

## **MINUTES**

### **ELKHART COUNTY PLAN COMMISSION MEETING**

**HELD ON THE 14<sup>TH</sup> DAY OF MARCH 2013 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, Jeff Burbrink, with the following members present: Tony Campanello, Doug Miller, Jeff Burbrink, Steve Edwards, Tom Stump and Frank Lucchese. Steve Warner, Roger Miller and Blake Doriot were absent. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Planning Manager; Mark Kanney, Planner; Duane Burrow, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Lucchese/Stump*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 14<sup>th</sup> day of February 2013, be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*D. Miller/Stump*) that the legal advertisements, having been published on the 2<sup>nd</sup> day of March 2013 in the Goshen News and the 28<sup>th</sup> day of February in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*D. Miller/Lucchese*) 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 Detailed Planned Unit Development known as **KUERT KOPF DPUD**, for Gloria Kopf & Kuert Concrete, Inc. represented by Jones Petrie Rafinski, on property located on the Southeast corner of SR 15 and US 20, common address of 57040 SR 15 in Jefferson Township, zoned B-3, B-3 PUD and DPUD-M-1, was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #57040SR 15-121105-2*.

Mr. Burrow stated that the Stormwater Pollution Prevention Plan that all Secondary's must comply with prior to approval was not completed or approved at the time of last month's hearing, but since that time it was brought into compliance.

Mr. Burrow pointed out that, on the plat the Staff was asking the Plan Commission to forward to sign, there is a notation of a "Ditch Variance" on the face of the plat. He said there is an item "To Be Recorded" also noted, but this document has now been recorded and the plat Mylar will have the recording number on it. Mr. Burrow said that this petition does not require a public hearing.

The Board examined said request and after due consideration and deliberation:

**Motion: Action:** Approved, **Moved by** Tom Stump, **Seconded by** Frank Lucchese, that

the Advisory Plan Commission recommend to the Board of County Commissioners that Secondary approval of this Detailed Planned Unit Development Plat be granted in accordance with the Staff Analysis with this document to be sent to the Board of County Commissioners meeting on March 18, 2013, along with the DPUD Ordinance.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 6).

**Yes:** Tony Campanello, Steven Edwards, Douglas Miller, Jeff Burbrink, Tom Stump, Frank Lucchese.

6. The application for Primary approval of a six lot major subdivision to be known as **SHERCK ESTATES**, for R & B Sherck Land, Inc. represented by Brads-Ko Engineering & Surveying Inc., on property located on the East side of CR 31, 1,758 ft. South of CR 10 in Washington Township, zoned A-1, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #0CR 31-130201-2*.

Mr. Kanney read from a letter received from Ronald G. Sherck, President, on behalf of R & B Sherck Land, Inc. requesting that the Elkhart County Plan Commission table the public hearing scheduled for March 14, 2013 regarding the request for Primary approval of a six lot major subdivision and requested that it be rescheduled for a public hearing on April 11, 2013 *[attached to file as Petitioner Exhibit #1]*.

Mr. Burbrink asked if there was anyone present for or against this petition and, if so, could they come back April 11<sup>th</sup>. One of the neighboring property owners said it was difficult to get off work and he had a couple of concerns. Mr. Kolbus stated it was up to the Commission whether they would take his comments. He explained that those comments could be kept as part of the public record and they could act on the request to table if they would like.

The neighboring property owner stated that next week there is another hearing for the 3 to 1 variance. He took off work today, he will take off again next week for the variance, and then for the April 11<sup>th</sup> meeting. He explained it would add up to six to eight hours off work and that would be difficult for him financially. Mr. Lucchese stated that he had no problem with hearing from the resident.

Mr. Burbrink asked if there was anyone present that wanted to speak in favor of this petition. There was no response. He then asked if there was anyone opposed to the petition. He then requested that the people opposed to the petition come to the podium for their comments.

Mike Leiter, 16078 CR 10, Bristol, lives to the north of the Sherck property and he moved there 13 years ago. He said the property has a rolling landscape and he checked with the soil people and they told him they would need a lot of mound systems in this area. Mr. Leiter does not want the water to trickle down on his property, but he had been told it wouldn't. Behind his house is a swampy wetland that is unbuildable and there would be water in the basement if someone tried to build in that area.

