

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 12TH DAY OF MARCH 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, Tom Holt, with the following members present: Roger Miller, Steve Warner, Tom Lantz, Blake Doriot, Meg Wolgamood, and Mike Yoder. Staff members present were: Robert Watkins, Plan Director; Mark Kanney, Planning Manager; Duane Burrow, Senior Planner; Robert Nemeth, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Warner/Lantz*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 12th day of February 2009 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Miller/Lantz*) that the legal advertisements, having been published on the 2nd day of March 2009 in the Goshen News and the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Doriot/Miller*) 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 for an amendment to the *Elkhart County 2006 Comprehensive Land Use Plan*; more specifically by incorporating the Syracuse Land Use Plan, located on all that land situated in Jackson and Benton Townships in Elkhart County, Indiana, described as Bounded on the West by County Road 127, Bounded on the South by the Elkhart-Kosciusko County Line, Bounded on the East by State Road 13, and Bounded on the North by US 6. ALSO: The South Half of the South Half of Section 25, Township 35 North, Range 6 East, Jackson Township, Elkhart County, Indiana. ALSO: The South Half of the South Half of Section 30, Township 35 North, Range 7 East, Benton Township, Elkhart County, Indiana. ALSO: The Southwest Quarter of the Southwest Quarter of Section 29, Township 35 North, Range 7 East, Benton Township, Elkhart County, Indiana. ALSO: The West Half of the West Half of Section 32, Township 35 North, Range 7 East, Elkhart County, Indiana. ALSO: The Northeast Quarter of the Northwest Quarter of Section 32, Township 35 North, Range 7 East, Elkhart County, Indiana, was presented at this time.

Mr. Burrow explained that the necessary documents were not in the staff's possession ten days prior to the hearing so there are issues with hearing this request today. The more specific issue is that they did not have the Future Land Use Map in time to send out in the Board's packets, which is on the back side of the tri-fold document he distributed. Therefore, he said they may need to table and re-advertise this request for consideration in April.

He went on to explain that the original comprehensive plan was adopted by the Area Plan Commission of Kosciusko County and was then ratified, he assumes, by the Town Council. He said the plan in front of the Board today has not been forwarded to their Area Plan Commission for an amendment to their comprehensive plan.

The City of Syracuse is developing the GPUD property he pointed out on the aerial map. When that was approved a few years ago, Mr. Burrow said the idea was to have a more comprehensive plan, possibly a land use plan, which would be developed for this area so the County would have a better idea on how to react to future requests for rezoning. At this time, he said the staff cannot give the Board a recommendation to forward this to the County Commissioners because it has too many technical flaws. He feels they could, however, have Ken Jones go through the process of reviewing it by doing an overview.

Mr. Burrow said the comprehensive plan the Town of Syracuse adopted was adopted independent of any input from the County, and some of the industrial and additional commercial areas they are proposing may not be something the staff would support. He thinks the objective years ago was to get more of a concerted detailed plan on the SR 13 corridor going up to US 6, and they really were not envisioning anything over on the west side of their plan. Therefore, he said the staff does not feel they are in a position to support this amendment at this point in time.

* *(It is noted that Mr. Sharkey arrived for the meeting at this time.)*

For clarification, Mr. Yoder questioned what plan was approved. Mr. Burrow said it's his understanding that the plan the Board is looking at today was modified by the Town Council of Syracuse from the original plan and Ken Jones of Wightman Petrie, who was in the audience, concurred. According to Mr. Burrow, they have made some modifications to the plan that have not been forwarded through the appropriate processes.

Mr. Doriot pointed out that the section north of the county line has to go through the Elkhart County Plan Commission and he asked if it also has to go to Kosciusko County. As part of their comprehensive plan, Mr. Burrow said they discussed that north all the way up to US 6 was technically out of their jurisdiction, but Elkhart County has cooperated with them and created a mutual agreement between the different planning areas.

When asked if neighboring property owners have all been notified, Mr. Burrow said the only thing we do in the comprehensive plan process is legal ads. The only time a person would receive specific notice is if they are within 300 ft. or if they see the legal ads in the newspapers.

Mr. Burrow pointed out that this is also part of a TIF district, which is going forward on some issues with sewer improvements. He said Mr. Jones has an advantage the staff didn't have with the information of knowing exactly how the sewer has been designed and its carrying capacity for the different roads and intersections, which is critical because they don't see this developing without some kind of city infrastructure. He then suggested they consider this a workshop-type situation because the staff would like to concentrate their focus more on the corridor of SR 13 and US 6 rather than expanding it to the west.

