CALL TO ORDER

Mr. Gibbs: I would like to call to order the Plainfield Plan Commission for September 8th.

ROLL CALL/DETERMINATION OF QUORUM

Mr. Gibbs: Mr. Carlucci would you poll the board to determine a quorum?

Mr. Carlucci: Mr. Satterfield- here
Mr. McPhail- here
Mr. Brandgard- here
Mr. Duncan- here
Mr. Kirchoff- here
Mr. Gibbs- here

Six members present, none absent, we have a quorum for the purpose of conducting business.

Mr. Gibbs: Thank you.

PLEDGE OF ALLEGIANCE

Mr. Gibbs: If you would please rise for the Pledge of Allegiance.

APPROVAL OF MINUTES- August 1, 2011

Mr. Gibbs: I assume everyone on the board has had an opportunity to review August 1st Plan Commission minutes, if so, with no corrections I will entertain a motion.

Mr. Kirchoff: So move.

Mr. Satterfield: Second.

Mr. Gibbs: I have a motion and a second, all those in favor signify by saying aye, opposed, motion carries.

OATH OF TESTIMONY

Mr. Daniels administered the oath of testimony

PUBLIC HEARINGS

Mr. Gibbs reviewed the Guidelines Governing the Conduct of Public Hearings.

PREVIOUSLY CONTINUED PETITIONS FOR PUBLIC HEARING

Mr. Gibbs: Our first thing on the petition is RZ11-002, Mr. James we will turn it over to you.

Mr. James: Thank you Mr. President, good evening. We received a request to continue this petition to the October 3rd meeting. This would give the Guilford Township Civic Association time to meet and review this petition and the petitioner has agreed to continue it to October 3rd.

Mr. Gibbs: So I will need a motion for that.

Mr. Brandgard: So move.

Mr. McPhail: Second.

Mr. Gibbs: I have a motion to continue it, Mr. Carlucci would you poll the board?

Mr. Carlucci: Mr. Satterfield- yes
Mr. McPhail- yes
Mr. Brandgard- yes
Mr. Duncan- yes  
Mr. Kirchoff- yes  
Mr. Gibbs- yes

Six ayes, none opposed, motion is approved.

Mr. James: First petition tonight for public hearing is DP-11-001 Stoops Buick, remodel. Jill will present that to you.

Ms. Sprague: The Stoops Buick, I’m sure you are familiar with it; it is located along Quaker Blvd., just south of Stanley Road. They built this structure in 2003 and GM has requested that they try to conform to the brand model for GM and this is their petition is their attempt to blend what we approved in 2003 with what the brand model is idealized as. The main change is that they are planning on painting a lot of the top portion of the building white and they will be adding some metal banding and so they will be requiring a few waivers for this request. This is what the brand model of what they wanted it to look like, and then there are some elevations, the easiest to look at is the proposed rendering. As you can see on the top part they plan on painting white and then putting the black metal banding around there. They would require a waiver for the west, south, and north side because they are using block as the primary building material. That is the same as it was in 2003, it will just be a different color now. Then on the west side the metal banding that they are adding is going to make it so that the block is no longer a primary material, and so they don’t actually have a primary material, and so that is what their last waiver would be for. Essentially that is goal here, is to meet with what GM is requesting as well as maintaining what the Town approved in 2003. I know the petitioner is here if you have any questions, or I can answer any questions that you have.

Mr. Gibbs: Would the petitioner like to come forward?

Mr. Quintana: My name is Nick Quintana, I am the architect with Zebra and Associates Architects and it is my privilege tonight to represent Stoops Buick. Here with me tonight is also Jim Meyers, the Director of Stoops Buick and also Scott Reynolds. Scott is liaison between GM and Stoops. Part of the reason that we are here tonight is that to stay in good standing with GM, Stoops is required to do all due-diligence, to try to conform to the to the new GM model. We understood from the original design that they presented to us that we felt it was drastically different than the Town standards and what we tried to do is achieve a blend of the two. If you take a look at the rendering that is before you, we kept the arches the keystones and the elements on the lower part of the building, those are the similar colors that they are now, which has more of a pleasing appearance in my opinion to what the Town of Plainfield has approved in the past and liked, but we also tried to carry on the main focus of GM standards and that is the black and the white facial panel that is going along the top. We think and we believe for the best of our abilities that GM will accept this. We do have to go back to them after hopefully we get Town approval tonight that the Town’s accepted this modification and then we will have to get their blessing to see if they will go along with it. They may say yeah or nay. The downside to it is if they chose not to, then it affects the amount of money that GM is reimbursed for keeping in good standing with GM. They have different levels and I think primary reason for that is to keep all of the dealerships looking nice and current. So they do that through a monetary meet. I will be happy to answer any questions that you might have about the architectural style of the building, if you would like to direct any questions to Mr. Meyers or Scott I am sure they will be happy to answer those too. I think I forgot to give you my address, 674 Shakespeare Drive, Avon, Indiana.

Mr. Gibbs: Does anyone on the board have any questions at this time?

Mr. Kirchoff: The only question I have is how far from the GM standard do you feel comfortable that you are in the ballpark?

Mr. Quintana: We are pretty comfortable that we will get approval. One of Scott Riddle’s abilities here is to have verbal communications with the representatives with GM. So even though we haven’t been given the official nod, we have been led to believe that we will have a favorable recommendation from them.

Mr. Kirchoff: Thank you.
Mr. Brandgard: Just a comment, what you have done from the GM model to what we have out there, you’ve done what I would say a pretty nice blend out there. It keeps the feeling of the old one while bringing in the new one.

Mr. Gibbs: With this being a public meeting I will open it up for anyone in favor or questions about this petition? If not I will close the public portion of the meeting and open up for any additional questions from the board, or a motion.

Mr. McPhail: Mr. President I would like to make a comment. I can very easily vote against this proposal just based on principal. I find it very distasteful that a corporation like General Motors threatened the viability of a local dealership by dictating the standards their has to be when this dealership currently has very attractive building and I find that to be very distasteful and yet I have to support Stoops Buick because they are a viable business in our community and I don’t want to damage that. But I do think that it puts us in a very difficult position to approve something that does not meet our building standards just to keep a good viable business operating in our community. I don’t mind if you pass that information on to General Motors. It is very distasteful for me to vote to approve this, not because I like or dislike the building, I dislike the process that we are doing. Thank you.