Mr. Leiter's concern is the stream that is on the East side of the property. He said it is a nice little stream and they are going to put a road in the back. He thought there would be drainage issues and runoff with the salt, sand, and fertilizer from the properties. The residents want the landscaping to emulate golf course type lawns, but his concern is the water.

Mr. Leiter reiterated that there is a pond on the property and asked what should be done with that. He appreciated that the landowner was trying to make the property better, but in the next five to eight years while they continue to build who would monitor that road. He asked if this was a

public road that taxpayers plow and since he lives at a dead end would he have to call the police when kids go back there. He did not feel that he could police that road. Mr. Leiter mentioned that there is livestock in that area, so the concern is for him and his neighbors. He was concerned if kids access his property the fences would get cut he and his neighbors would be responsible for their livestock.

Mr. Leiter stated he just wanted to protect the river and his property. Mr. Burbrink said that the Plan Commission would take his comments under advisement.

Andy Helfrich, Attorney with Barnes & Thornburg LLP, 121 West Franklin Street, Elkhart, stated that this piece of property that is at issue is at the heart of some litigation and they represent the plaintiff in that case. He indicated that his firm sought a restraining order and injunction preventing R & B Sherck Land, Inc. and its principle, Dr. Sherck, with proceeding with this meeting. He was not aware that the Plan Commission received the request to continue the hearing until late yesterday, but he was glad that they requested it and Mr. Helfrich's firm is in favor of its continuance to the April 11<sup>th</sup> meeting.

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

**Motion: Action:** Tabled, **Moved by** Steven Edwards, **Seconded by** Frank Lucchese, that this request be tabled until the April 11, 2013, meeting of the Advisory Plan Commission.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 6, No = 0, Abstain = 0).

*Since the Plan Commission was ahead of schedule they decided to hear the Staff Items.*

7. *Stanley L. Marks & Judy E. Marks – Review and approval of Written Commitment (1407SNappaneeSt-13017-1) - Duane Burrow*

Duane Burrow stated that last month the Plan Commission approved a rezoning and accepted the commitments from the property owner concerning that rezoning. Part of the new process is to bring the Commitment form back to the Plan Commission to be accepted and put into the record. Mr. Burrow explained that the Board of Zoning Appeals has been using the Commitment form for a while, so the BZA is more familiar with it. However, the Plan Commission has just begun to use this as a process which assists with reducing the need to require Planned Unit Developments.

Mr. Burrow said the Stanley L. Marks & Judy E. Marks petition received a favorable recommendation and he is just bringing their Commitment form for signature. He requested that they adopt it and place it in the record. Mr. Burrow planned to take it to the March 18, 2013 Board of Commissioners meeting for their review and possible adoption of the actual Ordinance.

Mr. Kolbus pointed out eight items were listed in the Staff Report that the Plan Commission approved as part of the recommendation and he recommended that it is consistent with the Plan Commission's action last month. Mr. Burbrink reminded the Board that he was not at the meeting in February; therefore, he would abstain from the vote process.

**Motion: Action:** Approve, **Moved by** Steven Edwards, **Seconded by** Tom Stump that the Written Commitment along with the eight items be adopted and sent to the County Commissioners for their review and adoption of the Ordinance.

**Vote:** Motion passed (**summary:** Yes = 5, No = 0, Abstain = 1).

**Yes:** Douglas Miller, Frank Lucchese, Steven Edwards, Tom Stump, Tony Campanello.

**Abstain:** Jeff Burbrink.

8. *Martin Animal Bedding (CR 17) – Recertification of Development Plan (PUD Plat and the Site Plan Support Drawing – Duane Burrow*

Mr. Burrow went through the modifications that were made to the Site Plan/Support Drawing after the Plan Commission had recommended approval for this petition. He said the Site Plan/Support Drawing went to the Board of County Commissioners and they made some modifications to it and the petitioner agreed to those modifications. The Ordinance has approximately 30 pages of documentation in it and the attempt was to try to reflect those major changes on the documents. Usually the Detailed Planned Unit Development Site Plan/Support Drawing is the driving force for permit issuance and for the plat itself, so the Staff wanted to make sure the documents coincided with each other.

