

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 11TH DAY OF JUNE 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 Vice-Chairperson, Mike Yoder, with the following members present: Jeff Burbrink, Dennis Sharkey, Blake Doriot, and Meg Wolgamood. 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 (*Sharkey/Burbrink*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 14th day of May 2009 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Burbrink/Sharkey*) that the legal advertisements, having been published on the 29th day of May 2009 in the Goshen News and on the 1st day of June 2009 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Burbrink/Doriot*) 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. The application to amend the text of the Elkhart County Zoning Ordinance by adding **SECTION 9: ELECTRONIC MESSAGE BOARDS to SPECIFICATIONS H – SIGNS** for the Elkhart County Advisory Plan Commission on property located in the unincorporated areas of Elkhart County, Indiana; and the incorporated areas of the Town of Bristol, Indiana; the Town of Middlebury, Indiana; the Town of Millersburg, Indiana; and the Town of Wakarusa, Indiana, was presented at this time.

Mr. Nemeth explained that the Planning Department made some revisions since mailing the draft ordinance to the board members. He then submitted copies of the proposed ordinance with those revisions to the Board for review *[attached to file as staff exhibit #1]*.

According to Mr. Nemeth, electronic message boards are the latest development in sign technology. Because signs have become larger, they eventually started to block each other out and the signs dominated the landscape. Therefore, he said the government stepped in and set maximum limits on the sizes of signs. Electronic message boards have created new problems because they have gone from conveying on site sales and service information to movement that is so fast that it's not conveying information as much as it is attracting the attention of drivers. What the proposed ordinance tends to do is try to limit the amount of movement

The second problem the ordinance attempts to address is glare. There are illumination levels during the day, but they are very bright at night and on overcast days. The third problem Mr. Nemeth said they would like to address with the ordinance is preserving tranquility adjacent to residences. He said there are some land uses that are incompatible next to each other; for example, a house in a residential neighborhood next to a day care, a government institution or a church with an electronic message board that functions like a Wal-Mart.

Mr. Nemeth said the beginning of the ordinance proposes some objectives, which he went on to review with the Board. When the Comprehensive Plan was adopted, he said one of the four main goals was to preserve a sense of community and rural character. The staff's contention is that electronic message boards sometimes do not promote that goal. Another goal was that the functions of government protect public health, safety and welfare, and he said part of the general welfare is aesthetic preservation. The staff would like message boards to blend in and not dominate our community. They also want to convey information and not distract so they want to put a limit on the amount of flashing, swirling and animation in the regulations. With regards to promoting traffic safety, Mr. Nemeth said electronic message boards look like traditional traffic safety warning signs so a driver will look at it. The question is how long the driver's eyes can be removed from the road before it becomes dangerous.

The first regulation Mr. Nemeth said the staff would like to promote is the three zoning districts where electronic message boards should be a permitted use. Those zones are business, manufacturing and development park (E) zones. The staff would also like to allow electronic message boards as Special Uses granted by the Board of Zoning Appeals on a case-by-case basis based on their location in agricultural and residential zones next to land uses such as day cares and government facilities. A development standard the staff would like to promote is a minimum space separation of 300 ft. between the message board and an existing residence. If a landowner wants a variance from that standard, he said they can apply to the Board of Zoning Appeals on an individual case basis.

Some of the general standards the staff would like to promote is having the message shown on the message board all at once with the message to be static for at least 10 seconds. This would allow a driver to look at the information being conveyed. They would also like to restrict the amount of motion on the message board so there is no flashing, swirling, scrolling, or animation. Mr. Nemeth then pointed out a message board that was displayed at the back of the room to illustrate some of the characteristics of a message board such as flashing and illumination. He said they would also like to set a maximum illumination level at night and the display will show the different light levels.

When applying for an Improvement Location Permit, Mr. Nemeth said they would like a site plan submitted showing the location of the sign. In addition, they would like the manufacturer's specifications with the maximum NIT standard written into the specifications so the staff can review the illumination levels at night. As part of the specifications, the staff also recommends that a manual brake system is installed allowing for the sign to be shut-off.

