

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 10TH DAY OF MARCH 2011 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, Mike Yoder, with the following members present: Tom Lantz, Steve Warner, Tom Holt, and Roger Miller. 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/Holt*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 10th day of February 2011 be approved as submitted and the motion was carried unanimously.

3. There were no legal advertisements published for this meeting.

4. A motion was made and seconded (*Holt/Lantz*) 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 Secondary approval of a one lot minor subdivision known as **GRINDLE MINOR SUBDIVISION**, for Daniel R. & Sherri L. Grindle represented by B. Doriot & Associates, on property located on the East side of CR 33, 1,200 ft. North of CR 44 in Benton Township, zoned A-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #0 CR 33-110118-1*.

Present to address questions from the Board was Blake Doriot of B. Doriot & Associates.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Holt/Lantz*) that the Advisory Plan Commission grant Secondary approval of this one lot minor subdivision in accordance with the Staff Analysis as it meets the requirements of the Subdivision Control Ordinance. The motion was carried with a unanimous vote.

6. The application for Secondary approval of a replat of Lot 84 in Meadow Glen Estates Section One known as **RAMSEY MINOR SUBDIVISION**, for James Ramsey et al represented by B. Doriot & Associates, on property located on the Northeast corner of Tower Road and Meadow Glen Drive in Baugo Township, zoned R-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #30441TowerRd-110118-1*.

Blake Doriot of B. Doriot & Associates was present to address questions from the Board.

The Board examined said request and after due consideration and Analysis, the Advisory Plan Commission grant Secondary approval as this replat meets the requirements of the Subdivision Control Ordinance. With a unanimous vote, the motion was carried.

7. The application for Secondary approval of a two lot major subdivision known as **TROYER COUNTY ROAD 48 SUBDIVISION**, for Todd and Michelle R. Troyer represented by B. Doriot & Associates, on property located on the South side of CR 48, 1,560 ft West of CR 13 in Union Township, zoned A-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #OCR 48-110118-1*.

Blake Doriot of B. Doriot & Associates was present to address any questions from the Board.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Miller/Yoder*) that Secondary approval of this two lot minor subdivision be granted by the Advisory Plan Commission in accordance with the Staff Analysis as this subdivision meets the requirements of the Subdivision Control Ordinance. The motion was carried with a unanimous vote.

8. Three zoning maps were displayed at this time and the discussion began with Mr. Watkins explaining the staff's process for revising the maps. He said the use of the property was obtained through the Assessor's file and that information was laid over the proposed map. The only changes the staff recommended were in the residential zones. The crosshatched areas on the maps are the areas where the use does not match the zone.

In addition, Mr. Watkins said two staff members went out and looked at the crosshatched areas with the exception of Washington Township. When the variances, use variances and special uses are removed, he said there would be very few actual non-conforming uses. An example was then given of a motel located on US 33 southeast of Goshen, which has been a non-conforming use since the day the current ordinance was drafted. It is also an area that is developing commercial so he said the Board may want to consider rezoning it to commercial to bring the motel and that entire area into compliance.

When completed, Mr. Watkins said the goal is to remove the crosshatched areas that are not in conflict because they have an underlying special use or some other permission for what they are doing in that zone. A list will then be made of the remaining areas that should be considered for rezoning because of how they developed and what is actually there.

Mr. Yoder asked for another example of property shown in a crosshatched area. Ann Prough, the zoning administrator, said there are three residences on the south side of Simonton Lake that are actually in a business zone. They have been residential for years so she said that may be an area they want to convert to residential. Another area she gave as an example was Hively Avenue and SR 19 which is currently zoned industrial. The staff feels that would be good area to zone back to business because it is established, the building is constructed, and it is all service retail. Their goal, she said, is to get manufacturing away from that area and keep it retail.