Mr. Burrow stated one of the changes on the amended Site Plan/Support Drawing was indicated as triangle 4, Elkhart County Advisory Plan Commission Certification, and the recertification statement does include the fact that if there is a conflict the narrative of the Ordinance will override the graphics. He said that is unusual, but because of the extensive nature that the Board of County Commissioners modified the request they wanted the text to have standing rather than the graphics. Mr. Burrow explained that the Board would be recertifying that these modifications are acceptable in this instance. This will be presented to the Board of County Commissioners Monday, March 18<sup>th</sup>, so they can get this matter resolved.

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Steven Edwards that the Advisory Plan Commission recertify the Site Plan/Support Drawing and the DPUD Development Plan.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 6).

**Yes:** Douglas Miller, Frank Lucchese, Jeff Burbrink, Steven Edwards, Tom Stump, Tony Campanello.

9. *Copperfield Seventh (Extension) – Request one year extension of Primary approval – Mark Kanney*

Mark Kanney submitted a letter from Gregory Shock of Brads-Ko Engineering & Surveying, Inc. on behalf of Fireside Homes asking that the Primary plan approved in 2006 be granted a one (1) year extension *[attached to file as Petitioner Exhibit # 1]*.

Mr. Kanney stated that one of the attachments to the letter included a copy of the overall plan for the Primary that was approved and the third page indicated the remaining 11 lots that are unplatted. He also included a history page for this subdivision. Mr. Kanney pointed out since 2011 the Plan Commission recommended approval of an extension for these 11 lots, but because of the economy it never happened, so he would like to extend it another year from now. Mr. Burbrink wondered if they need more than a year, but Mr. Kanney pointed out this is the second time they've requested an extension.

**Motion: Action:** Approve, **Moved by** Douglas Miller, **Seconded by** Frank Lucchese that the Advisory Plan Commission grant a one (1) year extension from today for the Copperfield Primary plan.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 6).

**Yes:** Douglas Miller, Frank Lucchese, Jeff Burbrink, Steven Edwards, Tom Stump, Tony Campanello.

10. *Zoning Ordinance - Module I Review*

Brian Mabry asked the Plan Commission if they had any questions on Module 1. He finished the presentation at the last meeting and Mr. Godlewski mentioned that the Plan Commission should think about until this meeting to see if there were any questions on Module 1.

Mr. Stump inquired whether any of the Policy Committee members had any questions or concerns. Mr. Mabry thought their main concerns pertained to what is in the draft right now about the as-builts and how to most effectively address the concern of projects not matching up with what was approved. He stated that they were going to have a workshop pertaining to that issue after this Plan Commission meeting.

11. The application for a zone map change from A-1 to a Detailed Planned Unit Development-A-1 to be known as **ANCHOR RIDGE D.P.U.D. – PHASE TWO**, for BIG M, INC. & Marv Schmucker (developer) represented by Brads-Ko Engineering & Surveying Inc., on property located on the East side of SR 13, 3,000 ft. South of SR 120, common address of 53254 SR 13 in York Township, zoned A-1, was presented at this time.

Duane Burrow presented the Staff Report/Staff Analysis, which is attached for review as *Case #53254SR13-130131-1*.

Mr. Burrow said this amendment to the DPUD would include increasing the real estate and establishing an additional three lots accessing a private drive which will take the development from six existing buildable sites to nine sites.

Attorney Charlie Zercher, Kindig & Sloat, 102 Heritage Parkway, Nappanee, stated that Brads-Ko had filed this petition and Mr. Shock asked him to represent them. Mr. Zercher displayed and submitted a site plan outlining the areas of the current DPUD and the property in question *[attached to file as Petitioner Exhibit #1]*. The plat indicated that BIG M, Inc, owned property to the north and Marv Schmucker is the developer of the original DPUD. There are six lots that are part of the DPUD, and two residences are located on lots 2 and 3 as the Staff Report indicates. Mr. Zercher said all of the lots are served by a private roadway onto SR 13. There is a pole barn on lot 2; and in addition to adding these three lots, there is a proposal to change the lot lines, so currently, they plan to add a portion of lot 2 to lot 9. They also plan to construct a pavilion or recreational building between the pond and the drive. The residences on lot 2 and 3 are served by a private well and septic. Mr. Zercher said the soil and water test on lot 7, 8, and 9 indicated that there are no issues. Lots 7, 8, and 9 consist of a combined 14.555 acres and the addition of a residence on each lot with minimal tree removal, current drainage, and surrounding barriers to neighboring properties will not be affected. The additional storm runoff, as Brads-Ko indicated in their narrative, is negligible and any additional storm runoff can be handled by the wetlands that are located within lot 7, 8, and 9.

