

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 8TH DAY OF JANUARY 2009 AT 9:00 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Plan Commission was called to order by the Chairperson, Jeff Burbrink, with the following members present: Dennis Sharkey, Tom Lantz, Blake Doriot, Roger Miller, Meg Wolgamood, and Mike Yoder. Staff members present were: Robert Watkins, Plan Director; Mark Kanney, Planning Manager; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Dan Piehl, Planner; and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Miller/Doriot*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 11th day of December 2008 be approved as submitted and the motion was carried unanimously.
3. A motion was made and seconded (*Sharkey/Lantz*) that the legal advertisements, having been published on the 26th day of December 2008 in the Goshen News and on the 29th day of December 2008 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.
4. A motion was made and seconded (*Doriot/Lantz*) that the Elkhart County Zoning Ordinance and Elkhart County Subdivision Control Ordinance be accepted as evidence for today's hearings. With a unanimous vote, the motion was carried.
5. ***Election of Officers for the year 2009:*** Mr. Sharkey moved to accept the Slate of Officers and Appointments for 2009 as presented (*see attached*). Mr. Lantz seconded the motion, which carried with a unanimous vote.
6. The application for a zone map change from M-1 PUD to A- 1 for ***HNHB, LLC*** represented by Philip Barker on property located on the West side of CR 35, 1,260 ft. North of US 20, common address of 56775 CR 35 in Middlebury Township, was presented at this time.
Mr. Kanney explained that this application and the next application for a minor subdivision reflect the same property. He then submitted an aerial map and clarified that the property in question is the hatched parcel within the PUD [*attached to file as Staff Exhibit #1*].
Mr. Kanney went on to present the Staff Report/Staff Analysis, which is attached for review as *Case #20083584*. In addition, he explained that in 1994, this was the Shasta Industries to the southwest and they wanted to give themselves room for expansion. They asked for this to be rezoned to M-1, which was granted, and there was a site plan approved by the Plan Commission that included this site. According to Mr. Kanney, this existing house and outbuilding were part of that rezoning, and at that time, they were shown as being office space. He doesn't think there is a Shasta any longer and now they would like to sell this as residential, which is what it was originally created to do. It was then clarified that only the hatched area on the map that was submitted is what they are discussing and Mr. Kanney said he just wanted the Board to see how that affects the entire PUD.

Phillip Barker, Cardinal Point Surveying, 1002 Zollinger Road, Goshen, was present on behalf of this request.

* *(It is noted that Steve Warner arrived for the meeting at this time).*

When the Board asked about a name for the minor subdivision, Mr. Barker said Shasta Minor had been suggested to him.

Mrs. Wolgamood asked how long the house has been vacant and he indicated that the house was never used as an office. The house has an existing septic and well, so he would like to use it as a residence.

Mrs. Wolgamood also questioned the prior use of the existing building and Mr. Barker said it was used for storage for Coachman.

Mr. Miller questioned the distance between the property in question and the access point and Mr. Barker replied 60 ft. When asked if that is adequate for access, Mr. Barker said he doesn't believe there is a frontage requirement in the M-1 zone. He explained that it is attached to the Shasta property, and he thinks their original plan for this property was for storage of RV units, which would require them to access the site from US 20 or across the southern portion of the lot.

Mr. Doriot asked if there is a curb cut there other than to the house and Mr. Barker said no. In order to utilize a curb cut on the property, the petitioner would probably need to modify the PUD.

Mr. Kanney then explained that there is a stipulation in the PUD that all of the freight traffic has to exit out onto US 20 and not on the county road. That stipulation would have to be removed before it could be a manufacturing use and it would be required to come back to the Board as a major change. At this time, he said he could not allow a driveway to go in there.

There were no remonstrators present.

A motion was made and seconded (*Wolgamood/Doriot*) that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Sharkey*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from M-1 PUD to A-1 be approved in accordance with the Staff Analysis. The motion was carried with a unanimous roll call vote.

7. The application for Primary approval of a one lot minor subdivision to be known as ***NO NAME MINOR***, for HNHB, LLC represented by Philip Barker, on property located on the West side of CR 35, 1,260 ft. North of US 20 in Middlebury Township, zoned M-1 PUD, was presented at this time.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083583*.