Mr. Doriot asked if this shows all of the new non-conforming dairies, but Mrs. Prough said they have not zoned anything beyond AG. If you are milking more than 50 head of cattle, Mr. Doriot said you are going to have more than 75 on your farm. That is probably more than 80 percent of the dairies in the county and he feels those properties should be zoned AC.

Mr. Yoder thinks they mixed the terminology because it is supposed to be 75 mature cows; however, he said that number is probably too low. Level one should start where the CFO number is for the state so he said that is a modification they need to look at. According to Mr. Yoder, the average right now is probably 120 cows and he feels those moderate sized dairies would be okay in

an AG zone. However, he said he noticed an inconsistency between the AG standard and the standards when moving to levels one, two and three.

Mr. Watkins recalled discussion in the AG zone of pastured animals and not confined animals, which he feels is where some of the confusion is coming in.

As they go forward, Mr. Yoder said they need to talk about how they want to handle the AG zone. He said there are some benefits to being in an AC zone so they may want to just encourage larger operations to move to that designation. That will allow them more flexibility for expansion, as well as some additional advantages of lower setbacks if they want to construct a new barn. He then recalled that in the past they have allowed landowners to rezone their property at no cost for a period of 12 months.

With the way the agricultural zones lay out, Mr. Yoder feels the AG zone is like a buffer between the higher density livestock areas and areas that are hobby farms. He feels the AG zone is targeting hobby farms and larger lots with a minimum of five acres, and the AC zone is targeting the Amish community with their smaller acreage livestock and dairy operations under 300 cows.

9. Continuing on to the zoning ordinance discussion, Mr. Yoder said he has asked board members to point out the issues they see with the draft ordinance.

Commenting first was Mr. Doriot who said it is too complicated. He explained that his staff took every page out of the (draft) ordinance that applies to each district. In the past week, they put the A-1 and R-2 districts into the same format as the current zoning ordinance and copies were then submitted to the Board (in the file for review). He explained that a copy was given to the zoning administrator this morning so there may a few things that will be changed based on her interpretation.

When looking at the restrictions of the AG district, Mr. Doriot said it is extremely more cumbersome and invasive. He keeps hearing that it will protect us and he agreed we will probably get a little protection, but it is his feeling that it will infringe upon our rights.

Mr. Miller asked what he means by "invasive" and Mr. Doriot said it invades what you want to do with your property. It may keep your neighbors from doing something you don't want them to do, but he said it will also keep you from doing something you feel you should be able to.

Mr. Yoder asked if these are restrictions on the use of the property and Doriot said yes. He then gave examples of fencing and landscaping standards.

A map of the Airport Overlay District was then displayed and Mr. Doriot said one of the things not allowed within five-miles is the Elkhart County Landfill. He explained that the purple outline shown on the map is 10,000 ft. where you cannot dig a pond, and the pink outlined area restricts you from building a house unless you can prove it will meet certain noise standards. He pointed out that Fairfield school is within this area and any additions would have to meet those requirements. He also indicated there are many uses within that 10,000 ft. area that would no longer be allowed without more restrictions placed upon them. With regard to farming, Mr. Doriot said it still suggests that they want everything within one mile that is not developed to be 80 percent turf grass.

Mr. Yoder said he was disappointed they had not received any feedback from the airports before this last draft. He thought the committee's intent was for this to be preventative. If he was a farmer and lived within an area that was controlled by the FAA, he wouldn't want to be able to get a building permit to put up an grain elevator leg and then have the airport come to him later and tell him he has to take it down.

For the last two months, Mr. Warner said he has tried to contact the mayor's office and council members in the city of Goshen and he did receive some input. He also called a board member of the Airport Commission, and after no response, he finally received an email that the Airport Board and their attorney were working on something. He doesn't know if that information has been sent and Mr. Watkins said he just distributed copies of a letter from the Board of Aviation Commission, which is in the file for review (*see attached*).

After reviewing the letter, Mr. Yoder said he sees no particular reason for an overlay zone in the ordinance for the airports.