Mr. Kirchoff: If you are ready for a motion. Mr. President, I move that the Plan Commission approve DP-11-001 as filed by Stoops Buick, Inc. requesting architecture and site design review approval for a reface of the Stoops Buick at 1251 Quaker Blvd. with a requirement for waivers to the building materials requirements finding that:

1. The Development Plan complies with all applicable Development Standards of the District in which the site is located.
2. The Development Plan complies with all applicable provisions of the Subdivision Control Ordinance for which a waiver has not been granted.
3. The Development Plan complies with all applicable provisions for Architectural and Site Design Review for which a waiver has not been granted.
4. The proposed development is appropriate to the site and its surroundings.
5. The proposed development is consistent with the intent and purpose of the Plainfield Zoning Ordinance.

and, regarding a waiver to allow the primary Building Material of the structure to be a concrete block and also to allow the west elevation to not have a primary building material, the Plan Commission finds that:

1. The proposed development represents an innovative use of building materials which will enhance the use of value of area properties;
2. The proposed development is consistent with and compatible with other development located along the Gateway Corridor; and,
3. The proposed development is consistent with the intent and purpose of the Plainfield Zoning Ordinance.

and that such approval be subject to the following conditions;

1. Substantial compliance with the building elevations file dated July 14, 2011.

Mr. Brandgard: Second.

Mr. Gibbs: I have a motion and a second, Mr. Carlucci would you poll the board.

Mr. Carlucci: Motion was made by Mr. Kirchoff and seconded by Mr. Brandgard.

Mr. Satterfield- yes
Mr. McPhail- yes
Mr. Brandgard- yes
Mr. Duncan- yes
Mr. Kirchoff-yes
Mr. Gibbs- yes

Six ayes, none opposed, motion is approved.

PETITIONS FOR PUBLIC HEARING

Mr. Gibbs: Next item on the agenda is PUD-11-001
Mr. James: After a lot of head scratching I think we finally figured out what this petition is all about and you know that addendum I sent you yesterday, forget about it. I will pass out another motion I came up with today. What we came up with is, this is just a request to modify an original zoning commitment that was made when the Marketplace and Metropolis Parkway, the Rave theatre, and phase three (3) of Metropolis was first approved back in 2003, they want to modify commitment number eight (8) to extend the approval period to December 31, 2013 just for this 25.5 acre parcel. Number eight (8) of the zoning commitment stated that all phases shall be completed within three (3) years from the date of the PUD, that is all initial project review phases shall be done within a three (3) year period, the original developer Premier went bankrupt and they were unable to complete the phases within three (3) years, so the zoning and preliminary plan expires and the allotted parcels were sold off. This is the parcel we are talking about 25.5 acres, this is Central Park right here, and Metropolis Parkway, the Rave theatre, and phase three (3) of Metropolis, and here you see all of this was in the original Metropolis PUD. There was some confusion regarding the purpose of the request and the petition. The purpose is to modify commitment number eight (8) to extend and approve the deadline to December 31, 2013, commitments are modified by the Plan Commission and not by the Town Council. The request does not approve multi family use for this subject parcel, more approvals are necessary before any apartments can be built, so after tonight you see fit to modify the commitment they modify have to agree to this tonight because obviously we do a rezoning to allow multi family, they have to get approval of a preliminary plan to allow multi family, they have to get approval of a final detailed plan or a development plan, and then they have to comply with all of the zoning commitments and that means that it has to go before a review committee as originally stated in the commitments. So however any confusion that straighten up and then the only action tonight is just to modify the commitment. With that I will have a seat and there are several representatives here and I am sure they can go into more detail about this request.

Mr. Scimia: For the record, my name is Joe Scimia; I am an attorney with offices located at 600 East 96th Street, Indianapolis, Indiana. I am here tonight on behalf of Brookview Properties which is a member of the Hearthview Residential Family of Development. I am joined tonight by representatives, partners, and principals of Hearthview Residential, to my right is Mr. Jim Thomas, and this is Kelli Lawrence. As Mr. James stated we are here requesting modification of commitment number eight (8) to the original PUD, which was then known for the Marketplace Plan Unit Development that required all initial review phases of the PUD completed within three (3) years. That ordinance was adopted in 2003, and it is currently known here as Metropolis. We are requesting the modification in the developing extension to allow the developer to for approval of the necessary development plans to develop a high quality multi family housing development on approximately 25.5 acres. We would like to take this time why we believe that you should support this request, but I want to take one moment to be a lawyer and apologize for that, I'm not going to bore you nor inflict pain upon you by going through the process of discussions they reflect the fact that this is a little bit difficult because with the PUD having gone through what it has gone through, it is not exactly clear what process remains or what is required and I think that has kind of shown somewhat in reflection in the staff report and the time it has taken us to get here in discussions and I will leave it at that. I am going to go on the record saying that I do not agree that we have to rezone the property, I agree that there are development plan approvals that need to be obtained, but the property is already zoned PUD and it would rezone PUD after this and if you look at the original PUD it allowed various uses and classifications, and I don’t think we have to agree to this tonight because obviously we do agree that this action needs to be taken in order to proceed. My only point in what I'd ask Mr. Daniel and Mr. James to consider after this is to look at the PUD district regulations of the zoning ordinance and being very familiar with them I believe that if they have a look at section 6.1D, it talks about the fact of what happens if there is a failure to get a final development plan approval within three years of a plan and what it says, you basically have to go back through the process and just to quote it, it says “the preliminary plan shall be deemed to have expired”, which we believe it probably has, “for that portion of the PUD that has not received approval of the final detailed plan except for the location and density of purposes land uses depicted on such preliminary plan.” So I don’t think it is a rezoning, I think
we are going to have to get subsequent approvals and I agree with that and we are going to have to work through that if you see fit to go forward and approve our petition tonight, but I just wanted to go on the record with that small point, and like I said I don’t think it has to be resolved this evening. As I mentioned I do represent the purposes are not clear to me, nor are they any questions on the record. We have contracted to purchase the property. I’ve asked Mr. Thomas and Ms. Lawrence to speak with you a little later to tell you about Hearthview, their history and the quality of their developments and honestly what they bring to the project. We believe that obviously there are good reasons to support this request. Obviously everyone knows here that the Town has made a significant investment in Metropolis and surrounding area, whether it is in the form of sewers, roads, info structure, whether it is the traffic identification plans that work so well with the Town and the incentives in the forms of abatements that have been available. There is obviously a large amount of investment in this project and you all should be commended for that. Also, quite honestly, being the premier regional center and area, it provides a valuable asset to your citizens obviously. Needless to say the failure of Metropolis would have a significant impact to the Town of Plainfield and surrounding area, we all know what can happen to regional centers that quite honestly become unpopular is the word I like to use, but what happened is they have an ability to attract the people and that means to be here which is going to end up with seasonal uses or less attractive uses, and it is hard to imagine that such a nice facility with the quality of shopping and restaurants you have at Metropolis could ever deteriorate, but I guarantee you that every developer of a mall has always said that that would never happen to my facility, so the goal here is to keep the viability of that. Obviously that depends upon whether the current economy and the single family and multi family development is going to bring, but also if it becomes clear that it is going to be hard to develop in this area, or it is less attractive of an area, then the first and power in this day and age dictates to retailers where they are going to locate and I probably if any of you are familiar with retail shoppers when you sit down with them whether it be anchors or not, the first thing they talk to you about, how many rooftops are within the geographic area of this development, and that drives their decision to locate the size of the facility that that they will even locate there. I look at it as purchasing power and that is the key to the future investment again, in other words, keeping it in its current state and quite honestly even though the expansion of retail at Metropolis, we all know that back in 2003 when this project was introduced it was considered to be a much larger project because of intervening and that has not fully materialized at this point, but obviously the person on power is one of the keys to the future of this project. The current economy and the single family and single family crisis tells us that probably the likelihood of additional single family development means successfully built in the area is not likely to occur if you talk to anyone who knows about this or looks at it, they will tell you that the foreseeable of the future looks bleak for single family development and that is something that we’ve worked through. We’ve been through trothos before, how long that will last, not clear but I don’t see anyway seeing that there is going to be a robust single development occurring in the near future. The other thing that complicates that is the fact that it was originally proposed as integrated development by a single developer, who had control over and who the users would be and how it will be developed. A single visual was easy to implement. Unlike that is scenario has kind of changed. We now as a result of the failure of the developer have multiple owners among the many parcels that are left to be developed in the area. When I say the time is not the Town’s best interest, all I am saying is, is that as time passes people lose interest in the projects and investment projects become quite honestly harder to make. My concern would be like any concern of a large property owner is that we don’t know what the future is going to bring, but also if it becomes clear that it is going to be hard to develop in this area, or it is less attractive of an area, then as time goes on there is less interest in the property. I think there are a lot of motivated land owners in the area right now, but obviously the process is very concerning as well as the economy. I am not here on any false illusions; I know obviously that there is a lot of concern in this community and skepticism about multi family development. As you before on several projects available on those concerns, but I think we have to look at what we are talking about with respect of this site and what is realistic in this community and that is high quality multi family apartments is contemplated by the existing developer, and by the existing PUD. Remain the highest and best land use for this western portion of Metropolis development and
here is why we believe that. If you look at the site, it is bordered on two sides by existing apartment development, undeveloped ground and in an area that is not far from industrial development. Not much has changed as far as the land and its surroundings since 2003 since this was originally envisioned. There was some discussion I understand that there would follow multi family development. I don’t feel quite honestly, I wasn’t around then, it is a little counterintuitive to me, but obviously there might have been some good reasons for it at the time, but typically it is not a situation where you build it and they shall come, it is a situation where if you have purchasers and you have residents then the retail will follow that is a pre-existing condition. I stand that a product quite honestly less brings along with it.