Mr. Zercher stated that at some point in the future, when residents are located on all nine of the lots, the estimated daily increase in traffic movements onto SR 13 would be approximately 72 trips. The only single point of access for lots 7, 8, and 9 will be a private drive from the existing residence to a private roadway, which is part of a common area owned by the Homeowner's Association, and the mail and garbage pickup will be in this area. Mr. Zercher asked that the Staff give this request a favorable recommendation. Greg Shock of Brads-Ko Engineering and Surveying was present for any questions pertaining to this petition, but there were none.

There were no remonstrators present.

A motion was made and seconded (*Burbrink/Lucchese*) 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:

**Motion: Action:** Approve, **Moved by** Jeff Burbrink, **Seconded by** Steven Edwards, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved in accordance with the Staff Analysis.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 6).

12. The application for a zone map change from M-1 to a Detailed Planned Unit Development M-1 to be known as **FAIRFAX PARK DPUD**, for Southern Cross Investments, LLC represented by Jones Petrie Rafinski, on property located on the North side of Charlotte Avenue, 750 ft. West of CR 24, common address of 28255 Charlotte Avenue in Baugo Township, zoned M-1, was presented at this time.

*\*It is noted Tony Campanello stepped down from the Board for this public hearing due to a potential conflict of interest.*

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #28255CharlotteAve-130204-1*.

Peter Schnaars, JPR Jones Petrie Rafinski, 4703 Chester Drive, Elkhart, was present to represent the owner and prepared the plans for this petition. Mr. Schnaars indicated that they are in agreement with the Staff's recommendations and he has worked with them to accommodate their concerns. He asked for the approval of Fairfax Park DPUD.

There were no remonstrators present.

**Motion: Action:** Approve, **Moved by** Frank Lucchese, **Seconded by** Jeff 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:

**Motion: Action:** Approve, **Moved by** Frank Lucchese, **Seconded by** Tom Stump, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved in accordance with the Staff Analysis provided:

1. The drainage facilities are upgraded as proposed.
2. That the internal access agreement becomes part of the DPUD document.
3. That signage documented on signage plan be considered the limit for signage on these lots; any increase in size would require Plan Commission approval.
4. That this DPUD approval is based on the submitted documents:
  - a. Fairfax Park DPUD – Narrative (amended 2-22-13)
  - b. Fairfax Park existing signage plan (amended 2-22-13)
  - c. Fairfax Park Site Plan Support Drawing (amended 2-22-13)

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 5).

**Absent:** Tony Campanello.

13. The application for Secondary approval of a Detailed Planned Unit Development M-1 known as **FAIRFAX PARK DPUD**, for Southern Cross Investments, LLC represented by Jones Petrie Rafinski, on property located on the North side of Charlotte Avenue, 750 ft. West of CR 24, common address of 28255 Charlotte Avenue in Baugo Township, zoned M-1, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #28255CharlotteAve-130204-2*.

Mr. Kanney stated that one of the conditions that needed to be fulfilled was the drainage and

the access agreement being part of the DPUD itself.

Mr. Burbrink inquired about the signage and Mr. Kanney said the signage is existing. The site is for construction and they are just trying to fine tune it.

Peter Schnaars, JPR Jones Petrie Rafinski, 4703 Chester Drive, Elkhart, indicated that during the Primary plat site plan analysis the Staff identified certain concerns about the deficiencies in the drainage. The owner agrees with that and is getting bids right now to improve the drainage for the site plan. He is in agreement with the tabling at this point.

There were no remonstrators present.

