

The North Royalton Planning Commission held a **Regular Meeting** at the City Hall Council Chambers, 13834 Ridge Road, on **Wednesday, February 1, 2012**. The meeting was called to order by Don Willey at 7:00 pm.

Present: Don Willey, Cheryl Hannan, Mayor Stefanik, Tim Miller,  
Vince D'Agostino, City Engineer Mark Schmitzer,  
Community Development Director Tom Jordan, Law Director Tom Kelly,  
Secretary Julie Broestl.

Don Willey: Please stand for the Pledge of Allegiance.

The audience recited the Pledge.

Don Willey: At this point we have an organizational meeting because we have new members and we vote on new officers for Planning Commission. The nominations are open for Chairman or President of the Planning Commission.

Moved by Cheryl Hannan, seconded by Tim Miller, **to nominate Don Willey as Chairman.**

Don Willey: Okay. Please call the roll.

Vince D'Agostino:	Yes.
Cheryl Hannan:	Yes.
Tim Miller:	Yes.
Mayor Stefanik:	Yes.
Don Willey:	Yes.

**Yeas – all. Nays – none.**

**Motion carried. (5-0) - Don Willey is Chairman of the North Royalton Planning Commission**

Moved by Don Willey, seconded by Tim Miller, **to nominate Cheryl Hannan as Vice-Chairman.**

Don Willey: Any other nominations? Please call the roll.

Tim Miller:	Yes.
Mayor Stefanik:	Yes.
Don Willey:	Yes.
Vince D'Agostino:	Yes.
Cheryl Hannan:	Yes.

**Yeas – all. Nays – none.**

**Motion carried. (5-0) - Cheryl Hannan is Vice-Chairman of the North Royalton Planning Commission.**

Don Willey: Thank you. Congratulations to the new elected officers. There will be free coffee and refreshments after the meeting.

Julie Broestl: I need a motion and a second to excuse Vince D'Agostino from voting on the minutes.

Moved by Don Willey, seconded by Tim Miller **to excuse Vince D'Agostino from voting on the minutes.**

Don Willey: Call the roll.

Tim Miller: Yes  
Cheryl Hannan: Yes  
Mayor Stefanik: Yes  
Don Willey: Yes

**Yeas – all. Nays – none.  
Motion carried. (4-0)**

Julie Broestl: I need a motion and a second to approve the minutes of January 4, 2012.

Moved by Tim Miller, seconded by Mayor Stefanik, **to approve the minutes of January 4, 2012.**

Don Willey: Yes  
Cheryl Hannan: Yes  
Tim Miller: Yes  
Mayor Stefanik: Yes

**Yeas – all. Nays – none.  
Motion carried. (4-0)**

Old Business:

**Woodcroft/Woodcroft Glen Phase II, Final Plat Approval. Tabled. No Action.**

**Medina County Port Authority-OneCommunity. Tabled. No Action.**

**Purple Skies Farm/David and Visar Duane, 18802 State Road, Rural Residential Zoned.  
PPN: 486-14-007 & 008. Site Plan Approval for a Bed and Breakfast and Accessory Structures.**

Moved by Tim Miller, seconded by Don Willey **to remove Purple Skies Farm from the table.**

Cheryl Hannan: Yes  
Tim Miller: Yes  
Don Willey: Yes  
Mayor Stefanik: Yes  
Vince D'Agostino: Yes

**Yeas – all. Nays – none.  
Motion carried. (5-0)**

Don Willey: Gentlemen please come up and state your name and address and give us your presentation.

David Duane and Eric Newland approached the microphone.

David Duane: My name is David Duane and I reside at 4980 Corkwood Drive, North Royalton.

Eric Newland: My name is Eric Newland, 5252 Hickory Drive, Lyndhust, Ohio. I'm the architect on the project.

