2008-0581 Zoning Ordinance Re-write - Proposed Zoning Map outline; to be discussed at the January 27, 2009 Public Hearing.

Chairperson Boswell stated that there was a Public Hearing, but there would not be a vote, and he commented that hopefully by the January meeting, the Commission would be ready to vote.

Mr. Anzek spoke first, advising that Mr. Breuckman would walk the Commissioners through the Ordinance changes and then answer any questions. He felt there would be items for future discussion, and he mentioned that there would be another meeting on January 20th. They would talk about the structure of and substantive changes to the Ordinance and solicit input from the Commissioners.

Mr. Breuckman turned to his power point presentation. He noted his memo in the packet, which highlighted items that had changed or were added to the Ordinance. He stated that by and large, the proposed Ordinance contained all of the parts of the existing Ordinance. They had taken a lot of the organizational components, and tried to put it together so that it flowed better. They added and modernized some standards and other items that reflected changes since the Ordinance was last updated. He planned to underscore areas he thought they would want to further discuss.

Mr. Breuckman advised that the RE, Residential Estate, MR, Mixed Residential Overlay and FB, Flex Business Overlay districts were added, which were recommended changes from the Master Plan that needed implementation. New regulations were added to the landscaping chapter, and a section on alternative energy was included. There would be a new Zoning Map included, which would be brought forward at the next meeting. In terms of the structure of the Ordinance, there were now 13 Articles, beginning with Administration. They reviewed the procedural and technical aspects in the first three chapters. The middle three chapters dealt with zoning districts and uses. In Article 4, the zoning districts were established, and they put in a table of permitted uses. Rather than each zoning district having its own Article and list of uses, he noted that they had been rolled into one table, which he felt would be easier to use. He added that Article 5 was the Schedule of Regulations and Article 6 was Supplement District Standards. That was where they moved certain standards and uses that were repetitive. Article 7 was Planned Unit Development, which had not changed. Article 8 was the new Flex Business overlay districts. Article 9 included the steep slope and natural features regulations, which had not changed. Article 10,

General Provisions, collected a lot of management regulations and included parking, loading, and landscaping and screening definitions toward the end.

Mr. Breuckman referred to Article 1, Administration and Enforcement, and explained that they were mostly standards that had been scattered throughout the existing Ordinance. It was organized into a number of chapters. Chapter 2 listed procedures for amendments to the Ordinance and the review process to be followed. Section 1.204 regarded Public Hearing procedures, which had changed with the Zoning Enabling Act, PA 110, which established consistent Public Hearing requirements. Mr. Hooper had suggested adding a list of items that required Public Hearings, which was added at the end of Section 1.204. Mr. Breuckman next discussed Article 2, which included Site Plan and Conditional Land Use Approval and Variance procedures. He stated that the Site Plan review was one of the biggest changes. In Section 2.201, he tried to better describe what activities required Site Plan review, who did the reviewing, and the different kinds of review. The existing Ordinance dated from a time when Site Plan review was getting started. The procedures the City followed, as a practical matter, did not really fit with what the old Ordinance required. They added a two-stage Site Plan review process, with the idea of getting Site Plans before the Planning Commission earlier, before a lot of expensive Engineering was sunk into the plan. This would give the Planning Commission more input into the layout of a site. Once an applicant spent a lot of money developing plans, they were a lot less likely to change things. The Ordinance also established Administrative Review, Sketch Plan Review and Site Plan Review, based on the intensity of the development. If a developer were adding onto a building that was below the threshold, for example, a Sketch Plan would be required. They were trying to ease the burden of submittal requirements for activities that required less information. Mr. Breuckman referred to Section 2.204, which added standards for Site Plan Approval, and Section 2.209 added a table that listed all the requirements, which had been from some of the earlier drafts.

Mr. Kaltsounis asked if Preliminary and Final Site Plan reviews were similar to the review for platted subdivisions. Mr. Breuckman agreed they were. Mr. Kaltsounis presumed that they were making the Preliminary process more formal. Mr. Breuckman stated that the idea was for a developer to negotiate the layout of the site and then do the engineering and detail work. The Commission would be granting Preliminary Site Plan Approval. Chairperson Boswell questioned whether it would be different from a subdivision review, because when the

Commission gave Preliminary Approval, and then the Final came before them, unless it was substantially different, they were almost locked into giving approval. He asked if that would be the same as the proposal for Site Plan review.

Mr. Delacourt agreed that it would be very similar. If a Plan came back consistent with what was approved at Preliminary, it should be approved at Final. The only time there would be an issue would be if the Engineering work caused major changes and inconsistencies. If the Commission did not like the Preliminary, they would not approve it. He reiterated that they were trying to give everyone a comfort level up front, before a lot of money had been sunk into a project.

Mr. Kaltsounis asked if they would see landscaping and a lot of the details that would affect the development at Preliminary. He liked the informal, conceptual meetings they had been having beforehand, where they were asked what they thought about the driveways, layout, etc. He was concerned that for the Preliminary review, the applicants would have to do a lot more work than they would like. Mr. Delacourt said they could if they wanted. They still had the option of requesting a discussion first, and there was nothing in the Ordinance that prevented showing a conceptual idea. Mr. Kaltsounis wondered if they would be adding an extra step. He liked having the basic concept meeting and then having the applicant come back with the details. He felt they would have to do a lot of work at the beginning. Mr. Delacourt reminded that they still had the option of coming for a conceptual discussion.