Present on behalf of this request was Phillip Barker of Cardinal Point Surveying, 1002 Zollinger Road, Goshen. When asked if he had any objection to the recommendations of the Technical Advisory Committee, he indicated that he did not.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Sharkey/Lantz*) that Primary approval of this one lot minor subdivision be approved by the Advisory Plan Commission in accordance with the Staff Analysis and comments of the Technical Advisory Committee with the following conditions imposed:

1. Change the name of the subdivision.
2. Must be successfully rezoned to A-1.

Prior to voting on the motion, Mr. Barker was asked if he has a name for the subdivision and he indicated Shasta Minor; however, it was pointed out that the staff would have to verify that that name has not already been used.

The motion was then carried with Mr. Doriot voting in opposition.

8. Mr. Burbrink explained that the Executive Committee met and reviewed the *Employment Agreement for Plan Director*. The committee decided on one minor change, which entailed removing item E on page 2. Mr. Burbrink said they didn't feel that it was the Board's necessary task to approve all of the appointments. If the Board has issues with the department, then they can approach the Plan Director to discuss that. The committee also removed the compensation paragraph in #3.

A motion was then made and seconded (*Burbrink/Wolgamood*) that the Employment Agreement for the Plan Director be approved as presented (*see attached*). After a unanimous vote was taken, the motion was carried.

9. A proposed revision to the Plan Commission Rules of Procedure was distributed to the Board for review.

Mr. Doriot explained that the Executive Committee was discussing attendance and per diem for board members who are compensated. Mr. Burbrink recalled that this was discussed at the December Plan Commission meeting and they felt that everyone would miss a meeting or two.

After a brief discussion, it was determined that a board member may be compensated for two missed regular Plan Commission meetings during the year, but meetings missed beyond those two will not be compensated. It was then clarified that compensation is only for the regular meetings of the Plan Commission and not for additional meetings that are called or for workshops.

A motion was made and seconded (*Doriot/Wolgamood*) that the Board adopt the revision to the Rules of Procedure by adding 2.01 B. Membership (*see attached*) as distributed to the Board. The motion was carried after a unanimous vote was taken.

10. Mr. Watkins explained that the Planning Staff is proceeding with a proposal to hire a consultant to re-write the Zoning Ordinance. An RFP was sent out in December and there were two responses received from RW Armstrong and Ground Rules. Both of the companies have done previous work in Elkhart County; i.e. the Northwest Gateway project and the CR 17 study. Ground Rules is primarily focused on subdivisions and zonings. They are a smaller group, but they have very impressive work. The next task will be to determine who is going to do the work. Mr. Watkins indicated he has a copy of the proposal in case someone wants to review it.

One of the things that will need to be decided is who is going to work with the company. He would like to have representatives from the Board, including the Executive Committee. Mr. Watkins said he is ready to establish times for the interviews. He spoke with Ground Rules this morning and they are available to do their interview on Monday afternoon or anytime on Tuesday. He feels they are very good proposals, but they both have their shortcomings.

Mr. Sharkey said he feels a lot has changed in the past six months. He said the Planning Staff and the Plan Commission Board has a lot more time than they did before, so he asked if they could do the work for the Zoning Ordinance. Mr. Watkins said no because it wouldn't be completed by the end of the year. The goal is to have this done quickly, efficiently and professionally. He believes an assumption is being made when saying the Planning Staff has a lot

of time on their hands. A lot of time is being spent getting caught up on projects that never got completed before such as updating zonings, following up on incomplete certificate of occupancies, and scanning files.

Mrs. Wolgamood said that getting the changes for the Ordinance in front of the Board is an enormous amount of work to get done. The consultant can facilitate everything, so she feels that their involvement will be pretty good size. Both of the proposals talk about staff involvement and all of the things the staff will need to do.

Mr. Sharkey asked who will be giving the consultant direction and Mr. Watkins said the Planning Staff, the Plan Commission, and the public.

Mr. Yoder said the time line for the re-write is 12 months. The staff re-wrote the Subdivision Control Ordinance and it took a long time. The Zoning Ordinance is a much larger process, so he feels that the \$100,000 is adequate for this project.

Mr. Kolbus said he feels they need someone from the outside looking in. This will allow the staff and Board to think of things that haven't been thought of and figure out different ways to organize things. He feels that when they were working on the Subdivision Control Ordinance, it was very tunnel vision because it was hard to reach out and look at other concepts.