David Duane: Especially for Vince tonight, you were not at the last meeting, I'm a long term resident of North Royalton for approximately 20 years. My wife and I found a dream come true and it has to do with the property we are going to talk about here. What my intention is to first, and foremost, is to farm the site located at 18802 State Road. It is between south of Cady and north of Wiltshire. It is approximately 20 acres. We've had a tenant farmer on there this past year and grew field corn, but we are interested in creating an organic farm as our first priority. There is a site plan which we will go over in a minute. What I would like to do is show you what it use to be as terms of the buildings on that property that were razed in April of last year. There was a farm located on the property and a house as well, sorry I don't have a picture of the house, but it is my understanding that the house had water problems in the basement, that was what I was told. In addition to the house there was a barn and to my understanding the doors haven't been closed in years. Here is a picture of that barn from the back and a pole barn which was next-store to it as well. There was a fairly new and modern garage. All those buildings were razed in April of 2011. I also put up a couple of pictures courtesy of Google Maps, beneficially I probably should say, at one time, and I'm not sure when because it happened long before I came along, that they had a farmers market or mini store, or tent, which they sold, and it is really kind of amusing to see what it looks like from the road, and it is my understanding that this stand got hit a few times by cars when trying to make the curve at that point. It is kind of a dangerous site when putting out your wears right on the street like that. What I do want to do is kind of set the tone in terms of what we are looking for and moving forward. These are not exact representations but I do want you to know my intentions of wanting to build three structures on the property. One is a cold storage barn, because I need a place to store a tractor and tools. That is the first item up on my list. Second to that is the utility building which has mufti-functions for. What I do want to do is point out here is that on the pictures I'm showing here is that this is the style we are looking for. This is a representation of that cold barn over here. The utility building here, and in the same coloration and design. In terms of the main structure which will be the residence and attach bed and breakfast. We do intend to farm so we want you to get a sense of what it is going to look like with the planting. We do want to grow a number of items. Berries, blueberries, strawberries, red raspberries, and in addition to that a various amount of fruit and vegetables like watermelon, pumpkins, and we find it interesting and beautiful to look at fields of lavender. That is why I put the lavender out here in terms of that. Ultimately, we want to benefit the community by providing quality organic foods for neighbors and the community in general to part take in, so we do intend to sell to the community in general.

Eric Newland: Again, I'm Eric Newland. To summarize what David was saying about the use of the property, it will be an organic farming vision and also a primary residence with an attached bed and breakfast. We have been before the Board of Zoning Appeals to seek two variances for accessory buildings, which is shown in the site plan here. The first to construct will be the cold storage, which David mention, which will store the tractor and other farming equipment. Step two will be to create a second accessory structure which will be for farming operations and also synergistic with the bed and breakfast facility as well. Finally, we will construct a primary residence with bed and breakfast suites located also in that facility. The site mentioned is 20 acres. We want to catch whatever rain water is in

site. We want to be sustainable and organic in every fashion not just farming. We want the architecture to speak of this refreshing sustainable lifestyle. So we are taking every effort to achieve that vision. We would like to incorporate a walking path around the site. We want to minimize the impact as it stands much as possible. The site as it stands now is beautiful and we would love to keep it that way. What we are seeking this evening is a conditional use pursuant to Chapter 1273.02, Permitted Buildings and Uses, Section (b), to construct a bed and breakfast inn, in conjunction with plant husbandry operations. Thank you.

Don Willey: Questions? Mr. D'Agostino.

Vince D'Agostino: As far as the bed and breakfast goes, how many residents are you hoping to sleep there?

Eric Newland: It hasn't been designed yet, but the intention is to be four or five rooms at the very maximum.

Vince D'Agostino: Okay. This would be on an over night a week at a time?

Eric Newland: Yes. If you have every had a bed and breakfast experience it is that you come in and spend the night and then we would provide breakfast and usually a very elegant breakfast and people would be free to come and go as you please. As you know, there are numerous things for them to do throughout the greater Cleveland area. This would be in sense of the over night accommodations.

Vince D'Agostino: Okay. Thank you.\

Tom Kelly: Mr. Chairman.

Don Willey: Mr. Kelly.

