO.	ACCOUNT/PROJECT NAME	ACCT. NO.	FUND NAME	FUND NO		
1	200,000		Gas Diesel	4210	Local Road & Street	114		
2								
3								
4								
5								
6								
7								
8								
<b>TOTAL</b>	<b>200,000</b>							
			If Prior Add'l Appropriation Was Approved This Year	Can Transfers Be Effectd		APPROVED BY COUNCIL		
	ORIGINAL AMOUNT							
	Approp.	as of Date	AMOUNT	DATE	YES	NO	Amount	Date
	350000	26-Aug				X		

**REASON FOR REQUEST** 1. Additional funds needed for fuel.

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Jeff Taylor, Manager of Transportation, asked for approval to receive "Requests for Quotes" to reconstruct Shannon Court which is located near Pheasant Ridge subdivision. That street is concrete and is completely in disrepair. Quotes will be received on September 16<sup>th</sup>.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board gave approval to request quotes.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved out-of-state travel for an employee in the sheriff's department to go to Altamonte Springs, FL in November for Police Internal Affairs Investigations training.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved and forwarded to the County Council an additional appropriation for \$500,000 from the Rainy Day fund for the Group Insurance Trust fund, as requested by Tom Byers, County Administrator.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved and forwarded to the County Council an additional appropriation from the Northeast TIF District fund for \$125,000 for additional paving on CR 6, as requested by Tom Byers, County Administrator.

The two (2) above additional appropriations are as follows:



**ELKHART COUNTY  
ADDITIONAL APPROPRIATION REQUEST**

DATE 8-23-2013

DEPARTMENT

Commissioners  
NAME

332/980  
NUMBER

	AMOUNT REQUESTED	PROJ. NO.	ACCOUNT/PROJECT NAME	ACCT. NO.	FUND NAME	FUND NO		
1	125,000	1303	Cons/Recons	4730	Northeast TIF District	332		
2								
3								
4								
5								
6								
7								
8								
<b>TOTAL</b>	<b>125,000</b>							
	<b>ORIGINAL AMOUNT</b>		If Prior Add'l Appropriation Was Approved This Year	Can Transfers Be Effectcd		APPROVED BY COUNCIL		
	Approp. as of Date							
			AMOUNT	DATE	YES	NO	Amount	Date

**REASON FOR REQUEST** Additional paving on County Road 6

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On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board accepted the Weights & Measures report for July 16<sup>th</sup>-August 15<sup>th</sup>, 2013 and placed it on file.

Gordon Lord, county attorney, asked for approval of an Indemnification Agreement with Mor/Ryde, Inc. and R & R Property Leasing, Inc. in order for the county to issue a building permit for their project. There is a pending lawsuit regarding this project and Mr. Lord said this will protect the county.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved the Indemnification Agreement as presented. A copy of the agreement is on file in the Commissioners' office.

Gary Olinger, 18317 CR 2, Bristol voiced his complaints on the berming that was done by the highway department in front of his property. He lives at the bottom of a hill and is fearful he will have major water problems when it rains because of the berming that was done. He wants to know what the county is going to do about his yard because the highway road grader tore it up. Mr. Yoder said they will be discussing this process with the highway department. Mr. Olinger tried to reason with the individuals that were doing the project, but they wouldn't listen to any reasoning. He said he won't give up and will be back again.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board adjourned their meeting.

Respectfully submitted,  
Kathy L. Erschen

## MINUTES

### ELKHART COUNTY BOARD OF COMMISSIONERS MEETING

**September 9, 2013**

President Terry Rodino called the meeting to order at 9:00 a.m. in the Commissioners' meeting room in the County Administration Building, 117 North Second Street, Goshen, Indiana. The other two (2) Board members, Frank Lucchese and Mike Yoder, were also present. Others present were Pauline Graff, County Auditor; Tom Byers, County Administrator; and Kathy Erschen, Executive Assistant.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved the Allowance of Claims, as presented by the county auditor's office.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board appointed Mandy Gerber to the Nappanee Public Library Board to replace Gavin Miller, whose term expired October 1, 2012, as requested in a letter received from the library director. Ms. Gerber's term will end October 1, 2016.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board adjourned their meeting.