Mr. Warner said he finds it unfortunate from the airport's point of view. He feels they could work with some rules that would benefit both farmers and the airport for the long-term life of the airport.

When the Board's position of the overlay district was questioned, Mr. Holt said Elkhart is one of the best FAA governmental funded airports in the state and there hasn't been an overlay district. He doesn't think it will affect their funding nor does he think it has affected Goshen's funding so he doesn't see why having an airport overlay district is so important.

Initially, Mr. Yoder said he was supportive of the district as a preventative measure, but he has completely moved away from that at this point.

Mr. Kolbus noted that Larry Meteiver is in the audience and said he may want to address the airport issue. The Board agreed on taking some comments at this time.

Mr. Meteiver said he has been a resident of Elkhart County for 35 years. He is a pilot and aircraft owner, and he uses all three of the public use airports and the Mishawaka Pilots Club. His comments today are his own and he said he does not represent any particular individual or entity.

Mr. Meteiver said he has talked with Don Schuler who represents the Goshen Board of Aviation Commissioners. Mr. Schuler indicated they have things in process, which apparently the Plan Commission has received. Mr. Meteiver has not seen that letter yet and a copy of the letter from the Goshen Board of Aviation Commissioners was given to him to review.

According to Mr. Meteiver, the primary concern of any pilot operating in and out of an airport is obviously going to be safety. One source of safety problem is wildlife, both in the air and on the ground. Another safety problem is birds, which he said can be attracted to primarily food and water sources such as ponds, processing facilities, and landfills. This will not affect the current operation of the landfill located within that five-mile radius of Elkhart, but he said any expansion of that landfill could be affected by the restrictions in the airport overlay. Also affected by the overlay districts would be residential development.

Mr. Meteiver said he prepared a number of technical type problems he sees with the airport overlay district, but he did not feel this is the forum to go through each one. The city of Elkhart does have an overlay district for their airport, but he said that does not extend out into the county. There are significant sections of the county that will be covered by airport operations in and out of Elkhart so he encouraged the Board to retain some form of an airport overlay district.

The other problems with airports and non-compatible uses around them relate to noise issues. Mr. Meteiver said Elkhart has a fair amount of jet traffic in and out now, and he sees some expansion potential for Goshen as they continue to grow as well as Nappanee. He feels they will run into problems with residential sitting underneath those jet flyway patterns and that a lot of problems could be alleviated if there are overlay zones. He then indicated that there is still an area west of the Elkhart Airport that could be development under county jurisdiction.

In conclusion, Mr. Meteiver again suggested they keep the overlay zone, but not necessarily in the format it is currently in. He said he is willing to discuss any changes to what has already been proposed with the Plan Commission and Ground Rules (the consultant).

Mr. Miller questioned if the runways are going to continue expanding in length or in other directions. He thinks Goshen has extended their runway about as far as it can go because there is a highway on one end and a river on the other. He then asked how you not have a ring of growth, yet still allow people to build in that area, which needs ponds to drain.

In describing two kinds of ponds, retention and detention, Mr. Meteiver said one holds water year-round and the other is only filled when you have a significant rain event. He said it catches the overflow and then it's designed to drain out over a short period of time. The catch ponds are not as much of a danger as the ponds designed to retain water year-round. However, Mr. Doriot said those only work when you have an outlet available for your detention pond and Mr. Meteiver agreed.

Looking east of the airport, Mr. Doriot said there is really no regulated drains going south for a mile and a half to the river. Mr. Miller added that that area is pretty much an underwater lake.

The way the overlay district is currently designed with the expansive rings is not necessarily what is needed according to Mr. Meteiver. He believes that Goshen has some expansion possibilities both in size and use, but he doubts they would ever decide to go with a different positioned runway. Most of the winds are out of the west/southwest so an east/west runway is the favored operational runway for airports in this particular area. By the same token, he said as the intensity of use increases, the possibility of problems with non-compatible uses surrounding the airport also increases.