Tom Kelly: Mr. Chairman. I would like a brief moment just to go over with the Planning Commission some of the consideration that need to be addressed by the Commission in its determination of whether or not grant a conditional use permit to this applicant. Tonight is the first time I heard the applicants, Mr. Newland, make mention to the fact that the application is intended to include plant husbandry as well. Was that part of the original application form Tom?

Tom Jordan: I will be honest with you, I was not involved. Actually, I could look at the application as you talk.

Tom Kelly: I hope it does because it would solve one of the concerns that the Commission is likely to have to address this evening. Initially, we understood, or at least I understood, that this was a single family residence with a conditional use permit for a bed and breakfast. That is separate and apart from the consideration of running an organic farm which would fall under plant husbandry. If the application, and I don't have the form in front of me, but if the application form does in fact say bed and breakfast and plant husbandry that would certainly alleviate some of our difficulties. As you would know Mr. Newland, those are two separate conditional uses. What you are dealing with here is really a multiple use piece of property. The first, and primary use, would be the single family residence which is a main use under 1273.02(a), and that is perfectly permitted without any conditional uses or

restrictions. Part of our concern has been, and part of the discussion that we have had internally over this, is putting the cart before the horse. As Mr. Newland says, the applicants desire here is to build a single family residence last. It's an acceptable procedure, I won't say that it isn't. It's not maybe the most desirable way from the community's point of view, but it is certainly an acceptable procedure to phase in the development. The BZA in granting the variances that they have granted, granted them contingent upon the Planning Commission making specific determinations as to the nature of the uses to be made of those buildings. So, for example; with regard to the utility building that Mr. Duane mentions, the utility building as I heard from previously was a building intended to be used to prepare the vegetables to clean them and so on to make them ready to eat or market. One of the concerns you are going to have to address this evening is whether or not a retail operation is going to be permitted as part and parcel of the plant husbandry conditional use. If so, what restrictions are you going to place on that experience, which is to say if you are going to sell vegetables that is a retail experience. It's not technically a conditional use under that Section however, we can con-screw a certain level of flexibility in the Code to allow for it, but it is going to have to at least bare a certain level of restriction, which is to say; hours of operation, parking, ingress and egress, all of the kinds of things that right now are not being fleshed out. They don't need to be. I'm not suggesting that you have to limit them to so many parking spaces tonight. We don't have plans that would allow for that, I imagine. But the fact of the matter is, those considerations have to be part of the conditional use permit, otherwise either the applicant has no use for that purpose, which is not his desire, I take it, or the alternative the use would be wide open and unrestricted. I don't think either side would be happy with those two alternatives. So, what part of this discussion this evening, Mr. Duane and Mr. Newland, is going to have to take in the Commissions determination of, first of all, a phased development. Multiple uses of the property. And what restrictions are to be imposed per each conditional use. So, as to the B and B is the Commission going to approve five specific units, five bedroom units, and restrict you to that kind of an operation. With regard to the utility building, whether or not it is going to be serviceable for retail purposes and if so what restrictions if any would be placed on the use of that building. There ought to be questions and decision regard to subletting, if that is part of your plan. Right now you have indicated that there was a tenant farmer there last year. Are you going to do this all in-house or whether you are going to break it up into parcels and parcel it out for subletting, whether that would be permitted under the conditional use permit. Whether or not there are going to be other farm workers on the property, and if so, what facilities would be available to them. You intention is to use this land primarily for an organic farm. I take it that is first in time, not necessarily in terms of focus. Which is to say your ultimate focus is to have the bed and breakfast and to have your home there. So, those are all things that the commission is going to have to consider. Plant husbandry is a separate conditional use under the Code as opposed to personal garden, which is allowable to any single family homeowner in Rural Residential or otherwise. I bring that to the commissions attention. I ask you to at least recognizing that it is your task this evening, in part, to begin to outline for the applicant and for the community what restrictions if any you place on these permits relative to the applicants intentions and consistent with the Code. Thank you Mr. Chairman.

Mayor Stefanik: Mr. Chairman, if I could.

Don Willey Willey: Mayor Stafanik.