Legally, Mr. Kolbus said you have to have anything that is going to be heard for public hearing ten days ahead of time so if someone did see the legal ad they could come to the office and look at exactly what's proposed. He pointed out that part of the new subdivision ordinance is having everything up front, and if there are substantial changes, it goes back to the front of the process and starts over again. He feels they subject themselves, Syracuse and the County to having this overturned by a court if someone at some point in time objects to it because they didn't follow the proper process. It is his opinion that they can't have a formal public hearing until they have a proper application in front of the Board ten days prior to the public hearing, but they can have some general discussions on what they would like to see and about the issue with the expansion to the west the staff has brought up. He said this would give Mr. Jones some guidance to come back with a specific plan next month.

Mrs. Wolgamood said her issue is the fact that the information was not given to them in their packet. Had it been in the office ten days prior to the public hearing, they would have had it and been able to review both the large and smaller documents they were given today. She said she is not prepared to ask any questions so she would prefer to table the amendment to give them time to review the material.

Mr. Warner commented that the lines of communication were mixed and they now have a better relationship with the town so they understand what the County is trying to do. Because this is in Elkhart County, Mr. Burrow said they do have the final determination and can act unilaterally or without consent from the Town of Syracuse or from the Area Plan Commission. If those issues are not straightened out, he thinks there is a possibility they could still hear this next month. After the Plan Commission has gone through all of the documentation, he said the Board might be able to voice the modifications they would like to see at that time.

During this process, Mrs. Wolgamood said she heard that Syracuse has undergone some change in administration, which could have been an issue. According to Mr. Burrow, the town manager who started the project is no longer there so there may have been a break-down in communication. He also said they are in the process of trying to fast-track the installation of sewer and water at the SR 13 corridor. They do want to bring in a DPUD for the current GPUD, but he said the comprehensive plan is suppose to be in place prior to that discussion.

Another issue Mrs. Wolgamood pointed out is that the staff has given no recommendation because they have not seen the plans either.

Mr. Miller felt it was inappropriate for them talk about this plan without the town knowing what is going on; however, Mr. Burrow said the legislative body is very much on board with this from what he understands. He reiterated that they are fast-tracking a sewer installation, but without zoning being changed to a more appropriate classification to increase revenue on that area and without certain other issues being agreed to, he said the existing M-2 might be the only area serviced by it.

If the town was not working on this comprehensive plan, Mr. Yoder asked why they would not move forward with the GPUD. Mr. Burrow explained that the specifics of the GPUD stated there was to be additional information to make a decision. They did adopt a new comprehensive plan, but he said it did not do much in the way of specificity in this area. He explained further that the 2006 comprehensive plan states that they have to have urban growth boundaries adopted under the new comprehensive plan for future land use changes.

If only a minor change were made to this, Mr. Yoder said they have the information they need to review until next month. Mr. Burrow said he thinks this is the final document and Mr. Jones verified that it is.

Mr. Jones said it may help the Plan Commission if the town could explain what has been going on in the last few years. He said he is not asking for the Plan Commission to take any action or even open the public hearing today.

Mr. Kolbus advised that giving the Board information on where they are in the process is okay, but it would be inappropriate to discuss the comprehensive plan itself.

A motion was made and seconded (*Doriot/Warner*) that this request to amend the Elkhart County 2006 Comprehensive Land Use Plan by incorporating the Syracuse Land Use Plan be tabled by the Advisory Plan Commission until a complete application is timely filed. The motion was carried with Mr. Sharkey abstaining.

6. The *Syracuse Land Use Plan* was discussed further as an audience item. Ken Jones of Wightman Petrie, Inc. 4703 Chester Drive, Elkhart, explained that Henry DeJulia has taken over as town manager of Syracuse, but the document was prepared by Jeff Nofzinger who has left the area. Mr. Jones was not involved in the comprehensive land use planning effort in Syracuse so he said he hasn't been sure what steps were taken and whether it was ever presented to Elkhart County and adopted at this level or by the Kosciusko County Area Plan Commission.

According to Mr. Jones the Land Use Plan was adopted and reviewed by a planning committee in Syracuse, and he now knows that it was approved at their Area Plan Commission and then fully adopted by the Town Council. He explained that neither he nor Mr. DeJulia could find an electronic copy of the document, including the maps that were included in it, so they had to re-create that Future Land Use Plan and re-insert it into the document and that's why they missed the filing deadline.