When asked if the Board of Aviation's recommendation of decreasing the distance to $\frac{1}{4}$ mile seemed reasonable, Mr. Meteiver explained there is a wedge-shaped flight path that widens out as he get farther away from the airport. This gives a plane additional room to get aligned before it gets closer into the airport. North and south of the Goshen and Nappanee airports will not create too many problems, but he said the extension of the runway centerline off of each end of each runway that will.

For clarification, Mr. Yoder said he is suggesting they consider keeping in an airport overlay, but that it be restricted only to the actual needed restrictions that are in place and not the suggested guidelines and Mr. Meteiver said yes.

Mr. Meteiver went on to explain that the model contemplates an entire ring around the airport, which is obviously an ideal situation if you have an airport in an undeveloped area and you want to establish some controls for that area. In our situation, he said we have relatively developed areas around each of the airports so he does feel they need some controls at the Goshen and Nappanee airports. He said the Mishawaka Pilots Club will receive the benefit of whatever happens in Elkhart so that is not a concern. If you included all airports in the county as defined in the original draft, he said there are 15 and the overlay would cover the entire county.

In the audience were Mike Neff and Lowell Stoltzfus who both farm land in the area of the Goshen Airport. Mr. Neff said it's his opinion that the airport is done expanding their east/west runway as they are landlocked without moving the highway.

Mr. Yoder asked if they are aware of the glide path restrictions now, and if so, if that guides their decisions on anything they may or may not do in that area. Mr. Neff said he doesn't believe it affects them.

Mr. Neff said he appreciates that the Board is looking at this and addressing all of these issues as every inch of his farm is located within this overlay district. If the ordinance is approved as written, he said it will destroy his farm if he has to put it at 80 percent sod. He understands the need for restrictions out in remote areas where you want to protect it from the future, but he does not feel it is practical for this is area, which he said is about done growing and Mr. Yoder agreed.

Lowell Stoltzfus then addressed the Board saying it is okay to impose restrictions, but he feels there also has to be some type of a reward system. For clarification, Mr. Doriot said he thinks what Mr. Stoltzfus is saying is that they are taking away options.

With regard to the wellhead protection areas, Mr. Doriot said we do want to protect our potable water; however, every time you put in a public water source such as a well in a mobile home park, you all of sudden have more restrictions on your property set out by the EPA and IDEM. He's not sure that all of the restrictions in the wellhead overlay are the same as IDEM's so we need to be careful when a new public well is put in because all of those restrictions are overlaid upon the property.

According to Mr. Yoder, there has been an effort to create wellhead protection zones for all of the wells in the county that was initiated in the Goshen area. He asked if anyone knew how our overlay connects with that effort.

The way he read the overlay, Mr. Watkins said it basically restricts it to residential uses and things that don't contaminate water. What he's not clear on is whether or not water and sewer is required for residences.

The other ordinance that Mr. Yoder said is making its way around does require that and it also has some restrictions on agricultural activity. He feels at some point those two efforts need to be merged together, and he too is unsure which is EPA driven, IDEM driven or locally driven.

Mr. Doriot said EPA and IDEM restrictions are already in place so he thinks we should just say our wellhead protection is covered by IDEM or EPA and leave it at that.

After reviewing the ordinance, Mr. Watkins said most of these will be new ones at least built near cities and towns and this would encourage connecting to sewer in those areas. Otherwise, he said it's pretty much what we have already allowed. For example, restrictions were placed on the North Wellfield in Elkhart that was residential only with basically the same types of standards. He said a lot of the restrictions in that overlay were also created for work they have already done.

When Mr. Doriot asked if wellfields are allowed by our ordinance, the staff indicated the North Wellfield has a Special Use. Recharge areas were then briefly discussed.

