

MINUTES OF A REGULAR VOTING MEETING OF THE

FAIRFIELD PLANNING COMMISSION

October 26, 2011

Members present: Jeff Holtegel, Mitch Rhodus, Don Hassler, Scott Lepsky, Mark Morris, Bill Woeste and Tom Hasselbeck.

MINUTES OF THE PREVIOUS MEETING:

The minutes of the previous meeting, held September 28, 2011, were approved as submitted.

NEW BUSINESS:

Kroger's Gas Station – 5214 Pleasant Avenue

At the Commissioner's places were copies of the Design Review Committee Meeting draft minutes, the Staff Report, memos from Public Works regarding Pleasant Avenue access, the response from Kroger's to the Staff Report and information regarding the Conditional Use application submitted at the Boymel Office Park. The Commission was also given a copy of the changes proposed to Chapter 1192, Source Water Protection.

A slide of the site plan was shown. A full access curb cut is proposed on Nilles Road as far east of the Pleasant Avenue intersection as possible. Access on Pleasant Avenue is proposed as right in only. There will be no egress at this curb cut. Mr. Bachman explained along the Pleasant Avenue frontage, Kroger is proposing a small grass area at the south property line, then heading north, the right in only curb cut, a mountable curb, a full raised section of curb and then landscape to the corner. Staff visited a Kroger site in Ft. Mitchell, Kentucky that utilizes the mountable curb with a right in/right out curb cut (slides of curb cut were shown). This particular location also has a concrete barrier in the roadway to prevent left turns into or out of the site and a decel lane for the right turn in. The concrete barrier was constructed when the Kroger Fuel Center was built.

A slide of the building elevations was shown. The kiosk will have a mansard roof, drivit band, brick and glass. The canopy is shown with a green standing seam hip roof and brick columns matching the kiosk. Slides were shown of the areas where Kroger is proposing to display product for sale. These areas include cages located next to the gas pumps, snack station near the kiosk and hydration centers on each side of the kiosk.

A slide of the landscape was shown. There is a landscape buffer at the intersection of Pleasant and Nilles that wraps to both the south and east curb cuts. Screening and landscape will be placed around the dumpster.

Regarding lighting, Mr. Bachman stated the plans shows 0 foot candles at the right of way. The majority of light will be under the canopy. Two fixtures are proposed; flat lens and fixed. The lights will be turned off when the facility is closed with exception of a few for security purposes.

A slide of the proposed ground sign was shown. The location will be in the general vicinity of the existing Flowerama ground sign.

The staff report was reviewed. There were four points discussed:

Use – The proposal is defined as a motor vehicle fuel dispensing facility and is a permitted use in the D-1 zone. The Zoning Code defines this as “A place where gasoline or other motor fuel is sold at retail to the public and deliveries are made directly into or onto motor vehicles and no other motor vehicle service is performed. The sale of gasoline or other motor vehicle fuel under this definition must be an accessory use to retail grocery and/or convenience store sales and must be of the self-service sales type. Vending machines do not constitute retail sales under this definition. All motor fuel tanks shall be underground and shall not exceed a total of 20,000 gallons for any one facility.” (Underlining by staff; Zoning Code definition has no underlining). There are several issues regarding the proposed Kroger facility meeting this definition. The sale of gasoline is not an accessory use to a retail grocery or convenience store. It is clearly the primary use. Mr. Bachman stated he believed this definition was adopted before 1985 when the Clark stations started locating in the Midwest. Those stations had a small kiosk building with the sale of gas being their primary function. Council must have had a concern that it was a use that didn’t provide any services except the sale of gas and was not desired in the community.

Building Design – The D-1 Guidelines state “The Town Center should project a positive image. This will be achieved in part through well designed buildings, which will come to represent the Town Center and the City of Fairfield”. Mr. Bachman stated the Commission needs to decide if a kiosk is the type of building they want in the Town Center.