Mr. Dettloff asked if the Commission would have to give another approval if the applicant had to come back because of changing something due to cost factors or something else. Mr. Delacourt said it would depend on the level of detail they reached. If they did not finish all the work and noticed a change soon after Preliminary Approval was granted, they would need to come back and discuss the change at a Revised Preliminary stage. If they had all the other information and it could be reviewed as a Final, they could point out the changes. It would be very similar to the Site Condo process.

Mr. Breuckman added that an applicant was not required to get Preliminary Approval before they got Final Approval. If they wanted to come in with a very informal plan for an informal review, they could do that and then they could get plans ready that met the Final Site Plan Approval requirements and simply ask for Final Approval. Mr. Kaltsounis asked how that would work when the Ordinance said the Final had to match the

Preliminary. Mr. Breuckman explained that the Ordinance said an applicant could skip the Preliminary.

Mr. Reece clarified that for a relatively straightforward Site Plan, an applicant could choose to come in one time and take a chance his plans would be approved. The Preliminary Stage let an applicant come in for a conceptual review. If it was a complicated site, they would want to know the Planning Commission would go for it, especially if they were going to spend the next year engineering the plans. The Planning Commission would have the opportunity to move things around or talk about the number of lots before the applicant put a lot of money into it. Mr. Breuckman said that at the Preliminary, there would not be full landscape or engineering plans. They would not know there would be 49 trees on the property line; they would just show that they would add a buffer consistent with the Ordinance requirements.

Mr. Klomp asked if the Commission would be obligated to approve the next review if the applicant showed some trees, but not a lot of the detail. Mr. Breuckman said it would depend on what was required for Preliminary Approval. If it were an item of information that was not required for Preliminary, the Commission would not be approving that item. He noted that what was required was listed in Section 2.209.

Mr. Anzek said that oftentimes, a concept was more than just an idea sketched on a piece of paper. It was more about how it would look and how it would fit. The Preliminary would give the opportunity to identify whether the applicant needed to discuss any Buffer Modifications. There would be nine different people looking at a project as a functioning Site Plan, and if they saw things they felt could be better, they could be caught at Preliminary. Mr. Kaltsounis said he would be concerned because if the applicant said he wanted a Buffer Modification, he would like to see what they were going to do. Mr. Breuckman did not think the Commission would approve a Buffer Modification without seeing the details. Mr. Kaltsounis suggested that it would be something they would learn more about as they went forward.

Mr. Reece asked how many communities had the Preliminary step. Mr. Breuckman said that most that he worked in did. Mr. Reece's concern, from a business development and attraction standpoint, was that the City, in the past, did not have the best reputation relative to Site Plan Approval. People would now have to see the Commission twice. Mr. Delacourt said they did not have to, which Mr. Reece realized, but he said he hoped it was not perceived as a negative in the business community. Mr.

Delacourt said that an applicant would like to know he was somewhat vested, and that he would not have to deal with another Planning Commission in a year. So far, Mr. Delacourt said he had gotten positive feedback regarding it.

Mr. Anzek agreed that they wished to cut red tape and to expedite things. They had heard for many years that applicants would like to know a little sooner that there would be support for a plan. Mr. Reece agreed, but he was a little concerned about adding another step, when it took a year or so now to get approval. He stated that those were the things that had to change in the community to attract business.

Mr. Casey noted that almost a year ago, the City established a Permit and Processes Subcommittee out of the Mayor's Business Council. That involved architects, engineers and developers. They suggested that it was a problem that they were required to provide so much detail before they were even vested with their project. They would at least have some surety earlier in the process that they could do the project, as long as they met the requirements of the Ordinance at Final. Mr. Anzek added that it would also help with the financing and leasing.

Ms. Brnabic agreed that having a concept plan meeting had been helpful in the past year. Concepts were very basic, though, and she would rather see a Preliminary Plan because they could iron more things out before the Final. They would want to see more details, because if the Commission did not have a grasp of them, when the Plan came back for Final, there could be frustration on both sides. She did not think the Preliminary would add too much time to the process, and she did not feel it was a bad idea. She was still concerned that because a concept was a concept, it could be scary to go from concept to Final because a lot of the details would not be worked out. Mr. Yukon thought that the Preliminary step would help to fast track a development because of the discussion that would take place, and he was all for it. Mr. Breuckman said that hopefully, it would result in more dialogue throughout the review process, and he concluded discussion about the Site Plan review process.

Mr. Breuckman referred to Article 2, Chapter 3, Conditional Land Use Review, and said that not much had changed, but some procedures were now spelled out. Article 3, Nonconformities, was basically the same, and he pointed out 3.105 because they had discussed it earlier. It regarded expanding nonconformities, especially where a structure was considered nonconforming to the required side or rear year setbacks and where the extension of the existing side or rear building line would be permitted. It

could occur if it were a one-family dwelling if the extension did not increase the nonconformity beyond the existing nonconformance. Mr. Delacourt explained that in the past, if there was a building that encroached three feet into the side yard setback and the owner wanted to build an addition, he was not allowed to unless the ten-foot side yard setback was met. That was an issue for the Zoning Board of Appeals (ZBA). They felt that as long as it did not encroach any closer than seven feet, that the wall should be allowed to be extended, but by their interpretation of the Ordinance, they could not allow it. The new Ordinance would allow it. A person could extend a wall along the setback line, if the setback was created prior to the existing Ordinance. The ZBA wanted to see that flexibility. They were tired of denying Variances for what they felt were acceptable additions, and he stated that it was a significant change.