Mayor Stefanik: I just want to let you know that the City is excited about this project and we want to see it move forward, but we have to make sure it moves forward in the right way. That is why the Law Department has brought up some of these issues. I know Mr. Jordan has a lot to say about it. I think

Mr. Jordan and the Law Department don't really agree right now on everything, but it is our job up here to sort through that and do what is best for the City long term. Like I said we are really excited about this project. I think it is great for that part of the City. It compliments the apple orchards in that part of the City and what the Rural Residential is all about. There is always a chance you could get started with this project and something might happen to you, God forbid, health-wise and you might have to sell it when one of the buildings are up. We have to make sure the City is protected that somebody might move in there and start storing boats in the property. We have to make sure we protect the City in that part. I really don't know if we can sort it all out this evening. My thought would have been to have everyone sit down, the Law Department, Economic Development Director and yourselves and work out what these conditions are and how to move forward quickly. Whether or not you have to withdraw your application and reapply, not at another cost we would waive that, or if we could work it out the way it is presented that would be fine too. I don't want to waste your time tonight or our time tonight. If we could get it sorted out tonight great. If we can't, we still want to see it go forward. Just so you understand that.

Tom Jordan: Madame Secretary, is animal husbandry a part of the original application?

Julie Broestl: I didn't see it anywhere.

Tom Jordan: To the Law Director. Is he allowed on the floor this evening to add animal husbandry as a conditional use?

Don Willey: Not animal husbandry.

Laughter from everyone.

Tom Kelly: I would be pleased to recommend to the chair that it would be allowed except for the fact that it is a separately designated conditional use under the Code, the notices would have to go back out again. In fact that is what we are considering.

Tom Jordan: Mr. Charmin. We anticipated that the conditional use relative to the bed and breakfast would be considered this evening, and that the Board would consider some limitations on that. That is probably best at what we could handle this evening. If in your application you wish to add plant husbandry as a conditional use for the property, we would have to work that out in advance of this evening. I think we could deal with the issues relative since it has been properly noticed since we have what we need to discuss that. If the Board wishes to put limitations on the number of units they could and a couple of the other items. The plant husbandry issue also was discussed at the BZA and at that time we informed you that multiple uses that were indicated on your plan were not part of the application for the BZA and we didn't discuss it. The only thing you would default into, and I question this to our Law Director, is in the lack of identification or lack of the conditional use being applied for plant husbandry, would they just default into the allowable uses under Rural Residential?

Tom Kelly: That is correct.

Tom Jordan: And frankly, you probably would want to do your research as to what's allowed under Rural Residential. We have come to some agreement about what is allowed without a conditional use being granted. I believe we can handle the conditional use on the bed and breakfast if you wish further

consideration on that. Is that the applicants wish at this point?

Eric and David: Yes.

Tom Jordan: And we have the site plan issue that we can deal with. To the Law Director, on the site plan issue, I believe the site plan really encompasses a farm with a certain number of buildings and by approving the site plan are we in any way affecting the plant husbandry issue, I'm not sure we are.

Tom Kelly: I don't believe so, Mr. Jordan. Bearing in mind that the buildings are intended by the applicant to be used for a specific purpose they could be put to other purposes as well.

Tom Jordan: Like storage. That is allowed in Rural Residential.

Tom Kelly: Right. So, I don't think we are committing any egregious.

Tom Jordan: Okay. So, we can get through site plan approval this evening and it looks like we can get through the issue on the bed and breakfast. So you know what we struggled with is that people and the newspapers have reported that this is a bed and breakfast and I believe its intended main use is a private residence and then the last use you intend to add is this bed and breakfast four suite in addition to a four bedroom home. Is that correct?

David Duane: Yes, that is correct.

Tom Jordan: Okay.

Don Willey: That is all encompassed into one unit though, is that correct?

Tom Jordan: No. Could you point out the residence on the site plan.

Eric Newland went to the easel and pointed out the site plan location.

Don Willey: It's one footprint is what I'm getting at.

