

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 9TH DAY OF DECEMBER 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 Vice-Chairperson, Jeff Burbrink, with the following members present: Steve Warner, Roger Miller, Tom Lantz, Meg Wolgamood, Dennis Sharkey, 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/Wolgamood*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 10th day of November 2010 be approved as submitted and the motion was carried unanimously.
3. A motion was made and seconded (*Miller/Wolgamood*) that the legal advertisements, having been published on the 27th day of November 2010 in the Goshen News and the 29th day of November 2010 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.
4. A motion was made and seconded (*Miller/Sharkey*) 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 M-2 to A-1 for **Charles L. & Jennie Kauffman** represented by B. Doriot & Associates, on property located on the East side of Franklin Street, 550 ft. North of CR 44 (Jackson St.) in Benton Township, was presented at this time.
Mr. Nemeth submitted and presented a revised Staff Report/Staff Analysis [*attached to file as Staff Exhibit #1*], which is attached for review as *Case #0FRANKLINSt-101104-1*.
Present on behalf of this request was Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, representing Mr. and Mrs. Kauffman. He explained that the petitioners own a piece of property that is zoned M-2, which is the original zoning. According to Mr. Doriot, it was zoned that way as the Wabash Railroad runs through the area and it was thought at that time that this would grow into a manufacturing area, which has not happened. He said the petitioners would like to sell the property as a farmstead site, and he submitted a petition with 32 signatures of adjoining property owners in support of this rezoning request [*attached to file as Petitioner's Exhibit #1*]. Mr. Doriot explained that this petition was previously submitted to the Hearing Officer of the Board of Zoning Appeals.
For clarification, Mr. Yoder said their request is to rezone what is currently designated as M-2 to A-1 and Mr. Doriot said that is correct.
Mr. Doriot explained that there is a 100 ft. strip of land to the south going back to the woods that will remain M-2. That property is not owned by the petitioners. He explained further that Franklin Street was a maintained street and the Kauffman's participated in the right-of-way dedication when the county took it over as they had been maintaining it for years.
There were no remonstrators present.

A motion was made and seconded (*Sharkey/Wolgamood*) 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 (*Sharkey/Yoder*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from M-2 to A-1 be approved in accordance with the Staff Analysis. A roll call vote was taken and the motion was carried unanimously.

* (*It is noted that board member Blake Doriot took his seat on the Board at this time.*)

6. The amendment of the Northeast Corridor TIF District was presented by Mr. Watkins. He explained that there are six properties owned by six individuals in the area of Reedy Drive and the Toll Road where an Inter-local Agreement was established years ago. The agreement was specifically put in place so if the city of Elkhart annexed property the county kept the revenue during the period of the agreement to make sure the projects that were dependent upon that revenue received it rather than it all going back to the city. At the end of ten years, the Redevelopment Authority Board, the group responsible for the agreement, has to re-establish itself and he said that has expired. These properties have all been annexed into the city of Elkhart and are no longer eligible to collect the TIF revenue; therefore, he said the purpose of this amendment is to comply with that Inter-local Agreement.

Mr. Watkins then submitted the list of properties to be removed from the TIF district along with an aerial photo with those properties outlined *[attached to file as Staff Exhibit #1]*.

Mr. Yoder commented that it sounds like there is no revenue consequences to the county and Mr. Watkins said not any that are significant.

Mr. Yoder then asked if the TIF revenue will now go to the city of Elkhart and Mr. Watkins said it will once the change in the district is approved. He then estimated that amount to be \$50,000. One of the things the Redevelopment Commission has talked a lot about is the reduction in area for the Northeast TIF and Mr. Watkins said this just happens to coincide with that.

Mr. Sharkey asked if the city will increase the TIF, but Mr. Watkins clarified that it won't be in a TIF for the city. The undeveloped land is insignificant and he said the county is not losing that much. Based on the Redevelopment Commission's desire to shrink the TIF district, he said he wouldn't be surprised to see more requests to reduce the area that that district includes in the coming years.

Mrs. Wolgamood moved to accept the Amendment of the Northeast Corridor TIF District as presented (*see attached*). Mr. Warner seconded the motion, which carried with a unanimous roll call vote.

7. Mr. Nemeth presented a request for an extension of Primary approval for **Chelton Glen**, which is located on the West side of CR 19, South of CR 6 in Washington Township. He explained that Primary approval was granted for 60 lots in 2005, and Secondary approval of Phase One for 23 lots was granted in 2006. The Plan Commission was asked to extend Primary approval for two years, which was granted in August 2008, and due to the economy, he said the owner/developer is now requesting another two-year extension from today's date.