Ms. Brnabic added that there were many existing, nonconforming conditions. If a house was built in 1930, the house might have had a four-foot setback from the property line. If someone wanted to add on, and the other setbacks were correct, they had to start the addition at the currently required side yard setback of ten feet, and it caused an odd-looking structure. Mr. Anzek thought that it was just common sense to allow an addition to look orderly and like it was part of the original structure. The little jogs they were making people do made those additions look very piecemeal. Mr. Delacourt said that the ZBA had always interpreted it to be nonconforming. The Ordinance did not clarify it one way or the other, so the ZBA wanted that flexibility in it. It was up to the Planning Commission and City Council whether that should be a change to the Ordinance.

Ms. Brnabic maintained that the ZBA had no choice but to deny the requests based on the interpretation of the Ordinance as it was written. They felt the Ordinance needed to be changed for clarity. Mr. Delacourt said that the ZBA could choose to interpret the Ordinance any way they wanted, but they wanted the matter identified so that it was not up to interpretation. Different ZBAs could have changed the interpretation to allow the extensions, but the City's did not.

Mr. Breuckman indicated that each community's ZBA was different. Some were strict and some were more liberal. In a strict reading, it was probably correct that they would be increasing a nonconformity if they allowed an extension at the lesser setback line. Ms. Brnabic stated that it was the job of the ZBA to strictly interpret the Ordinance. Mr. Delacourt believed that the previous Ordinance was silent about it. It did not say

whether adding on at the lesser setback (where the house was originally built) was an increase in nonconformity, but he related that the new Ordinance stated that it was not.

Ms. Brnabic wanted to make sure the Planning Commission was clear about what was being changed. She gave an example of a house that was built with a four-foot side yard setback, which was allowed in the year it was built. She noted that the current Ordinance required a ten-foot setback, so the ZBA had to ask people to do something with their structures that did not work. They were creating a bigger problem by asking people to build something that did not have a proper layout. If someone wanted to add on to their kitchen, they were being asked to move over six feet and start the addition to the kitchen from that point, for example. The new Ordinance was saying that if the house was nonconforming because of when it was built, someone would not be increasing the nonconformance if they wanted to add onto it. She thought they had been creating some atrocities by making people design according to the current setbacks, and it was a problem for the ZBA. They did not want to have to consider that adding onto something that was built a long time ago, and according to the Ordinance, was increasing the nonconformance. If someone wanted to make their house larger, and they stayed along the four-foot setback and all other setbacks were current, the ZBA did not feel someone should have to abide by the ten-foot setback of the current Ordinance.

Mr. Delacourt asked if anyone had a concern with the change. Mr. Klomp asked in what instance they would regret accepting the Ordinance change. Mr. Delacourt thought that the worst-case scenario would be a house located very close to a property line. He thought that 95% of the requests the ZBA saw were minor - it should be 15 feet but they were asking for 13. He could not recall one where the request involved more than 50%. Mr. Breuckman said they could put it "half," or a minimum setback of five feet. Mr. Klomp asked if they could re-craft the language to give the ZBA a little more latitude to interpret something. Mr. Delacourt said that the ZBA was the board that had the least latitude in the City. They reviewed appeals to denials and reviewed Dimensional or Use Variances. He stressed that the ZBA would be the least appropriate board to have that type of latitude. Mr. Kaltsounis recalled that it was the most contested subject during the Tech Committee meetings. Mr. Delacourt agreed, and said that the ZBA had debated the interpretation for years.

Mr. Anzek referred to "worst-case" scenario and wondered about the

impact if a house were at the lesser setback and the addition went vertical. The neighbor would now be looking at a two-story house that was really close. He felt that could be somewhat oppressive, and he wondered if they needed to rethink it and limit it to one-story. He noted that the bottom third of the City was full of those types of scenarios, and he wondered if it would be creating a big-foot situation for the neighbors.

Mr. Breuckman questioned how much of a difference it would be if someone were to go to two stories with a ten-foot setback or a seven-foot setback. Mr. Delacourt added that currently, a vertical increase was not considered an increase in nonconformance. A person could already go to two stories at the seven-foot setback line. Mr. Reece commented that a lot of communities were adding on vertically and horizontally, and that it did make it worse. Mr. Delacourt did not feel it would be a bigfoot impact, because that would involve a teardown and someone would have to go back to the original setbacks. Mr. Anzek said he understood, but he still wondered about it having an adverse affect.

Mr. Breuckman said that in most cases, there would not be a vertical expansion associated with the horizontal expansion. Mr. Anzek agreed that would be rare and expensive. Mr. Breuckman said they could add to 3.105 B. something about the closest an addition could be. They could put something in that prohibited vertical expansions unless the setback was current. Ms. Brnabic questioned whether the five-foot minimum would be for someone who wanted to go vertical and horizontal. Mr. Breuckman said that the number could be worked out.

Chairperson Boswell suggested adding that an applicant could not go over "50% of the required setback." Mr. Delacourt said they would look at the language and come back with something. Ms. Brnabic said she would be concerned with that because there were some people whose homes were less than five feet from the property line. She recalled that when the ZBA reviewed a previous request, they determined that an addition would not interfere because it was in the backyard. Many people had plenty of room because they have a large backyard and would have no problem meeting the required rear yard setback, so it was feasible and no other Ordinance was broken. The problem would arise for a home that had been originally built three or four feet back from the side lot line. She did not think 50% would quite work for all situations, and she suggested that perhaps they had to consider the circumstances and the surrounding environment. Mr. Breuckman said they would review the past requests to get a basis for deciding how it should be written and what was reasonable. Ms. Brnabic said they might want to think about special circumstances.