Respectfully submitted,  
Kathy L. Erschen

## MINUTES

### ELKHART COUNTY BOARD OF COMMISSIONERS MEETING

September 16, 2013

President Terry Rodino called the meeting to order at 9:03 a.m. in room 104 in the County Administration Building, 117 North Second Street, Goshen, Indiana. The other two (2) Board members, Frank Lucchese and Mike Yoder, were also present. Others present were Sheriff Brad Rogers; Pauline Graff, County Auditor; Gordon Lord, County Attorney; Tom Byers, County Administrator; and Kathy Erschen, Executive Assistant.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved the Minutes of the September 3<sup>rd</sup> & 9<sup>th</sup>, 2013 meetings and placed them on file.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved the Allowance of Claims, as presented by the county auditor's office.

Bids were received for the CR 17 between CR 40 and CR 38 road improvement project for the highway department. Pauline Graff, county auditor, opened the bids and Jeff Taylor, Manager of Transportation, read the bids aloud. Bids were received from Walsh & Kelly for \$1,668,002.43; C & E Excavating, Inc., for \$1,903,139.19; Niblock Excavating, Inc. for \$1,524,983.86; Phend & Brown for \$1,516,108.23 and Rieth-Riley Construction Co., Inc. for \$1,772,747.00.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board accepted all the bids and referred them to the highway department for a recommendation at a later meeting. Bids will be on file at the highway department offices.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved an Independent Contractor Agreement for professional services with Dr. Stosh (Mark Potuck) & Company to promote flu shots at a not to exceed cost of \$8,000, as requested by John Hulewicz from the health department. This will be paid from a grant received from the CDC. The agreement is for a period of four (4) months. A copy of the agreement is on file in the Commissioners' office.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved Secondary approval for Max K. & Rhoda E. Weldy Trustees Rev Liv Trust (If Est) (owners) and Elkhart Development, LLC (developer), represented by Brads-Ko Engineering & Surveying, Inc., for a 20 lot subdivision known as Jemian Trace Phase III located 460 feet north of CR 18, north extension of Jemian Drive, 2,300 feet east of CR 23 south in Jefferson Township, as requested by Mark Kanney from planning and development.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved Secondary approval of Fairfax Park PUD on Charlotte Avenue in Greenfield Industrial Park, as requested by Mark Kanney from planning and development.

Duane Burrow from planning and development presented a request for Hart City Properties, Inc. for a zone map change from R-2 to M-1 located on the northeast corner of Markle Street & Florence Street, 500 feet west of SR 19 in Baugo Township. The Plan Commission has recommended approval of the request. Richard Aker, owner of Hart City Properties, Inc., said they have requested this so they can make use of the final lot on the property. There were no other comments from anyone in the audience. On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board closed the public hearing.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved the request and adopted an ordinance establishing this rezoning.

The Ordinance is as follows:

ORDINANCE NO. PC 2013-13

**AN ORDINANCE TO AMEND COUNTY CODE 36-7-4-600 KNOWN AS THE COMPREHENSIVE PLAN OF ZONING FOR ELKHART COUNTY, INDIANA BY REZONING THE AREA OF REAL ESTATE HEREINAFTER DESCRIBED FROM R-2 AND M-1 TO M-1.**

WHEREAS, Hart City Properties Inc. submitted an application to rezone real estate hereinafter described from R-2 and M-1 to M-1 and after proper legal notice a public hearing was held as provided by Law, and the Plan Commission did find that all elements of the Law have been met and did on the 8th day of August 2013 recommend a zone change from R-2 and M-1 to M-1 and filed their recommendation for adoption of this Ordinance with the Board of County Commissioners of Elkhart County, Indiana.

**BE IT THEREFORE ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ELKHART COUNTY, INDIANA THAT:**

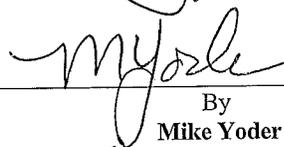
Legal Description

See Attachment A – Legal Description

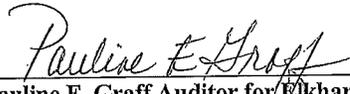
BE rezoned from R-2 and M-1 to M-1 effective immediately, and the zone maps dated October 30, 1959 and made a part of Article II, Section 2 of the Master Plan of Zoning for Elkhart County, Indiana as amended are hereby ordered amended and changed to reflect the said rezoning of said real estate.

**ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS FOR ELKHART COUNTY, INDIANA THIS 16TH DAY OF SEPTEMBER 2013**

  
\_\_\_\_\_  
By  
Terry Rodino

  
\_\_\_\_\_  
By  
Mike Yoder

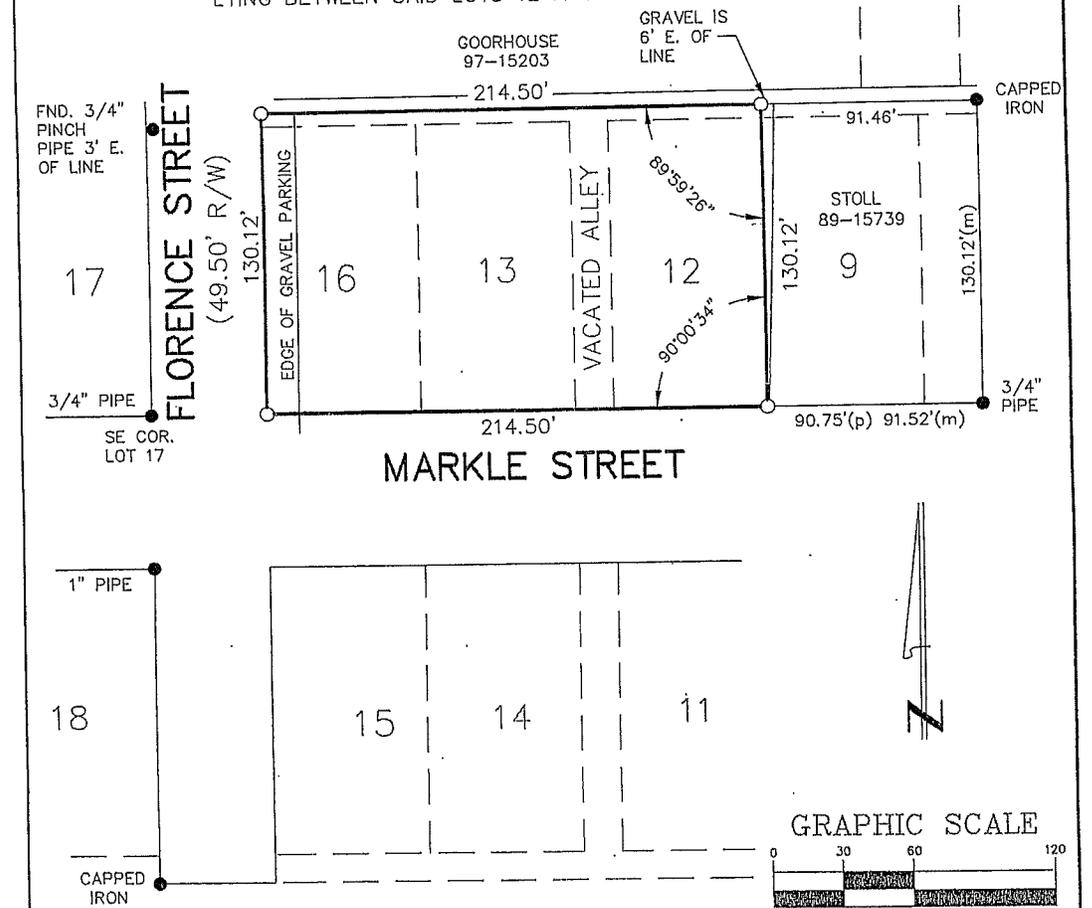
  
\_\_\_\_\_  
By  
Frank Lucchese

Attest:   
\_\_\_\_\_  
Pauline E. Graff Auditor for Elkhart County

# CERTIFICATE OF SURVEY

## LEGAL DESCRIPTION

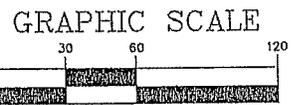
LOTS 12, 13 & 16 AS THE SAID LOTS ARE KNOWN AND DESIGNATED ON THE RECORDED PLAT OF TURNER AND NORWOOD'S ADDITION TO ELKHART, INDIANA, A SUBDIVISION IN BAUGO TOWNSHIP; SAID PLAT BEING RECORDED IN PLAT BOOK 116, PAGE 19 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA, TOGETHER WITH THE SOUTH ONE-HALF OF THE VACATED ALLEY LYING NORTH OF AND ADJACENT TO SAID LOT 16 AND THE VACATED ALLEY LYING BETWEEN SAID LOTS 12 AND 13.



I, BRADLEY S. CRAMER, A REGISTERED LAND SURVEYOR IN THE STATE OF INDIANA, LICENSE #910004, DO HEREBY CERTIFY THAT THIS REPRESENTS A SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION. THIS SURVEY WAS COMPLETED ON JULY 3, 2003 IN ACCORDANCE WITH TITLE 865, ARTICLE 1, CHAPTER 12 OF THE INDIANA ADMINISTRATIVE CODE.

NOTE: IT WAS THE INTENTION TO DEED THE CORRESPONDING SOUTH HALF OF THE VACATED ALLEY TO THE NORTH OF THE THREE LOTS. A CORRECTIVE DEED IS BEING PREPARED TO RESOLVE THIS OMISSION. THIS SURVEY REFLECTS THE 3 LOTS AND THEIR RESPECTIVE VACATED ALLEYS.

OWNER: HART CITY RV SALES, INC.  
 DEED RECORD: 2003-17170  
 ADD: 28117 MARKLE AVENUE



### LEGEND

- = SET 5/8" REBAR-FLUSH WITH I.D. CAP #910004
- = FOUND IRON PIPE
- (m) = MEASURED
- (p) = PLATTED