Outdoor Display – This was discussed in length at the Design Review Committee meeting. A big part of Kroger’s business plan is to have a large portion of outdoor display. The D-1 Code refers to the C-1 District, Section 1157.04 which states “All businesses, services or processing shall be conducted wholly within a completely enclosed building except off-street parking and such incidental outdoor display of merchandise, material and equipment as does not exceed five percent (5%) of the floor area of the principal structure or 5,000 square feet, whichever is less”. The City’s position is that the kiosk is the principal structure and therefore, 8 – 9 s.f. would be permitted for outdoor storage (based on 5% of total floor area). The Code also states displays cannot exceed 4’ in height.

The issue of what is the principal structure, canopy or kiosk, was thoroughly discussed. One of the Committee members felt it would be defined as the one served by utilities. It was Mr. Bachman's opinion the primary structure would be the one occupied by the employee. If one structure was removed, which one would have to remain in order for the business to function – the kiosk? This is the premier intersection in the Town Center. He asked if it was appropriate to have all of the outdoor display and kiosk at this location when compared to the other three corners. Only one of the three buildings was constructed under the requirements of the D-1 zone but the other two are also substantial buildings without outdoor storage.

Building Design – Mr. Bachman stated there are two elements to be considered. The first being if the building(s) are acceptable as defined in the Town Center Guidelines. The second would be the colors and materials the buildings are comprised of. Kroger's has done a good job in designing the structures with brick and the green roof used throughout the Town Center. It is still a pre-fabricated kiosk and canopy and the Commission has to decide if this meets to intent of the Guidelines created in the early 1990's.

Access – Two memos were submitted from Public Works discussing the Pleasant Avenue access point. They recommend no access from Pleasant Avenue as it is too close to the intersection and would be a safety issue. Kroger initially proposed a full service curb cut and then revised it to the right in only. There is still the concern of a fuel delivery truck and the general public making a left turn from Pleasant Avenue into the site. Kroger is proposing signage stating the left turn is not permitted but past experience has shown these signs are ignored. Mr. Bachman used the Applebee's/PNC right in/right out curb cut as an example. If Pleasant Avenue access is critical, Public Works submitted a standard they felt would minimize accidents. The problem is that the site is too small to meet the criteria for this standard.

The Design Review Committee also discussed the full access curb cut on Nilles Road. The concern with this curb cut is a motorist will have to cross five lanes of traffic to go north on Pleasant Avenue.

Mr. Jonathan Wocher, McBride, Dale, Clarion spoke on behalf of Kroger. He distributed a color rendering of the proposed landscape and elevations. Mr. Wocher also introduced Monte Chesko, Director of Real Estate for the Cincinnati Region and Carol Crank, Real Estate Representative for this project. The landscape plan has been modified to reflect changes in the tank location and Pleasant Avenue access. Kroger is proposing to develop this site for seven fuel dispensing locations, canopy and kiosk. Mr. Wocher stated they met with the City several times to discuss their proposal which initially included a full access driveway on Nilles and Pleasant. The landscape area proposed will be 12' wide, exceeding the requirements of the D-1 district, and will be irrigated. The canopy will be 126' x 43' and the kiosk, 8' x 22'. The dumpster proposed

in the south east corner will be in a masonry enclosure and screened. Lighting is contained under the canopy and will be flat lens and focus lights. Only a few security lights will remain on when the facility is closed. The hours of operation will be 6:00 a.m. until 11:00 p.m.

Mr. Wocher addressed access. The existing site has two full access curb cuts. Kroger is proposing moving the Nilles Road curb cut further east away from the intersection. The Pleasant Avenue access will be generally in the same location and align with one of the UDF curb cuts. Based on the comments from the City Engineer, the Pleasant Avenue curb cut was redesigned to be a right in only with signage that would indicate no exit and no left turn into the site. Regarding the mountable curb, the photos show earlier display the detail of this curbing. It is a 6" concrete curb with a beveled edge designed for only trucks to roll over. The width of the driveway will only be 12'; smaller than the photos of the Ft. Mitchell station. The photos do represent the type of mountable curb proposed for this site. The Pleasant Avenue curb cut is essential for tanker truck access and Mr. Wocher requested the City approve the design. The tanker truck will access the property from Pleasant Avenue, unload the fuel and exit onto Nilles. Kroger customers leaving the store will more than like follow this same traffic pattern. Mr. Wocher pointed out the access issue is with the site; any business locating here would have the same access challenge. It is their belief the right in only addresses the problem. They are willing to continue working with the City on other options. Mr. Wocher stated they feel there is ample room to construct a barrier on Pleasant Avenue to prohibit the left turn movement. Another option would be moving the curb cut further south onto City owned property. The Butler County design proposed by Public Works is not feasible due to the size of the site and location of an existing utility pole.