This company, quite honestly and probably a better product as far as the maintenance and its age, that is just honestly what the retail market has to offer these days. One project I wanted to talk about, and it is a comparable project in a comparable community, is the fact that we know that the average household income for our renters in other communities exceeds the average income for Plainfield residents and again that speaks about the quality and the type of resident that we attract. We believe that a quality product by quality developers is the best interest of not only the Town (inaudible) assistance for the reason we (inaudible). You got a tremendous asset that you've made a significant investment in, and obviously you want it to continue to be a quality investment and a tremendous amenity for the citizens. We believe that a product quite honestly as we are proposing will do exactly that. A couple of other things that we are going to talk about or Mr. Thomas is going to talk about is that there is always concern about the effect that we will have on the school corporation and with the type of units that we are proposing here obviously it would not be truthful to say that there would be no school age students in this project, we are going to have them, but our experience at similar communities as this tells us we are looking somewhere between 25-35 children total after total build out. Now that may sound like a lot, but if you think about it overall what the schools are facing these days, I don’t think that that is a tremendous amount to make a big change quite honestly in their operation. The other thing is, is that we are always talk about tax base and what happens, our estimates based upon similar projects that we've built in the current rates in this community, that we would be adding an excess over a half million dollars in property taxes to the Town, together obviating the additional sales tax that will be generated by the residents shopping and the nearby facilities. So we think there is some very good policy reasons quite honestly for you to consider allowing us to proceed with this process, but one of the things that I want to make sure that you understood was the history or the quality of the developer, I think that does make a difference, so I am going to ask Mr. Thomas to speak briefly to you about his company, quite honestly and their profit.

Mr. Thomas: For the record, my name is Jim Thomas I am the principal with Hearthview Residential offices, 805 City Center Drive in Carmel. I will be brief; I get to talk about more fun things than Joe does. We
are a local multi family folks headquartered here in the Indianapolis area, myself, two partners, Kelli Lawrence, all have extensive careers really 20 plus years would be our average. We have an extensive record of successful communities exactly like what we are talking, so this isn't a first time thing. I personally developed over $600 million dollars of high grade institutional apartments throughout the Midwest.