Tom Jordan: To the architect, Mr. Chairman, there will be four in suite units that would have their own private bathroom and their own separate entrance and exits, and that you would probably use in common in the house would be the kitchen and dining area.

David Duane: That's correct.

Tom Jordan: Mr. Chairman, to the Law Director, if we approve the conditional use on the property for a bed and breakfast, is there any limitations with just the current site plan on the number of units?

Tom Kelly: No. There is no limit which is part of the concern and what the Commission should have about this and the question is should we make a restriction not to exceed X number of living units or sleeping units.

Don Willey: Mr. Law Director, Tom Jordan, the thing is we don't have a model of this, nor does our

Code provide, at this time to my knowledge, something that would allow us to, you know, it's not a multiple unit, or a for lease on a ongoing basis, this is a different type of beast, in a sense. You know it's a hotel, motel, essentially, so we don't have a provision for this at the current time, correct?

Tom Kelly: That is correct sir. Mr. Chairman, because it is a conditional use under the Code. It is intended that each one be crafted individual. For example, Mr. Duane and Mr. Newland's proposal here is for a bed and breakfast of four units attached to the main house. I could envision another circumstance where somebody else would set aside a separate building close to the main residence but not necessarily tied to the main residence where there would be two, or six, units of similar import. I think the Codes intent here is that there be enough flexibility such that the Commission be in a position to grant or deny or assist in shaping the proposal. Here Mr. Newland has done an excellent job of that. Mr. Duane has given his blessing. I don't wish to stand in the way of it in the least, but at the same time I wish the commission to at least take a hand in fixing the proposal in a way that we can place the restrictions in the conditional use permit so that there is some basis upon which everyone could look forward to see whats coming. If we leave it to be decided at a latter date we will be in an awkward position. For purposes of going forward tonight with the site plan approval the only thing I would ask is if you intend to adopt the conditional use permit to allow the bed and breakfast at the very least we specify a maximum number of sleeping units that are to be constructed.

Cheryl Hannan: Mr. Chairman.

Don Willey: Yes Cheryl.

Cheryl Hannan: I recall when you were here last month that it seems like your main intent was to have an organic farm. From what I am hearing and the comments from the Law Director and the Economic Director, I think it would almost be prudent if you go back and try to develop your organic farming proposal to bring to us because if we go forward on the bed and breakfast we really don't have a plan, and it would be arbitrary right now for us to restrict you to something until you flush that out. I guess for me, right now, I wouldn't be comfortable really going forward.

Don Willey: I believe the only thing in my way of thinking about it is that we don't know what is going to happen in five years from now. You might win the lotto and move to Florida. But what you presented, if we approve that and restrict only what you presented than you have less flexibility down the road. Am I correct?

Tom Kelly: Yes. Although he could always come back in and ask for modification.

Don Willey: So, if you decided to do six units instead of four five or six years down the road than you would have to come back and request a variance from the conditional use basically. What would benefit you tonight if we would approve and to move forward?

Eric Newland: Tonight we are seeking conditional use to move forward with a bed and breakfast conditional use. I fear I opened up a whole new can of worms by mentioning plant husbandry. It was my impression that given that is the existing function of the site.

Don Willey: The zoning of the site right now is residential.

Eric Newland: Correct, but it is being used for farming purposes.

Don Willey: Practically, if that was zoned farming right now there really wouldn't be an issue. Am I correct Mr. Law Director.

Tom Kelly: Yes sir. If it is being farmed now it is very likely a nonconforming use, because all of the buildings have been razed. I would have to have a little more information before I could opine on it. It is plainly residential and therefore not agricultural. On the other hand because it has been farmed in the past and I take it probably continuous for a long period of time. It represents a nonconforming use. The question of whether a new owner can continue the nonconforming use. I won't speak to that because I don't know the answer to that. An organic farm, as the applicant described as being his first and foremost desire for the property would fall under plant husbandry in rural residential as a conditional use, and it's altogether appropriate that it should be used that way. The problem is I can't tell if the application reflected that request and until tonight I hadn't, well, I don't know if the application reflects that or not and we don't have it to look at it I take it.