For the Zoning Ordinance re-write, Mr. Watkins said they are asking that it be much more user friendly than the current Ordinance. RW Armstrong was asked to review the current Ordinance and they did that. It currently lacks graphics and some of the concepts that make it usable for the public. Both of the firms have emphasized the need to use graphics and pictures to explain different concepts.

Mr. Doriot noted that they are being asked to make cuts in the budget, but Mr. Sharkey said this has already been budgeted. He agrees the Zoning Ordinance needs to be revised, but he wonders if now is the time to spend the money.

Mr. Watkins clarified that this has been approved and the money was appropriated. From a staffing point of view, this is the best time for the staff because the number of petitions is down and some things are slower. There will soon be a new Subdivision Ordinance and a lot of the changes in the Subdivision Ordinance are predicated on the Zoning Ordinance so it does need to be done.

In addition, he said the BZA Rules of Procedure also need to be revised, which is included on at least one of the proposals, if not both. The overlay zones for the Gateway District and the West Goshen Drainage Project will also need to be considered.

Barry Pharis was in the audience and he indicated that he received an RFP for this project. Initially, he thought his firm would be ideal, but he later decided that it would be better for a new firm out of the area who has a new perspective. The company will not get paid anything until they present an Ordinance that is legal. He understands the economic issues, but he feels it is critical that the Ordinance be revised this year.

Mr. Watkins again asked who would like to be involved in the interviews and it was decided that they would address that at the end of today's meeting. (See page 8, item #16 for further discussion on this matter.)

11. The application for a zone map change from A-1 to a Detailed Planned Unit Development-A-1 to be known as **MICHIANA EQUIPMENT/VINYL PRO DPUD**, for Jay Graber represented by Brads-Ko Engineering & Surveying, on property located on the North Side of CR 30, 1,270 ft. East of CR 37 in Clinton Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083600*.

Present on behalf of this request was Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th St., Goshen. Mr. Pharis noted that Jay Graber, owner and petitioner, is also present in the audience today.

In 1997, Mr. Graber and his wife obtained a Special Use for a home workshop/business for vinyl flooring, fencing, etc. Michiana Equipment installs heating and fan systems in agricultural buildings such as chicken coops, duck coops, and dairy barns. One hundred percent of that business is off-site and eighty percent of it is in the Amish community. The crews meet at Mr. Graber's residence in the morning, load equipment onto the trucks, and go to the job site to do the work.

The Vinyl Pro business is almost identical because one hundred percent of the work is done off-site and eighty percent of business is to the Amish community. The retail portion of their business is four or five customers per day. On average, one customer comes by vehicle and the rest normally walk, ride bikes, or take buggies.

The average invoice for a retail sale is \$25, which is primarily parts, pieces, and filters. There are 20 employees for this business, but there have never been more than five on site at one time. Mr. Pharis said there are normally only three employees on site. Five of the 20 employees are English and drive vehicles, so they are the ones who come in and load up their vehicles to go to the jobsites. Four of the 20 employees live on site, which includes Mr. Graber, his wife and two children. Thirteen of the employees that work for Mr. Graber live within one mile of this site. Seven of the employees, including the Amish, live greater than a mile from this site.

There have been no complaints made about the property by the neighbors. When the petition for warehousing and storing was filed in March, the outside storage was discovered which resulted in a violation. Growth of this business had something to do with them storing supplies outside, but the increase in gas prices had more to do with it than anything else. The company was ordering fans and heaters and getting charged high prices for shipping. With the increase in gas prices, the transportation companies changed things and said there would be a flat \$400 fee to deliver to his site. They had previously been ordering five or ten fans at a time, but 40 of them can fit on one truck. Therefore, by ordering 40 at one time, it reverted the price back to \$10 per unit. Fans and heaters need to be inside, but the vinyl can be outside.

Mr. Graber's problem now is what he does with the vinyl that is sitting outside. The BZA denied his request for warehousing and storage, so he contacted Brads-Ko Engineering & Surveying. Mr. Pharis suggested that he look at bifurcating the businesses and moving one to another location. Mr. Graber found two properties that would have worked, but he couldn't buy either one because they were sold to others. The only other options would be to close the business or try a DPUD.

The petitioner then went to the neighbor to the east and asked to buy acreage from him so he could construct a new building lot for use for his vinyl storage. The neighbor agreed to it and said he was comfortable with it. Mr. Pharis said they were stuck because they can't show a petition with one lot when he only owns half of it. They now have lot one and lot two, but lot two would be the piece that he would buy from the neighbor which shows the new building.