Mr. Jones went on to explain that the Future Land Use map was changed at the recommendation of the County Planning staff based on some internal meetings they had. It was then adopted at the Council level. He said the only change to the entire document was a strip of land a little less than one-quarter mile wide lying north of US 6. That land was shown in the original plan as being manufacturing and the staff proposed that it be changed to a mixed use. He said the Board will be reviewing exactly what the Kosciusko County Area Plan Commission approved other than that one minor change. The strip of land in question was then pointed out on the map.

From a procedural standpoint, Mr. Kolbus asked if the change made at the recommendation of the County Planning staff has been approved by the Council and Town Plan Commission in Syracuse and Mr. Jones said yes. However, Mr. Burrow clarified that it has been approved by the Town Council, but it has not gone through the Area Plan Commission.

Mr. Jones said he wouldn't assume the Area Plan Commission of Kosciusko County would make it their responsibility to make a change to a land use plan north of the county line. He indicated they would be happy to take it back to the Kosciusko County Area Plan Commission if this Board asks them to do that. He then explained that they had planned to submit a DPUD on the property owned by the town for the April Plan Commission meeting, but with the adoption of the Subdivision Control Ordinance on March 2nd, they could not meet the requirement for a complete recommendation from the County Highway Department so they plan to make that submittal for the May meeting.

One thing he said he was involved in with Jeff Nofzinger was to analyze the area, especially the industrial uses that are shown, to make sure the Town provides the essential utility services. He said that is possible with some capital projects, and the first project will be the extension of sewer and water up SR 13 with the second phase bringing sewer and water up CR 29. The town has the capability and capacity to do that, but he said it will be done in phases.

If the Plan Commission's desire was to get a recommendation or comment from the Area Plan Commission on this proposed change, Mr. Kolbus asked if that can be done in time for the April meeting of this Board. Mr. Jones could not say because he said he does not know their submittal deadlines and when they meet.

When the Board was asked if they want anything else done other than Council approval, which they already have, Mr. Yoder said he doesn't feel they need it. Mr. Doriot agreed saying it is the County's jurisdiction. Mr. Holt felt that Mr. Jones has answered all of their questions and that they can just look at it again next month.

Mr. Sharkey wondered why they don't just have a straight east/west line. Mr. Jones said there are some residential uses along US 6 and they didn't think it was appropriate to change their use. If you look at the property, he said there are some natural buffers that occur on their west and east boundaries so that's why the Town felt it would be a good place for some commercial.

In conclusion, Mr. Jones asked the Plan Commission to look at the proportion of residential land uses against the proportion of industrial land uses that are available to the Town on their overall area map. If the Board is concerned about what the Town may want to see happen in Elkhart County, he said they will probably get a better feel for why they are proposing it the way they are. He said it mostly has to do with the availability of land and the availability of a transportation network. He then pointed out that a comprehensive plan doesn't change zoning, it just makes recommendations for future land use.

7. Amendments to the Plan Commission Rules of Procedure were presented to the Board at this time.

Mr. Burrow distributed copies of a proposal to add Section 4.02 E.1.a. to the Rules of Procedure with the *Town of Wakarusa's letter of Review & Consideration* attached. He explained that the Town Of Wakarusa amended their Comprehensive Plan, and in amending the Elkhart County Comprehensive Plan, the requirement that a Letter of Review and Consideration for land use changes in and around the Town of Wakarusa was accepted. He said the format of the letter would not give them any information that would bind them to inappropriate decision making from the Town of Wakarusa because the Plan Commission and County Commissioners, depending on where it's located, have the right to act independent of the Town Council. If the technical people for the town support a project, they found it does give them a better understanding of whether or not they can support it.

Mr. Burrow went on to say that the second page of this letter reiterates repeatedly that they are not nullifying anyone's ability to make a decision. They are asking that only pertinent information to the decision making process for the Plan Commission hearing be submitted. They are also asking that the letter be signed by the town manager, one town council member, and a public works representative, which is the make-up of the Wakarusa Technical Review Committee. The additional member on that committee is the town engineer who he explained is a consultant they have hired.

According to Mr. Burrow, the major imposition on people is that this will have to be submitted with applications going to the Plan Commission. He said the town has adopted a filing process, which will be made available to applicants so they understand this is a mandatory document for filing, and this will be an item that is required to be able to submit a complete application to the Plan Commission.

Mr. Kolbus recalled that this came about because Wakarusa has their own proposed standards that they want followed. He and Mr. Burrow tried to focus on the facts involved and they cut the original four-page letter down to one page. The letter asks them to describe the basics of the project, whether it meets their (town's) standards, which standards it does not meet, and it then asks for their recommendation. There may be some projects that they find do not meet their standards, but the town may still recommend that the project be approved. He said this is a more factual piece of information for the Plan Commission to use in making their decision.

