

MINUTES

ELKHART COUNTY PLAN COMMISSION MEETING

HELD ON THE 13TH DAY OF FEBRUARY 2014 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: Jeff Burbrink, Doug Miller, Steve Warner, Roger Miller, Steve Edwards, Tom Stump, and Frank Lucchese. Tony Campanello 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 (*R. Miller/Lucchese*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 9th day of January 2014 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Warner/Stump*) that the legal advertisements, having been published on the 1st day of February 2014 in the Goshen News and the 31st day of January 2014 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*R. Miller/Edwards*) 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.

ELECTION OF OFFICERS FOR 2014

Mr. Burbrink said that during the January 2014 election of officers, he was not sure that the slate that was considered was that which the nominating committee had offered. Mr. Burbrink then read from a corrected copy of the 2014 Officers and Appointments, on which Steve Warner appears as Plan Commission chairman, Roger Miller appears as Plan Commission vice chairman, and Steven Edwards appears as Plan Commission secretary.

The Board examined the corrected 2014 Slate of Officers and Appointments, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Tom Stump, **Seconded by** Douglas Miller, that the Advisory Plan Commission approve the corrected 2014 Slate of Officers and Appointments (see attached). The motion was carried with a unanimous vote.

6. The application for the vacation of East/West alleys and North/South alley right-of-way between CR 13 and Depot Street and South of CR 142, for *Marvin H. & Ruth A. Schmucker, et al.* represented by B. Doriot & Associates, on property located on the East/West alleys and North/South

alley between CR 13 and Depot Street, and South of CR 142, in Union Township, zoned B-1, B-3, and R-3, was presented at this time.

Brian Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #0-140107-1*, adding that there is no physical evidence of right-of-way on the subject ground.

Charles Buzzard, B. Doriot & Associates, PO Box 495, New Paris, was present on behalf of the petitioners but offered no additional comments.

There were no remonstrators present.

A motion was made and seconded (*R. Miller/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** Roger Miller, **Seconded by** Steven Edwards, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for the vacation of East/West alleys and North/South alley right-of-way between CR 13 and Depot Street and South of CR 142 be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

Yes: Douglas Miller, Frank Lucchese, Jeff Burbrink, Roger Miller, Steve Warner, Steven Edwards, Tom Stump.

7. The application for the vacation of North/South alley right-of-way between Ruskin Avenue and Whittier Street and between Kreighbaum Street and SR 19, for *W. Joel Nichols, et al.* represented by B. Doriot & Associates, on property located on the North/South Alley right-of-way between Ruskin Avenue and Whittier Street and between Kreighbaum Street and SR 19, in Baugo Township, zoned B-3 and R-2, was presented at this time.

Brian Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #0-140107-2*.

Charles Buzzard, B. Doriot & Associates, PO Box 495, New Paris, was present on behalf of the petitioners. He stated that the primary petitioner, Joel Nichols, owns 1 lot on the West side of the subject alley and 3 lots on the East side and that the vacation will allow the consolidation of these properties.

There were no remonstrators present.

A motion was made and seconded (*Warner/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** Jeff Burbrink, **Seconded by** Steven Edwards, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for the vacation of North/South alley right-of-way between Ruskin Avenue and Whittier Street and between Kreighbaum Street and SR 19 be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

Yes: Douglas Miller, Frank Lucchese, Jeff Burbrink, Roger Miller, Steve Warner, Steven Edwards, Tom Stump.

8. The applications for a zone map change from a General Planned Unit Development-M-1 to a Detailed Planned Unit Development-M-1 to be known as **BRISTOL PARK FOR INDUSTRY**

PHASE 2C & 2D DPUD, for Secondary approval of a Detailed Planned Unit Development known as **BRISTOL PARK FOR INDUSTRY PHASE 2C**, and for Secondary approval of a Detailed Planned Unit Development known as **BRISTOL PARK FOR INDUSTRY - PHASE 2D** for Wagner Land Development Co., Inc. (owner), and Nuway Construction (developer) represented by Jones Petrie Rafinsky, on property located on the North side of Commerce Drive, 1,400 ft. West of CR 29, in Washington Township, were presented at this time.