Mr. Breuckman said that out of the Tech Committee meetings, and at the ZBA's request, it was decided that it would be non-discretionary, and that there should be an automatic clause. Mr. Delacourt agreed that since the items would not go before the Planning Commission, they could not build in criteria for the standard. It was either a can or cannot. If they were deciding about the impact to the neighbors, somebody would have to make the discretionary decision to approve it.

Mr. Klomp asked if the prior appeals had been denied by the ZBA. Ms. Brnabic said that, unfortunately, they were. The ZBA did not have a choice; they were in charge of interpreting the Ordinance, which was not discretionary regarding this. There had been many times when several of them sat at the meeting and on a personal level, felt that it was not fair, but that was the job. That was why the ZBA members spoke up as the Ordinance was being rewritten and mentioned the problems they were having. They felt the Ordinance needed to be changed. Mr. Anzek remarked that there were Variances denied that involved a matter of inches, but the ZBA did not want to step over the line and set a precedence.

Mr. Breuckman referred to Article 4, Zoning Districts and Permitted Uses, and said that three new zoning districts had been established. He advised that the old Ordinance had each zoning district in its own Article, and that it had now been streamlined to be user-friendly. The Purpose of the districts had been moved to the new Chapter 2. It would be referred to for rezonings or for making decisions about a use. The Purpose Statements of the zoning districts were not used too often, but the Committee felt that it was good to have them all in one place. Chapter 3 had the Land Use table, and he felt it was a big improvement because all of the zoning districts and all of the uses were in one place. In the past, if someone wanted to see where a typewriter store was permitted, he or she had to flip back and forth to hunt that down. There was also a table of the specific standards applicable to each use, rather than being listed under each use. He encouraged the Commissioners to take a look at it and identify any they wanted to talk about. Mr. Anzek said they tried to be comprehensive with the use list, and they felt they got everything covered, but if someone found a use they thought should be added, they should let Staff know.

Mr. Breuckman referred to Chapter 4, Design Standards for Specific Uses, and said that most of them were existing standards. A few were new, such as Chapter 4.415, State Licensed Residential Facilities, which was referred to in the Zoning Enabling Act. Section 4.419 was for Pet

Boarding Facilities, and he recalled that the Commission had recommended an amendment to the Ordinance in 2007 to include them. There were some new standards for nursing homes and assisted living facilities. Mr. Yukon said that 4.419 did not include the maximum number of animals that could be housed at one time, and he asked Mr. Breuckman to explain that. Mr. Breuckman said there was no maximum because the use was different than kennels, and dogs did not live there. It was hard to establish a maximum that made sense because the uses were very wide-ranged. Some of the uses had taken over industrial spaces with 20,000 square feet, and some were at Pet Smart in a little corner of the store. There were many different forms and contexts it could take, and since the dogs did not live there or stay long, he did not think it was practical to establish a maximum.

Chairperson Boswell referred to the Table of Uses, and said it allowed helipads only in Industrial areas. He noted that he saw a helicopter land at Crittenton Hospital the other day, which was in a Special Purpose district. Mr. Breuckman commented that it was in the existing Ordinance only in Industrial areas, but he felt it was a good point. Mr. Delacourt said that as a primary or conditional use, he would not want helipads in a Special Purpose district without a hospital attached. A helipad was allowed in a Special Purpose district now as an accessory use to a hospital. It was a hospital use, not a helipad use, per se. Mr. Breuckman thought they should take the word helipad out of the Industrial district to eliminate confusion, and support the argument that it was an accessory use.

Mr. Anzek explained that a lot of the use changes were driven by unique questions the Planning Department had received over the last several years. Someone would ask if they could do a certain thing in a certain district, and Staff could not always find clear, definitive statements to answer them.

Mr. Breuckman indicated that the current Ordinance listed some requirements for nursing homes, but he did not feel they accomplished much, so they were replaced with standards that made more sense. Open-air business uses were accessory uses such as outdoor sales area space. It was limited to 1,000 square feet in the B-1 district and 2,500 square feet in the B-2 and B-3 districts. More than that required a Conditional Land Use Approval. He brought up outdoor dining, and said that the new Ordinance allowed those areas as permitted uses with appropriate limitations. Mr. Dettloff asked if they should include the timeframe the Commission had agreed upon, which was April 15 to

October 31st. Mr. Anzek said the condition was initially driven out of a neighbor concern. He did not think there would be a concern on a cold winter night, and he thought the weather would take care of the issue. Mr. Breuckman said that his first instinct was to not have unnecessary regulations. He was not part of the discussion, and he was not sure of the intent or purpose limiting the timeframe. He thought the seasons would eliminate it. He did not know if having outdoor dining after Nov. 1 would create any more problems than it would on July 1st. Mr. Yukon recalled that the Commissioners made several approvals where they had asked the applicants to agree to a condition limiting the dates of operation. Mr. Delacourt clarified that they had done it as a requirement of Conditional Land Use, and it was now a permitted use. They could add it as a condition of Site Plan Approval. If outdoor dining was added onto an existing development, it might fall under Administrative Approval. He did not feel there was a need to limit the operations in writing, but if the Commission was uncomfortable with that, they could add it in for next time. Mr. Dettloff indicated that he would not want to tie a business's hands, and he suggested that it should be handled on a case-by-case basis.

Mr. Schroeder asked about 4.425, Use and Occupation of public right-of-way. He asked if they wanted to allow use of a public right-of-way. Mr. Breuckman said that in practical terms, they would not because buildings were set back from the right-of-way in most cases. Mr. Schroeder asked if he considered the setback public right-of-way, and Mr. Breuckman said it was just the street right-of-way. He said it would be more for a downtown area, such as the Commercial Improvement district. If they wanted to have a few tables and chairs right at the front property line, technically, the tables would be in the right-of-way. The text was giving the City leeway to manage that. Mr. Delacourt suggested adding language that would allow it with a permit from the appropriate agency.

