

**MINUTES**  
**ELKHART COUNTY PLAN COMMISSION MEETING**  
**HELD ON THE 14<sup>TH</sup> DAY OF OCTOBER 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: Roger Miller, Meg Wolgamood, Steve Warner, 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 (*Yoder/Wolgamood*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 9<sup>th</sup> day of September 2010 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Warner/Miller*) that the legal advertisements, having been published on the 1<sup>st</sup> day of October 2010 in the Goshen News and the 4<sup>th</sup> day of October 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/Wolgamood*) 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 **PRAIRIE GROVE SUBDIVISION**, for Nicholas J. & Amanda M. Stoltzfus (owners) and Lowell Stoltzfus (developer) represented by B. Doriot & Associates, on property located on the South side of CR 44, 1,368 ft. East of CR 127 in Jackson Township, zoned A-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #16764CR 44-100903-1*.

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, was present on behalf of this request. He explained that Nick Stoltzfus is the son of Lowell Stoltzfus, the owner of Prairie Dairy Farms, and they own most of the area south of the airport to the river. Lowell would like to split off a parcel on the east side of Nick's property (proposed Lot 1) where he wants to build his house into the edge of the woods to be closer to his son and his family. He said they both will have 100 ft. of road frontage and they will share the driveway with a cross-access easement that will service the house. According to Mr. Doriot, Lowell's nephew will then move into the existing farmhouse. He then described the surrounding area, which is mainly farmland and his brother's property, Tim Stoltzfus, who is co-owner of Prairie Dairy Farms.

There were no remonstrators present.

A motion was made and seconded (*Holt/Wolgamood*) that the public hearing be closed and the motion carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Yoder*) that the Advisory Plan Commission approve this

request for Primary approval of a two lot major subdivision in accordance with the Staff Analysis. The motion was carried with a unanimous roll call vote.

6. The application for a zone map change from B-3 to R-1 for *Elmer & Amanda Christner* represented by B. Doriot & Associates, on property located on the West side of CR 29, 640 ft. North of South County Line Road in Benton Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #72833CR 29-100903-1*. The purpose of this request is to separate the residence from the mobile home park located to the west and south. He also reported that both the design professional and landowner are agreeable to rezoning the property to A-1. He then noted that Mr. Doriot and Mr. Christner are both present.

Present on behalf of this request was Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris. After pointing out the zoning line of the existing mobile home park, he said they are agreeable to rezoning this property to A-1 as requesting R-1 was an oversight. He said they will come back with a plat subdividing this portion of the property out, but they wanted to get the zoning approved before they proceed.

The size of the tract they are requesting to rezone was questioned by Mrs. Wolgamood and Mr. Doriot said approximately 28,000 sq. ft. He said it will be a legal sized lot, but it will reduce the mobile home park to less than five acres. He believes the standard for a mobile home park is five acres, but he said that would be the only complicating issue.

When asked if it has a septic system, Mr. Doriot pointed out the location of a lift station. Mrs. Wolgamood asked if the house is also hooked up to the lift station and Mr. Doriot said they will have a cross-access easement for the house to be connected to the sewer system.

There were no remonstrators present.

A motion was made and seconded (*Holt/Yoder*) 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 recommend to the Board of County Commissioners that rezoning this property from B-3 to A-1 be approved in accordance with the Staff Analysis. With a unanimous roll call vote, the motion was carried.

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

7. At this time, the minor change request for the *VIM DPUD* was presented by Mr. Burrow.

\* (*It is noted that Mr. Holt stepped down from the Board for this staff item due to a potential conflict of interest.*)

Mr. Burrow submitted and presented a Staff Report/Staff Analysis [attached to file as Staff Exhibit #1] for VIM Recycling who is requesting a minor change to their existing site plan by changing the location of the new office building. The property is located on the North side of US 33, East and adjacent to CR 1 in Baugo Township. Attached to the Staff Report is an aerial photo of the site, the letter from Chris Marbach requesting the minor change, a copy of the originally approved site plan (Exhibit "A"), and the proposed layout.