Outdoor Display – The staff report states the sale of fuel is the primary element of the operation and the kiosk is the principal building. In function, design and size, the canopy is clearly the principal component of this property. It is more than 5,000 s.f. compared to the kiosk which is less than 200 s.f. It is Kroger's opinion that the canopy should be used for determining the amount of outdoor display. City staff has been consistent in their opposition to the amount of outdoor display. The site plan submitted is Kroger's preferred plan in regard to locations of display material. There are options for removing some of it. They feel they are meeting the requirements of the Zoning Code in regard to outdoor display as defined in the C-1 section of the Code.

Use – There are two definitions relating to fuel sales in the D-1 District. The first is "Motor Vehicle Service" which states "Motor vehicle service station, display, hire and sales subject to the provisions of Chapter 1189". That is the first fuel related term permitted in the D-1. The second definition which City staff is classifying this use as is the "Motor Vehicle Fuel Dispensing Facility". Both terms are listed in the D-1 District. Staff's position is that the Kroger

proposal is not permitted since it is not part of a grocery store. Kroger believes they meet the “Motor Vehicle Service”. They sell gasoline, other motor vehicle fuel, lubricants, supplies for operating vehicles and the products are sold to the public and delivered onto or into motor vehicles. The Code does not say they have to offer vehicle services (tire rack, oil change facility, etc.). This is an important issue which was not brought up until the second presentation before the Design Review Committee. To find out now that this proposal is not a permitted use is surprising. It is common for communities have two definitions pertaining to fueling stations. They normally are to be inclusive, not exclusive. The D-1 District allows both definitions and it is Mr. Woche’s opinion it was intended to be inclusionary to allow a use that might not be just a gas station and not to be exclusionary saying we’re trying to keep all of these out.

Design Guidelines – The D-1 zone allows motor vehicle service and fuel dispensing. There are certain guidelines that have to be followed. The guidelines contain 16 specific standards that are to be applied to properties. The Kroger proposal complies with setback, area, height, roof, materials, colors, ingress/egress (they are asking for an exception to allow the driveway on Pleasant), parking, loading, landscaping, pedestrian, buffering, signage and lighting. Thirteen out of sixteen standards they comply with. Facade organization and storefronts they cannot comply with. A storefront cannot be put on the canopy and the facade organization does not apply.

A comment was made this corner doesn’t have the substance of the other uses. This corner would also end up with less access than the others. The west corner has more access via multiple driveways approaching the same intersection with no restrictions. There is a similar use across the street with two full access points. If there is a way they can meet the storefront or facade orientation, they will work with the City to achieve.

In summary, Mr. Woche stated they meet the design guidelines and definition of Motor Vehicle Service. If the Commission is inclined to support this project, they are willing to work through the issues of access and outdoor display. Kroger had preferred to be in the parking lot in front of their building but that was not allowed so they looked for alternative locations. Redevelopment of this site would remove blighted buildings and serve the public.

Monte Chesko, Real Estate Manager for the Cincinnati/Dayton Division of Kroger, stated they opened their store in July, 2002 and invested nearly \$15 million in the project. When the project was built, they were interested in constructing a fuel center but the City did not want to see it in Village Green. Fuel has become a very important part of their business model and they are willing to work with community guidelines to accomplish establishing a fueling center.