According to Mr. Watkins, the ordinance he's seen from the city of Goshen is far more stringent and he's not sure how that would affect the county. Mr. Yoder said he thinks they are expecting participation from the county to adopt their ordinance and he agreed it is more restrictive.

If we have an overlay district, Mr. Yoder said he's hearing that it should mirror state or federal regulations and not go over and above.

If someone comes in and wants to build a housing addition in the wellfield area, Mr. Miller asked if they would be allowed to do that. Mr. Yoder said they would be allowed. If extending the sewer costs less than three times, then they would have to extend the sewer. If not, then it would be on site.

Mr. Doriot said if the total projected cost of the septic systems in that development was \$150,000 and it was decided that it was \$450,000 to extend to municipal services, then you would have to extend to municipal services. Each individual lot owner would absorb that additional cost.

Mr. Miller pointed out they are saying these are restricted areas, but there are options. The benefit to the public would be that they have clean water. However, Mr. Doriot pointed out that if a wellfield is placed by the airport, then the farms would have to deal with all of the additional restrictions. Mr. Watkins indicated the only additional restrictions would be that they would have to label their chemicals.

Mr. Doriot said he can do X, Y and Z with his property now, but with the new zoning ordinance, he can only do X and Y because of the additional restrictions.

In looking at the bigger picture, Mr. Yoder pointed out that in the new zoning ordinance there are more things you can do in each zoning districts. Mr. Doriot agreed, however, he feels there are fewer options in the agricultural zoning districts. Mr. Yoder said they are trying to create zoning districts that make sense so they create less conflict. He feels it is good to have more restrictions in the agricultural zoning districts because he doesn't necessarily want some of the potential uses next to his dairy operation. If they leave things as they are now, he feels they will see expansion in agricultural areas when the economy turns around and it will shut down the animal industry in Elkhart County. Generally, livestock and residential areas do not fit very well when they are side by side.

Mr. Lantz feels the problem is that the community is not familiar with the current ordinance and they became overwhelmed with the restrictions in the proposed ordinance.

Mr. Doriot feels that some of the standards in the proposed ordinance are good, but he also feels that some of them are personal issues.

According to Mr. Warner, it is a proven fact that more restrictive zoning creates a more valuable piece of property.

Mr. Yoder feels that most of the standards described in the proposed zoning ordinance are practical and common sense.

Mr. Holt said the more tools and detail you give someone, then there will be more people coming to the Board of Zoning Appeals with complaints. Mr. Yoder feels that the proposed ordinance will eliminate a lot of Board of Zoning Appeals applications. Mr. Holt agreed with regard to land use, but he feels there will be more people with complaints on specific restrictions.

Mr. Yoder said there is no room for an arbitrary decision to be made by the Board of Zoning Appeals. He doesn't feel that more restrictions would mean more conflicts.

Mr. Holt said there is a difference between use and the way something is built.

When Mr. Yoder questioned the fence standards, Mr. Doriot said the proposed ordinance wouldn't allow you to build a privacy fence around the front of your house. Mr. Meteiver said the purpose of that is to have a panoramic view of nature. Mr. Watkins said another reason is visibility due to line of sight issues.

Mr. Watkins asked if you want to see a subdivision with fences in the front yard, but Mr. Holt said that should be the decision of a developer. Mrs. Prough interjected that they have changed that standard and you are allowed to have a four-foot fence in your front yard.

Mr. Yoder said a decision has to be made as to what kind of county they want Elkhart County to be. He has heard comments that Elkhart County is not urban enough for these types of restrictions, but this is the fourth or fifth largest urban county in the State of Indiana.

Also in the audience was Barry Pharis who asked how A-1 property becomes something else. He wants to know if it will automatically be done by the staff or if the landowner will be notified and have a say in the rezoning during a public hearing. Mr. Doriot said it would be done by the staff at a public hearing, which has been advertised in two newspapers within the

jurisdiction. He pointed out that the circulation of the papers are going down and 90 percent of the community won't know the zoning has changed for their property until they come in to get a building permit.