<div style="border: 1px solid black; padding: 5px; display: inline-block;">PE</div> PROGRESSIVE ENGINEERING, INC. Architectural, Mechanical, and Structural Engineering 58640 State Road 15 GOSHEN, INDIANA 46528 Telephone (574) 533-0337	CLIENT: HART CITY RV SALES	
	JOB NO.: 03-921	DATE: 7-9-2003
	DRAWN BY: BRAD	SCALE:

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved a traffic control recommendation and adopted a traffic control ordinance to rescind weight limits for bridge 359 on Cassopolis Street 0.1 miles north of Beardsley Avenue; bridge 383 on Johnson Street over the St. Joseph River all northbound lanes; and bridge 365 on Simonton Street 0.1 miles east of Willowdale Avenue, as requested by Jeff Taylor, Manager of Transportation.

The traffic control ordinance is as follows:

# TRAFFIC SIGN ORDINANCE

TYPE OF SIGN: "WEIGHT LIMIT"

WHEREAS, the Engineer has conducted an engineering and traffic investigation and upon the basis of this engineering and traffic investigation has recommended that the existing signs be removed at the following location:

**LOCATIONS:**

**BRIDGE 359 ON CASSOPOLIS STREET 0.1 MILES NORTH OF BEARDSLEY AVENUE**

**BRIDGE 383 ON JOHNSON STREET OVER THE ST. JOSEPH RIVER ALL NORTHBOUND LANES**

**BRIDGE 365 ON SIMONTON STREET 0.1 MILES EAST OF WILLOWDALE AVENUE**

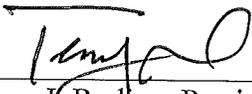
NOW THEREFORE BE IT ORDAINED that Elkhart County Highway Division is authorized to remove the existing signs at this location:

**LOCATIONS:**

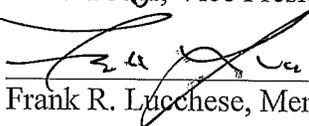
**BRIDGE 359 ON CASSOPOLIS STREET 0.1 MILES NORTH OF BEARDSLEY AVENUE**