Negotiations with the owner of this property has been very difficult and has not been easy even getting to this point. The site is only .62 acres and requires access from both Nilles and Pleasant. Mr. Chesko emphasized their desire to locate on this corner. It may not be what the City envisioned there but will be first class. From a design standpoint on the building, there is flexibility. This will be a \$2 million dollar investment and they would like to partner with the City in a manner that is conducive and profitable for both the City and Kroger. They also would like to meet with the City and review a median design to prohibit the left turn movement or moving the access further south. With respect to outside storage, he has received several other opinions that the canopy would be the principal structure on this site. They can however modify the amount of display. Regarding use, they were not aware until the second scheduled Design Review Committee meeting that they would be classified as a non-permitted use. They understand this is a high profile intersection and respect the City's comments.

Planning Commission Discussion – John Clemmons, Law Director, stated definition 63.1 "Motor Vehicle Fuel Dispensing Facility" was created in the early 1980's to address the small kiosk gas stations. Those facilities were determined by the City not to be very attractive uses so the second definition was added. The first definition actually provided service in conjunction with fuel sales. There had to be a substantial structure in order to perform automobile service. Motor Vehicle Fuel Dispensing Facility was created to permit stations not offering the various services conditioned upon them also having a substantial structure. The Kroger proposal does not meet this; the canopy may be large but it is only an awning. The intent of the second definition is still valid today. Kroger is going back to a model that was rejected back in the 1980's. This is not the type of fuel dispensing facility that Council thought they needed. Council knew the auto service and gas dispensing went together but they didn't want to see fuel sales done from a small, inexpensive structure. Either the business had to offer automobile service or have fuel sales out of a substantial structure. That is how these two definitions go together and were intended to prevent this type of use. If you are going to sell gasoline, it has to be done one of two ways.

Use – Mr. Lepsky asked why definition 63 "Motor Vehicle Service" was not modified instead of creating 63.1 "Motor Vehicle Fuel Dispensing Facility". Mr. Clemmons replied 63.1 was created to allow the dispensing of fuel in conjunction with a convenience type store; they do not have to offer auto service. The intent was not to allow the small kiosk type buildings. Mr. Bachman pointed out the Marathon station at Patterson and River was a service station that closed up their bays and turned into a convenience type store. Mr. Clemmons added the Kroger proposal is not offering any type of service; everything is basically sold at retail. Mr. Wocher pointed out definition 63 states "Motor Vehicle Service or Filling Station". It doesn't quantify that you have to have service. What is a filling station? Mr. Clemmons replied that is an old definition that did more than put gas in a car; services were also offered. The Kroger

proposal is not offering any service. It is a contortion of the definition to say they provide service. Mr. Wocher debated how many services they would have to offer to meet the definition. They were well into the process when they were told they didn't meet either definition. He feels they meet the definition of Motor Vehicle Service or Filling Station. Deliveries are made into the motor vehicle. Mr. Bachman stated similar uses in the D-1 zone all have the component of a convenience type store with them – Marathon, BP, Ameristop and UDF.