We usually have equity joint ventured partners in these, they are very large investments and our equity partners are kind of the who's who of the institutional real estate investors. We do a lot of work with a group called Western Southern, a big insurance if anybody's got Cincinnati connections, everybody's got Cincinnati, Northwestern Mutual Metlife, those are the folks that are our partners, our long term investment partners in these communities. The principals have developed many landmark communities hopefully that you all know here in the Indianapolis area. I think the one everybody always tracks is Indianapolis, I guess because it is big, everybody goes by and it has a special place in people's hearts. These are just a partial list that people talk to us about a lot, Meridian Arch which is right near the Central Library, 110 East Washington, it was actually one of the earlier initiators of the redevelopment of the Carmel Civic Center redevelopment, that thing has flourished it was 9 or 10 years ago that we started with the first large development there. Similarly the first major redevelopment investor in Carmel's old town, they have named Design District but basically the redevelopment of Carmel Civic Center, and then Prairie Lakes and many more communities, pictures with a thousand words, so this is the Indianapolis Athletic Club Redevelopment into for sale condominiums. This is the exterior of the grand entry and our high water mark unit for a very, very famous Hoosier who I can't name. The prices here is over $1 million dollars so my point is we don't try to do very high quality stuff and we have done it for some normal folks that is just a better view of what we've done. Similarly down near Mass. Ave., a very stylized loft redevelopment, these are our two assets I mentioned in Carmel on the top is the first Civic Center Development, if you have been up to Carmel's reflecting pond, the Veteran's Memorial Reflecting Pond, this community wraps that and then the lower right, if you have all been up off the Monon where the Muldoon's and Bubs and all that stuff is, you will recognize that landmark. This is actually not in Indianapolis, but I like it, it happens to be in a mix, an adjacent to retail kind of thing, it is a lease out in Missouri. I'm from Kansas City originally so this is near and dear to my heart; my folks live in Lee Summit, and you can see a mix of styles to blend in with the retail right there and this was the highest thing that had ever been done in the city of Lee Summit. I'd like to show you tonight is one of the most directly or our most comparable new community which is called Prairie Lakes Apartments in Noblesville, it is at 37 and it runs from 146th down to 141st down to 141st, so we were very happy to have anybody come and take a look. Long term view towards exterior materials, it's brick, it is stone, its hardwood siding, I'm not sure the projector here, that you can quite see the fine tune nature of the details, but one of the companies that we also owned is a big exteriors company, so we spent a lot of time making this thing time proofed to the extent you can do that in the weather, our community is long term materials and very high quality exterior materials. This is an interior there and while we do have fancy estate version, what I am going to show you tonight is our normal version so this is exactly what we are talking about bringing here to Plainfield. You can see the flooring, granite accents, drink refrigerators, expansive cabinets, it is a different interior, again you got to bust Kelli her talents shown on the interior, she brought a lot of the finishes that we execute in condominiums and for sale housing to this community. Again the bathroom, hardwood floors, and tile and other interior views, but you get a sense, this is not, and people think of rental housing, this is high end executive level housing. These are some of our amenity areas, the club level on the top is a side bar café, you again can see the screen, we are off at the moment and then the extensive fitness center area there, pool, infinity edge pool, again what we strive for and the way we achieve these high rents is to provide a level of service, a level of interiors and kind of a feeling, you feel like you are at a resort, so it is an infinity edge salt water pool, a big deck it is a hopping pool amenity. Last year again, I am not touching what Jon said about our residents, our median income there is materially above I think the median income, our point is, we are entirely in keeping with the community profile here in Plainfield and we want to be a proud member of the Town of Plainfield. Forty nine percent of our residents at Prairie Lakes are single and that will tie into the low number of
school children we actually see. They live there because it is a lifestyle choice and to some degree they want the financial flexibility of not having to put up 20% and pay a broker and an uncertain single family market. Seventy-one percent of our folks are professional in occupation; I don’t know if you can read that pie chart, there is a lot of various things, not much service not much manufacturing. We’ve got folks that drive down 69 from the Nestle plant because they want to live there, and so we hope that we are a draw for people in the larger Hendricks County area to come and that is when I talk about purchasing power to Metropolis, that is what I am thinking of. Again I am delighted to take any questions you all have, thank you.

Mr. Scimia: That concludes our presentation and I would like to simply say in closing that we are asking you to allow us to gage in the process to bring in a project for development plan approval, whatever approval is ultimately decided need to be obtained to allow us to proceed and at least allow us to demonstrate to you what it is we proposed for the project, and what we bring to the community as an asset. My last closing thought would be is if we don’t, if this commitment is not modified, and someone else were to come to you, I ask you what process would they go through, because as I see it, if there is not a process to go through this project has no economic viable use, it can’t be developed. There is nothing that can be built on it today, so we will be glad to answer any questions you might have, and thank you for your time.

Mr. Gibbs: Any questions from the board at this time? If not I will open it up for public comment on supporting or opposing this petition. If not, I close the public portion of the meeting and open it up to the board for discussion or a motion.

Mr. McPhail: I make a comment or two; I don’t think the question before us this evening is related to the quality of the petitioner and in the product that he proposes, I don’t think that is the question we are here to discuss tonight. I certainly think they have done a nice job of presenting who they are, but I don’t think that is the issue before us, I think the issue before us is that we have a PUD approved with a specific plan with a specific time table, and if I understand it right they are asking us to extend the time period for that PUD for a portion of that PUD, I personally cannot support that, Mr. Scimia made one statement that I want to disagree with a little bit, he said that with a thought that multi family would follow retail development in the original PUD and I don’t believe that is correct, I believe the intent along with that PUD and the work that we went through with the developer was balanced development and balanced growth of both residential and retail. The concern that I have is that we have other fragments that are studying out there and if we start to support an extension of only a portion of that. We were looking at a plan that included the original PUD and all the other properties that were involved and with the time table of that, I could very easily have a very in depth study of that. But I feel very uncomfortable that if we sit here and try to start taking certain sections of that original PUD and try to develop a plan not comprehensive, I think it is not in the best interest of our current property owners and our current tax payers.

Mr. Satterfield: What is the alternative?

Mr. Brandgard: the question I was going to ask, if this was granted they still have to go through rezoning, same process they would have to go through if it was a PUD so what is the point I guess is the question, it comes back to what the alternative, what does that land sitting there have to make, what kind of zoning?

Mr. James: Discussions with Mel, it is our thought that the zoning has expired and it is reverted back to the I-1 and I-2, which was the original zoning before The Marketplace came in.

Mr. Daniel: Reflecting on what Joe said one of two things is out there. Either it is I-1, I-2 which is the previous zoning, or it is PUD with no approved use for that particular property, it is one of the two, people and or lawyers can disagree on which one of that is technically correct but that I think it is fair to say that it is one of those two results as to where the property is.
Mr. Gibbs: Joe, question I have looking at this map, since I wasn't here for the original PUD, that PUD is everything inside that bold line, is that correct?

Mr. James: Yes, pretty much.

Mr. Gibbs: Question I have is how many property owners are inside of that?

Mr. James: I gave you the handout that breaks it down, there maybe six or seven currently.

Mr. Kirchoff: Actually it shows eight on (inaudible)

Mr. James: Eight, ok.

Mr. Brandgard: Now in talking about that, now this opens up to me a big can of worms out of there. The way the property has been split up now, the various banks or other people owning the various properties, their only property value is zoning. I mean what they thought they had with the PUD.

Mr. Daniel: Well what was approved in that three year period is set, that doesn't change. The only thing we are talking about here is areas of the original PUD had it not completed approved (inaudible), this was supposed to be done in phases, I think the last one was phase 4, was that right Joe, I don’t remember.

Mr. James: Phase 3.

Mr. Daniel: Whatever phase it was anyway, and then as each phase was approved and completed, then that was done. That zoning was set, but then this was being done a piece at a time inside this PUD as it developed and then it stopped. But what is built out there and approved, it still is.

Mr. Brandgard: I was saying the like the out lots along Perry Road, nothing has been done with those, so what is their status?

Mr. Daniel: Well, as I mentioned earlier, it is either back to the original zoning or it is a PUD with no approved use on it.