The last recommendation of the staff is that three definitions be added to the definition section of the existing zoning ordinance. One definition is NIT, which is a unit of measurement for brightness equal to a one candle per square meter. The second definition is electronic message board sign, which is a sign that emits a changeable stream of light to show multiple messages. Mr. Nemeth said they are contrasting that from an illuminated sign, the third definition, which is a steady stream of light that conveys one message.

With regard to the definition of NIT, Mr. Burbrink asked if there is a distance component to that measurement and Mr. Nemeth said no. If you are 200 ft. away, Mr. Burbrink said the light is going to diffuse and be less intense than if you are within ten feet of the message board. It seems to him that you have to be consistent where you are measuring from.

Mr. Yoder asked if the five conditions listed in Section 1. d. reflects the Board's suggestions from the survey taken previously and Mr. Nemeth said yes.

Mr. Kolbus noted there is no nighttime NIT level for an illuminated sign and he asked if that is necessary. Mr. Kanney said the current sign ordinance splits signs into illuminated and non-illuminated, but they never put the illuminated sign definition in the ordinance. Since this is being merged with an existing sign ordinance, he said they needed the definition of illuminated sign to differentiate it between an electronic message sign.

When Mr. Kolbus asked if an NIT maximum level is necessary for an illuminated sign, Mr. Kanney said you could take it to that level. Mr. Nemeth said some communities have passed maximum as well as minimum NIT levels, and because Elkhart County has no regulations, he has tried to focus on what is the least amount of regulations that are necessary so he did not include a daytime NIT level.

Mr. Kolbus also asked if there is some way they can define nighttime to distinguish dusk from complete darkness. According to Mr. Doriot and Mr. Burbrink, the standard used in the Indiana hunting regulations is 30 minutes before sunrise and 30 minutes after sundown.

Mrs. Wolgamood questioned where Section 3 of the ordinance is located as indicated in Section 1. e. (2) (f). Mr. Nemeth said that is a typo and should reflect Section 1, and that is more for history of compliance. If the ordinance is adopted, he said they would start keeping track of which tenants are complying and not complying with the regulations.

When asked if they will be asking for something in writing to demonstrate compliance, Mr. Nemeth said the demonstration will be their past history with compliance and also by following the regulations and submitting the manufacturing specifications. Mr. Kanney clarified that if there is a challengeable question, the owner will be required to prove they are in compliance under the enforcement section of the ordinance.

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

Mr. Sharkey wondered if this ordinance is similar to other municipalities and counties. Mr. Nemeth explained that he looked at sample ordinances from across the country and combined that with the preference survey completed by the Board. He also looked at national and local trends and he said this is consistent with what is going on across the country.

Mr. Yoder commented that the standards under Section 1. d. seem overly restrictive to him. In particular, he feels that ten seconds is a very long time, and although signs with motion catch his attention, he does not feel they are distractive. According to Mr. Nemeth, some communities impose a maximum of two to five seconds for motion.

Mr. Kolbus pointed out that the distraction will vary from person to person so you have to put some parameters on it. He advised that you either say no motion or you put some time limit on it.

Mrs. Wolgamood feels that they are not just looking at one sign, they are looking at a number of signs, which would be a huge distraction.

When Mr. Sharkey asked what they do with all of the existing signs, Mr. Nemeth said as the price of the signs keep dropping, businesses will all be able to afford them so they are looking more towards the future. If a sign is located in an A or R zone, he said their intent is not to take away what is already there. Because the messages are programmable and can be set at any rate, the planners are taking the position that they should comply. However, if something existed before adoption of an ordinance, he said Code Enforcement has traditionally considered it to be grandfathered. He then indicated that is something that will be reviewed by the board attorney.

If a business changes ownership and the use of the property, Mr. Sharkey asked if they could then change the sign, but Mr. Kolbus said the sign would be grandfathered as they pass on

from one owner to the next. If the sign is upgraded beyond normal maintenance, then they would have to comply with the codes depending on how the ordinance will be written.

A question was then raised by Mr. Burbrink regarding maintenance of the sign and whether that would be the time they could make changes to the components to meet the ordinance.

