

**MINUTES**  
**ELKHART COUNTY PLAN COMMISSION MEETING**  
**HELD ON THE 8<sup>TH</sup> DAY OF APRIL 2010 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: Blake Doriot, Meg Wolgamood, Dennis Sharkey, Jeff Burbrink, Steve Warner, and Mike Yoder. Staff members present were: Robert Watkins, Plan Director; Robert Nemeth, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Warner/Burbrink*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 11<sup>th</sup> day of March 2010 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Doriot/Burbrink*) that the legal advertisements, having been published on the 23<sup>rd</sup> day of March 2010 in the Goshen News and the 29<sup>th</sup> day of March 2010 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Warner/Burbrink*) 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 Primary approval of a two lot major subdivision to be known as **CRYSTAL BEND SUBDIVISION**, for Lamar Jay & Nancy Schlabach represented by Advanced Land Surveying, on property located on the South side of CR 22, 1,380 ft. East of CR 35 in Middlebury Township, zoned A-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #13744CR22-100301-1*. After reviewing the portion of the ordinance with respect to the requirements for the 3 to 1 lot dimension, he explained that rather than going to the Board of Zoning Appeals for a developmental variance and then through the subdivision process, this was sent to the Advisory Plan Commission to accomplish both.

Present on behalf of this request was Ron Justice of Advanced Land Surveying, 17120 CR 46, New Paris. According to Mr. Justice, they needed a portion of Mr. Schlabach's property for road frontage. There is an existing residence on Lot 1 and he said one residence will be built on Lot 2, which is over 20 acres. He then said they agree with all recommendations of the Technical Advisory Committee.

When Mrs. Wolgamood asked if the Highway Department has approved a curb cut, Mr. Justice said yes. He said they requested a right-of-way dedication of 50 ft. from centerline.

Also addressing the Board was Ferman Miller, 13893 CR 22, Middlebury. He explained that they had two acres with four children and need to expand so they are purchasing 20 acres of his parents' property. They also have a son with special needs and his grandmother is his primary care giver outside of the family so they want to have her close to them. His son likes the school he attends so they want to remain in the same school district. According to Mr. Miller, the farm had also been in a financial crisis so purchasing these 20 acres will help his parents out.

When asked who Lamar Schlabach is, Mr. Justice clarified there are two different owners of the property Ferman Miller is acquiring. Mr. Schlabach owns the portion of property at the road (CR 22) and Marvin Miller owns the southern portion of the property.

There were no remonstrators present.

A motion was made and seconded (*Sharkey/Holt*) 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 (*Wolgamood/Holt*) that this two lot major subdivision be approved by the Advisory Plan Commission in accordance with the Staff Analysis. The motion was carried with a unanimous roll call vote.

6. The application for Primary approval of a two lot major subdivision to be known as **TURKEY REST RESORT**, for James D. & Sharon E. Barber represented by Progressive Engineering, Inc., on property located on the South side of SR 120, 984 ft. West of CR 131, and Northwest side of CR 131, 1,460 ft. South of SR 120 in York Township, zoned A-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #15420State Road120-100224-2*.

Brad Cramer of Progressive Engineering, 58640 SR 15, Goshen, was present on behalf of this request. He explained that the petitioner's own the westerly house and their son built a cabin on the east side of the property. The purpose of this request is to bring this property into compliance as they currently have two existing homes on one parcel. There will be no new buildings or driveways, and he reported that they have met the conditions of the Highway Department.

Mrs. Wolgamood asked if the driveway on Lot 2 comes in off of CR 131 and Mr. Cramer said yes.

When Mrs. Wolgamood asked how the two residences were built on a single zoning lot, Mr. Cramer said he did not know. The age of the two homes was then questioned and Mr. Cramer said the main residence on SR 120 was built first and the son's home was built later in approximately 1987. According to Mr. Cramer, they both have septic systems.

There were no remonstrators present.

A motion was made and seconded (*Yoder/Sharkey*) 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/Wolgamood*) that the Advisory Plan Commission approve this request for a two lot major subdivision in accordance with the Staff Analysis. With a unanimous roll call vote, the motion was carried.