Mr. Brandgard: That is what I thought.

Mr. Satterfield: If we extend it, won’t it remain what it was originally planned for?

Mr. James: That is a big question that we probably need to have more discussions about, but they do have to bring in another preliminary plan, because a preliminary plan was never approved for this piece.

Mr. Kirchoff: My guess would be no, if we approve it, then they would have to come in and tell us how they want it zoned because the zoning is expired.

Mr. Satterfield: But if we approve it, it will go back to what it was originally.

Mr. Daniel: No.

Mr. Satterfield: It won't? Explain that to me.

Mr. Daniel: Because as this was developed in phases, but the and that is the reason for the multi page conditions and everything else, was that as each phase was approved, that didn't approve anything else, they had what they called a concept plan and in your materials here you will see where that even in the concept plan for this particular piece at such time as the development ceased, I don’t believe that area that is in the circle there that says multi family, is even the same area as this 25 acres, I could be wrong. But because some of this was changed and they came out with these here and we think we are going to put this in here but then somebody would come in and need more acres so those lines would shift because this was all done a phase at a time.

Mr. Brandgard: And each phase had to be approved, even though it meant the concept plan, after that phase, it had to go through the approval.
Mr. Daniel: Until it went through those four steps in the approval process, it was not approved.

Mr. Satterfield: So if this is not approved tonight what process would they go through to accomplish what they need to accomplish?

Mr. Daniel: Whoever does with whatever they do with this property that is left, will have to go through this process if they started here tonight, or find some other process.

Mr. Satterfield: What other process that is my question.

Mr. Daniel: One is just to come in and do a straight rezoning, just come in on a rezoning petition and getting all the commitments and everything else and ask the next parcel to be rezoned and put something in it.

Mr. Kirchoff: As I read through this, one of the things in the discussion tonight, I’d be curious to see what has been rezoned out there, and what parcels are left, I mean if this is the only piece out there, you see what I am saying? If we’ve got 50% of that land and there is no zoning out there, then it is the bigger bite to chew, but if it is just a few small pieces, I’d be more with you Kent…

Mr. McPhail: I’m a under the belief that we have a significant amount, not only this parcel but the other parcels that are owned now by different entities banks, I’m under the impression that they are all the same condition that this particular site is, and I think that is very significant.

Mr. Kirchoff: This causes me concern, if you are telling me that most of that is in essence…

Mr. Daniel: Look at page seven of the material that was handed out by the staff, you can see where it is just written in here multi family spring 2 and multi family spring office, Marketplace Drive, that entire area, however many pieces it is, is not in a PUD. I should say it did not go through the four phases.

Mr. James: This is the original concept plan, and as Mel said we are not sure if it matches up to the 25 acres the way it exists now.

Mr. McPhail: I think if you take a pretty good study of this concept plan a significant amount of that retail that is showing there has not been developed, and you have a significant part of that parcel east of the particular site they are talking about, but I believe it is the same condition, that the PUD zoning has expired and it wraps all the way around them.

Mr. James: This piece with these pieces down here and I think this piece over here that is north of Metropolis Parkway. The rest of this is general commercial, not in a PUD.

Mr. McPhail: That on the west side of Perry, I believe all of that comes off the west side of Perry is in the same condition the 25 acres they are looking for.

Mr. Kirchoff: That raises the question; can we get the people at the table to put the master plan together? I’m sure it will be a challenge.

Mr. McPhail: I would like to see somebody attempt to do that, because I think that in my mind that is the only thing I can really evaluate to take it a piece at a time I just think we are asking for trouble regardless of what they are proposing.

Mr. Kirchoff: And I think what we heard from the community that Multi family is not viewed favorably anyways so to me that is a double whammy not considering this.

Mr. Satterfield: We are not voting on that tonight are we?

Mr. Kirchoff: No we are not, but it is obvious what they want to do with it.
Mr. Satterfield: Well I know that but it is a different issue.

Mr. Kirchoff: You are correct.

Mr. Brandgard: My concern is we know we’ve got an issue out there because the property has been piecemealed from the concept, now we are asked to come back piecemeal to piecemeal, and my concern is, is that going to ultimately create a larger problem for development out there than what there is today. I don’t have the answer to that, but that is kind of where my concern is, and the whole area has got the same issue.

Mr. Satterfield: If we don’t do anything else is it going to stay undeveloped?

Mr. McPhail: I think one issue that further complicates this whole process for me, I’m certainly not an expert on this, but I do know there is waste commitments for some of those businesses within the occupied part of Metropolis that have covenant that dictate what can be built on some of those out lots and if we would approve on a project through this process whatever we go through, which I had an answer for us, but I don’t, but if we go through this process and we would approve a project that allowed one of those tenants to break there lease and then there co-tenant lease is out there that would allow somebody else to break their lease, it is a very complicated process that I think we are faced with and I wish we had an answer for, what do we have six property owners there now. Is there any hope to get those six together to try to bring in a comprehensive plan?

Mr. Kirchoff: Eight.

Mr. McPhail: Eight, eight different owners. I think they’ve all got the same problem, six or eight, whatever, it certainly is less than it was at one time.

Mr. James: (Inaudible)

Mr. Daniel: Joe, on some of those property owners, those are in the PUD that is developed, so there is not seven or eight outside of the PUD.

Mr. James: (inaudible)

Mr. Scimia: This is a very difficult situation, all these questions are very good questions, and I wish to say they have been thought from time to time again, not some clear answers but a couple of things. There is some discussion about the zoning has expired, the zoning has expired, the three year commitment has expired, and if your desire is to get everyone get on the same page I would suggest to you the last thing you will want to have happen is this PUD to expire, because this is the last control you have over all those property owners as a single unit, otherwise quite honestly they will come through and do exactly what you don’t want, they will set individual rezones by parcel basis, and there will be no way to integrate the whole, so I suggest you think about that because my guess is the PUD is the vehicle that keeps them all aligned in their interest, otherwise I would put that chance about as much probably just a little higher than Payton Manning the Quarterbacking this Sunday, so think about that. The other thing is quite honestly is that we are in a situation where we are talking about people that have property that they have acquired one way or another and as a result then you are going to tell them they can’t do anything with their property, again I don’t think you want to do that, because someone’s got a piece of property that they can’t do anything with, there is a claim there. The Government has taken them their property, after coming in and rezone it to a classification that can be used.

Mr. Brandgard: This is a counter argument to you. Somebody didn’t do diligence to figure this out before they bought it.