Mr. Yoder said they have discovered that the new zoning districts created very few non-conforming uses. The current use on the property will continue. If you want to change the use on your property and it's within the list of permitted uses, then you would be able to go ahead and do it. If it's not listed in the permitted uses for that zone, then there is a good reason for it. He absolutely supports the idea of pulling an automatic residential use out of an agricultural area because it makes no sense. When focused on the ability of the property owner to do whatever they want to do, there is no concern on the ramifications of the neighboring property or the community as to what the damage might be to other property values, etc. Placing a high density residential area in the community affects everyone and shouldn't be a single person's decision. He feels they need a new ordinance that clearly defines appropriate uses in each of the zoning districts. Generally, people are not going to know the difference unless they want to change the use on the property. If it is a significant change, such as going from agricultural to manufacturing, the community should have a say as to whether that is appropriate in that area.

Mr. Yoder noted the maps will be available for everyone to look at and he encouraged the people in agricultural districts to take a look at what zone they are in. Depending on how they move forward, he felt the Board should consider a 12-month period for farmers who may want to re-zone their property at no cost.

Mr. Holt asked about the people who bought A-1 land and want to use for residential. He questioned whether they would be able to re-zone at no cost. Mr. Watkins said that would be changing the land use and not correcting the zoning to match the existing land use. Mr. Yoder indicated they would need to re-zone to residential, but they would still be required to pay a re-zoning fee.

Mr. Lantz felt a farmer should base their zoning density. Mr. Yoder said the proposed ordinance would allow a farmer to come in with a plan for higher density. Mr. Watkins said there is an area that is more suitable for intense growth, so they could propose it.

It is Mr. Doriot's belief that you own your property and you have the best foresight as to what should happen on it. Mr. Yoder feels there should be some restrictions placed on land.

Mr. Yoder pointed out that a neighbor can do things in a neighborhood that will affect their property. He feels that is where a community needs to step in and say there are equal rights.

As a landowner, Mr. Holt said you are choosing to live there and you honor the restrictions. The government is not imposing those restrictions on you. He does not disagree that residential should not be built next to an agricultural area, but as a community, that is something the government needs to be involved in. When it comes to how tall the fence is or how many dogs are allowed in a residential subdivision, he feels those specific details would be handled best by the developer.

According to Mr. Yoder, the majority of the community wants restrictions so they have some sense of security as to what might happen in the future.

Mr. Miller said the proposed ordinance will protect the farmer, but the next-door neighbor has a right to put in a sewage plant or a nursing home.

Mr. Doriot said a tool was created years where they would give notification that property was next to an intense agricultural zone. In doing so, they have voluntarily put the restriction on their property that they can't develop it.

Mr. Yoder said the Indiana Right to Farm Law is pretty decent, but it doesn't protect him from being sued.

Galen Miller, 125 Woodlawn Drive, Goshen, said he recently explained to a group how the AG zone will be the default in the county and that a significant sized animal operation will not be permitted in an AG zone. A farmer could not go in and ask for a permit for a dairy barn in an AG zone without a Variance or a re-zoning being granted. He feels that most people don't understand that. He feels that is very unusual since the majority of the rural county is going to be zoned AG. He doesn't think that many people in the county know that there are three levels of agricultural and three levels of confined feeding. He also feels that the setbacks are pretty extreme.

In LaGrange County, the only things that have been stable are education, healthcare and agriculture. He said maybe the Board should go back and consider supporting animal agricultural and livestock.

Mr. Galen Miller also asked how this will work from a legal standpoint. He wonders how the county can write a law that people are given a 12-month time frame to ask for a rezoning to fit their current operation. Mr. Kolbus said that would have to go through the Plan Commission and then the County Commissioners. He said it cannot be done automatically and would need to go through the process. The fees would be waived for a 12-month period.