Outdoor Display - Mr. Clemmons stated the interpretation being offered by Kroger's is really troublesome. The incidental display is an exception to the requirement that all businesses, services or processing shall be conducted wholly within a completely enclosed building, except incidental outdoor display. To take an open air canopy and argue the exception to being required to place the items inside a building is going to be governed by this open air outdoor structure is totally turning the requirement. There is no support for this interpretation. This is supposed to be an exception to doing everything within a wholly enclosed building. The amount of outdoor display cannot be increased by saying it is based on an open air structure. Mr. Rhodus added the comment he made at Design Review was that the principal building should have the utilities – plumbing, electric, HVAC, water, etc. Even though decks require a permit in the City of Fairfield, it does not make them the primary structure. Mr. Wocher stated the canopy will have footings, foundations and electric. Fairfield's Codes do not define principal permitted structure. The canopy is a building. There is no guidance in the Code as to what is the principal structure. Mr. Clemmons asked as an exception to the requirement that business has to be done wholly within a completely enclosed building, is the canopy considered an enclosed building and should be the basis for determining the amount of outdoor display? Mr. Wocher replied that is their argument and outdoor display is based on the principal structure. Mr. Clemmons stated this is an exception to the requirement that business be conducted within a wholly enclosed structure. Mr. Wocher replied the exception does not include fuel dispensing either. The pumping of gas is not being done within an enclosed building. Mr. Bachman stated the Design Review Committee also struggled with what is the principal structure. The canopy is large but does that make it the principal structure? Mr. Clemmons said if you read the definition in the context in which it is written, business is suppose to be conducted wholly within a completely enclosed building. It is illogical to use an open air canopy to determine the exception to that requirement. Mr. Chesko asked if there could be a reasonable amount of outdoor display that could be agreed upon. He understood there is a difference of opinion for calculating the amount. Mr. Holtegel didn't feel the Commission could negotiate these items at this point. The amount of outside display they are entitled to based on definition is a huge point. Mr. Bachman stated the time to negotiate this was months ago. This is not a new element and they made a business decision to ask for what's been presented. Outdoor display is only one element of issues the City has with this project. Mr. Chesko stated they are willing to work with the City on the various issues to make this a viable project. Mr. Clemmons reiterated the incidental display is suppose to be no more than 5% of the

square footage of the principal structure. It was Mr. Clemmons' opinion the principal structure for this proposal is very small. If it were larger, similar to UDF, they would be permitted more incidental display. That however is not what they submitted. Mr. Bachman stated construction of a larger building with everything being kept inside has been discussed with Kroger. They stated that is not the business model they want to do in the Greater Cincinnati market.

Building Design - Mr. Clemmons stated the staff report references the Town Center Guidelines which are a part of the D-1 zone. The reason they cannot meet the organized facade or consistent frontages is those guidelines contemplate substantial buildings that enable facade organization and consistent frontages. If you don't have a substantial building, obviously you cannot meet these requirements. They have admitted they cannot meet it. It is suppose to be a substantial structure; not a kiosk. The downtown is to have a sense of presence. The whole intent of this zone is not to have structures like this.

Access – Mr. Hassler stated the only use that can survive on this corner would be one with a low traffic impact. Access is tough. If the Kroger project is approved, it will be a problem due to the amount of traffic. A decel lane on Pleasant Avenue would be needed to even get in there. Mr. Rhodus was concerned with Kroger being able to regulate the fuel tank drivers so they cannot turn left from Pleasant. They are not Kroger employees.

Mr. Wocher reiterated there are options that can be discussed in terms of outdoor display and access. If initiating these options would be something the Commission could approve, he asked they be permitted more time to work through them.

Mr. Rhodus thanked Kroger for working on their existing landscaping at the store. He encouraged them to look at other sites throughout the City if this location is denied.

Mr. Lepsky said Kroger has been a wonderful community partner. When the store was first proposed, there was community input which resulted in a win win situation for both Kroger and the citizens of Fairfield. Since there are so many site specific issues that need to be addressed, i.e., curb cut and City property that the Commission is not empowered to deal with, Mr. Lepsky made a motion that the proposal be denied in its current state. Mr. Hassler seconded the motion. Mr. Wocher asked if there would be another plan option they could submit if this one is denied. He was informed they could but they would need to work with the Development Services staff to resolve the comments addressed this evening.

The vote was unanimous to deny the Kroger fueling center submission.

Conditional Use Application – Church – 5958 Boymel Drive

Mr. Bachman stated this was before the Commission during the summer and was turned down. The property owner of the office park re-negotiated a deal with the church and completed legal documents in terms of parking. The Conditional Use definition means “A use that is permitted but only by application to and specific approval by the Planning Commission in each specified incident and after a determination by the Commission that all regulations and standards of the Zoning Ordinance applying to the specific use in the particular location shall be met along with such additional conditions or safeguards as the Commission may prescribe in a specific case and circumstances in order to prevent that harm or injury to adjacent uses, the neighborhood and/or in order to improve the public health, safety, convenience, comfort, prosperity and general welfare”. Parking was an issue when the Commission previously considered this application. A copy of the Declaration of Parking Easement was given to the Commissioners.