Tom Jordan: I believe the secretary has indicating that it was not included in the application.

Tom Kelly: Okay. I know Mr. Jordan you have indicated the desire to see if we could amend it on the floor. I couldn't recommend that because I think it requires notice.

Tom Jordan: I would not recommend the conditional use and plant husbandry until we could go in to the issue of whether they are grandfathered, whether they need it to begin with and the conditions placed on it. On the issue of the bed and breakfast and the site plan approval, I do believe you have outlined some limitations that the Board could consider this evening.

David Duane: The question related to the bed and breakfast, there is not problem by putting limitations on it for four units at this point in time. Per Mr. Kelly, there is some discussion of increasing that number and come back at a later time and that would be fine. The thing is I do want you to keep in mind is that the reason why identified that number was because that is what we can afford to produce and also in terms of cost. There is cost involved with that and the other thing which I think may not be apparent is that there is operating costs associated with that in simple terms, changing sheets, new toilet paper, cleaning rooms, all the stuff that goes into that, this needs operating expenses and operating issues relating to that. I don't envision running off and building something like a twenty or thirty unit bed and breakfast. In fact I think what we really want to do is basically to keep it simple so that it gives enhancement to the community that we can operate the business and beneficial to us and the community. I'm not opposed to limiting it to four rooms at this point.

Tom Kelly: Mr. Chairman. If the commission is so inclined it would be appropriate to go forward to give the applicant some consideration on the question of his application for the site plan approval with the restriction that he has already given his consent to and upon the understanding that the accessory buildings, which have been approved by the BZA, will not be used for any purpose unless and until the Planning Commission has the opportunity to review them in conjunction with a conditional use application for plant husbandry or the alternative upon a determination that the nonconforming use is available to the applicant for a continuation of the farming operation. Which is to say, they have the variances for the two accessory buildings, but they have no available use for them because the Planning Commission has yet to specify what those uses are or may be.

Tom Jordan: Except for whatever Rural Residential allows.

Tom Kelly: Yes. Thank you.

Don Willey: Does that sound okay at this point in time. I'm assuming we are not going to wait five years to get this application thing cleaned up.

Eric Newland: We need to build the storage buildings as soon as possible. Whatever is necessary to get this done before the nice weather starts. Not counting today.

Don Willey: Aren't you going down there right after this meeting? Okay. I have a motion to approve the site plan as presented with the condition of the buildings being built with all specificity of use.

Tom Jordan: And four units for bed and breakfast use only.

Vince D'Agostino: How big are these units? Is there a Code in the City that they have to be a certain size per unit, or can they just put in a little room?

Don Willey: I believe they want to have a bedroom with an advance facility. Like a boat cabin and people just sleep there overnight and they come down and go to breakfast.

Vince D'Agostino: Is there minimum restrictions for it?

Don Willey: No. We have no Codes. It has to be big enough to be safe. Around a 15 x 15 area? About 200-square feet?

Eric Newland: We are proposing each have their own bathroom when we design that phase. But we are estimating that the rooms would not exceed 400 to 500 square foot

Don Willey: That's a pretty good size, 20X20.

Eric Newland: May open up a small sitting area perhaps and a bed area.

David Duane: We don't want tiny rooms because we want repeat business. They have to have a good experience. We want them to say they had a great time here and the rooms were nice. If we don't provide that type of customer service it won't take effect. People won't come again. No small rooms.

Vince D'Agostino: That's why I asked. Anyone could do that, just divide it up and throw rooms here and say I got it.

Eric Newland: The provisions we will exceed the minimum restrictions based upon the Ohio Building Code for residential sleeping units. We have not discussed the exact criteria.

Tim Miller: Mr. Chairman. Would it be beneficial for the applicant to amend your application to include the plant husbandry? It sounds to me like you want to make sure you are going to be able to do all the things you want to do. Just doing this without that being included is that what your understanding is?

Eric Newland: You would have to send notice.