**Motion: Action: Moved by** Frank Lucchese, **Seconded by** Jeff 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:

**Motion: Action:** Tabled, **Moved by** Jeff Burbrink, **Seconded by** Steven Edwards, that in accordance with the Staff Analysis, the Advisory Plan Commission table this request for Secondary approval until the conditions of approval are fulfilled.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 5).

**Absent:** Tony Campanello.

*\*Tony Campanello returned to the meeting.*

14. The application for a zone map change from A-1 and R-1 to M-1, for **Rikki F. and Katherine R. Kain (owner) and R & R Property Leasing, Inc. (buyer)** represented by Robert F. Weaver, Anchor Construction, LLC, on property located on the West side of CR 15, ¼ mile South of CR 6 in Osolo Township, zoned A-1 and R-1, was presented at this time.

*\*It is noted Doug Miller stepped down from the Board for this public hearing due to a potential conflict of interest.*

Brian Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #000CR 15-130204-1*.

Mr. Mabry stated that a letter requesting that this petition be tabled until April 11, 2013 was received by email on March 4, 2013 from Anchor Construction. He indicated that there were quite a few people in attendance to hear this request and a large volume of letters had been received both for and against approval of this petition. Mr. Mabry said that Staff recommended tabling this request until the April 11<sup>th</sup> meeting.

Mr. Burbrink requested that a representative from Anchor Construction address the tabling of this petition.

Bob Weaver, Anchor Construction, 4085 Meghan Beeler Court, South Bend, was present to represent MorRyde, who is now the owner of the property for this petition. He explained that his firm had met with the immediate neighbors to the South two months before applying for the request. Mr. Weaver informed the neighbors and the school about what MorRyde plans to do, and wanted to find out about their concerns, and to mitigate or alleviate them in any way they could. In the discussions with the school system, the school suggested a possible land exchange, but they have not had an opportunity to determine exactly what they want to do. So, instead of MorRyde coming to the Plan Commission for a proposal to rezone the entire piece of property, they would like to work out an agreement with the school that would be mutually beneficial. He said MorRyde is anxious to proceed, but they want to alleviate any concerns the neighborhood had and agreed to an extension so that the school would have an opportunity to consider the option of a land exchange,

which is the reason for tabling this request. He said they made a decision to request tabling it March 4<sup>th</sup>, so the Plan Commission would be made aware of it in advance.

Mr. Burbrink requested that the Board discuss whether they wanted to table the request or not. He stated that he did not think it was fair to the people that might have wanted to attend this meeting to voice their opinion, but later learned that it had been tabled.

Mr. Stump asked Mr. Weaver about the land exchange, and thought the property shown in his packet would not be the property they would be discussing in a month. Mr. Weaver confirmed that was correct. He clarified that they have looked at a 10 acre land exchange with the school, but they could be back in a month with the 21 acres as MorRyde originally proposed. He felt it would be prudent for everyone to see what the ultimate property would look like, also.

Mr. Kolbus commented, at an earlier Hearing today, there was some public comment from an individual who said he could not return to the meeting. He did not think it would be appropriate to take public comment today, because Mr. Weaver did not know if this would be the same petition next month. He advised that he could choose to table the petition and not have a public hearing at this time, due to the fact that, it may be a different petition next month.

The Board examined said request and after due consideration and deliberation:

**Motion: Action:** Tabled, **Moved by** Tom Stump, **Seconded by** Douglas Miller, that in accordance with the Staff Analysis, this request for a zone map change from A-1 and R-1 to M-1 be tabled by the Advisory Plan Commission until the April 11, 2013, Plan Commission meeting.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 6).

15. See page 3 & 4, item #8, for the staff item regarding *Martin Animal Bedding (CR 17)*.
16. See page 3, item #7, for the staff item for *Stanley L. Marks & Judy E. Marks*
17. See page 4, item #9, for the staff item for *Copperfield Seventh*.
18. See page 4 & 5, item #10, for the staff item regarding *Module 1 Review of the Zoning Ordinance*.
19. The meeting was adjourned at 10:05 a.m.

Respectfully submitted,

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Sandra Herrli, Recording Secretary

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Jeff Burbrink, Chairman