7. In an update on the Zoning Ordinance rewrite, Mr. Watkins reported that they had a map date last week to look at the existing zoning in the county. They basically created the zoning map as it now exists and a map as proposed. The zoning map was broken into four quadrants, which he noted are all displayed in the back of the room for review. He said the only real changes made were to recreational areas in cooperation with the Parks Department, and several currently zoned A-1 residential subdivisions located in close proximity to villages were proposed for change.

With regards to manufacturing zones, Mr. Yoder asked if new zones are overlaid over the current zones and Mr. Watkins said that is the intent. If they missed that intent, he said that's something they need to look at.

Mr. Doriot commented that this is the biggest zoning change they've made and they are taking away uses that people can do now. Examples he gave were the airport overlay zones and golf courses, which would have to be rezoned to do anything other than a golf course.

Mr. Watkins asked if he's suggesting they take a closer look at the agricultural uses to be more consistent with what's existing and Mr. Doriot said yes.

If that's the case, Mr. Warner said he thinks those individuals will come forth and provide their input at the public hearings.

Mr. Doriot said he's talked with people who were not aware of the new ordinance, and those who are not sure how many animals they can have. He feels they need to take this proposed ordinance to different areas of the county rather than reviewing it just for one day. When Mr. Watkins asked how many people have actually read the ordinance, Mr. Doriot said his office has made approximately 20 copies for people who have asked for it and read it.

Mr. Yoder said he too has some questions about the livestock standards on smaller lots because he feels they made them more confusing. Mr. Watkins said he thinks they will have a lot of suggestions from the public meetings that they will need to consider. This is a draft and he said it was intended to seek public input.

Mr. Yoder commented that most of the zones have a variety of uses that fit with a similar impact. If someone has a golf course and wants it to go back to corn, he said that should be allowed without rezoning the property; however, if they want to build a subdivision, that should be rezoned to residential.

The comments that Mr. Holt said he has heard is that people agree the zoning ordinance needs to change and be modernized, but they want to slow the process down. He said the banking industry wants input as they have concerns on what this does to property values.

It was pointed out by Mr. Yoder that they've spent a year on this and they are just now entering the public input stage. He suggested they discuss this again and make some changes based on the comments at the day sessions scheduled for next week.

Mr. Sharkey said there are a lot of different types of golf courses that are individually owned or owned by associations. He asked how you put courses with no homes surrounding it in the same category as one like Black Squirrel, which is a privately owned course surrounded by houses. Mr. Doriot said those landowners purchased homes with the thought they were paying more for their lot because they are on a golf course so they do have a vested interest.

One thing Mr. Watkins said a zoning ordinance does is provide protection to people who bought a house next to a large open field. Unless they put something in the ordinance to protect their rights and allow them to at least participate in a public hearing for a rezoning of that property, they have no right.

Mr. Yoder feels the controversy is how large of a scope of use they want before it triggers a rezoning. He feels the question is going to be whether someone has a say if the neighbor's property is rezoned from an open space use to a higher density use such as residential. It's his opinion they should because it's a higher density use and could affect their property values. From a public standpoint, he said that higher density residential use out in the county creates more expense.

The reason Mr. Holt thinks they have not received much input is because the citizens do not understand zoning; therefore, he feels there needs to be some public education on zoning. Because

they have created more zones, Mr. Yoder said they need to focus more attention on those zones. He said they need to make sure those uses are correct and the standards are feasible, especially for those people who will be in those zones.

Mr. Doriot said he knows everyone wants to eliminate the pyramid zoning, but he pointed out that currently you can get a permit for B-1, B-2, B-3 and M-1 uses in an M-2 zone. If the property is zoned I2, he said all of the commercial uses are gone with the new ordinance. However, Mrs. Wolgamood said if she wanted to put in a mobile home factory she would ask what her property is zoned and what she can do in that particular zone. She estimated that 99 percent of people don't know whether or not they can do something else in that zone.

Mr. Watkins ended the discussion by reiterating that the zoning maps are displayed in the back of the room if anyone wants to look at them.

8. The application for a zone map change from General Planned Unit Development-B-1, B-2, B-3 to a Detailed Planned Unit Development-B-1, B-2, B-3 to be known as **WAKARUSA BUSINESS CENTER SUBWAY DPUD**, for One T., Inc. represented by Barr Design Group, on property located on the Northeast corner of Keystone Drive and Kemar Street, West side of SR 19, 1,200 ft. North of Waterford Street (CR 40) in Olive Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #0KEYSTONECOURT-100301-1*. He explained that Barr Design Group designed the site plan and Brads-Ko Engineering & Surveying is present to address any questions with regards to drainage.