Mr. Yukon recalled approving Chapman's Mill outdoor seating, and that the pathway would be extended to the Clinton River Trail. He asked if that would be on right-of-way. Mr. Delacourt said it would be reviewed by the Engineering Department, and any pathway connection would be approved by them with the Site Plan. Mr. Anzek noted that there were two pathways involved. The applicant agreed to build a pathway as part of the public right-of-way, extending it from its terminus point down to the Trail. In addition, they would create one from the parking lot to the Trail. They had no objections to do it, and it was made part of the Conditional Land Use. Mr. Anzek thought it was more about getting approval from the City than them being forced to do it.

Mr. Dettloff mentioned that some communities were being approached by businesses asking for permission to do gambling, such as offering a Texas Hold 'Em Tournament, as a way to generate business in a facility. He wondered if there was anything in the new Ordinance that would restrict that or what the current policy was. He gave the example of an existing banquet hall that was down on rentals and was approached by someone to run tournaments for six months. He wondered if there was anything to prevent that currently.

Mr. Anzek said it was a good question, and he thought that it fell under another Ordinance - perhaps one regarding State gambling licensing. He was not sure how it worked with charitable organizations. He was not aware that it was typically handled in a Zoning Ordinance. When it was inside a space, it was very difficult to regulate and enforce something, and he said he would have to look into it. Mr. Dettloff said there were a lot that appeared to be very legitimate, especially if a charity was involved.

Mr. Breuckman stated that Article 5, Schedule of Regulations, was mostly unchanged from the existing Ordinance. It had been updated to include standards for the Residential Estate district. The Industrial districts of I-2 and I-1 had been merged and there was no longer an I-2, Heavy Industrial, district, recognizing the changing nature of industrial uses, and that there was not much I-2 land in the City. The Industrial district standards had been relaxed a little, and the front yard setbacks had been reduced somewhat. It was mostly an economic development item, to allow easier redevelopment and reinvestment in existing Industrial areas. He cautioned that the City should not be a roadblock. Mr. Delacourt added that the front yard setback was changed from 75 to 50 feet, also requiring a 30-foot greenbelt. Mr. Kaltsounis talked about the different types of Industrial uses, from the concrete crusher to companies like Webasto, which manufactured components for vehicles. He was not sure what that was zoned, and Mr. Anzek said that Webasto was in the Tan Industrial Park and it was zoned Light Industrial. Mr. Delacourt said that Light Industrial encompassed mainly warehousing, manufacturing and assembly. The I-2 district was where the concrete crusher would be. There were very few parcels that were I-2, and the Tech Committee recommended discontinuance of those uses. They would be allowed to continue operating as long as they did not expand, and they would be nonconforming uses. Mr. Kaltsounis asked if all of the office complexes in the Industrial areas were I-2, and he was told they were I-1. He thought companies like Dana, which actually was no longer there, would be the wave of the future. Mr. Anzek agreed that those companies were

evolving, and the City was looking for ways to accommodate that type of employment with more flexibility for expansion and parking.

This matter was Discussed

Mr. Breuckman talked next about Article 5, Chapter 2, Supplemental Provisions and Exceptions. It collected a lot of things that were previously scattered throughout the Ordinance, such as lot size variation and subdivision open space plan options. It was where permitted encroachments, corner clearance, building grades and standards and measurements were arranged, and a lot of the language was from the existing.

Mr. Klomp asked about street frontage. Mr. Breuckman responded that a parcel had to have frontage on a street. Mr. Klomp asked if it had to be an architecturally or interestingly defined front. Mr. Breuckman said that was not necessarily the case; a parcel just had to have street frontage so it was not landlocked.

Mr. Breuckman noted that there was new language about building grades to protect adjacent properties from draining water. It put in writing the things the City already did. He continued that Article 6, Supplemental District Standards, collected some special districts, such as the Manufactured Home Park district and Commercial Improvement district that were scattered. The Multiple Family district showed dimensional standards because it was a little more complicated and too complex to fit in the Schedule of Regulations. There was a new Mixed Residential district in Article 6 also. The Multiple Family district standards were mostly unchanged with the addition of a few design standards. It included architectural details, requiring some interesting facades that faced streets. A lot of times they saw nothing but garage doors facing streets in attached housing, so there was a standard that limited the orientation toward the street. They would like to make the front door entrance more prominent, which he said had an effect of "humanizing" the front façade. The new Ordinance required some recreational areas, and also permitted on-street parking to count toward the minimum parking requirement. There were no changes to density or other fundamental issues. Mr. Schroeder asked if the on-street parking addressed not allowing parking in front of fire hydrants. Mr. Delacourt replied that the Fire Code prevented any obstruction, and that the Fire Department reviewed all plans.