Tim Miller: I believe the Mayor mentioned maybe to get together and get it all worked out between the Law Director and the Economic Development.

Tom Jordan: The issue is if he's not applying for it, which in he can claim it's grandfathered in, he may never be back before this Board. All the uses would default into current zoning. So, he doesn't really need to come back here quite possibly. We could approve the bed and breakfast and the site plan and they can come back after we have an internal discussion about whether or not it is needed, and that's it. At least we would narrow our issues including the plant husbandry. That's my recommendation to go forward with the site plan and the bed and breakfast issue with the limitations that are outlined, and then we will take up plant husbandry following, and it was never apparently part of your application anyways.

Eric Neuland: Understood. Thank you in advance because we know it's complicated sort of vision. It is sort of an uncharted territory.

Don Willey: Well, it's our intention to help you and we want to see you succeed too.

Cheryl Hannan: Mr. Chairman.

Don Willey: Yes.

Cheryl Hannan: Another question, as our Law Director brought up, there may be a potential problem with another use, a retail use, if you have this organic farm and you want to sell your produce than I guess I question to the Law Director or the Economic Developer, they would have to come back in front of us for that even if they were grandfathered in to having a farm?

Tom Jordan: If they are claiming that they were allowed to farm the property, we would have to see if they are claiming to sell any retail. I don't believe that they are. But all they would be allowed to do under Rural Residential Code those uses that are allowed. They are not asking for any exception to that other than any uses that may be grandfathered in and that hasn't been determined.

Tim Miller: Are you referring to the retail Tom?

Tom Jordan: Yes. I don't believe retail is, I know retail isn't a main use allowed in rural residential. Whether it's allowed as an accessory use and to what capacity and whether it's seasonal or not, that level of detail we would have to look at.

Don Willey: So should they decide to convert to some retail at that time they could come and get a permit. If the facility conforms with the retail use then they don't have to get our permission to do retail.

Tom Jordan: They would have to abide by the current zoning without your permission.

Don Willey: Well there is a motion on the floor gentle people, to approve the site plan as presented and requested. Anyone second it?

Tim Miller seconded it.

Don Willey: Please call the roll.

Don Willey: Yes  
Mayor Stefanik: Yes  
Tim Miller: Yes  
Cheryl Hannan: Yes  
Vince D'Agostino: Yes

Yeas – all. Nays – none.

Motion carried. (5-0)

Don Willey: Anything else?

Tom Kelly; Mr. Chairman. It would be appropriate to let Mr. Newland and Mr. Duane that this now has to go to Council for approval.

Tom Jordan: And we will delay action after Council after we consider if you decide to go back for conditional use and plant husbandry, but we will follow up with some conversation.

Don Willey: When do you plan on starting constructing these out houses.

Laughter

Don Willey: Out buildings, sorry David.

David Duane: We are looking at probably April.

Don Willey: So, we haven't impeded your schedule in any way.

Eric Newland: Not at this point.

Don Willey: Thank you very much.

Eric Newland: Thank you.

Don Willey: Moving onward.

**Ordinance No. 12-14 - AN ORDINANCE ACCEPTING DEDICATION OF 105 FEET OF EVERGREEN TRAIL, IN THE TIMBERLANE ESTATES SUBDIVISION, PHASE 4A FROM WINDING RIVER DEVELOPMENT LLC, AND DECLARING AN EMERGENCY.**

Don Willey: To the City Engineer you had some comments I believe.

Mark Schmitzer: Thank you Mr. Chairman. I have been working with the developer, Mr. Lechko, from Winding River Development, on the close-out of this development. We have an agreement in

place, the City and the developer, for this addition to Evergreen Trail, which is really just a cul-de-sac with five lots on there that finishes up the end of that street. We have performed a punch list, my department has very minor items remaining to be done. We are recommending some items not be performed until the spring time to allow the ground to settle out. This way we won't go out do some work and then do it again. We have all the necessary forms in place, bonds, etc. just working through some minor details on dates that we will need to place on those bonds. From the contractors for the two year guarantee wants council accepts dedication the plat itself meets all the requirements of our subdivision code with easements, lot size, setbacks, etc. I'm comfortable in recommending that this development be approved her tonight by the Planning Commission and recommending to City Council for dedication.