**BRIDGE 383 ON JOHNSON STREET OVER THE ST. JOSEPH RIVER ALL NORTHBOUND LANES**

**BRIDGE 365 ON SIMONTON STREET 0.1 MILES EAST OF WILLOWDALE AVENUE**

  
\_\_\_\_\_  
Terry J. Rodino, President

  
\_\_\_\_\_  
Mike Yoder, Vice President

  
\_\_\_\_\_  
Frank R. Luchese, Member

DATE OF ORDINANCE: September 16, 2013

ORDINANCE NUMBER 2013-454

Jeff Taylor also asked for approval to award a quote for paving Shannon Court. They had four (4) options for repairing this street and it was decided to replace the curbs and replace the street with asphalt. Niblock Excavating submitted a quote for \$35,057 and Mr. Taylor is recommending they give the project to Niblock Excavating.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved awarding the quote to Niblock Excavating for Shannon Court paving.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board accepted the Solid Waste – Landfill report for August 2013 and placed in on file.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board adjourned their meeting.

Respectfully submitted,  
Kathy L. Erschen

## MINUTES

### ELKHART COUNTY BOARD OF COMMISSIONERS MEETING

September 23, 2013

President Terry Rodino called the meeting to order at 9:00 a.m. in room 104 in the County Administration Building, 117 North Second Street, Goshen, Indiana. The other two (2) Board members, Frank Lucchese and Mike Yoder, were also present. Others present were Pauline Graff, County Auditor; Tom Byers, County Administrator and Kathy Erschen, Executive Assistant.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved the Allowance of Claims, as presented by the county auditor's office.

Kris Krueger, Grants Procurement Specialist, addressed the Board regarding the funding allocations for 2014 from the Elkhart County Drug-Free Partnership for the Drug Free Community funds. There is over \$240,000 to appropriate to three (3) categories: Criminal Justice, Prevention and Treatment. They received 12 proposals requesting fund and have determined 10 of those applicants to be the most consistent in promoting the areas of concern. She gave each Board member a synopsis of the committee's recommendation for the 2014 funds and a spreadsheet of the funding breakdown.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved the funding allocations as recommended by the committee. Ms. Krueger will now take them to the County Council along with an additional appropriation for allocating the funds.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board awarded the bid for the CR 17 between CR 38 and CR 40 project to Phend & Brown, as requested by Jeff Taylor, Manager of Transportation. They were the low bidder for the project.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved an Independent Contractor Agreement for Professional Consulting & Engineering Services with Abonmarche Consultants, Inc., as requested by Jeff Taylor, Manager of Transportation. They will perform periodic engineering services as needed for the highway department. A copy of the agreement is on file in the Commissioners' office.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved out-of-state travel for two (2) employees in the highway engineering department to go to Washington, DC in January 2014 for a TRF Conference.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved out-of-state travel for two (2) employees in the sheriff's department to go to Bentonville, AK in October for Hostage Rescue Barricade training.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved out-of-state travel for an employee in buildings and grounds to go to Oklahoma City, OK in October for cooling tower maintenance school.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board adjourned their meeting.

Respectfully submitted,  
Kathy L. Erschen

## MINUTES

### ELKHART COUNTY BOARD OF COMMISSIONERS MEETING

**September 30, 2013**

President Terry Rodino called the meeting to order at 9:00 a.m. in the Commissioners' meeting room in the County Administration Building, 117 North Second Street, Goshen, Indiana. The other two (2) Board members, Frank Lucchese and Mike Yoder, were also present. Others present were Pauline Graff, County Auditor, and Tom Byers, County Administrator.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved the Allowance of Claims, as presented by the county auditor's office, except for Claim #23575 to Bit Mat Products due to not enough funds being available in the project.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board approved an out-of-state travel request for an employee in the sheriff's department to go to Altamonte Springs, FL in November Police Internal Affairs Investigations training.

On a motion made by Frank Lucchese, seconded by Mike Yoder and unanimously carried, the Board approved a contract with INDOT for bridge replacement, concrete, for Bridge 127 on CR 4 over Christiana Creek, as requested by Jeff Taylor, Manager of Transportation. A copy of the contract is on file in the Commissioners' office.

On a motion made by Mike Yoder, seconded by Frank Lucchese and unanimously carried, the Board adjourned their meeting.

Respectfully submitted,  
Kathy L. Erschen