Duane Burrow presented the Staff Reports/Staff Analyses, which are attached for review as *Case #COMMERCE DRIVE-140107-1*, *Case #1650COMMERCE DRIVE-140107-1*, and *Case #000COMMERCE DRIVE-140107-1*. He explained that phase 2C establishes the portion of the subject area within Bristol town limits and the Commerce Drive right-of-way as far East as the Bristol municipal boundary. Phase 2D establishes Commerce Drive right-of-way as far East as CR 29 and plats the portion of the subject area adjacent to the toll road. The 2 phases are being treated separately because the phase 2D Commerce Drive extension is currently within the county, but essentially the project only establishes one lot and an extension of Commerce Drive to CR 29. Mr. Burrow also reminded the Commission that the original GPUD prohibited extension of Commerce Drive.

Mr. Burrow went on to state that this project is moving forward with Bristol's approval, and Bristol is ensuring that infrastructure that will support the development will be in place in an appropriate amount of time, though technically speaking, the platted right-of-way currently within the county's jurisdiction is not compliant.

Mr. Burrow then summarized the petition, which is that the Plan Commission grant rezoning of the lot currently within Bristol town limits, which provides that the lot adjacent to the toll road be used for retention only, and which is that the Plan Commission grant the dedication of both portions of Commerce Drive right-of-way at question. He added that in lieu of surety for 2D are assurances by the Town of Bristol of timely annexation and establishment of rights-of-way and infrastructure.

In response to Mr. R. Miller's question regarding the time frame for annexation, Mr. Burrow said it would take about 3 months. He said he hoped for the accuracy of that forecast so that ordinances are not taken to the wrong legislative bodies. Ordinances, though, can be modified as necessary to reflect annexation.

Ken Jones, Jones Petrie Rafinsky, 4703 Chester Drive, Elkhart, was present on behalf of the petitioners. He stated that design plans for the building to be constructed on the South portion of the subject property are complete. Road plans and sanitary sewer and water systems have also been designed. The Bristol Town Council has also assured him that the annexation's first reading will occur February 20, 2014.

Mr. R. Miller expressed interest in seeing the completion of the project and the extension of Commerce Drive, and Mr. Jones repeated that the plans are done and are in final review.

There were no remonstrators present.

A motion was made and seconded (*R. Miller/D. Miller*) 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** Tom Stump, **Seconded by** Frank Lucchese, that the Advisory Plan Commission recommend to the Bristol Town Board (**BRISTOL PARK FOR**

INDUSTRY PHASE 2C) and the Board of County Commissioners (*BRISTOL PARK FOR INDUSTRY PHASE 2D*) that the request for a zone map change from a General Planned Unit Development-M-1 to a Detailed Planned Unit Development-M-1 to be known as *BRISTOL PARK FOR INDUSTRY PHASE 2C & 2D DPUD* be approved in accordance with the Staff Analysis, based on the past actions of the Elkhart County Advisory Plan Commission and the Board of County Commissioners to rezone this property to General Planned Unit Development by Ordinance PC07-13.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

Yes: Douglas Miller, Frank Lucchese, Jeff Burbrink, Roger Miller, Steve Warner, Steven Edwards, Tom Stump.

Motion: Action: Approve, **Moved by** Douglas Miller, **Seconded by** Roger Miller, that based on the Staff Analysis, the request for Secondary approval of a Detailed Planned Unit Development known as *BRISTOL PARK FOR INDUSTRY PHASE 2C* be approved by the Advisory Plan Commission as the PUD Plat is in compliance with the proposed DPUD Ordinance and the Site Plan Support Drawing to be considered by the Town Council of Bristol.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

Yes: Douglas Miller, Frank Lucchese, Jeff Burbrink, Roger Miller, Steve Warner, Steven Edwards, Tom Stump.

Motion: Action: Approve, **Moved by** Steven Edwards, **Seconded by** Tom Stump, that the Advisory Plan Commission approve the request for Secondary approval of a Detailed Planned Unit Development known as *BRISTOL PARK FOR INDUSTRY - PHASE 2D*.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

Yes: Douglas Miller, Frank Lucchese, Jeff Burbrink, Roger Miller, Steve Warner, Steven Edwards, Tom Stump.

9. *Southwest Michigan Planning Commission—Wetland Partnership Project*

Mr. Mabry said two representatives of the Wetland Partnership Project, a joint effort of the Southwest Michigan Planning Commission and the Friends of the St. Joe River Association, were present to speak. Matt Meersman was present representing Friends of the St. Joe River, and Marcy Colclough was present representing the Southwest Michigan Planning Commission.

Matt Meersman came forward and introduced himself as a South Bend resident and president of Friends of the St. Joe River, a bistate organization concerned with all land that drains to the St. Joe River. Specifically, he works as a watershed coordinator in Michigan.

