

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 10TH DAY OF SEPTEMBER 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: Steve Warner, Meg Wolgamood, Roger Miller, Blake Doriot, and Mike Yoder. Staff members present were: Robert Watkins, Plan Director; 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 (*Doriot/Wolgamood*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 13th day of August 2009 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Doriot/Miller*) that the legal advertisements, having been published on the 29th day of August 2009 in the Goshen News and on the 31st day of August 2009 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Doriot/Warner*) 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 a zone map change from B-1/A-1 to a Detailed Planned Unit Development-B-1 to be known as **RAINTREE BLVD. DPUD**, for Raintree Blvd. Investments, LLC represented by Wightman Petrie, Inc., on property located on the Northeast corner of SR 120 and SR 13, common address of 11255 SR 120 in York Township, was presented at this time.

Mr. Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091779*.

Matt Schuster of Wightman Petrie, Inc., 4703 Chester Drive, Elkhart, was present on behalf of this request. He explained that part of this property is zoned B-1 and the other part is A-1. With approval of this request to rezone the property to a DPUD-B-1, his client would like to add limited outdoor sales for the months of June and July, and a special attraction for the months of September and October to the site. He then indicated that the attraction would possibly be a haunted house inside the building. Mr. Schuster said they have been working with the county staff and INDOT for the layout of the site, and he agrees with the staff's comments and recommendation for approval.

Mrs. Wolgamood questioned the type of outdoor activity and Mr. Schuster said for firework sales in June and July. She asked if that would include flags and all of the things he normally does and Mr. Schuster said he assumed so. When asked if a tent would be set-up for the outside sales, Mr. Schuster was not sure.

Mr. Miller asked what the petitioner would be doing beyond what he currently does at this location. Mr. Schuster explained that he currently sells fireworks at this location and he thinks he sets something up to sell outdoors. The petitioner's intention is to demolish the existing building and construct a new, more aesthetically pleasing building to do the same thing.

Mr. Schuster was then asked why the petitioner needs to set-up an outdoor display when he sells the product inside, and his response was so everyone can see he has an outdoor area when coming for the 4th of July.

Present in opposition to this request was Hope Perkins, owner of the Middlebury KOA campground, 52867 SR 13, Middlebury. The campground is located directly across the street from the subject property and she is concerned about what is going to go in there. According to Ms. Perkins, their guests do complain about the fireworks and displays due to the noise. She wants to make sure there are some restrictions as to how often they would be shooting off the fireworks and whether or not there is an issue with disturbance in regards to that. She does like the fact they will be demolishing the existing building and making improvements to the site.

When asked if there are fireworks going off now, she said there were a couple of times that he would shoot off a display over the Labor Day weekend. She does understand, however, that in the retail industry you do need to demonstrate how things work from time to time, but she wants to make sure that any restrictions would be adhered to. She did indicate that they have had a decreased number of complaints this year as opposed to what there had been with the previous management in the past. She said the dogs do not like the fireworks and people think they are being shot off from the campgrounds, which they have rules against.

Mr. Yoder explained that there is a state law and a county ordinance was passed that limits fireworks to certain holidays. Mr. Doriot wondered if that would pertain to the petitioner if he has a state license to display, but Mr. Yoder wasn't sure.

Also present was Gordon Henke, pastor of the River of Life Church located across the street on SR 120. His concern is for the entrance of traffic with relationship to the churches exists. The church is completely adjacent property and he said they have a very large parking lot. He assumes the petitioner's times of business would be different than theirs, but he is concerned because they do inherit quiet a few things that come down from the sky after they've been shot up in the air from the subject property. Mr. Henke said it hasn't been a real nuisance, but with a new building and the same kind of activity, he is concerned with the extra traffic and the fireworks.

Mr. Kolbus pointed out that the site plan shows the proposed fireworks building, and the Site Data (#1) says, "limited outdoor sales for the months of June and July, and special attractions for the months of September and October". He also said the parking is based on the gross floor area of the building and he asked Mr. Burrow if he's concerned with where a tent and additional parking might go. Mr. Burrow explained that a site plan is suppose to reflect everything that's anticipated on the site, and he does not see any area where they can launch fireworks or a designated area for a tent. If the site plan doesn't show it, he said it's not anticipated to be there. He said a tent could easily be set up in their grassy area, but he said they cannot remove parking to add floor retail area.