The site plan was reviewed. There are three existing buildings – The Wieland Office Building, a condominium building (1/2 of building occupied by a Doctors office) and the proposed church building. The issue the Commission had with this application during the summer was that the 50 parking spaces required by Code could not be met. The Declaration of Parking Easement was designed to facilitate this requirement by providing parking off site in a legal manner. There are three lots that are part of the agreement. Mr. Bachman explained the three parcels; A, B and C. Parcel C is approximately .802 acre and is a building pad that was never constructed. The parking proposed for Parcel C is shown in the white area and consists of 33 spaces. The Parking Easement Agreement is for these three parcels to share parking. The agreement has one exception which says Boymel, as well of the owners of Parcels B and C agree to cooperate with the Association to keep 14 designated parking spaces available for use solely by the owners of units within Parcel A, their customers, invitees, employees and licensees. When this was reviewed during the summer, the owner of the Doctors office objected since the parking spaces that were suppose to be designed for his unit were not defined.

Mr. Rick Paolo, attorney for the applicant, thanked staff for their assistance through this process so they could apply again. The property is zoned C-3 and a church is permitted if approved by the Planning Commission. Mr. Paolo introduced Mr. Wieland, owner of Boymel Office Park, and Mr. Feotis Gilbert, Assistant Pastor of Bethlehem Church.

Reverend Gilbert stated Bethlehem Church is a small “plant” church with a membership of 20 people. Ten of the members are core and focus on outreach ministry. Eighty-five percent of the outreach program is conducted off-site in neighborhoods, on the streets and in homes. Reverend Gilbert does not believe they will outgrow this location quickly. They have three vans that pick

people up and bring them to the church for services. Parking should not be an issue for several years as it will take some time for church membership to grow. Most of the services occurring through the week happen after 6:00 p.m. (Doctor's office would be closed) and there are two services on Sunday. They have also talked with the owner of the daycare located behind them who stated they could use parking at their location if needed and would formalize an agreement in writing if one is needed.

Mr. Paolo stated Parcel A and Mr. Wieland's office to the south exist. Parcel B is the proposed church and Parcel C is the pad which Mr. Wieland currently has under contract depending on the outcome of this application. There has been no building activity here for several years and because there is interest in Parcels B and C, the Parking Easement was created to address any future concerns. All of this was originally a condominium complex. Because of finance issues and economy, it was necessary to split off Parcels B and C to allow development to occur as not part of a condominium complex. Since the intent was to have condominiums, the parking was built as common area. There were intended to be no restrictions as to parking use, how that was to occur and under what circumstances. The current configuration has a total of 101 parking spaces. Mr. Bachman provided Mr. Paolo with a copy of a parking analysis for this site prepared in July, 2011. By Mr. Rosen's calculations, the site would require 95 spaces. The cross parking easement was then developed which allows shared parking for the four parcels. What created the problem was the splitting of Parcels B and C which required their own parking. There was no longer the condominium intent for the complex or common/shared parking. Parking issues for the Doctors office on Parcel A still remained. Mr. Paolo stated the initial purchase agreement with the Doctors office included the use of 17 spaces; not the 14 addressed in the Parking Declaration. The additional 3 spaces will be corrected in a separate legal document.

Section 1133.01 (21) of Fairfield's Code, allows a church with approval of the Commission. The Commission must consider the impact of the request on the adjoining properties. The property to the north is the daycare; to the east, Stockton Station Office Park; to the south is Fair Oaks Plaza and to the east is Boymel Drive and the shopping center. The impact to the adjoining properties is minimal, if any. There is adequate parking because of the cross parking agreement. The church membership requires 28 parking spaces. If the anticipated growth maxes out at 140 congregates, 28 spaces would be required. Based upon square footage, the parking requirement would be 47 spaces. Eighty – eighty five parking spaces would be available for Sunday services excluding the dedicated spaces reserved for Parcel A. Traffic impact also would not be an issue since most of the congregates are picked up and brought to the church.