Mr. Scimia: We did do diligence, we just disagree on where it stands, and if I bet you anything if I was bringing in a very large retailer anchor right now, I wouldn’t have a single problem with moving through this process, so we understand that. I’m just suggesting that as we move through this and we have an interest in this and we obviously wouldn’t be talking about spending 30-40 million dollars if we didn’t think we could bring a quality park here and be successful, but having
said that, I am a little concerned about the fact that we are talking about there is no zoning. If it is zoned I-1 and I-2, then my guess very quickly you are going to have Mr. McNaught and Mr. Podell and a lot of other people here telling you we are ready to develop, because where else would you rather put your industrial investment than right smack in the middle of this project. You may not like it, but I can tell you that there is a lot of tenants that would, so I don't think that is a viable option either, it is not consistent with the overall plan, I'd only suggest that I’d think that your ordinance tells you what has happened and the ordinance says that there has not been a timely procurement of the final development plan approval within the three year time period, and what is the consequence of that, it says that you got to go back and get a new preliminary plan and a developmental plan approved. That is where I am struggling with the concept of a rezone because it doesn’t make sense, I’m zoned, and if I’m not zoned, I mean if I got to get a rezone then tell me what I am zoned today and the answer can’t be I-1 and I-2, I don’t have the clear answer, I know what I believe in, I’m just suggesting that these are considerations. I’m asking for the right to bring in, like any other person under a PUD zoning a petition to have plan approved, and if it means I’ve got to bring one for a preliminary plan and a final development plan so be it, but I would agree to you that there is not perfect clarity in this and that is why we presented our vision because we were hoping that you would see that we are not trying to bring something that we could in anyway damage or not be a good citizen to the community.

Mr. McPhail: I guess I would like to ask a couple legal questions. It appears to me that if I’m making a couple of assumptions here that if we deny this request tonight, they would have to wait to come back.

Mr. Daniel: That is correct, but the Plan Commission can waive that penalty.

Mr. McPhail: I guess the next question that I’ll ask is there anyway to try to get the other property owners on the table and see if they have any ideas for this whole thing, assuming that Mr. Scimia’s position is correct; it still doesn’t justify piecemealing extending the thing to me. We’ve got the same problem if the process is to re-do or extend the PUD and change some of the commitments if we are not looking at the PUD as a whole, I don’t think we are gaining anything.

Mr. Satterfield: Can we do that? Can we extend it, the PUD as a whole?

Mr. Daniel: Well that is not before you tonight.

Mr. Gibbs: But you can continue to this petition.

Mr. Satterfield: I would assume the people that bought the property probably thought they were still under the PUD zoning, I don’t know, that is speculation.

Mr. McPhail: I believe, I believe that the actual property owners ended up with it through the bankruptcy, I think the petitioner is a potential buyer unless he has closed on the property I didn’t know that. I believe the paperwork we have in front of us, First Merchant’s allowed them to bring this petition in, that First Merchant’s still owns that property, and I believe that all of the property owners are in the same situation, I don’t think anybody has gone out there and bought a piece of property out of the bankruptcy, I think the lenders are the ones that are the true owners.

Mr. Satterfield: What is the cause for extending it for the whole, what can we do?

Mr. Brandgard: What I see happening is that if approve this request; we are going to see everyone coming in.

Mr. Satterfield: What I am saying is we don’t have to do this individually; can’t we do this as a comprehensive?

Mr. McPhail: That is what I was saying.

Mr. Satterfield: Well can we do that?
Mr. McPhail: My question is can we get those six properties owners to come to the table with this one?

Mr. Satterfield: Do we have too?

Mr. James: Yes we'd have to get approval from all of those property owners to amend the commitment from each property they own.

Mr. Satterfield: That is if you say it's been rezoned and what it is rezoned too? Depends on who you are listening to right?

Mr. Daniel: Joe can correct me on this, I don't think anybody is arguing over what is in paragraph eight of the commitments, and it says you have three years, and at the end of three years whatever, if your not done, your done, whether your done or not, your done, that is what number eight of those commitments says and I will do something that may be the right thing or the wrong thing, but I think some of these members where not here when this development went through, but to give you a two minute, when Chris White came in, this is a big project, and from my understanding is and we have members here that was here at the same time, there is a real concern about whether he had what it took to really develop this type of project and what the Town basically said is that we are not going to end up with the project half done and a bankrupt thing with property left that we can't do anything with, we are not going to be left in the same situations where developers went bust and that sort of thing, and the building is half finished and that sort of thing and something else, and we are not going to get stuck with zoning that might become inappropriate or whatever else, and that is why they put the three year deadline, they put him on a very short leash, and they believed they had good reasons for that and that is why you see all of these commitments, the three year deadline and all this other, and as fate would have it, before he got finished with this project, he went bankrupt and so now the Town has this situation and in being fair to everybody here, one of the reasons for that three years, was let's say he does go bankrupt and he did and then during a span of time after that, circumstances change, what he may have looked at on his concept plan may not be appropriate some years later, so that was the reason for that three deadline, and without getting into a lot of other stuff or whatever, in the meantime, that was 2003, that was 7 years ago, that expired in 2006, so it expired a long time ago. Well in the meantime things have changed; the Town has approved an apartment project right across the street. That does not mean that this is not a good project, I'm just pointing out some of the reasons that they did it the way that they did and how that impact came about, that doesn't mean that we shouldn't have apartments out here also, but the very thing that went through all of their minds when this was going on, some of circumstances have come about, so there is a difference the area, and whether or not what Chris White had on his concept plan and the conditions and the zoning and everything when you read that ordinance it makes it very clear that that concept plan that says right in the ordinance, does not constitute a preliminary plan, if you read the whole ordinance it says that on the first page of the ordinance, then it is set up a four step process after that and then it was going to be completed in phases and however many phases he got finished, and hopefully all of it, it would be approved phase by phase basis and you'd have the whole project. Well what’s been approved out there is approved and set and nobody can change that and now the Town is left were we are 5 years after these commitments have expired. That may not have been perfect, but it is a sense of what happened.

Mr. Carlucci: I would like to make a suggestion if I could. I’ve got a feeling that we are not going to solve this tonight, and that is why they paid me the big bucks to come up with an observation like that. Secondly, I think it would be good to continue this meeting to the next Plan Commission meeting interim between Tim, Don, and myself, Robin, Kent, and other members of the Plan Commission and we get together and we set out how we move forward on this. There are some issues here, but I don’t think we are going to get these out tonight. We may have to start looking into what our plan is going to be. It is up to you.

Mr. Brandgard: I think the other thing is if I understand it right, if we were to grant the extension and you follow the process inheriting that, it doesn’t mean whatever somebody brings in can be approved. Granting the extension does not approve anything, other than the fact that you get more time to bring something in than the terms of a PUD.
Mr. McPhail: I certainly would support a continuance at this point, maybe it won’t be any clearer in 30 or 60 days but I certainly would like to see an attempt to see more comprehensive plan than what we are looking at.