According to Mr. Burrow, the reason the staff is recommending approval of this is because of the policies that were enacted that allowed the fireworks to be established on this site in the first place. He said fireworks are not permitted in B-1, B-2 or B-3 zones; they are only permitted in a Conditional Industrial Unit Development. Mr. Miller recalled a recent rezoning request on this property and Mr. Burrow said that is why they referred it back as a PUD.

Mr. Kolbus then asked if they should delete the "limited outdoor sales" wording; however, Mr. Burrow said he would interpret that they would be able to put the limited outdoor sales in the areas that would not take over any parking or violate setbacks.

When asked if he feels it is necessary to show the location of a tent on the site plan, Mr.

Burrow said they encourage all site plans to have adequate information to make it easy for the staff to enforce the site plan in the future. At this time, he said it would be a discretionary act on the staff's response if the petitioner would ask if he could put a tent up, and in his opinion, it would be hard to demonstrate a legitimate way to put a tent on this property. He said he was concluding that they were just going to have minimal amounts of some outside sales of retail materials. If he went out and found a truckload of fireworks sitting in the parking lot, he would consider it in violation of the current site plan.

Mr. Doriot pointed out that they are presenting verbal evidence, which becomes part of the written record, that there will be outside displays so if granted as presented, it is up to the Board to determine the area. However, Mr. Burrow said they do not have a defined outside area so it would be up to his interpretation. If they are intending to put up a tent, they need to show it so the staff understands there is going to be a large area where they will be retailing fireworks from.

After further discussion, it was determined that the petitioner either needs to define his (retail) area or remove #1 from the Site Data.

It is Mr. Warner's opinion that launching of fireworks should not be allowed on this site in any way. Mr. Burrow agreed and said the staff recommends there be a narrative statement put in the ordinance that says they are not granting the ability to actually use the fireworks on site. Mr. Warner wondered if that would be addressed in the state law, but Mr. Burrow said the ordinance doesn't split it down in that detail. He said he does not interpret a B-1 zoning allowing fireworks displays in a retail zone.

In rebuttal, Mr. Schuster said he doesn't know anything about them currently launching fireworks from this site.

The petitioner's intent for location of a tent was then questioned and Mr. Schuster said their outside sales display would probably be out in the grass area in a swale at the intersection of SR 13 and SR 120 so it's visible from the intersection.

Mr. Miller then pointed out that their previous outdoor displays were located in the darker area on the aerial view in the front.

When asked if the new building would be larger than the existing structure, Mr. Schuster said it would be 8,400 sq. ft., which is larger. He also clarified that they are moving the existing drive on SR 120 farther away from the intersection.

A motion was made and seconded (*Doriot/Warner*) that the public hearing be closed.

Prior to voting on the motion, Mr. Henke said his concern is moving that driveway down towards their driveway and having them across the street. Right now is it not a problem, but he would like to know how far down that driveway is going. Mr. Doriot said it appears to be moving about 50 ft. east and he imagines that is an INDOT requirement for spacing at the stoplight.

When Mr. Henke asked if they will be required to have an egress, Mr. Schuster said INDOT is requiring it to be built to a Class IV with tapers on the drive. He then clarified that the driveway is moving roughly 50 ft. or less to the east.

A vote was then taken on the motion to close the public hearing and the motion was carried unanimously.

According to Mr. Burrow, they provide adequate parking around the perimeter of the building for retail sales so the excess parking (designated as overflow parking) is more than adequate and could easily be converted into a display area if supported by the Plan Commission.

Mr. Doriot has no objection to some outside display in the overflow parking or grass area behind the building setback line, but he does object to setting off fireworks mainly due to the

location so close to two state highways.

Mr. Yoder asked if they can limit that if the state and county allows the shooting of fireworks at certain times. Mr. Kolbus believes there is a distinction between personal use and a retail sales operation so he thinks they can make an argument that they can limit or prohibit them; however, he indicated that he would have to research the law with regards to this issue.