Mr. Breuckman advised that the RCD, Residential Cluster District was completely unchanged. The one change to the Commercial Improvement district was that no side yard setbacks were required. He

said that the changes to the Manufacturing Home Park district were made as a result of changes in State law. The City had to be consistent with the current requirements of the Mobile Home Commission. He noted that Chapter 5 was for the new Mixed Residential option. It implemented the Master Plan, and the intent was to provide design flexibility without increasing density. A lot of the areas were located on major roads. Article 7, Planned Unit Development, was unchanged. Article 8 was for the Flexible Business districts. Those areas were planned for commercial areas of the City, and they were intended to facilitate redevelopment. They were discussed in detail during the Master Plan process. Article 8 was about form-based zoning regulations to implement the Flex Business overlay districts. Article 8 sort of worked like a Zoning Ordinance within a Zoning Ordinance because of the overlay districts, and any property owner could choose to develop under the current zoning district or the flex overlay standards. There were some tradeoffs using the overlay districts. Article 8 was much more specific about where a building should be located and how sites should be laid out, but there would be greater flexibility in terms of use. There was a broad table of permitted uses included that listed things like general commercial, places of assembly and restaurants. There was only one Office designation, and it did not matter if it was Medical or Professional Office. The standards started at the street and moved onto the lot. When setting up the site, someone would lay out the street network and then they would start building within the blocks. There were dimension and design standards regarding where the building should go in relation to the streets. They wanted to create character by the building placement. Putting the building up to the property line would create more of a downtown, walkable area. Setting a building farther back would create a more residential context. They were all appropriate in the form-based districts, but there were guidelines for building height, building mass and element standards but not architectural standards. If there was a building right up to the property line, there should be a certain percentage of the first floor area in windows, for example. There were general provisions for parking, amenity space and signs. Signs should be legible to people driving by, but in the flex districts, they would not need the same type of signs, because different kinds of signs would be appropriate for people walking by.

Mr. Schroeder mentioned that the clear vision standard applied to the right-of-way but not to private property. There could be a problem at a triangle corner, if shrubs and trees blocked the view. Mr. Breuckman explained that there were different standards for the clear vision area in the Flex districts because the buildings were going to be located a lot closer to the street, and there would be more on-street parking and wider

sidewalks. It would be a lot more pedestrian in character. Mr. Schroeder asked if a building could actually be at the property line, which was confirmed. Mr. Breuckman said that people would be more aware of pedestrians in more constrained situations, so that was the idea for the smaller corner clearance.

Ms. Brnabic asked Mr. Breuckman if he had received her question regarding the height of monument signs at seven feet. Mr. Delacourt said that an earlier version allowed monument signs to go to eight feet, but they decided to make them equal in all districts, which was changed in the latest version. Mr. Delacourt asked if there were any further questions regarding Article 8. He suggested that if the Commissioners thought of anything subsequently, since it was the biggest change to the Ordinance, that they email him with comments. Mr. Breuckman mentioned that the Village of Rochester Hills would be the type of design permitted by Article 8. Mr. Anzek noted that the Bordine's proposal would also use that tool to redevelop. Mr. Kaltsounis commented that as they went forward, there would be some parts of the Zoning Ordinance that they would have to tweak. They might not really know about something until that first development came in front of them. Mr. Anzek said that he was sure Staff would be back in front of the Commissioners with tweaks. Mr. Delacourt recalled the visual preference surveys that were done with the Master Plan, and said that the sites that scored the least highest now had overlay zoning districts. Some of the strip mall sites or larger retail development sites were where the Flex Overlay was now identified as an option. People identified that if something was going to be retail, they wanted it to look a little different than it did now. They did not want to impose that every site had to redevelop under that option, however. He noted that in the future, the Planning Commission might have a large role to play if someone wanted to look at specific site-driven modifications if something in the Article did not quite work. The Commission had the ability to work within the Ordinance to modify small parts of it to adapt to certain sites. He asked them to take a good look at it to make sure they were comfortable with it.

Mr. Breuckman stated that Article 10, General Provisions, was broken down into four chapters: Accessory Structures, Exterior Lighting, General Provisions and Sustainable Energy Generation. He advised that there was a change to the maximum height for accessory structures. It would be the same as the maximum height for the principal structure in the zoning district, and someone's garage could not be higher than his house. There was some flexibility built in for detached accessory structures. They could go up to 16 feet tall if the roof pitch was four on 12

or greater. In the past, if someone wanted to match the roof pitch on a house but it was greater than four on 12, the City would not allow it. Mr. Delacourt explained that the previous Ordinance allowed only a 14-foot height for detached structures. There would be a 35-foot tall colonial, for example, but the garage would look much flatter. There was concern about "mother-in-law" suites over a garage, so they did not want to allow enough room for conversion.

Mr. Breuckman advised that Exterior Lighting was a new section, which he thought was important. Chairperson Boswell remarked that the Burger King on Crooks Rd. looked like a place for spaceships to land. Mr. Delacourt asked if anyone had a question about the lighting section, and Mr. Schroeder asked if it was a standard provision that had been proven over time. Mr. Delacourt said it was similar to what the Commission required now. Mr. Breuckman said that the Illuminating Engineering Society of North America was a great resource, and he added that they were not trying anything new. Mr. Delacourt said that lighting had been handled by the Planning Commission previously based on individual Site Plans. Now they were saying what was acceptable in all circumstances, and he wanted to make sure it was acceptable to the Commissioners. Mr. Kaltsounis liked that it said 20 feet for lightpoles was desirable. He did not think it addressed parking structures, and he wondered if they should add something about it. For example, Crittenton's parking structure originally had too much glow, and he wondered if there should be a certain standard for those. Mr. Anzek said that the poles on the upper deck were lowered from 20 to 15 feet and were internal to the deck. The perimeter had low-mounted wash lights across the deck, and they required a non-reflective surface. He thought that a lightpost on top of a parking deck could be bright. Mr. Kaltsounis reminded that the City was being built out, and they were starting to pack in a lot more to what was left. Mr. Delacourt said the footcandles would be the same requirements, and no light would be allowed to project over a residential lot line. Mr. Kaltsounis thought that a 20-foot pole on top of a parking structure would shine into someone's house more than one on the ground would. Mr. Breuckman did not think that was necessarily true, because it would be so much higher than someone's window. If someone could not see the hot spot, it should be acceptable. Mr. Delacourt said they would look into it to see if something needed to be added regarding parking deck lighting. Mr. Anzek commented that exterior lighting was a big issue. He recalled that a community he worked in was involved in a major lawsuit over a molestation that occurred because, they claimed, the lighting was insufficient. He would like the standards to be comparable to other communities and not too restrictive. He thought they did a good job

to brighten up the City, but they had to be cautious. Mr. Breuckman said he had used the light levels in other communities. One section allowed up to 20 footcandles under gas station canopies. Some gas station owners wanted 80 to 100 footcandles, which he felt was actually dangerous because it could cause transient adaptation, or night blindness.