Mr. Yoder explained that almost all of the A-1 land being farmed right now will move to AG without any issue at all. Whatever people are doing currently should work out just fine with the proposed ordinance, as nothing will change. If they are a livestock operation wanting to expand and are in an AG zoning district instead of an AC, then they will need to re-zone.

In most agricultural counties, Mr. Yoder said going from raising corn to a concentrated livestock operation is a pretty significant change of use. They have to have some type of continuity across the entire planning idea. Generally in Elkhart County, most of the corn and soybean farming is staying as is, so he feels Mr. Galen Miller's concerns are very limited in number.

When asked where the AC zoning districts will be located, Mr. Watkins pointed out that the maps reflect the current uses. If a property is abutted up against Goshen or Elkhart, then it probably has less of a potential for an AC.

Mr. Watkins said one of the things the maps don't show are the roads with lines of houses. There are already residential conflicts out in the county. He felt it would be hard to find a mile section of road in Elkhart County that doesn't have a house on it.

Mr. Doriot pointed out that the proposed ordinance is taking away pyramid zoning. When the property was purchased, it was purchased with a bundle of rights but when the new ordinance goes into effect, they are no longer going to have those rights.

Mr. Watkins suggested their research indicates that hasn't happened. If it were an issue, it would've shown up as a conflict because the assessor appraises based on use and not zone. If a commercial zone would have been put over the top of a manufacturing zone, it would have showed up.

Mr. Galen Miller said they will conform to what the Plan Commission and Commissioners end up with, but if the 46 growers in Elkhart County wanted to build today with an AI zoning district in hopes to expand, only 17 percent would fit within the proposed ordinance.

When Mr. Yoder asked what about the limitation, Mr. Galen Miller said setbacks. He doesn't feel it is going to be that simple to rezone and indicated they could go elsewhere.

Mr. Yoder said the intent is not to drive his operation out of the county. He feels that most of Mr. Galen Miller's facilities would be within the standards of the AC zoning district.

Mr. Watkins reiterated that is a process that has to go through the Plan Commission and the County Commissioners. If it is already what they are doing on the property, he said the staff can't object to it. The staff can't identify where these properties are located as the number of livestock is not on the map.

Mr. Roger Miller questioned if the 83 percent that don't comply with the new standards would be able to build under the new standards. Mr. Watkins said it depends on the size of the operation and how big it needed to be. The new ordinance will reduce five agricultural zones to three. It does allow for an agri-business, but that is separate. All of the confined feeding has been put into one zone. Mr. Galen Miller noted that levels two and three are bound by the Indiana state law.

Mr. Pharis asked if the subdivisions in the agricultural zones will have to be rezoned to R-1. He questioned what happens when they don't comply with the new R-1 standards. Mr. Roger Miller said they would comply with A-1 in the current ordinance.

If a structure is rebuilt when the proposed ordinance takes effect that was originally constructed under the current ordinance, Mr. Roger Miller asked which ordinance standards would need to be abided by. Mr. Watkins said if the person builds the same structure, in the same place, with the same setbacks, then they would follow the restrictions of the current ordinance. If they change the building and expand, then they would need to follow the restrictions of the proposed ordinance.

Mrs. Prough said if they build the structure larger than what it currently is, then they would need to meet the new standards. If they have an existing house in a subdivision and they want to add onto it, then they can do that as long as they meet the standards of the current ordinance.

Mr. Watkins said some of the changes that have been asked for would require the staff to operate under both the current and proposed ordinances.

Mr. Pharis said that most people aren't going to be aware of the proposed ordinance restrictions. He explained the city of Goshen's process at this time. They have areas where the zoning is not appropriate for the use. Mr. Pharis said his office is in an M-1 zone and he has a B-1 use. When they rezone a property, they mail notices to every property owner, have a public hearing, the homeowners can come in to speak, the Plan Commission meets, and after a vote is done, the Plan Commission's recommendation is sent to the City Council. He said if you're going to rezone an agricultural subdivision to residential, then he feels the owners of that subdivision should be notified so they can come to the meeting and offer their comments. He said he understands it would take a long time to complete that process. Mr. Watkins said he didn't feel that was reasonable.