There are two employees in one of the buildings, which is connected to the residential septic system and well. If this request is approved, then the site will require a commercial septic field system with a repair site and a new well, which will all be sized to handle both buildings.

Therefore, the issues of septic and well utilities would be addressed in the planning and permitting that is required by the State of Indiana. With the change they are proposing, there will be absolutely no outside storage.

Mr. Pharis disagrees that this business is in conflict with the rural agricultural nature of the area. He feels that it supports and enables as part of the agricultural nature. The staff's recommendation also indicates that the zoning is inconsistent with surrounding zoning. Mr. Pharis said when he reads that statement, he gets a visualization of a huge box that Home Depot set in the middle of farmland. In reality, there is an agricultural structure used for business purposes and a proposed barn used to store things.

The traffic count on CR 30 at this location last year was 155 vehicles per day and they are not adding one vehicle to this. The projected travel in 2009 is 158 vehicles, so business impact is negligible. According to their standards, Mr. Graber won't need to do anything to the county road or the entrance. He understands that the Highway Department has the final say, so Mr. Graber will do what he needs to do.

Mr. Pharis feels that the DPUD Ordinance was specifically designed to permit vastly different characteristics of our community for multiple purposes. The Ordinance permits Clinton Township to provide the very same benefits to its members and community that Elkhart or Osolo Township provide to their's. The Planning Staff's position is incredibly difficult because they have a very specific Ordinance that they must apply to a very non-specific use. He feels they do a good job at that, but a strict application of that Ordinance to this business is the same as saying Mr. Graber needs to close his business. One thousand people per year who walk or ride a bicycle to this business to spend an average of \$25 are not going to walk to Millersburg, Goshen, or Middlebury. The thirteen employees who live within one mile of this business are either going to have to commute a long distance to find a new job or try to start something at their own residence. Mr. Pharis is not suggesting that staff should change the way they apply the Ordinance. The PUD allows the petitioner to specify a limit and itemize the functions they say will happen. It also gives the Board the ability to fine tune and apply the needs of a specific community knowing that there are conditions in place and the uses are limited to what the petitioner is asking for. Mr. Pharis feels they are being very specific with this request and any change wanting to be made would have to come back before the Plan Commission. He asks that the Board apply an interpretation that will allow them to forward this request to the County Commissioner's with a favorable recommendation.

Mrs. Wolgamood questioned the size of the vehicles that bring equipment to the site. Jay Graber, owner of Michiana Equipment and Vinyl Pro, 12865-2 CR 30, Middlebury, indicated they have four employees with four door trucks. When the equipment comes in, they are delivered with semis and the equipment is taken out on trailers pulled by trucks.

She also questioned the access and asked if there is a turn around on site and Mr. Pharis pointed out the driveway on the site plan. He said the turn around is by the chicken coop to the north side of the property. He indicated there would be no backing in from the county road.

The timeframe for the construction of the new building and having everything moved inside of the building was questioned by Mrs. Wolgamood. Mr. Pharis said it will be this construction season, but he does have three more hearings to go if this gets approved. It will take three months to get through the approval process and then Mr. Graber can apply for his permit. They should have the permit by April and have the building built by this summer. Everything should be moved inside of the building by fall of 2009.

Mrs. Wolgamood asked if Mr. Graber understands there is to be no outside storage and Mr. Graber said yes.

Mr. Warner asked what the projected life of the project is as far as years of growth. Mr. Graber said when he filed for the home workshop/business, he was told he could only have three employees. He's sure that he knew there was to be no outside storage, but it was ten years ago and he didn't realize it. He understood that when the employees weren't on site, they don't count. He wanted to sell the vinyl business, but he was unable to get that accomplished with the economy the way it is. If he needs room for storage, then the vinyl will have to be moved elsewhere.

Mr. Graber said the second building he built was for sawdust and tools for the chicken house. He still has some tools in that building, but he also uses it for storage. Therefore, he would like to build the building on lot one so that if it's no longer used for the business, it could be used for agricultural farming.

The number of semis was then questioned by Mr. Sharkey. Mr. Graber said he has the chicken houses in the back, which have more traffic than the businesses. He indicated that box trucks from UPS and Fed-Ex will come in three to four times a week. Mr. Graber estimated getting two semis per week for the business and one semi per day for the chicken houses.