While presenting the Staff Comments, Mr. Burrow clarified that Condition 1. a. in the Overview portion of the Staff Report, which is the actual requirement for a driveway permit, is a

narrative condition and not a site plan condition. That is an outstanding requirement that he said has not been complied with to date. The staff is also asking for guidance on whether or not they should allow them to go through the normal bonding procedure for the permit, or to actually have them install the driveway to county standards prior to the issuance of any building permits. According to the standards established under the original DPUD Ordinance, the improvements were to be installed and approved by April 2009.

Mr. Doriot asked if they were under an injunction by that time and Mr. Burrow said there have been no injunctions filed against this property that they are aware of. Mr. Kolbus said that was related to certain other activities on the interior of the processes involved, but not on the road.

When asked if they need a building permit to relocate the building and Mr. Burrow said yes.

Mr. Yoder asked why the County Highway Department is involved with a driveway permit on a state road and Mr. Burrow said this is Old US 33, which has been transferred to the County.

Mr. Doriot felt that moving the building back causes less exposure to the public and is moving it into an area that's more controlled; therefore, he considers it a minor change.

When the staff was asked for further clarification, Mr. Burrow explained that the normal procedure is for them to secure the permit, which requires bonding of the improvements. He said the Highway Department is hesitant to enforce the bonding restrictions associated to the installation of driveways because they have to go to court to force the issue. Since this is already two years after the adoption of the ordinance and due to the lack of compliance of the safety issues, he said the staff is suggesting they require the improvements prior to any permits being issued.

Chris Marbach of Marbach, Brady & Weaver, 3220 Southview Dr., Elkhart, was present and he was asked why the issue with the driveway has not been resolved. He explained that the driveway permit process was started, but then the owner got involved with legal issues trying to keep the business open so it has not moved forward. He said the owner knows he needs to obtain the driveway permit, but the company is not in full operation at this time so he's really not had the need for it. According to Mr. Marbach, holding up the new building would be a hindrance as the owner is financially ready to construct the building with the funding he has available.

When Mr. Yoder clarified that VIM is constructing the new building and not the potential new owner of the site, Mr. Marbach said yes, to his knowledge. Mr. Yoder then asked how much activity is currently going on at the site, but Mr. Marbach didn't know.

Mrs. Wolgamood agreed that moving the proposed building is a minor change to the site plan. She pointed out that the staff has already indicated they would have issued the building permit had it not been for the driveway. She also pointed out that in September 2008 they were given until April 2009 to install the driveway and it is now October 2010 so she feels it's time the applicant be required to install it. In her opinion, the driveway should have been one of the first things they did.

Mr. Marbach was asked if the drawings are already done and he said they have been started, but they are not completed. He then indicated there will be accel/decel lanes and a passing blister.

Mr. Miller moved that the Advisory Plan Commission considers this request a minor change to the Site Plan / Support Drawing, and approves the minor change provided a driveway permit is obtained and the curb cut installed prior to the issuance of any building permits for the structure. Mrs. Wolgamood then seconded the motion.

In further discussion, Mr. Doriot said he would be comfortable if it is submitted and bonded. This is the second week of October and he said they will have to file this approval and

then they're looking at the second or third week of November by the time everything is done. He indicated the operation will probably shut-down at Thanksgiving rather than staying open all year, and he knows the Highway Department doesn't really want concrete out there.

Based on their track record, Mr. Yoder felt the new owners will follow-through if the transfer happens. He said he is curious why they are doing this kind of activity before they have closure on other issues.

If they file a bond and then it's sold, Mr. Miller asked if the bond would stay with the property and Mr. Kolbus said it would.

Mr. Warner then commented that he didn't feel the timeline should be the Board's consideration at this time.

It was Mr. Yoder's feeling that the office building is not critical to the operation. He said there are other issues they need to get through to get this site up and running because there is waste going to places it shouldn't go.

A roll call vote was then taken on the motion and the motion was carried unanimously.

\* *(It is noted that Mr. Holt returned to the Board at this time.)*

8. The application for a zone map change from R-1 to B-1 for **Horswell-Neidballa Realty, Inc. (land contract holder) and Gary W. & G. Ann Andre (land contract purchasers)** on property located on the North side of W. Vistula St. (SR 120), 1,000 ft. West of Division St. (SR 15), at the North end of Chestnut St. in Washington Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #400WVistulaSt-100902-1*. He then submitted a revised site plan to the Board *[attached to file as Staff Exhibit #1]* to show the location of the buffering required on the west side of the north parking lot adjacent to the R-1 district. With that addition, he said the site plan will be conforming to the zoning code.