Mr. Paolo stated under the definition of Conditional Use, the church creates no negative impact to the site or adjoining properties; parking is not an issue.

Mr. Rich Rosensweig, owner of half the building depicted as Parcel A, stated parking was a concern when they first looked at the site to purchase. Parking needed to be close to the building since most of their patients are elderly. The number of visits is 120 – 125 per week which is about 6,000 per year. In the contract agreement signed by Mr. Wieland, “The unit owners were to receive designated parking spaces in the number required to meet the building code and zoning requirements of the agency having jurisdiction and that are reasonably adjacent to and for the exclusive use of that owner’s condominium unit (dated November 5, 2005). At a minimum, the 14 spaces between Boymel Drive and 9566 Boymel Drive, Building B, plus the three spaces in front of the buyers unit, proximal to Boymel Drive, shall be designated for buyer’s tenant parking only”. If these had not been designated, they ran the risk of patients not being able to park near the office. At the very least, Mr. Rosenweig stated he wanted the contract document honored which means modifying the Declaration that has been filed. Mr. Wieland has not made any attempt to come up with a practical solution since this first came before the Commission in the summer. The second issue pertains to the fairness of the Parking Easement. It is the church that needs to utilize parking spaces belonging to Parcels A and C. Regarding maintenance, the Declaration says that each owner will maintain their own parking areas. Although the church will need to use some of the parking of other parcel owners, they will be under no obligation to make any repair to these spaces if they fall in disrepair. Costs would relate to sealing, patching and ultimately completely re-surfacing which could cost more than \$10,000 per parcel. Snow removal will also be an issue. Under the condominium documents, they already pay for these services for their parcel. Mr. Rosensweig proposed the church purchase part of Parcel C needed to meeting the parking requirement instead of all the cross easements running through the office park.

Mr. Paolo stated the issue is whether the church is an appropriate use and meets the parking requirements. They are trying to be a fair neighbor and there is no disagreement that Mr. Rosensweig is entitled to 17 reserved parking spaces. Before an amendment to the Parking Declaration is recorded, Mr. Paolo suggested meeting with Mr. Rosensweig to define which spaces were agreed upon. The maintenance is a different issue in that Parcel B is not part of the condominium anymore. The anticipated use of the space is intended to be the 33 parking spaces adjacent to Parcel B as opposed to the Doctor’s tenant space. Seventeen spaces will be designated. From a practical standpoint, the congregation will tend to use the parking around Parcel C (building pad) as opposed to the south (Doctor’s building). Whatever the Doctor wants, they will abide by under the terms of the Doctor’s contractual agreement. Maintenance could be an issue; the church might use these spaces once a week (52 times a year) versus the Doctor using them five days a week year round. This is something that needs to be worked out between the property owners, not the Commission.

Mr. Rhodus asked for clarification regarding the church lot remaining in the condominium association. Mr. Paolo explained in order to get any type of financing, the bank underwriters require that even within an office condominium project, it be a minimum of 50% pre-sold. Boymel Office Park did not meet this so Parcels B and C were taken out. Mr. Bachman clarified the only condominium parcel remaining is Parcel A consisting of 2 units.

Mr. Paolo stated that under the parking requirements calculated by City staff, parking is deficient for buildings B and A. When the Parking Declaration was drafted, the intent was to bring Parcel A into compliance with the parking requirements when the building was sold out. The Declaration also brings Parcel B into compliance.

Mr. Hassler asked about parking for Parcel C if and when it is sold and Mr. Bachman replied the cross parking easements created by the Parking Declaration allow the use of parking on the various parcels and therefore, meet the parking requirements. Mr. Hassler asked about utilities serving the parcels and Mr. Bachman stated a lot split was also submitted in the summer, creating a separate lot for Parcel C. Before the split was approved, documents were recorded covering cross easements for utilities, drainage, access, maintenance and signage. Mr. Wieland owns half of Parcel A and all of Parcels B and C.