Lionel Ryman of Sign Image and Design, 1617 Cassopolis St., Elkhart, was present saying he has designed, installed and programmed at least 15 LED signs in Elkhart County. He's been through three different training programs with manufacturers for LED signs, and he's made trips to Las Vegas and China to see the new technology coming in the future. He is also on the Board of Directors for the Elkhart Chamber so he is interested in the growth and promotion of business, and he prefers Elkhart County to look like Elkhart County rather than Las Vegas.

Mr. Ryman said he would like to sell a sign that not only works for the customer, but also for those going by seeing the sign and getting the message, and those who might be offended by it as well. He has done a study on LED signs, and he indicated that he has made a presentation to this Board in the past where he provided Success of Signs of which a copy should be on file. He clarified that this tells you everything about the questions the Board has been asking and he indicated he would be happy to answer those questions today.

Mr. Ryman brought an LED sign for demonstration and he said he tried to make it as offensive as possible so the Board can see the blinking, flashing, strobing, and those things that shouldn't be on a sign like "stop". After he put the sign into a test pattern, he explained that it is basically a computer attached to a TV screen so it can do just about anything you want it to do.

When Mr. Yoder questioned the level of NITS being demonstrated, Mr. Ryman said about 1,250. He explained that the display sign is a directional LED and goes out in a straight line; however, he said those are now changing to a rounded LED so you can see it at more of an angle. In addition to the stripes and blinking, Mr. Ryman said the signs will show full animation. He said you can put a commercial off of TV on a sign, like the one he did at the Concord Mall, and it will look like you're watching TV.

As he reads the proposed ordinance, which he indicated he is willing to assist the Board and Planning Department in developing, Mr. Ryman said one of the differences is how the LED signs are being developed and what you can expect to see. There are basically three different kinds of LED signs to take into consideration with this ordinance. The first is a monochrome LED sign, which is a simple text LED like you see at Walgreens or CVS. The text is red or amber, and it will show text and some limited animation.

The second LED is a full color LED, which will show commercials, videos and photos. It is a computer running a TV so it will put your messages up any way you want. He also said you can take other messages that you develop, or take off the computer, animations, and photos to put on the sign.

The third type of signs are billboard signs, which Mr. Ryman said are a wave of the future in a big way. He indicated that he already has a client who is interested in five of them in Elkhart County. He explained that each one of the categories has different specifications and measurements to the LED sign so he feels that should be taken into consideration when developing this ordinance. For example, he said you could go as high as 5,000 NITS on a full billboard sign simply because of the height of the sign and the distance it's going to be from the road. The minimum on a standard full color LED is 500 NITS at night and 1,250 during the day.

With these NITS, Mr. Ryman said most of the manufacturers have a self-adjusting program within so as it gets close to dusk, the number of NITS brightness comes down. When it gets dark, it

gets to the minimum NIT adjustment and when there is sunshine, it will go to the maximum number of NITS in that LED. The key, he said, is that the sign company can adjust that minimum and maximum number of NITS as well as the duration of blinking, etc. In addition, he said the monochrome sign is a lower NITS limit than a full color sign, and the average for full color is usually 500 to 1,270. That generally covers most manufacturers, and even though some manufacturers are a bit different, he said they could still be adjusted. The display unit is a text unit because it is a display, but he said he does have a larger unit on a trailer that he can show commercials on in full color.

In answer to a previous question, Mr. Ryman said there is a distance in measuring the LED's. He then submitted information with a photo to show what a NIT meter looks like *[attached to file as Petitioner Exhibit #1]*, which is used to measure brightness. He explained that he keeps a NIT meter to make sure the sign is within the specifications, but he said a sign company could turn the NITS up. If turned up to the highest brightness, he said the sign wouldn't last as long as it would if you kept it within the factory specifications. He also uses the NIT meter when he services a sign to make sure the brightness of the entire sign is the same.

Mr. Kolbus questioned the distance he measures the sign from and Mr. Ryman said from about 25 ft. He measures the LED's straight on to the LED unless it is the new design that has a rounded LED. According to Mr. Ryman, some of the new designs will let you see the LED message from almost a 90-degree angle.