Don Willey: Mr. Jordan, do you have anything to add.

Tom Jordan: No.

Don Willey: Anyone on the Commission have any questions or comments.

Mayor Stefanik: Mr. Chairman.

Don Willey: Mayor.

Mayor Stefanik: I will reclude myself from the vote due to a previous business transaction with this developer.

Don Willey: Okay. Anyone else.

Tom Kelly: Mr. Chairman.

Don Willey: Mr. Kelly.

Tom Kelly: Very recently, I mean within the last couple of days, I received a letter from an attorney on behalf of Mr. Lechko advising me that they had some concerns over the fact that the subdivision he proposes, this five parcel subdivision, is not yet part of the homeowners association that is otherwise reflected by the residences on Evergreen Trail and the question is whether or not the City is going to require that those lots be made part of that homeowners association. Apparently there is some agreement on the part of the existing homeowners association to take these parcels in as part of the homeowners association. So, there is some unanimity of understanding between the parties, between the developer and the homeowners association, Mr. Lechko and Mr. Hayes, I believe. So, they are trying to work that out. I'm not asking that the approval be made conditioned upon that, however, I wanted to bring it to your attention. It is something we are going to have to work out before Council approves.

Mark Schmitzer: Mr. Chairman. Mr. Kelly, I did actually receive a letter from Mr. Hayes, addressed to Mr. Lechko, that said there was a vote of the homeowners association. They only had 52 people respond out of the 70-some that they have in that addition, and they had 47 yeses and 5 nos on that. Based on that in the letter they go on and state that they did get a majority of the vote to accept them in. I just wanted to share that. I know that there is still the portion of actually recording that and actually

accepting them in, but I do think there is an agreement in place in principle to take those five lots and have them under the same covenants and restrictions as the existing Timberlane subdivision.

Tom Kelly: Mr. Chairman. Mr. Schmitzer is reflecting in understanding that was encompassed in the letter I got from the attorney representing Mr. Lechko. The only thing I would say is that the covenants and restrictions of the homeowners association in question have to be recorded as to the five lots in question prior to the time, and therefore adopted by the homeowners association as well, prior to the time that any of those properties are sold. I see Mr. Schmitzer is waving his head up and down.

Mark Schmitzer: Yes. That is correct.

Don Willey: Okay. Anyone else? So, we want to approve those conditional on the acceptance of the lots in question being accepted and recorded as part of the current homeowners association, is that correct?

Mr. Kelly: I think it would be the safer play. Yes sir.

Don Willey: Can restrict the sale on those?

Mr. Kelly: No, you can't restrict the sale, but the approval, if it is conditional upon the adoption of the homeowners association covenants and restrictions and recordation of those covenants and restrictions will at least provide us with a measure of impediment in order to see to it is done before other permits are issued.

Don Willey: Do I have a motion to approve based on the condition of the filing of the covenants for homeowners association.

Moved by Cheryl Hannan, seconded by Tim Miller, to **approve Ordinance 10-14 based on the condition of the filing of the covenants for homeowners association.**

Don Willey: Please call the roll

Tim Miller:	Yes
Cheryl Hannan:	Yes
Vince D'Agostino:	Yes
Don Willey:	Yes

**Yeas – all. Nays – none.**

**Motion carried. (4-0)**

Don Willey: Anything under miscellaneous? Any old time stories or anything along that line?  
Thank you all for attending.

Moved by Mayor Stefanik, seconded by Vince D'Agostino to **adjourn the Planning Commission meeting of February 1, 2012.**

Don Willey: Please call the roll.

Mayor Stefanik: Yes  
Don Willey: Yes  
Tim Miller: Yes  
Vince D'Agostino: Yes  
Cheryl Hannan: Yes

**Yeas – all. Nays – none.**  
**Motion carried (5-0)**

Approved: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_