More importantly, Mr. Burrow said it puts the town in the front of the land use change process. He said it wasn't unusual for the staff to go to the town with something they were not

aware was being rezoned and this puts them on notice that something is happening within their corporate limits and within the town growth area.

Mr. Miller asked if this would then be unique to Wakarusa or if it could be used with the Syracuse application as well. With the way the Rules of Procedure have been modified, Mr. Burrow said it would allow them to adopt this for any of the towns within or adjacent to Elkhart County and the only change to the form would be the name. However, he did say they would be required to have a comprehensive plan that reflects that area.

A motion was made and seconded (*Miller/Yoder*) that the Advisory Plan Commission amends the Elkhart County Plan Commission Rules of Procedure by adding Section 4.02 E.1.a, and adopting the Letter of Review and Consideration from the Wakarusa Technical Review Committee (*see attached*). The motion was carried with a unanimous vote.

8. Mr. Burrow then distributed to the Board copies of a proposed Application for Primary Approval form that will be used for the new ***Subdivision Control Ordinance*** process. He explained that there is a process of requiring the review of a complete application and an acknowledgement of a complete application. The Application for Primary Approval requires the agent to sign and state that they understand they are to submit all of the required documents. It also reflects that the staff accepting the information is not a waiver of the requirement for having a complete application. He then clarified that it's not until they receive a Notice of Acceptance that they can actually have a complete application.

Mr. Yoder asked if it would be possible to email the Notice of Acceptance, and if so, they would have to include the email address on the Application for Primary Approval. Mr. Burrow said the letters will give the option of fax, email, faxed and email, or phone calls, and he distributed copies of the proposed Notice of Acceptance and Notice of Deficient Application to the Board.

If the letters allow it to be emailed, Mr. Kolbus suggested they include that on the Application for Primary Approval as well. Mr. Burrow then indicated he would modify the Application for Primary Approval to include the email address.

Mr. Burrow continued saying the Application for Primary Approval will have to be filled out and signed by either the agent or the property owner. It reflects some of the minor changes in the ordinance, and he pointed out that if the property is owned by a corporation, the resident agent information has to be given to the staff so they can give notice properly.

When asked how an application will be handled if one document is missing, Mr. Burrow said it cannot be sent to the Technical Advisory Committee if it is not a complete application. However, Mr. Kolbus pointed out that if an application is submitted five days prior to the filing deadline and it can be completed, they can bring that document in by the filing deadline and the application can go forward.

Mr. Burrow said the staff cannot duplicate some of the various documents because of the cost associated with it, and they cannot handle chronic problems during very busy times. He said the application is trying to let them know they are responsible for the documents they submit. The Notice of Acceptance is done in such a way that the staff can easily fax it, and because of the technology we have, he said we can easily email it at the same time.

From a planning standpoint, Mr. Kolbus said he feels it may be good to at least get these documents in so they can begin to work through them as problems come up because applications will not be coming in as quickly as they have in the past due to the County's economic situation. Mrs. Wolgamood agreed and said she feels Mr. Doriot is the perfect person to work with the staff

on this. Mr. Doriot said he just wants to make sure this does not become adversarial.

Mr. Burrow said all he needs is a consensus from the Board so the staff can begin using these forms. Mr. Kolbus said we usually adopt the forms as part of the Rules of Procedure, but Mr. Burrow said he didn't have the time to get that far in the process. If the forms are ready, Mr. Kolbus felt they should be adopted so they begin using them.

A motion was made by Mr. Warner and seconded by Mr. Miller that the Application for Primary Approval, the Notice of Acceptance, and the Notice of Deficient Application (*see attached*) be adopted by the Advisory Plan Commission as presented. With a unanimous roll call vote, the motion was carried.

Mr. Burrow then clarified that the decision of a complete application will be made by the planners and not the counter staff.

If they email the Notification of Acceptance or Deficiency, Mr. Yoder suggested they make sure they get confirmation that the notice was received and Mr. Burrow indicated that the staff's faxing system does keep track of that.

9. At this time, Mr. Nemeth distributed to the Board copies of a survey with regards to ***Electronic Message Board Regulations*** (*see attached*). When he distributed a questionnaire last month, he said he didn't include any context on some of the research to give the Board a frame of reference on what other communities are doing. Three problems with electronic message boards that he identified to be solved are movement, glare at night, and proximity to residential houses.

Question #1 asks if flashing, blinking, swirling, or other strobe-like effects should be allowed. Mr. Miller asked if the size of the light has anything to do with this issue, but Mr. Nemeth said no. According to Mr. Holt, outdoor advertising companies have typically taken a self-policing policy of not allowing blinking or strobe-type lights.