Mark Barr of Barr Design Group, 502 S. Main St., Goshen, was present on behalf of this request.

Mr. Warner asked how significant the water drainage problems are. Mr. Barr said their site drainage has been approved by the city, but there is an overall retention area for the DPUD and he understands there are some questions as to whether each individual site will have enough drainage retention. When asked if that issue has been resolved, Mr. Barr said it's being resolved by Brads-Ko.

Also present was Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9<sup>th</sup> St., Goshen, representing Kemar, the owner and developer of the site, which includes the Wakarusa Business Center and the Deerfield Villas residential community. He explained that there was an original drainage plan for the commercial site submitted for the GPUD approval. When they became involved in the project for the residential subdivision, they did a study for that parcel and submitted it. He said the Wakarusa town engineer, James Emmons, has asked them to revisit the entire drainage so they are currently doing a complete drainage analysis of all on site water, all off-site water that comes on site, and the proposed water that will be created by hard surfaces. They are also doing an analysis of the three retention areas, and then they will develop a plan that will handle all of that water.

According to Mr. Pharis, the original DPUD implied that the buyers of commercial property would have all of their water handled by the master drainage plan, which is not typical in an industrial/commercial site. Typically, he said each landowner is required to retain the water they create and then they would account for that additional water that comes through the site. Subway and one other parcel have purchase agreements in place, and he said the owners understand that their drainage will be handled by the site and not maintained on their tract, which has created a concern for Mr. Emmons. Because of the implications through the agreement, he said the Subway site will have its water handled by Kemar, and in all likelihood, the other parcel will have the same.

The covenants and agreements are being prepared by their council with Brads-Ko's input as well as input from their client and the town attorney.

In conclusion, Mr. Pharis said they are close enough for them to feel comfortable in filing the Secondary DPUD plan for Subway on Monday. They do not see this as being an issue for Subway nor do they feel it should stand in the way of the Board's decision in any way.

There were no remonstrators present.

A motion was made and seconded (*Sharkey/Burbrink*) 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 (*Holt/Warner*) that the Advisory Plan Commission recommend to the Wakarusa Town Board that this request be approved in accordance with the Staff Analysis with the condition that the Town Engineer approve drainage/retention/storm water inconsistencies between this project and the overall site prior to a permit for construction being issued. The motion was carried with a unanimous roll call vote.

9. The application for a zone map change from General Planned Unit Development-B-3 to a Detailed Planned Unit Development-B-3 to be known as **PARKWAY AT 17 DPUD – PHASE III**, for Parkwel Development, LLC represented by Architectural Group III, on property located on the South end of Parkway Avenue, 1,400 ft. South of Verdant in Jefferson Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #-100301-1*.

Mr. Doriot explained that he has been in some conversations with potential builders about their need for excavated material and possibly working jointly with his office on the start of the two-stage ditch in this area. That would be done within the flood hazard area under permits and he indicated that should be added to the one statement in the Staff Report.

Present on behalf of this request was Gary Frank of Architectural Group III, 201 S. Nappanee St., Elkhart. He submitted renderings of the proposed ball park [*attached to file as Petitioner Exhibit #1*] and the ball park entry [*attached to file as Petitioner Exhibit #2*] to the Board for review.

According to Mr. Frank, the baseball field will represent the Northwoods Baseball League, which is a league that is local to Michigan, Indiana, and Iowa. The acreage for the ball field is approximately 20 acres and the facility will seat just under 2,000 people when completed. Phase I, he explained, is mainly for the baseball field, which is the amenities, the concession stands, and restroom facilities. The retail and professional space and baseball training facility will be Phase II or future phases.

In addition to baseball, Mr. Frank said the owner also hopes to bring in a multitude of events such as tournament play games and small concerts. He also said that a football field can be erected in the outfield area of the park where they will install inserts for the goalposts. Some of the amenities will include suites to rent out, concession stands for the public, and he said there will be a future terrace out towards the third-base foul line. According to Mr. Frank, the suites could also be used as conference spaces in the future.

Mr. Frank then noted that the owner, Craig Wallin, and the general contractor for this project are also present to address any questions from the Board. He then indicated that they agree with all three conditions of approval recommended by the staff.

It was then clarified that the small portion of land along the roadway and west side of the property is included in this project.