For clarification, Mr. Miller asked if the buffering is only required by the parking lot and not by the building and Mr. Nemeth said that is correct.

Present on behalf of this request was Ann Andre, 112 S. Division St., Bristol, who owns the subject property at 400 W. Vistula St., Bristol. Also present was the land contract seller of the property, Charles Horswell, 30121 Old US 20, Elkhart.

According to Ms. Andre and Mr. Horswell, the State decided to remove the parking along SR 120 (with the new road project) and they received no notification from the State that they intended to do that. Letters from the Elkhart County Historical Museum *[attached to file as Petitioner Exhibit #1]* and the Town of Bristol *[attached to file as Petitioner Exhibit #2]* were then submitted to the Board, which state they would allow the petitioners to use their entrance to access their parking area on the north side of their building. Ms. Andre clarified that the Town of Bristol actually owns the driveway into the museum parking, which is 50 ft. from their lot line on the east towards the museum. She said the Town has given them permission to use that driveway because there is no room to extend their driveway and the State will not allow them to do a curb cut.

When Mr. Miller commented that it will be a nicer entrance, both petitioners and several board members agreed.

Ms. Andre said she talked with the neighbors directly west and they have no objections, but they do not want any lights shining in their windows. She said their sign will not have lights

shining in their windows as it will be directed at the sign. Mrs. Wolgamood asked if they would be using the existing sign, but Ms. Andre said the existing sign has been removed.

There were no remonstrators present.

A motion was made and seconded (*Doriot/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 (*Doriot/Wolgamood*) that the Advisory Plan Commission recommend to the Bristol Town Council that this request for a zone map change from R-1 to B-1 be approved in accordance with the Staff Analysis and as presented. A roll call vote was taken and the motion was carried unanimously.

9. 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.

It was noted that in the previous action to table this request, the revised document was to come back to the Board as either an appendix or a stand-alone reference document, not an amendment to the comprehensive plan.

Mr. Watkins submitted to the Board a revised Baugo Township soils map [attached to file as Staff Exhibit #1], and a revised Baugo Township septic failure map / 286 septic repairs [attached to file as Staff Exhibit #2], which he received this morning.

Mr. Doriot said he would personally like this to be viewed as a reference document for the staff's use with that reference document showing the areas they are indicating that need sewers. He would also like the implementation portion of the document to be removed, which is Chapter 9.

Mr. Miller questioned what good it does as a reference document and Mr. Doriot said it would be used like a soils map and USDA soils survey. For example, he said they could say that according to the Utility Master Plan, this area is earmarked for the possibility of municipal services.

Mr. Kolbus also said they can use it to support a statement in their Staff Report when making any kind of recommendation. When a petition is presented and the maps show it is in a high risk area, he said the Board can make sure that everything is covered in the petitioner's application and development plan.

If a property use could not be defined or given based off the reference, Mr. Miller asked if it would just be for the petitioner to know themselves, but Mr. Kolbus said it would be given to the Board as background information. He said it is like any other fact that comes before the Board and they could use that information to deny the request if they wanted.

Because Mr. Jones could not be present today, Mr. Watkins said he indicated in his email that he took the liberty to revise the drawings (Staff Exhibits #1 and #2) as a result of the discussion last month.

Mr. Doriot then recalled that the maps with the red dots showed the large lots in its entirety. He said the maps were changed to show septic repairs and not failures, and there is a note on each soils map that says, "A USDA designation of severe soils does not preclude the use of onsite septic systems", which Mrs. Wolgamood said was part of the motion.

The other option was to adopt this document as an appendix and Mr. Yoder asked how an

appendix is used differently than a reference document. Mr. Kolbus said the distinction is that anything adopted as an appendix to the comprehensive plan would support the plan and it would carry more weight.

Barry Pharis of Brads-Ko Engineering & Surveying was in the audience and he asked if this reference document could be made available to design firms for a fee of less than \$100 to use in their own libraries before they come to the Plan Commission . During a brief discussion, it was pointed out that they could ask for the document in an electronic form or that it be put on a CD. Mr. Yoder also said he has access to it on Wightman Petrie's website.