The audience members were then advised to contact the Commissioners office to obtain a copy of the county ordinance on fireworks. If fireworks are launched outside the parameters of the ordinance, Mr. Yoder advised they could report that to the Sheriff's Dept.

Safety was also a concern expressed by Mr. Holt as there is also a gas station located at the corner. This is a major intersection with a lot of traffic and Mr. Miller agreed that fireworks going off could be a major distraction and cause for safety issues.

Mrs. Wolgamood also had no issue with an outside display in the location described by Mr. Doriot, but she does with the launching of fireworks because this is a B-1 zoning classification and firework sales are a conditional use. If they approve an outside display, she suggested they be specific about its location and that Wightman Petrie submit a new site plan showing that designated area. She said she feels that display area needs to be located behind the required building setbacks. Mr. Kolbus added that the narrative would have to be amended as well and the staff would have to verify both.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Yoder*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this Detailed Planned Unit Development be approved in accordance with the Staff Analysis with the following conditions imposed:

1. Any outside display and sales of product be placed in the overflow parking area behind the building setback.
2. Those outside displays to be in June and July as presented.
3. Due to the concern for the safety of the public with the proximity of this site to two state highways and within a few hundred feet of a gas station, the launching of firework products not be allowed on this site.
4. The special attraction for the months of September and October be permitted inside the building.
5. A revised site plan and narrative, as necessary, to be submitted to the staff for review and approval.

The motion was carried with a unanimous roll call vote.

6. The application for an amendment to an existing Detailed Planned Unit Development known as **PARKWAY AT 17 DPUD – PHASE II**, for Pine Creek Realty, LLC, on property located on the East side of CR 17 at the Verdant Extension 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 #090817-1*. For clarification, he said this adds to the narrative that is on the Site Plan / Support Drawing the types of development such as who will maintain the water and the vegetation in the development. Because it is recorded, he said everyone who buys in that property will be required to comply. If added to the Site Plan / Support Drawing, he also said we have the ability to enforce infractions of the aesthetics. In conclusion, he said the staff supports the amendment to this DPUD by the addition of these covenants and restrictions to the Site Plan / Support Drawing.

Present on behalf of this request was Dan Brekke of Pine Creek Realty, LLC, 56199 Parkway Ave. Elkhart. His only comment was that he concurs with the staffs' recommendation.

There were no remonstrators present.

A motion was made and seconded (*Yoder/Miller*) 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 (*Yoder/Miller*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this amendment to the existing Detailed Planned Unit Development be approved in accordance with the Staff Analysis with the following condition imposed:

1. That the document titled "Restrictive Covenants/Development Standards Pinecreek at 17 and Parkway at 17 D.P.U.D. Phase II" dated July 30, 2009, which was Recorded in the office of the Elkhart County Recorder on July 30, 2009, with a document number of 2009-19172, be made part of the Site Plan / Support Drawing.

With a unanimous roll call vote, the motion was carried.

7. There were no audience items.

8. The first Staff/board item Mr. Watkins presented was a brief update on the status of planning manager Mark Kanney.

He went on to report that the staff is working on a Wind Energy ordinance. It was his intention to show the photos he took of the wind farm in Benton County in May, but they were not adequate enough to show today so he said he would try to accomplish that at the next Plan Commission meeting. He has a video of the comments made about maintenance of roads, contracts and leases, and making sure the County gets their due, which he feels is important.

When asked how they have been able to sell the power they're generating, Mr. Watkins said there are three different types of generators being used and two or three large companies are buying all of the power and shipping it south and east because they can make more selling it there than we can here.

According to Mr. Yoder, Elkhart County has too many airports and there will not be many areas where they can locate towers. Mr. Holt added that we are in a Department of Defense red area, which he explained is a circle around an area that is like a "no fly zone".

Regardless, Mr. Watkins said we still have to have something in place for wind energy. There is something already drafted for small generators, but he feels we need to cover the medium and large sized as well.

9. The meeting was adjourned at 9:40 a.m.

Respectfully submitted,

Kathleen L. Wilson, Recording Secretary

Tom Holt, Chairman