Mr. Burbrink then asked why Code Enforcement came out to the site. Mrs. Wolgamood explained that when the Board of Zoning Appeals approved the request in 1997, it never got put on Code Enforcement's list to check the compliance. Somehow, it was noted that the on-site sign is bigger than what was allowed. When Code Enforcement went out to look at the site, they noted that there were a lot of issues. Mr. Graber was in violation of all six of the conditions that were placed on the request. The petitioner was then denied the Special Use for warehousing and storing.

There were no remonstrators present.

A motion was made and seconded (*Doriot/Sharkey*) that the public hearing be closed and the motion was carried with a unanimous vote.

During discussion, Mrs. Wolgamood suggested they ask that a turnaround or any other concerns the Board has be delineated on a new site plan and tie it to the site plan as that is how you enforce the planned unit development. She did not note on the site plan whether it says no outside storage, but she said it is stated in the narrative; therefore, they could attach the narrative to it and impose a timeframe if they are inclined to approve the request. She feels they do have some elements they could put in place that they did not have for the Board of Zoning Appeals in 1997 or last year. If the petitioner does not comply, she said it would then be turned over to their attorney or brought back before the Board.

With regard to safety of the public, Mr. Doriot pointed out that this is concentrating the exposure of slow moving vehicles in an area where there is limited traffic.

Mrs. Wolgamood also said they talk about display in the narrative and she knows there is display there, but it is not shown on the site plan. Mr. Pharis clarified that it says the displays will be removed.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Lantz*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved as presented with the traffic pattern for trucks turning around on site and no outside storage to be shown on a revised site plan. The motion was then carried with the following results of a roll call vote: Sharkey – yes; Lantz – yes; Burbrink- yes; Warner – yes; Doriot – yes; Miller – no; Wolgamood – no; Yoder – yes.

12. The application for a replat of a portion of Parkway at 17 DPUD – Phase II to be known as ***REPLAT OF LOTS 6 & 7 PARKWAY AT 17 DPUD – PHASE II***, and for a vacation of a portion of the right-of-way of Parkway Avenue, for Parkwel Development, LLC represented by Wightman Petrie, Inc., on property located on the West side of Parkway Avenue, 1,445 ft. South of Verdant Drive in Jefferson Township, zoned DPUD-B-3, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083669*. He explained that they want to shorten Parkway Avenue, which has not been constructed yet. Staff feels this is a minor change, but if the Board determines it to be a major change then he said it would have to go through the public hearing process.

It was also clarified that Parkway Avenue is a dedicated right-of-way that has been accepted by the commissioners, but Mr. Burrow said it can be vacated by acknowledgment from the Plan Commission through a document the surveyor has submitted. To make it clearer, he said they just made it in the form of a replat rather than just by legal descriptions.

Mr. Sharkey asked if the cul-de-sac will stay on the property to the west and Mr. Burrow said yes. He said he assumes the road plans have been modified and accepted by the Highway Department.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Wolgamood*) that the Plan Commission considers this request a minor change to the original Site Plan Support Drawing and the motion was carried with a unanimous roll call vote.

A motion was then made and seconded (*Sharkey/Burbrink*) that the Advisory Plan Commission approve the replat in accordance with the Staff Analysis and forward the PUD Plat to the Board of County Commissioners. With a unanimous roll call vote, the motion was carried.

13. There were no audience items.

14. See page 3, item #8 for the ***Employment Agreement for Plan Director***.

15. See page 3, item #9 for the ***Amendment to the Plan Commission Rules of Procedure***.

16. With regards to the previous discussion on interviewing prospective consultants next week (see page 3, item #10), Mr. Kolbus advised that they should limit it to four members. Otherwise, they would have to comply with the Open Door Law and he's not sure that can be accomplished by Monday or Tuesday. Mr. Doriot, Mr. Yoder, Mrs. Wolgamood, and Mr. Burbrink all indicated they would be involved. Mr. Watkins said RW Armstrong is scheduled for January 14th, but he indicated he would see if both companies could be present on January 13th with one interview in the morning and one interview in the afternoon.

17. The meeting was adjourned at 10:35 a.m.

Respectfully submitted,

Kathleen L. Wilson, Recording Secretary

Mike Yoder, Vice-Chairman