Mr. James: I do know this, no preliminary plan was approved from any of the undeveloped parcels, so somebody before they developed that parcel they would have to bring in a preliminary plan to the Plan Commission and it is your option to approve it or deny it.

Mr. Satterfield: And that is not what the petition is about tonight.

Mr. James: Tonight they just want to move forward.

Mr. Satterfield: I agree with the continuance too, to get something worked out before then.

Mr. Kirchoff: I would hope that there could be some clarity of what we think the zoning is and if it is expired.

Mr. McPhail: I would move that we continue this hearing I don’t think 30 days is long enough, I’d say to the November meeting, that would give us 60 days to try to do some research.

Mr. James: That works for me.

Mr. McPhail: I don’t think 30 days is long enough, do you?

Mr. Gibbs: So when you make your motion tell us that date.

Mr. McPhail: I would move that we continue this hearing PUD-11-001 to the November 7th meeting.

Mr. Gibbs: November 7th?

Mr. Satterfield: Second.

Mr. Gibbs: I have a second, Mr. Carlucci would you poll the board?

Mr. Carlucci: Mr. Satterfield- yes
Mr. McPhail- yes
Mr. Brandgard- yes
Mr. Duncan- yes
Mr. Kirchoff- yes
Mr. Gibbs- yes

Six ayes, none opposed, motion is approved.

Mr. Gibbs: Joe, next item?

Mr. James: That concludes our public hearing portion of the meeting.

OLD BUSINESS/ NEW BUSINESS

Mr. James: Next item under old business/new business, sidewalk signs in the general commercial district. A couple of weeks ago I emailed everyone the letter that I received from Cindy Turner, she is the owner operator of What a Girl Wants at 1601 East Main. She provided some information about her sale before she put up a sidewalk sign and then after she put up sign out by Main Street, so after she put up the sign I told her it was a violation and they weren’t allowed and that it had to come down. Then she wrote the letter to respond to my visit, so she wanted to at least see if we could have a discussion about allowing these sidewalk signs in the general commercial district. We’ve talked about this before.

Mr. Carlucci: That sign was a little bit more than a sidewalk sign.

Mr. James: Yes, it was 6 square feet.

Mr. Carlucci: The other problem that I have is that she is in one unit of several multiple units right on US 40 and Dan Jones Road. I don’t know anybody would see it, and then we have the guy holding the sign for do your taxes and then you have all the other people having signs out there; I don’t see how anybody can read any of that stuff.
Mr. James: In the last couple of weeks she has taken that sign down and she has put up a banner which I told her was allowed for 45 days to advertise her new business, so it will be interesting to see how her sales have fluctuated with the sign down and the banner up.

Mr. Carlucci: This is no defense, I don’t know this woman at all, but you would think that before you open a business that she would have asked all of these questions before she moved in, because she is in a spot back there that you can’t see. She’s in the back corner isn’t she?

Mr. James: Yes.

Mr. Carlucci: She made it harder to see, the only thing you can see back there to see who is back there.

Mr. James: The Goody’s and Advance Auto’s, Liberty Tax, that shopping center.

Mr. Brandgard: Going back to the sidewalk signs downtown, mainly because the business is front to the street on the sidewalk in the general commercial district, the businesses are so far removed from the sidewalk; it doesn’t make sense to have that. To me, I don’t think we should allow it.

Mr. Carlucci: Then again, we don’t.

Mr. Brandgard: I’m just saying in general I don’t think we should allow it because you are going to have...

Mr. Satterfield: How does she provide advertising for her shop? What is her solution?

Mr. James: Here is an option, the owner of the center does a new integrated center sign with an LED message board and each tenant in that shopping center can have their own panel on that sign.

Mr. Carlucci: Which he will charge for, it’s not going to be free. There is the other option they can have somebody stand out there and hold a sign.

Mr. Satterfield: For me, that is worse than sidewalk signs.

Mr. Carlucci: I know that is what we allow now. I go back to the fact that she had a responsibility...

Mr. Satterfield: Yes, I get that, but it sounded like to me in the letter she wanted her own business and didn’t think about a lot of these things like probably half the businesses in Plainfield. I just think there should be some remedy for her situation.

Mr. McPhail: I get the same argument from Shelly’s Closet which is in the strip mall there where the Florist and all that. Believe me, they take their sandwich board out there quite often and they tell me, and they are visible, you can see their sign as you are driving, a lot more visible than the other, they tell me the same story that that small little sign improves their sales. I don’t know what the answer is, but these places, particularly where this lady is with the resale shop, my guess is that property owner is not going to provide a new sign out there because they can’t get enough rent out of those buildings to afford to do that. There ought to be a simple way, but how do you control it and how do you control the quality of it and that type of thing? Every once in a while we El Mason used to sneak them out there and all that. I don’t know what the answer is; you can’t force the strip mall to put up a sign. Is there any way to come up with a small quality standard of a small sign that they could set out during business hours that wouldn’t be offensive?

Mr. James: Allow the yard signs, but if we allow it for one then everyone else is going to do it and then we are going to have them all up and down Main Street.

Mr. Satterfield: I’m not saying that is a good idea, I’m just saying there should be some way she should be able to advertise. We are starting all over making it; the strip mall ought to have it.
Mr. James: They say you can do it in Mooresville, I say well this isn’t Mooresville. Look at our standards compared to theirs.

Mr. Kirchoff: She does have a sign on the front of her building right?

Mr. Duncan: Well isn’t there a big (inaudible) to the sign now for the tenants?

Mr. McPhail: There aren’t enough panels on there.

Mr. Duncan: They don’t have enough panels?

Mr. Kirchoff: There is a Goody’s and Advance sign there.

Mr. Gibbs: But they could divide that panel up.

Mr. Duncan: For all of their attendance in there. There is that big sign out there, I never read it.

Mr. Satterfield: Do you know what restaurant is in that strip mall?

Mr. Duncan: Yes, I’ve been in a meeting there once.

Mr. Kirchoff: I think we should work with local business people to help them be successful. I don’t have the answer to that.

Mr. James: I am very lenient with them, I understand their predicament, especially in this economy, and help them out all I can.

Mr. Kirchoff: The more people that put signs out there it the least effective they are going to be.

Mr. McPhail: Did we do any research when we allowed the ones downtown and see what other people were doing.

Mr. James: That was limited to downtown area.

Mr. Carlucci: It is difficult downtown even with their A frame signs, you don’t have a lot of room between the fence and the walk, and most people are trying not to get in an accident when they went down 40 anyway, it is hard to look left or right.