Mr. Yoder said one decision they need to make today is to determine whether the document is ready for public hearing to get formal comments from the public.

Mr. Watkins said they should get the airport overlay into a format so it can be submitted as part of the public hearing. Mr. Yoder felt they should take in all of the comment from the public after they have the hearing.

Mr. Kolbus advised that there are two ways the Board can proceed. They can present the document they have now for public hearing, take the comments on that combined with what they have heard today, and then revise the document. It would be up to the Board if they want to take further comment on that or just have the Plan Commission review it one more time and then send it on. The other option is to take today's comments as a recommendation from this Board and make the changes as discussed, and then incorporate that into the draft that will be advertised. However,

he sees a problem with that because he thinks the Board wants to advocate specific changes from here on out as a result of the public hearing. He said everyone should come forward with changes they would like to see at the public hearing and then a total revision is done.

Mr. Yoder then asked for a formal motion so they can decide if they want this to go to a public hearing, or make continued revisions and come back with a public hearing later.

A motion was made by Mr. Miller that Draft E (Public Hearing Draft - clean copy) be set for public hearing at 6:00 p.m. on Thursday, April 14, 2011, at the Elkhart County Department of Public Services. The motion was seconded by Mr. Warner, and with a unanimous vote, the motion was carried.

10. Mr. Burrow reported that the staff received information from FEMA that the flood maps need to be updated by August 2, 2011, as Draft E (zoning ordinance) does not comply with federal and state regulations. According to Mr. Burrow, the consultant assured them that he had already reviewed this matter with FEMA.

In addition to that, he said they have to take six ordinances of adoption for those floodplains to all municipalities under Elkhart County's jurisdiction by Aug 2, 2011. If they do not meet that deadline, he said everyone would probably have to be paying 10 percent more on their flood insurance. Mr. Burrow said he sent corrections to our consultant about a week to two weeks ago, but he has not heard back from him. Therefore, they may have to remove that out of the zoning ordinance and have it adopted independently of the zoning ordinance in order to meet the August 2nd deadline.

It was then clarified that the DNR is the certification you need for FEMA so Mr. Burrow said this should be approved sometime in June.

Mr. Doriot asked if he is suggesting they pull the floodplain portion out of the zoning ordinance at the public hearing next month and then have it inserted back in once it is updated. Mr. Burrow said they may have to. He turned this over to the consultant so it could be integrated into their document, but he said he has not heard whether the consultant has been hired to do that or not. Hopefully, he said that will be in place before the zoning ordinance is finalized.

Mr. Burrow said he would like a consensus from the Board today that it would be appropriate for the consultant to modify Draft E if they can get the floodplain issues taken care of. He reiterated that the consultant indicated at all of the meetings he had reviewed the flood plain issues with the DNR, but they said they never saw it until he sent it to them.

Mr. Doriot commented that the consultant is supposed to bring them an ordinance that is upgraded to all rules, regulations and legal standards so that should be under his contract. Mr. Doriot said the floodplain standards need to be revised by the consultant and Mr. Kolbus advised that those need to come to the Plan Commission at the public hearing.

Mr. Doriot said they might have to pull the floodplain standards out of the ordinance and act upon them separately. It is his feeling that the floodplain standards need to be in the ordinance so they can be put back into the ordinance after they are revised.

11. A motion to adjourn the meeting was made by Mr. Holt and seconded by Mr. Warner. With a unanimous vote, the meeting was adjourned at 11:21 a.m.

Respectfully submitted,

Kate Keil, co-transcriber

Kathleen L. Wilson, Recording Secretary

Mike Yoder, Chairman