When Mr. Doriot asked if they are not doing five-year extensions, Mr. Nemeth explained they are currently preparing the legal ad to take that to the county commissioners. The current rule

is two-year extensions for a maximum of up to eight years, and the proposed change to the ordinance is for five-year extensions for a maximum of ten years. He indicated that the staff would have no objection to extending Primary approval even further, but Mr. Kolbus advised that the Board has to go by the rules in the ordinance until it is changed.

A motion was made by Mrs. Wolgamood and seconded by Mr. Doriot to accept the Staff's recommendation to extend Primary approval for a period of two years (December 9, 2012). The motion was carried with a unanimous vote.

8. At this time, Mr. Kanney read a letter dated November 18, 2010, from Barry Pharis of Brads-Ko Engineering & Surveying requesting an extension of Primary approval for ***Copperfield Subdivision*** until Sept 13, 2011. Mr. Pharis represents Fireside Homes. This subdivision is located on the West side of CR 1, ½ mile North of CR 4 in Cleveland Township. Mr. Kanney pointed out that nine sections have been done in this subdivision and he indicated there are only 11 lots that remain.

Mr. Doriot moved to grant an extension of Primary approval until September 13, 2011, in accordance with the Staff's recommendation. Mrs. Wolgamood seconded the motion.

Prior to voting, Barry Pharis of Brads-Ko Engineering and Surveying, 1009 S. 9th St., Goshen, asked to address the Board. If the new ordinance is passed allowing for five-year extensions and that can be extended another five years, he asked what will happen if they approve this two-year extension today. He wonders if that means he can get one more extension for five years for a total of seven years; or if it means he can get two more extensions of five years for a total of 12. Mr. Pharis said he has knowledge of other adjacent properties that could impact this last phase as well.

Mr. Kolbus said he would have to review the language, but he thinks they would have the opportunity to request extensions two more times and Mr. Yoder agreed.

Mr. Pharis said he is trying to go through all of his subdivisions to figure out which ones need to be extended, and he wanted to make sure he did not cause problems for his client by filing for this extension early. He said there are over 1,000 lots in Elkhart County that are developed and most have paved streets, but they do not see a rebound in the economy until 2013.

Mr. Sharkey indicated that he would vote for two extensions of five years and Mr. Yoder was in agreement.

The motion was then carried with a unanimous vote.

9. Mr. Burbrink asked for volunteers to serve on the ***Nominating Committee for the 2011 Slate of Officers and Appointments*** and those volunteering were Mrs. Wolgamood, Mr. Doriot and Mr. Miller.

When Mrs. Wolgamood asked if anyone has any issue with the appointments they are currently assigned to, Mr. Doriot said no.

Mr. Warner recalled a previous discussion they had about having some rotation in those who serve on the executive committee and he said that would be his only suggestion. Mrs. Wolgamood recalled that discussion as well.

10. In updating the Plan Commission on the zoning ordinance, Mr. Watkins explained that several public meetings were conducted with regard to Draft D and those meetings have stimulated more discussion and probably more changes. He then submitted to the Board copies of a list of

ordinance changes that are being proposed since the public meetings, which is dated 12/9/10 *[attached to file as Staff Exhibit #1]*. The list is not meant to be comprehensive, but he said it is a list of things that are being considered for changes from Draft D to Draft E as a result of the discussion between the public, steering committee and staff.

Mr. Watkins went on to say that it was not his intent to go through the entire list, but he did point out that he tried to keep the items listed by zones and sections of the standards. One thing that came up in the public meeting was an objection to regulating roof pitches and he said that standard has been removed. Also removed was the materials section from the accessory structure standards, as well as animal and storage tank standards from agricultural zones. Once there is a copy for the staff to review so they can make sure that all suggested changes have been covered, Mr. Watkins said we will then have Draft E, which he anticipates by the end of 2010 or first of 2011.

Mr. Watkins then reported that they have had discussion with representatives from Elkhart East and they will try to talk with other large commercial/industrial developers with regard to assigning a zone to their property rather than them having a DPUD or PUD. He said the uses are pretty well established in this ordinance and they are pyramidal within the zone, but not within the ordinance. Elkhart East has submitted a plan and he said they will be looking to see if there are zoning changes under the new ordinance that would fit their future plans that would basically eliminate the need for them to keep coming to the Plan Commission.