When asked if there is an official standard distance to read these signs, Mr. Ryman said it is based on the unit you get. The key to measuring a NIT is that it is a direct point of light going off into a distance so he said you're measurement is basically going to be by line of sight by eye. He said they try to base this on a reasonable distance that a person would be able to see and comprehend a message and still continue to drive safely.

With regards to safety, Mr. Ryman said there is a study by the federal government on safety of LED's and digital displays verses a freestanding signs. They have gone to LED displays for a lot of roadwork and for warnings because they say they are safer than a free-standing sign. The reason for that is because an LED projects the message to a driver much faster than if you had to read a message and then comprehend it. He also explained that the time limit of change will be based on an average person being able to see a message and being able to comprehend it.

In conclusion, Mr. Ryman said animation is really important with the design of the LED systems now. He believes every one of his full color signs in Elkhart County has full animation, and he said the City of Elkhart just purchased a 4 x 8 full color sign with animation for their downtown plaza. He has assisted several municipalities in helping develop their ordinance, and he said it's really hard to say what's going to be safe and what will work because everybody wants their sign to do something different. Standards have to be set or he said it would look like Las Vegas.

Mr. Sharkey asked if there is a standard distance to measure NITS and Mr. Ryman said no simply because the light is a steady emission of light. His meter is set at 25 ft. which will give you a range of the sign itself. If he's right up to the sign he said he will only get a small portion of NIT reading. When you read that message, he said the NITS are based on the complete sign.

Mr. Burbrink commented that you couldn't possibly read an entire billboard sign at 25 ft. away. Mr. Ryman agreed saying his meter is not designed for billboards. When asked if he measures a large sign at 100 ft., Mr. Ryman said every meter is different and it gives you a recommended distance. He said the meter shown in the information he submitted would read the

number of NITS from a range of .1 to 999,000.

Mr. Yoder said the affect light will have on a person is going to vary based on the distance so he feels they should say they are going to allow 500 NITS at a certain time of day and 1,500 during another time of day. Mr. Sharkey said it depends on where you put the meter and who is measuring, but Mr. Doriot said it would have to be within the standards of the meter. Mr. Kolbus then explained that that is why they included language in the ordinance where the owner has to prove they are in compliance.

When asked for his opinion of the ordinance, Mr. Ryman suggested the Board takes a look at it with three different styles of LED's.

Mr. Kolbus asked if he would like some type of motion and Mr. Ryman said yes and suggested that some type of motion be permitted.

For those that have allowed motion on the signs, Mr. Kolbus asked for examples of any parameters they have put on them. Mr. Ryman said the other jurisdictions didn't have any parameters. In animation, he explained that it is basically the amount of time that it takes to drive by the sign. To be effective in advertising, you want a message that you will be able to see the entirety of the sign.

Mr. Yoder asked if he is suggesting that a fair standard for animation would be that the entirety of it has to be displayed in a certain percentage of the time they are driving by. Mr. Ryman agreed and said that would be a great suggestion.

Mr. Yoder feels that they will run into trouble if they don't allow sign motion in the Ordinance. If holographic images are in the near future, he wondered if they should include that in the Ordinance now. He said he could see that happening in a few years.

Mr. Ryman then offered his assistance in working with the staff and Board on preparing this ordinance.

Mr. Doriot asked if it would be possible for Mr. Ryman to go out with a couple of the Board members in the evening and show examples of various NITS of existing signs. Mr. Ryman said yes and he named several LED signs within the parameters of 500 to 1,250 NITS.

Mr. Yoder commented that motion on signs has not been distracting to him.

Also present was Mark Salee, Middlebury Town Manager, who supports the Ordinance. Mr. Salee explained they have an Ordinance that does not allow any movement. Variances have been issued a lot and it is becoming a continuing issue. Mr. Salee said he will be working with the County as the Town of Middlebury is currently revising their sign Ordinance as well.

Mr. Yoder feels it is very important to have consistency between cities and the county.