Mr. Breuckman pointed out that General Provisions contained a lot of the existing standards, and he said that not a lot had changed. He pointed out Section 10.311, which were Performance Standards. It had the biggest update because a lot of the standards were from 1974, so they wanted to reflect modern practice. Chapter 4 was new and addressed wind and solar energy. Wind energy dealt with small wind and utility wind. Small wind was something that an individual house or small business might put up to serve their needs. The intent was not to generate electricity, but to provide energy for someone's use on the site. The height of the wind energy system would depend on the acreage of the parcel. A 45-foot tower would not be sufficient to generate a lot of electricity, so he did not feel they would see a lot of them. A half-acre to an acre parcel would permit up to a 45-foot tower - not that much taller than a tree. The alternative would be that if it was something the City wanted to promote, they could increase the maximum tower height for the smaller parcels. It was something for discussion before they made any decisions. On a one to five-acre parcel, there could be up to a 65-foot tower; five to ten could have a 100-foot tower. That would allow a decent system to offset a good deal of household needs. More than ten acres would have no maximum. There would be setbacks associated with the height, and those standards were used elsewhere. Mr. Schroeder was concerned that it could generate a lot of opposition from the neighbors.

Mr. Casey mentioned a business in one of the industrial parks that inquired about it recently. He would like them to look at the possibility of allowing towers to go higher in industrial parks as long as the parcel did not border residential use. The cost of energy was high in Michigan and business owners were looking for alternatives to generate electricity on site. Mr. Schroeder asked about the noise, and Mr. Casey felt that in an Industrial or Office district that noise was less of a concern. Mr. Kaltsounis remarked that they would be the next version of cell towers. Mr. Casey agreed, and said that the technology for wind turbines was changing so rapidly that whatever they put in the Ordinance today would likely be somewhat obsolete in a couple of years. He had seen designs for wind turbines that mounted on the roof of a building. They were proposing those in urban areas, such as Chicago, and that made a lot of

sense. He felt the City should be prepared for that.

Mr. Klomp thanked Mr. Breuckman and Staff for writing it into the Ordinance. He felt it was smart and ahead of the curve, and he was glad to see it. Mr. Breuckman said that if they went along with it, it would be something they would have to grow with, and Mr. Delacourt felt it was a good place to start. If all of a sudden they got a lot of requests for towers, they would be more prepared, but if they got requests for more than what the Ordinance allowed, they would be back in front of the Commission recommending a different set of standards. Mr. Breuckman said they would look again at the non-residential areas. He referred to utility wind systems, and said those regarded the types of wind turbines seen in farm fields. They would be allowed on sites of 20 acres or greater, but he wondered if they needed this part in the Ordinance because Rochester Hills was not located in a particularly great wind zone. If they took it out, however, it would discount the technology factor of the future, so he suggested that they leave it in. Mr. Reece asked if there was anything in the Ordinance about manure processing facilities and conversion to bio-diesel, as such operations were increasing. Mr. Breuckman said that would be handled under the use table as a type of industrial use. He said he would look at that. He was not sure that use would be appropriate in the City.

Mr. Dettloff asked Mr. Breuckman if there were any communities that were well into the sustainable energy issue. Mr. Breuckman said a lot of places were just really starting to look at it. Ann Arbor and Grand Rapids would be the closest. He outlined that the Ordinance would allow solar energy systems in the front yard, up to a maximum height of three-and-a-half feet tall. Mr. Anzek asked if they should add a screening requirement for those that might be close to the street. Mr. Breuckman said that was a good point, and that some communities did not want them in the front yard at all. He disagreed with that, because if the front yard was someone's only southern exposure, they could not discourage that, and screening would be a way to address it. He pointed out Section 10.403 and asked the Commissioners to review it. He said it was their choice whether or not to add it. It was an Ordinance that a few other communities had adopted (outside of Michigan). It was about a solar access permit and neighbors could not plant massive trees or a building that would block a solar system someone put in. The permit protected an investment. There was a procedure to let the neighbors know what was happening, but he cautioned that it could put the City in the middle of neighbor fights. Mr. Yukon asked what would happen if a house was sold to a new owner and they wanted to plant trees. He wondered if they would

be made aware prior to the sale. Mr. Breuckman said that a copy of the permit would be recorded with the Registrar of Deeds for Oakland County; however, some people did not read everything. Mr. Anzek said it was a big step that could become very problematic and cumbersome. He thought they should have more discussion about it at the next meeting. Mr. Breuckman said that it did not prevent someone from planting everything. There was a measurement that went along with it, based on a hypothetical 10-foot wall along the property line and the 30-degree angle above the wall where the sun was lowest in the sky on December 21st. That line was the limitation, so someone could plant a ten-foot tall green wall. Mr. Yukon asked what would happen if that were planted on private property and the owner did not maintain it. Mr. Delecourt said it would become a civil issue between the neighbors. He imagined that Council would really consider that section.