Mr. Bachman said when the Conditional Use was first submitted in the summer, parking was an issue. Reverend Gilbert has stated he doesn't need all of the parking right now but could at a later date. Parcel B does not meet the required 47 spaces. They have resolved this by creating the Parking Declaration creating the cross easements across Parcels A and C. Where the mix up occurred, is the purchase agreement in 2005 designated 17 parking spaces to the Doctor; the easement only designates 14. Parking for the church is now spread over 3 parcels and if the Commission is alright with this, the parking requirement is met.

Mr. Rhodus asked Mr. Rosensweig if he had other concerns beyond the 17 parking spaces and their location. Mr. Rosensweig replied the fairness of the maintenance agreement is also a concern. The church needs the additional spaces yet he would be responsible for maintaining part of their use. Snow removal was also discussed. The church will need spaces cleared for Sunday morning services but the Doctor's parking will not be needed until Monday morning. Mr. Rosensweig said Mr. Wieland is currently the manager for the office park and takes care of these items. Mr. Rosensweig is paying for these services though in his monthly condominium fees. Mr. Bachman stated that even though the lot split has been approved, the spill over of parking is still a concern. There is still a private property dispute; the church needs 20 additional parking spaces off site to meet the parking requirement. The adjacent property owner has an agreement for 17 spaces and doesn't feel it should be his responsibility to pay for maintenance of the additional spaces needed by the church.

Mr. Clemmons stated if the office complex had stayed under condominium ownership, all parties would have been responsible for costs throughout the entire complex. With the Declaration creating the cross easements, all parties will still be responsible for sharing this cost. Mr. Rosensweig replied the other properties have been pulled out of the condominium association and will now be responsible for their own maintenance. Mr. Clemmons stated Mr. Rosensweig is only responsible for upkeep on his lot now, not the areas around the other buildings. Mr. Clemmons asked if the parking requirement would be the same if a permitted use were to locate there. Mr. Bachman stated office use would require much less parking. Mr. Clemmons's point was cross parking would have been needed if the office park remained condominium use and should not be a concern at this point. If the property owner's dispute continues, settling it in court would be the next step. If the Commission approves this, Mr. Holtegel asked if the court might find in favor of one party over the other due to the Commission's ruling. Mr. Clemmons replied not necessarily. Nothing the Commission is doing is saying either party is right. There is a piece of property in the office complex that needs some sort of use. Parking is going to be an issue with Parcel B. Mr. Bachman stated if it becomes a medical use, parking will be an issue.

Mr. Rosensweig felt there is willingness by Mr. Wieland to comply with the intent of their purchase agreement for the 17 spaces. With that, he stated he was satisfied. Mr. Clemmons said this should be a condition of approval.

Scott Lepsky, seconded by Bill Woeste, made a motion to approve the Conditional Use for Bethlehem Church with the condition that the Parking Easement Declaration be amended as discussed. Mr. Bachman recommended the motion be amended that the building permit not be issued until staff receives a copy of the parking amendment for the 17 spaces. Mr. Lepsky agreed to the amendment; Mr. Woeste seconded.

Motion carried 7 – 0.

Amendments to Chapter 1192 – Source Water Protection

The proposed changes were given to the Commissioners earlier. Mr. Bachman asked the Commissioners to review these changes and be ready to discuss them at the November 9th meeting.

Mitch Rhodus, seconded by Tom Hasselbeck, made a motion to table this item.

Motion carried 7 – 0.

LaPinata Mexican Grill and Bar – Outdoor Fencing and Hood Screening 500 Wessel Dr., Suite E

Mr. Bachman stated the Design Review Committee approved the fencing and screening of the hood in concept. They were supposed to re-design the hood screening and submit to the Commission for approval.

The applicant was not in attendance to submit designs for further discussion. Because of this, a motion was made and seconded to table this item.

Motion carried 7 – 0.

Being no further business, the meeting was adjourned.

Jeff Holtegel, Chairman

Peggy Flaig, Secretary