Mr. Warner asked if they could control signage in certain situations such as a T-intersection and high traffic accident situations. Mr. Nemeth indicated the Board could add a setback from the intersection.

Mr. Kolbus feels that would be very difficult to enforce.

Mr. Doriot wondered if they could have something in the Ordinance in case a sign would become a hazard, but Mr. Kolbus said that would be up to the individual parties to litigate. He doesn't know that the Board could write an enforceable regulation without getting into a lot of court expense.

Mrs. Prough said the Ordinance already addresses the size of signs permitted in each zoning district. The setbacks are regulated and she indicated that if the sign is illuminated, you can only have three times the linear feet of road frontage.

Mr. Nemeth then added that there are also sight distance requirements.

When the Zoning Ordinance is looked at in its entirety, Mrs. Wolgamood feels that those types of things can be addressed at that point as well.

Mr. Kolbus said the purpose of this was to provide a stopgap measure until the Ordinance is re-written in approximately nine to twelve months. He asked the Board how much time they want to spend discussing this issue.

Mr. Watkins suggested the Board discuss this issue with the consultant who is re-writing the Zoning Ordinance.

Mr. Nemeth then reviewed the points for possible revision. The first possible revision would be to allow a maximum time for movement whether its animation or scrolling. He would suggest that flashing on signs be prohibited outright and the Board set a maximum time between two and five seconds for scrolling or animation. Secondly, a revision may be made to incorporate holographic images and prepare for the future in regards to this issue. Billboards had been talked about and the regulations don't currently have a maximum amount. Another possible revision would be to set a minimum distance of 25 ft. from where the NITS are measured. Mr. Nemeth suggested adding a time limit to the Ordinance in regards to how late and early the LED signs can be displayed.

Code Enforcement will not go out to each property and take the measures. The property owner will be required to prove that they are in compliance. Most owners will want to comply and it's only in extreme cases where people will take the time to call into Code Enforcement.

Mr. Kolbus said that measurements of animation or the parameters would depend on the available equipment. He explained that there are three types of LED's and the standards may need to be different for each one.

Mr. Burbrink recalled that one of the concerns is signage being in areas where the property is surrounded by residential homes. He asked if the Board needs to look at some type of a setback so the signs are away from those areas and Mr. Doriot indicated it is set at 300 ft. Mr. Kolbus also indicated that the Board of Zoning Appeals can set those standards.

Mr. Yoder suggested that if the sign were modifiable, he would like to see the County bring all of the signs into compliance if it is technologically possible. For those signs where it is not possible, then he feels those signs should be brought into compliance if they are changed in the future.

Mr. Doriot then disagreed because if the sign was legal at the time it was purchased, then he doesn't feel the owner should have to incur the extra cost to make it comply with the new regulation.

Mrs. Wolgamood pointed out that there is already a section in the Ordinance that addresses non-conforming issues.

Mr. Nemeth indicated he could present two versions of the LED Sign Ordinance next month. One of them will include the maximum time for animation/stillness and one will include the different LED levels. Mr. Kolbus suggested that he work with Mr. Ryman on those regulations.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Sharkey*) that this application to amend the text of the Elkhart County Zoning Ordinance be tabled until the July 9, 2009, Elkhart County Plan Commission Meeting. The motion was carried with a unanimous vote.

6. There were no audience items.

7. At this time, Mr. Watkins distributed the most recent Planning Commission Journal to the Board. He explained that Mr. Wayne Senville, Editor of the Journal, was present for the meeting. After today's meeting, he would like to have a discussion with the Plan Commission regarding issues that are affecting Elkhart County.

8. Mr. Burrow presented the staff item regarding *Crystal Pond GPUD* at this time. A copy of an aerial map showing the property was submitted to the Board at this time *[attached to file as Staff Exhibit #1]*. The property is located at the southwest corner of CR 6 and CR 10. The GPUD was originally adopted under the previous Planned Unit Development Ordinance and it has been there since 2005. The way the Ordinance reads, the Plan Commission can grant extensions as long as there are no significant changes in the area, which there have not been. The request is to have this extended due to market conditions that have not allowed them to secure tenants for the commercial zoning.