Mr. James: We will do some more research and see what we can come up with and report back to you.

Mr. Kirchoff: In the meantime can she put her sign up by the road.

Mr. James: We never told her to take it down, and she willingly took it down.

Mr. Gibbs: She is using something else.

Mr. James: She is using the 45 day banner.

Mr. Kirchoff: Hopefully in 45 days we will have an answer.

Mr. James: Next issue is overflow of trailer parking in the warehouse district. This was brought up at DAC, but not by Ralph, I meant to discuss this at the August meeting but I forgot about it. I went out and took a look to see if it was a problem and I counted about nine warehouses where it looked like they have some overflow trailer parking. I don’t know if they are using them for storage or what, but Amazon, it is very noticeable because it is right there the south end of the building right there off of Stafford. They did come in and talk to us and they are looking at adding some more trailer parking on the east and west side of the building, plus the new building that they just leased, maybe that will elevate some of that. Pep Boys, I couldn’t find the site plan that was approved so I’m not real sure whether trailer parking was approved or where it is supposed to go. Some of them like ERI you couldn’t see them from Perry Road, so I don’t know if that is really an issue, the others could be seen from I-70 off of Reeves Road.

Mr. Carlucci: About ERI, I think their issue is they are still waiting on things to come in from overseas, so they may be storing and I know
Mr. James: They are looking at leasing another building too, so maybe that will help elevate some of their problems. I guess the question is, is this really a problem, should we look into it or try to enforce it, or what are your thoughts?

Mr. Brandgard: I can tell you, you're talking about Pep Boys, from trailer parking that has been like that since day I almost and sometimes it doesn't look very good. But the other half is it is a sign that business is good.

Mr. Kirchoff: My gut reaction when I read it was we are in the warehouse district aren't we?

Mr. McPhail: As far as I know all of the sites are meeting the landscaping requirements and the muffler requirements.

Mr. Satterfield: What are they in violation of?

Mr. James: I don't really know if it is a violation, I mean if they were parking where the automobiles were supposed to park then that would be a violation. It may be the pavement wasn't built for the trailer parking, and it is more of an appearance, the streetscape, what you see from the street.

Mr. Satterfield: Same as sidewalk signs.

Mr. Gibbs: From my perspective it doesn't bother me near as much as trailer parking (inaudible).

Mr. James: Chief Mitny and I met with the new store manager a couple of months ago and we talked to him about that and he said he was going to try to control it; I haven't had any reports lately.

Mr. Carlucci: The manager turned out (inaudible) Chief Mitny talked to him and the summary of the conversation was if they want to stay there they can, because that is not a Walmart policy, they want to stay and then they can leave the next day, that is what he said, so I don't know what we can do. The problem that we can do this as a zoning violation and that process take a long time to go through, so we might have to think of some other way to keep them from parking there over night, I don't think a lot of things come good from that, it is supposed to meant for a parking lot, not for overnight parking for car and truckers.

Mr. McGillem: If I could suggest one thing on the trailer parking, I think whether you do anything from the standpoint of totally making an exception to it, it is my understanding talking to Ed, the one distribution building there at Airwest and Perry Road on the west end where the storm trailers, basically there is no aisle or anything they just have that whole end stacked in with trailers. If we got fire, lanes that needs to get around that building completely which is something that we are always talking about in tact is my understanding that a fire truck could not get all the way around the building because on that west end, they just got, they are not parked in spaces, they are just basically tucked in there end to end with as many trailers as you can get in there, so I think if they are going to store trailers or anything there still needs to be a drivable aisle through the parking facilities so that there some maneuver on the thing, that is just a safety issue and I think we at least need to see that that is accomplished. I emailed Kent Foster up there, the Fire Marshal and told him about Napa and ERI, is this a safety concern like Don said, is it blocking access to the building and he said he went out there and looked at it and he thought they were both ok.

Mr. McGillem: (inaudible)

Mr. McPhail: That is outside storage, we don't allow that, we allow truck parking and trailer parking, but we don't allow outside storage.

Mr. McGillem: (inaudible)

Mr. James: If they are using trailers for storage, is that a concern?
Mr. Gibbs: To me it is.

Mr. McPhail: It is to me.

Mr. James: I can check into that.

Mr. McPhail: It certainly needs to be a safe environment, if they got a problem we’ve got to be able to get safety equipment there.

Mr. Kirchoff: For their protection.

Mr. James: Ok, the last item was the Plan Commission invitee, this is Crager-Bartels Realty at 2430 East Main Street, back in June or July they put up a roof sign on the little house I guess that they use as an office for real estate, and so I sent them a notice and they said they were going to file for a variance by the end of July, but they didn’t, so I sent them an invitation to the Plan Commission tonight but it got returned today, so they were not contacted about the meeting tonight, so I don’t know if it was the wrong address or if they are not in that building or what the situation is, but I can go by there tomorrow and talk to them about it, to see if they want to go ahead and file for that variance or remove the sign. That is all I have for tonight.

Mr. Daniel: I have one item Mr. President, I apologize I didn’t call Joe and get this on the agenda but it is short. As you know we have our ongoing case with Kroger, the gas pumps, the Federal Court has spoke on that as you know and there decision was to send it back to the remanded trial court to order the trial court to remand it back to the Plan Commission to rewrite those findings that the Plan Commission (inaudible), in the meantime of course thirty days after that Court of Appeals decision, the Kroger, they wanted to try to get that to the Indiana Supreme Court they have to file a petition to transfer and the transfer on that is not automatic, the Supreme Court would have to agree to take that, that is not an automatic appeal, and I think the odds are less than 10% that the Supreme Court would take that case, but you never know, and I would say it is not very good. In the meantime, Mike Mansfield who represents Kroger, has advised us they are going to file a petition to transfer to try to get it to the Supreme Court and during that conversation he wondered if I would consider asking the Plan Commission whether there is any ideas they might have that would allow Kroger to put some design idea or any other idea that the Plan Commission might have that they would approve that gas facility on that site, as long as the Plan Commission didn’t say put it on the east side of that site. So I told him I would communicate that to the Plan Commission.

Mr. Gibbs: Redesign 40 and 267.

Mr. Daniel: So I have and if anybody on the Plan Commission or whatever, and a night that you can’t go to sleep, think about that, the news won’t put you to sleep or whatever else you can think of that redesign on that and let me know.

ADJOURNMENT

Mr. Gibbs: I will take a motion to adjourn.

Mr. McPhail: So move.

Mr. Kirchoff: Second.

Mr. Gibbs: All in favor,

All: aye.