According to Mr. Watkins there was also some concern about the airport overlays, especially in the Fairfield school district. They met with the principal and business manager of the school district and their concern was with the expansion of their facility; however, he said they had no suggestions to offer. Mr. Watkins said the school officials were told that the staff is open to any and all changes, up to and including deleting the zone. Both he and zoning administrator Ann Prough have tried to talk with them since their original meeting, but he said they have not received any response.

When Mrs. Wolgamood asked if they are talking about both Elkhart and Goshen airports, Mr. Watkins said just Goshen as that is the only area where there has been any controversy.

In addition, Mr. Watkins said they have also met with individuals from the poultry industry over the confined feeding standards and setbacks. He said they are trying to come to some resolution in that area to make sure they are not putting people out of business. However, he doesn't think they want to have 400,000 chickens on a 20 acre piece of land so when they are looking at those setbacks they need to make sure they are also considering what that means in terms of the total animal population, which is defined under each confined unit definition.

In working with the maps, Mr. Watkins said one of the things they are considering is rezoning agricultural properties that are less than one acre to R-1 and properties that are one to three acres to RR. Anything that is three acres or larger he said would remain agricultural. If that is something they can do, he said it would make changing the maps fairly easy.

A Proposed Zoning Ordinance Schedule was then submitted to the Board by Mr. Watkins *[attached to file as Staff Exhibit #2]*. This schedule indicates that Draft E will be available in early January and they are considering a public hearing in February; however, Mr. Watkins said they will not take any action on the ordinance until at least April because they would like all board members to be present. This will give them the rest of February and March to consider any public comments that come up as part of that hearing, and it will give the Board time to continue to become familiar with the ordinance and the staff more time to work on the maps.

If board members are not present for the public hearing in February and it is tabled until

April, Mrs. Wolgamood asked if those members can vote in April. Mr. Kolbus explained that the law allows board members who are not present at a hearing to familiarize themselves with the testimony either by listening to the recording, reading a transcript and reviewing exhibits that have been submitted. If that is done, he said they can then participate in discussion and vote when the time comes.

Barry Pharis was in the audience and he asked if single family attached is being added to the ordinance. Mr. Watkins said that is part of the discussion and it has been proposed several different ways.

Mr. Watkins then asked how much single family attached they are actually seeing or what they think they will be seeing in the future, and whether or not they should put it in the zoning ordinance or create an overlay district for single family attached or zero lot lines. Mr. Pharis said he has over 300 dwelling units existing now and Fireside has done four subdivisions with single family attached units. In addition, he said Adlai Schrock has also done four major subdivisions in Goshen with probably 300 lots, but they are running out of space in Goshen so he has to be able to come into the county adjacent to the city so he can get sewer and water. Mr. Pharis said he brought this up at a public meeting in October but he was told it was a subdivision issue; however, he feels setbacks are a zoning issue and it is something that needs to be addressed. Mr. Watkins said this is something they are discussing with the Builders Association, but it is not done.

Mrs. Wolgamood asked Mr. Pharis if all of these subdivisions are on city sewer verses septic systems. Mr. Pharis said several were on septic and city water, but several subdivisions have been converted. With this kind of density, he said they now try to make sure they have services available.

Mr. Pharis went on to explain that people are downsizing because their incomes are going down and he feels that not addressing single family attached will create havoc. Triplexes and fourplexes have been studied, but he said the difficulty is that you have one buyer who builds the unit and then they are trying to sell two or three other units, which can't be done in this industry. Due to the federal government and financing issues, Mr. Pharis said he will probably come back with all of his condominiums that aren't sold out to reconvert them to subdivisions. Therefore, he said you come back to the single family attached and the ability to sell each dwelling unit to a different owner.

When Mr. Burbrink questioned his preference, Mr. Pharis asked what an overlay does. Mr. Watkins explained that it is a layer over the top of an existing zone. For example, if it is an R-1, it would basically establish the additional standards needed to have zero lot lines in an R-1 zone. If it doesn't create an additional hearing and add 30 to 60 days to the process, Mr. Pharis said he doesn't see that as a problem.

If a property is presented to the Plan Commission for rezoning, R-1 Mr. Yoder said there would also be a request for an overlay that would allow for the single family attached. He then asked if they could allow that overlay to be put on any of the other residential zones and Mr. Watkins said he didn't see why not.