Mr. Kolbus asked if the area has basically stayed the same and Mr. Burrow indicated yes.

A motion was then made and seconded (*Doriot/Burbrink*) that this request be approved with a two-year extension to be granted. The motion was carried with a unanimous vote.

9. Copies of the *2010 Budgets* were then presented to the Board by Mr. Watkins. He explained that between the two budgets (Planning and Code Enforcement), he was instructed to cut in excess of \$58,000, which he has been able to do.

Mr. Harrell's position has been reviewed and he is in the process of splitting his job into two different positions. There will be a Zoning Administrator/Code Enforcement and also a Building Official. In doing so, this will present approximately \$15,000 in savings. The reductions are shown in red and the only line item showing an increase in either budget is where Mr. Harrell's position has been split, and the tire budget. He anticipates they will need to purchase tires for the older vehicles next year. Between the two budgets, the Code Enforcement budget is being reduced by 4.6% and the Plan Commission budget is being reduced by 6.6%.

Mr. Yoder asked about the impact of some of the line items. Mr. Watkins said the proposed cuts are based on the belief that new software will eliminate the need for copying and printing on paper. A lot of it should be able to be done electronically. He is also hoping that the tablet computers they are using for inspections will eliminate some of the printing as well. Mr. Watkins said he hopes they have to ask for more money because that would indicate that business is up.

Mr. Watkins feels this budget is doable given the current workload. If the workload increases, then he may have to ask for money. He explained that the largest line item is legal expenses, so he went through the last two years of budgets and any excess that was in the legal funds, he cut them out. Mr. Kolbus is aware of that and it shouldn't have much of an impact beyond this year.

Mr. Watkins said the last task he wants to complete is re-writing the Nuisance Ordinance, which may be done next year.

Mr. Kolbus explained that he and Mr. Watkins discussed some ways to improve efficiency, which will assist in meeting the budget. Mr. Watkins has made some changes throughout the building regarding who will be doing inspections, etc., which will make the process go much smoother.

Mr. Watkins doesn't feel this will be easy at all and it will be even harder in 2011. The savings they have realized from the re-organization has helped.

Mr. Yoder explained that another approach in Code Enforcement is taking the fines to a point where the violators have to pay for that department. Mr. Kolbus explained that the county has never taken that position and it would be a change in philosophy.

The Agreed Order was also explained by Mr. Watkins at this time.

In 2011, Mr. Yoder is concerned that this department will be inundated with work when they have less resources and the next step would be to reduce the number of employees.

When the department's income for this year was questioned by Mr. Sharkey, Mr. Watkins said it is about half from what it was at this time last year. He explained that the department is down at least \$100,000. Mr. Watkins said whatever they can cut in 2009 would really be appreciated.

Mr. Watkins said they will see some savings due to the re-organization. Mr. Harrell will be leaving in August and the new positions will then be filled. In the result of this, one position will be lost in this department. Mr. Sharkey asked if that extra position is in the 2010 budget and Mr. Watkins said no, it's not funded.

Mr. Warner asked Mr. Watkins if he is comfortable with the level of fees since they were moved up minimally a few years ago. Mr. Watkins indicated yes and explained that the fees are based on the costs. If he reduces the costs, then the fees should technically be reduced. Mr. Yoder suggested that they be cautious about figuring the fees.

Mr. Yoder explained that from a Commissioner's standpoint, he appreciates all of the work being done by each department to meet the budget goals.

A motion was then made and seconded (*Doriot/Warner*) that the 2010 budgets for Planning and Code Enforcement be approved (*see attached*). There was a unanimous vote and the motion was carried.

Mr. Watkins expressed concern that the County Council will take more money from these departments. Mr. Yoder said that if each department does their job going into this, then there won't be that type of activity.

10. Mr. Burbrink reported there will be another Plan Commission training next Thursday at 7:00 p.m. at his office regarding confined animal feeding.

11. The meeting was adjourned at 10:44 a.m.

Respectfully submitted,

Kate A. Keil, Transcriber

Kathleen L. Wilson, Recording Secretary

Mike Yoder, Vice-Chairman