Mr. Yoder questioned Condition #1 in the Staff Analysis, which he said appears to prohibit the use of the property as a baseball park. Mr. Frank's interpretation is that baseball would not be played and the occupancy permit would not be issued until the PUD has been recorded and Mr. Nemeth was in agreement. Mr. Kolbus then advised that Condition #1 should be modified by adding "prior to the Certificate of Occupancy being issued" in the second sentence.

When asked if this has been submitted to the State, Mr. Frank said all of the drawings are complete and they plan to send them to the State next week. The State permitting usually takes two to four weeks and he said they will also be submitting them to the County for building permits. In addition, they have been in contact with the City in regards to the utilities.

Mrs. Wolgamood clarified that they will submit their plans to the County and State simultaneously and they are not asking to get the County permits prior to permits from the State. Mr. Frank said that is correct as the County requires the state release prior to issuing a building permit.

Mrs. Wolgamood then asked if there is a timeframe for future phases. Craig Wallin with CTT Communications, 58520 Norway Lane, Elkhart, said Phase II will be developed as the sponsorships and funding comes in so it could be that Phase II will be there on opening day in June 2011. He then clarified that there is a Phase III, IV and V, which will be developed in that order as sponsorships and private funding comes in.

Mr. Holt asked if a Traffic Impact Study (TIS) been done as he feels this will increase the amount of traffic that was originally going to be in this area. Mr. Frank said the Highway Department did not require an additional study and the traffic impact does not exceed the original TIS done for the entire development. There are four lanes going into this site with a light at the intersection, and Mr. Yoder said the only thing better would be their own access off of US 20.

A larger version of the listed deviations from the development plan was then reviewed by the Board.

There were no remonstrators present.

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

Mr. Yoder asked if they have a recommended language change for staff recommendation #1. Mrs. Wolgamood suggested that it say, "*That all permits for construction may be issued prior to the recording of the DPUD with no Certificate of Occupancy to be issued until the PUD Plat has been recorded as the use of the property as a ball park, whether for practice, the playing of games, or any gathering, is prohibited and is in violation of the DPUD Ordinance until the Certificate of Occupancy has been issued and the PUD has been recorded.*" Mr. Kolbus indicated that he agreed with that language.

Mr. Doriot then suggested that staff recommendation #2 be revised to say, "*That no earthmoving or land improvements be permitted within the Special Flood Hazard Area as designated unless properly permitted by State, Federal and local agencies. Any work within the right-of-way of the county drain to be approved by the Elkhart County Drainage Board.*"

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Holt/Doriot*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved in accordance with the Staff Analysis, as amended by the Board, for Phase I as submitted with the following conditions imposed:

1. That all permits for construction may be issued prior to the recording of the DPUD with no Certificate of Occupancy to be issued until the PUD Plat has been recorded as the use of the property as a ball park, whether for practice, the playing of games, or any gathering, is prohibited and is in violation of the DPUD Ordinance until the Certificate of Occupancy has been issued and the PUD has been recorded.
2. That no earthmoving or land improvements be permitted within the Special Flood Hazard Area as designated unless properly permitted by State, Federal and local agencies. Any work within the right-of-way of the county drain to be approved by the Elkhart County Drainage Board.
3. That a Cross-Access Maintenance Agreement be recorded, specifically for Lots 8 and 9, prior to the adoption of the Development Plan (PUD Plat). The agreement shall permanently address the rights of access to Lot 8 with the responsibilities for maintenance and enforcement of the agreement between the lot owners of Lots 8 and 9

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

10. The application for Secondary approval of a Detailed Planned Unit Development known as **PARKWAY AT 17 DPUD – PHASE III**, for Parkwel Development, LLC represented by Wightman Petrie, Inc., on property located on the South end of Parkway Avenue, 1,400 ft. South of Verdant in Jefferson Township, zoned GPUD-B-3, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #PARKWAYAVENUE-100301-1*.

Peter Schnarrs of Wightman Petrie, Inc., 4703 Chester Drive, Elkhart, was present on behalf of this request and he submitted to the Board an updated Access and Utility Easement Agreement [attached to file as *Petitioner Exhibit #1*]. It was his understanding that Mr. Burrow wanted the access agreement to be signed and recorded prior to the Plat, but they felt it would be better to have it done simultaneously so it is cross-referenced, which is how he said they have handled access in the past. He then explained that Lot 9 is served by an access easement that crosses Lot 8 because it does not have direct lot frontage, and the final plat is just a follow-up document to formalize it.