Both Mr. Yoder and Mrs. Wolgamood suggested the document be viewed as an appendix. Mrs. Wolgamood said her fear of it being a reference document is that after it's done, it will just sit on a shelf and no one will look at it because no one will know anything about it.

When the staff was asked for their opinion on how to view the document, Mr. Kanney said they all agree that it's a good reference material. It allows the staff to look at an area and determine if the location has any opportunity for sewer. From a staff standpoint in dealing with the city, he said he likes this report because it also puts the cities on notice about where problems might be. He then asked if Chapter 9 is a plan they want implemented or if it is just options that are available at this point in time. He feels this is a great reference document, but he said it kind of leads into a plan and he doesn't know if that's what they are looking for.

If this were a reference document or an appendix, Mr. Miller asked how the staff would utilize it differently. Mr. Kanney said they could review proposals if someone wants to rezone their property, and the best example he could give is that they do not believe you should be on manufacturing ground without access to sewer.

Mr. Kolbus asked if the staff would prefer to adopt it as an appendix or as a reference document. Before he answered the question, Mr. Kanney wanted an explanation on what the last chapter ( 9) is about and whether that is a plan they wanted implemented or not. He said it is good cost-sharing information, but he feels that it gives you the impression this is the list of priorities that they are going to run sewer to. He said they may, but there are so many other factors and he doesn't know if the Plan Commission wants to have that priority list in front of them every time.

Mr. Yoder suggested they pull Chapter 9 (the implementation chapter) for now and make the rest of the document with the amendments presented today as an appendix.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Miller/Warner*) that the Advisory Plan Commission recommend to the Board of County Commissioners that the Countywide Utility Study be accepted as an appendix to the Elkhart County 2006 Comprehensive Land Use Plan, including the revised maps submitted today (Staff Exhibits #1 & #2 dated 10/14/10) and the changes discussed at the September 9, 2010 Plan Commission meeting, with Chapter 9 to be removed at this time. With the following results of a roll call vote, the motion was carried: Doriot – yes; Miller – yes; Wolgamood – yes; Warner – yes; Yoder – yes; Holt – no.

10. ***Subdivision Control Ordinance*** – review of residual parcels

Mr. Kolbus explained that he and the staff has been working independently on this issue, but they still need to consolidate their thoughts and come up with a final draft.

Mr. Burrow explained that they are taking the concept they took from the original meeting to guide them on how to create the support of a residual parcel. The idea is that they will recognize

it as a buildable tract, but he said they are trying to get some of the wording into the definition so they do not end up with a buildable tract that is only 5,000 sq. ft.

No action was taken on this matter at this time.

11. See page 2 item #7 for the *VIM DPUD* minor change request.

12. ***2011 Planning Calendar***

Mr. Burrow distributed copies of a proof of the proposed 2011 Planning Calendar, which he explained is in the same format that was approved last year. He said the Tech Committee and Tech Committee Corrections have been set-up based on the state requirements for giving notice in the paper.

Mr. Kolbus explained that according to the Rules of Procedure, the Board is to approve a planning calendar, and once it is approved, the calendar will be printed.

Mrs. Wolgamood asked if the 2010 Planning Calendar worked for the staff and Mr. Burrow replied yes.

A motion was made by Mrs. Wolgamood and seconded by Mr. Miller to accept the 2011 Planning Calendar as presented.

Prior to voting on the motion, the timing of the Secondary filing deadline was questioned by Mr. Doriot. He said it is hard to get a plat redone if the deadline is on a Friday. Mr. Burrow said they are the Monday following the Plan Commission meeting, and if there is a holiday on Monday, it would be the following Tuesday.

Unanimously, the motion was then carried.

13. In updating the Board on the Zoning Ordinance rewrite, Mr. Watkins reported that the steering committee reviewed the ordinance and accepted most of the changes at the last workshop. He said they hope to have 'Draft D' by Monday to make available to the community, and he would also try to make CD's available as well.

14. Mr. Miller moved to adjourn the meeting, which was then seconded by Mr. Yoder. With a unanimous vote, the meeting was adjourned at 10:03 a.m.

Respectfully submitted,

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Kathleen L. Wilson, Recording Secretary

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Tom Holt, Chairman