Mr. Breuckman next discussed parking and loading. He summarized the changes philosophically, and said they tried to simplify the parking requirements to reduce the number of standards, which would eliminate a roadblock for the reuse of buildings. If there was parking provided for a very specific use and someone wanted to reuse the building and it required a different parking standard, it could create problems. They went to more general, criteria-based parking standards to help minimize unused impervious surface and unnecessary parking spaces. They included shared parking and deferred parking, and allowed the Commission the ability to modify parking standards.

Mr. Kaltsounis referred to the width of nine feet for the parking spaces. He said they were currently at ten and he would prefer that, as an owner of a large vehicle. He stated that nine was tight. Mr. Anzek thought it was a good discussion point, and that he was the owner of a large vehicle as well. He noted that the Somerset Mall had nine-foot spaces. In the Village of Rochester Hills, he recalled that half were nine and half ten as part of the Consent Judgment. He felt that if people got centered in a space, that nine feet would be plenty. He believed that a two-door car had a wider door swing than a four-door did. Mr. Kaltsounis said he was not worried about the swing; he was worried about getting in and out. In a one-way lane, he could back out easier, but in a two-way, it was very difficult. Mr. Anzek said that using dual stripes helped people get centered in a space, but he acknowledged that would add more paint on the ground.

Mr. Reece said that the trend was going to smaller cars, but there would always be people that still bought larger. If they decided to use the

smaller spaces, perhaps they could reserve some spaces for large cars only. Mr. Anzek said that Home Depot and Lowe's did that, and put in bigger spaces for contractors. He suggested that as a solution. Mr. Delacourt said that if the building owners saw an issue, they would come back and request a parking change to ten feet. Staff looked at all the pros and cons, and the Tech Committee was split on the issue, and they ended up at nine, which was a common space size. There would be less impervious surface, and that was the deciding issue. Mr. Kaltsounis restated that nine in a one-way would be manageable, but that it would be too tough in a two-way lane. Mr. Anzek said they could all think about it, look around at various parking lots, and tell Staff if they found places too tight. He noted that in some of the industrial areas, which were employee intensive, that ten spaces at ten feet could become 11 spaces at nine. That was becoming the deciding factor about whether a building was leased. Mr. Delacourt said that if it had to go back to ten in the retail areas, he would like the Commission to consider leaving it at nine in the industrial areas or where there were more "all day" parking situations.

Mr. Dettloff referred to Section 11.201(d), General Provisions, which discussed uses meeting more than one category and asked how that had been handled in the past. Mr. Anzek said that the predominant use or space was parked first. Mr. Dettloff clarified that the Ordinance specified that each component would have a set parking requirement. Mr. Breuckman said they would come up with an aggregate number. Mr. Delacourt added that gas stations were always based on square footage, and if they expanded with a convenience store, it was required that more spaces would be added. Mr. Anzek indicated that a two-bay service station converted to a convenience store had always been problematic for parking.

Mr. Breuckman next referred to Article 12, Landscaping and Screening, and advised that the existing standards had been updated. He remarked that landscape requirements science had advanced by leaps and bounds. The City's Landscape Architect offered a lot of comments, which had been incorporated. The Ordinance talked about was permitted with regards to plant materials and ground cover requirements. The bigger change was in 12.205. It allowed existing vegetation to provide the same effect as a landscape requirement. In the past, there were a lot of questions about adding trees to a buffer that already did the job. He referred to 12.206, which was the requirements for plant species. People could only plant up to 20% of one kind of species on site. They added a part about a green wall, and the notes and table were added. They wanted to encourage a green wall and applicants now had the flexibility to

do so. He asked the Commissioners to read through it to make sure it did what they wanted it to. Mr. Delacourt joked that they should never again hear the term "landscaping to meet the intent of the six-foot opaque screen."

Mr. Breuckman talked about parking lot landscaping requirements, noting that they were trying to get some green into the seas of asphalt. There was something added about right-of-way trees. Mr. Reece asked if irrigation systems would be required. Mr. Delacourt said that the City required that now. He agreed that they might need to add something that allowed modification for LEED points. Staff had been administratively waiving that requirement for buildings that sought LEED certification, but the Ordinance should have something stated. Mr. Breuckman pointed out that 12.106 required irrigation, and item (a) said that the "Planning Department may approve an alternative form of irrigation or may waive this requirement by determining that underground irrigation is not necessary." The determined that something specific should be added regarding LEED, however.

Mr. Delacourt asked if there were any other general comments, and Mr. Kaltsounis said he disagreed when an applicant replaced a tree with a bush. He talked about the bushes lacking at the Walgreen's at Auburn and Crooks.

Mr. Delacourt reported that there would be 11 map amendments to the Zoning Map. He advised that the I-2 district was being removed, and that there were some large areas proposed for rezoning to Residential Estate. There would be a few recommendations that came from the Master Land Use Plan. He said they would send the information as soon as it was formalized, in advance of the next meeting. He asked that if anyone had questions, they should contact Staff to talk about it before the Public Hearing in January. He wanted the Commissioners to be clear about everything before making a recommendation to City Council. Mr. Reece asked for a .pdf of the power point presentation. Upon asking, he was assured that the next meeting would be noticed as a Public Hearing. Mr. Anzek mentioned that the crushing operation, which was currently zoned I-2, would be put in a nonconforming situation by going to I-1.

Chairperson Boswell opened the Public Hearing at 9:48 p.m. Seeing no one come forward, he closed the Public Hearing. Upon no further discussion from the Commissioners, he thanked Mr. Breuckman and Staff.