Mr. Schnarrs said they believe the updated agreement addresses the concerns Mr. Burrow usually has. They want to make sure the County is protected against having to maintain the private easements, and he said there is language in the agreement making sure the owners of Lots 8 & 9 participate with the maintenance of the road. He then indicated that Mr. Burrow has not seen this version of the agreement nor has he seen a slight revision to the location of the access easement, which was changed on the DPUD plan that was just approved. He explained that the final plat needs to conform to the DPUD, and because they made a minor change to the location of the road, he had to follow-up with a minor change on the plat.

When asked if there is a problem with recording the documents simultaneously, Mr. Kolbus said the issue is that it's what the Plan Commission and the Board of Commissioners require procedurally. His concern is that Mr. Burrow has not had a chance to review it. There may be some changes that need to be made, and he asked what happens if they can't work that out.

Mr. Doriot questioned the impact if this is delayed 30 days and Mr. Schnarrs said it would complicate the land transfer issue. Rather than being able to transfer by the lot number, they would have to prepare legal descriptions of the individual lots to transfer. He also said it would change the names of the people who would have to sign the Access and Utility Easement Agreement so it is more paperwork.

Mr. Yoder felt there should be a way to move forward today and Mr. Sharkey asked if they can approve this Secondary on condition of approval by Mr. Burrow. Mr. Kolbus advised that they usually impose conditions at Primary as Secondary says you have met all of the conditions. If they approve it and Mr. Burrow has an issue, he said the Commissioners just don't sign off; however, that is not the way they like to proceed.

If they've allowed for simultaneous recording of documents in the past, Mr. Yoder said this indicates they have established a different process. Mr. Kolbus said they would have to address that with Mr. Burrow.

In conclusion, Mr. Schnaars said he is confident this meets all of the major concerns and he asked that they move forward with the final plat today.

If signed now with Parkwel being the current owner of Lots 8 and 9, Mr. Kolbus said there is no need for the future owner to sign because it's recorded of record so that issue goes away and it makes a clearer title.

There were no remonstrators present.

A motion was made and seconded (*Doriot/Burbrink*) 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/Holt*) that the Advisory Plan Commission grant Secondary approval of Parkway at 17 DPUD – Phase III with a notation that the Commissioners should have the Access and Utility Agreement at the time for simultaneous recording. The motion was carried with a unanimous vote.

11. The application for an amendment to the *Elkhart County 2006 Comprehensive Land Use Plan*; more specifically by incorporating the Countywide Utility Study, for the Elkhart County Advisory Plan Commission on property located in the unincorporated areas of Elkhart County, Town of Bristol, Town of Wakarusa, Town of Millersburg, and the Town of Middlebury, was presented at this time.

Mr. Nemeth read a fax from Ken Jones of Wightman Petrie, Inc. requesting to table this item until the next Plan Commission meeting.

Mr. Doriot explained that he met with Mr. Jones and Hans Musser and after reviewing the document, they found that some of the language needs to be revised for better understanding. He said some of the maps in the document were confusing as terminology that is common amongst the industry is not understood by the general public. A failed septic system was then given as an example. Another example he gave were notations on the maps that indicate soils are severe for septic. In some townships, he said 80 percent of those areas are supposedly in severe soils and someone not understanding the issue would think you could not put a septic system in that area, which is false.

Mrs. Wolgamood noted there were people in the audience and she felt this discussion should not be held without Mr. Jones being present. Chris Marbach of Marbach, Brady & Weaver was the only person present for the discussion and he indicated he would come back next month.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Burbrink*) that the amendment to the Elkhart County 2006 Comprehensive Land Use Plan; more specifically by incorporating the Countywide Utility Study, be tabled until the May 13, 2010, Plan Commission meeting. With a unanimous roll call vote, the motion was carried.



12. See page 2, item #7 for the zoning ordinance update.
13. A motion to adjourn the meeting was made by Mrs. Wolgamood and seconded by Mr. Burbrink. With a unanimous vote, the meeting was adjourned at 10:11 a.m.

Respectfully submitted,

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Kathleen L. Wilson, Recording Secretary

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Tom Holt, Chairman