Mr. Yoder asked how many of these types of signs are currently in the county and it was pointed out that several churches have them.

Mr. Doriot felt the intensity of the sign is another issue. He doesn't mind someone optimizing their sign to get more than one information out, but he doesn't feel the sign should be a real distraction.

Mr. Nemeth said some communities do set size requirements and a percentage of their allowed space will be relegated for electronic message boards. Currently, he said these types of signs are in industrial and business zones and the size determined is six times the frontage, which he feels is excessive.

Mr. Miller commented that they are inexpensive with little upkeep and he foresees the day when there will be message signs on mailboxes.

Question #2 asks if scrawling or animation should be allowed on electronic message boards. Mr. Miller noted that Goshen does not allow scrolling signs, but he pointed out that Bethany Christian High School has one.

Mr. Sharkey noted that St. Joe, Kosciusko, Cass, and Lagrange counties were not mentioned in question #1 where it names the communities that do not allow strobe-like effects. Mr. Nemeth indicated that he could get that information for next month or for the workshop.

Question #3 questions the maximum amount of time allowed for movement such as scrawling and animation. Mr. Doriot felt they should agree with the National Highway Traffic Safety Administration study unless they are stricter. The study concluded that any distraction of more than 2 seconds is a potential cause of a crash.

When asked if there is a differentiation between scrolling and when the entire sign changes, Mr. Holt said it depends on if it is a fade or if it works like blinds.

If there is change, Mr. Nemeth asked how the Board would like that change; it could be instantaneous or as a range of movement as described by Mr. Holt. He then clarified that he used the word "scroll" as a catch-all for movement.

Question #4 asks for the minimum amount of stillness required between movement to prevent it from functioning like a flashing strobe light and reduce the visual stimulus in the environment. Mr. Kolbus explained that that would be the type of sign that is computerized and switches the picture.

Question #5 questioned how much the illumination intensity should be reduced at night to prevent glare. Mr. Nemeth then clarified that the SRF Consulting Group who recommended 500 NIT is the consulting firm who did research for the City of Minnetonka.

Question #6 asks if electronic message boards should be required only in industrial and commercial zoned property; if not, Question #7 questions the separation between an electronic message board and a residence. Right now, Mr. Nemeth said there are churches, government buildings, and home workshop/businesses who wish to advertise in residential areas. He wonders if this is really compatible with residential homes and if they want to keep those signs within certain zones. He pointed out that the recommendation from Burkhart Sign Company is 300 ft. After a brief discussion, it was determined that the word "required" in question #6 should be replaced by the word "allowed".

Since this is very much a safety issue, Mr. Warner asked how enforcement is handled to gain compliance. Mr. Nemeth said we have no regulations at this time so this would be the first step towards establishing some type of standards.

Mr. Warner also wanted to know if the instrument to measure the NIT standards is a commonly available product that's reasonably priced. Mr. Nemeth was not sure about the cost, but he said they can be designed to reduce brightness when it reaches a specified level. He said some communities do this by use of timers. With regard to enforcement, he said there will be specifications submitted with the electronic message boards.

Mr. Doriot suggest they visit a site with someone from Burkhart so they can see an example of a sign at different levels of brightness. Mr. Holt said Burkhart has not put a sign in Elkhart County yet because it's hard to find a place to put one, but he felt they would be willing to work with the Board.

Mr. Nemeth offered to go to a site at night and take video footage of the different intensities; however, Mr. Doriot said a video camera optimizes light where our eyes do not. Mr. Burrow then suggested they actually ask the owner to manipulate the sign for them.

Mr. Holt was then asked to talk with Burkhart, and in the meantime, Mr. Nemeth said he would compile the answers to the survey and put it on a bar graph. He would then bring a draft of proposed standards to the next workshop for the Board to review.

Instead of going out to a site, Mr. Holt said he thinks they have the technology to bring a sample sign in to a workshop so they would not violate the open door law. He said he would talk with Burkhart to see what is available and what they can do to try and solve that problem.

10. Mr. Watkins reported that two meetings will be set-up with Brad Johnson from Ground Rules; one with elected officials and boards, and the second with a steering committee/interest groups. Numerous dates were discussed and it was determined that April 6th, 7th and 8th were

available to most. Mr. Watkins was not sure of the duration of the meetings, and he said he would advise everyone of which dates are established.

11. The meeting was adjourned at 10:14 a.m.

Respectfully submitted,

Kathleen L. Wilson, Recording Secretary

Tom Holt, Chairman