In further discussion, Mr. Watkins said the easiest way is to create another zone, which would be single family attached and then you create the standards for that. Mr. Pharis pointed out that the ordinance has a zone for duplexes, but he said duplexes and single family attached are not the same.

When Mr. Yoder asked if he wants a new zone just for this use, Mr. Pharis said he would be agreeable to an overlay in a residential district if he could put commercial, single family, and single

family attached all in a project at one time. He said they do not have a lot of experience with overlays and when they make these changes he is concerned there will be issues in trying to follow the rules. He doesn't want his clients to have to wait ten months after they've invested hundreds of thousands of dollars in streets, water and sewer.

Mr. Watkins said some of the proposed changes that are on the list already are addressing existing conditions. They are basically saying it is not illegal and that it becomes a legal use if it was created legally originally. He also said there are several sections being proposed specifically for the non-conforming use areas to make sure that what currently exists stays. They have been listening to the comments and Mr. Watkins said there are still changes that will be made towards the end of the month or first of January.

Mr. Doriot asked what meetings are going to take place during this process and if these changes are just being done by the staff. Mr. Watkins said it would probably be done by the staff because they are basically just including the public comments into the draft. He feels they have attempted to include any reasonable comments made at those public sessions, from the Builders Association, and anyone else they have talked with since Draft D has been released. However, he did say the steering committee could meet again if they want to be involved in getting to Draft E, but it should just be cleaning up the language and making sure the issues addressed on the list, the airport overlay, and the zero lot line are included.

Mr. Burbrink asked what the group thinks about going with either an overlay or another zone to give the staff direction on the zero lot line issue. He feels an overlay is good for doing something specific to a particular area such as along Cassopolis St. or CR 17, or he said you might have an established ordinance where conditions have changed that you can overlay something over a neighborhood that needs to be addressed specifically. However, since they are rewriting the ordinance, he said it may be better to rewrite something into the document if it's going to be commonly used rather than using an overlay.

Mr. Watkins said it may just be an issue of creating standards for zero lot lines if they add it as a use, but in any case, it would mean an addition to the ordinance.

Mr. Yoder said Mr. Pharis' idea of coming in with an overlay in a larger R-1 zone that would allow a variety of residential type uses in one step offers some flexibility without creating another zone that there may not be a market for in the future.

* *(It is noted that Steve Warner was not present for the remainder of the meeting.)*

When asked for his comments, Mr. Kanney said his problem is fundamental premise. He said the smallest single family lot we'll be able to have is ½ acre on sewer so a single family attached would be on one acre on sewer for two units. He said there are no lots in Elkhart County that will be smaller than ½ acre and that's only if they get sewer so single family attached homes won't happen. However, Mr. Watkins said they are actually allowing down to 10,000 sq. ft. in an R-1 district with sewer, 20,000 sq. ft. in a platted subdivision with sanitary sewers, and 25,000 sq. ft. in a platted subdivision without sanitary sewer.

According to Mr. Pharis, they are doing them on 5,500 sq. ft. and he said they have a lot of resale value. They all came in as DPUD's and the smallest single family attached they obtained variances for was 4,400 or 4,500 sq. ft. Basically, he said these people want a little green strip in both the front and back and a 20 ft. driveway with the rest being their house. He said they don't want grass that they have to maintain.

Mr. Yoder agreed that this is a market that will probably stay in this community so it is his opinion that they should have a zoning ordinance that will allow for single family attached;

however, he doesn't know if it would be better to do an overlay or a special zone. Both Mr. Burbrink and Mrs. Wolgamood were in agreement, and Mr. Watkins said when he has some proposed language he will send it to all of the board members.

Mr. Doriot reported that his secretary has transcribed the three public meetings that were held on November 15, 2010 and he distributed copies of these transcripts to the Board, which are in the file for review. He explained that the red print is the consultant's comments and the black are those comments from the public. He asked the Board to take some time to look through the comments and he indicated they would also be on the Surveyor's website at elkhartcountysurveyor.org.

Mr. Yoder asked the board members if they are agreeable to the proposed schedule and Mr. Doriot said he does not feel that one public hearing is enough. When it was pointed out that three meetings have been held, Mr. Doriot said he was under the opinion they would take the draft of the ordinance around the county to public meetings.

11. A motion to adjourn the meeting was made by Mr. Miller and seconded by Mrs. Wolgamood. With a unanimous vote, the meeting was adjourned at 9:50 a.m.

Respectfully submitted,

Kathleen L. Wilson, Recording Secretary

Tom Holt, Chairman