Mr. Meersman said the river and other bodies of water are assets needing protection, and protection of these assets leads to protection of the built environment. He explained that a watershed is an area of land that drains to a particular body of water and that every body of water has its own watershed. The body of water of particular interest to Mr. Meersman is the St. Joe River, to which 15 counties drain, seven of which are in Indiana. Elkhart County is among those counties, and 97 percent of the county drains to the St. Joe., via the Elkhart River and other tributaries. Watershed is an important topic, said Mr. Meersman, because pollution and flooding problems originate on land, not in the bodies of water themselves. He added that 60 percent of pollution comes not from point sources such as industrial discharge pipes but from field, street, and home runoff. Because treatment

of land is not regulated, watershed education comes from volunteers.

Mr. Meersman continued by stating that the desire for clean water for such things as drinking and recreation is universal, but the water concern that might be of most interest to the Plan Commission is flooding, which is affected most what happens on land. He said that prior to development, river levels did not fluctuate like they do now and that over 90 percent of water arriving at rivers came from the ground, not as a result of runoff. Indians traveling along the Sauk Trail could at one time walk across the St. Joe River during most of the year. He stated that water soaks into a natural, undisturbed landscape, but conversion of forests into fields and introduction of pavement change the movement of water.

Wetland, Mr. Meersman said, is any place where land meets water, whether the place is forested, swampy, or of some other nature. Legal definitions of wetland are normally based on at least two the following criteria: presence of water at or near the surface for at least part of the year, presence of plants suited to inundation conditions, and presence of hydric soils, those which form under conditions of inundation. Areas containing hydric soils are or were until very recently wetland, he added.

The Wetland Partnership Project exists for two reasons. First, wetlands must be understood not as wastelands but as providers of a service. Drainage was at one time incentivized in fulfillment of the concept of manifest destiny. Restoration instead is now incentivized because of the impact drainage had on flooding and water quality. Wetlands must be understood as “sponges on the landscape” and filters that remove sediment and weed-supporting nutrients from water arriving at rivers and lakes. Second, the loss of wetlands must be communicated. The St. Joe watershed area in general has lost 53 percent of its wetland, Elkhart County has lost 78 percent, and Indiana overall has lost 87 percent, Mr. Meersman said. Loss occurs through drainage or filling. Loss to agricultural development is through drainage, and ditches, tile lines, clay lines, and plastic perforated pipe have been the means for the rapid drainage desired. Loss to development such as road building is through filling. Mr. Meersman went on to explain that wetland loss has varied according to the St. Joe tributary at question, but the loss overall has been great.

With respect to restoration, Mr. Meersman said that the EPA has provided a grant that enables Friends of the St. Joe River to determine what lost wetland areas, if restored, would serve development functions such as flood prevention best and should thus be given priority for restoration, adding, though, that both preservation of existing wetlands and restoration of lost wetlands are important. The data generated by the project results in specific targets. Individual owners of land comprising a target area may be brought together and offered conservation easement incentives, under which development rights are surrendered in exchange for tax breaks. The resulting difference in the value of the land, which is ultimately undevelopable, is treated as a charitable donation. Individual owners of former wetland area that is now farmed are also offered cash, approximately \$3,000 per acre in some cases, in exchange for development rights such as those to farm. Under this offer, the federal government restores the former wetland in question, but the landowners retain ownership of the land and the use of it for such things as recreation.

Mr. Meersman also reemphasized the relevance of the Wetland Partnership Project. He said that when state or federal agencies are considering granting money, their interest is in water quality and nutrient removal—those concerns that affect development and the population in general. Thus the project does not simply benefit “the frogs and the turtles.” He cited the example of Benton

Harbor, where the St. Joe River empties into Lake Michigan and where hundreds of thousands of dollars are spent per year on sediment removal. "Spend some of that money up on the land . . . so we don't have to dig [the sediment] out at the end," Mr. Meersman said.

Mr. Meersman concluded by saying that he at one time assumed wetland protection had been in place since approximately the 1980s. He has since learned how few wetlands are actually protected, and he stated that local government has many means to protect valuable, service-providing wetlands. The work of keeping Elkhart County development viable does not have to be left to state and federal agencies.

Mr. R. Miller asked whether wetlands left undisturbed will eventually drain and become dry, and Mr. Meersman said all lakes do eventually become filled with vegetation. Wetland areas can eventually cease to be so, but new wetlands will always take their place as, for example, rivers change shape or migrate. Changes, though, are more likely to be to type, which is affected by water table level, than to presence at all.

Mr. R. Miller then asked why the Goshen dam pond has become swampy. Mr. Meersman identified dramatic wetland loss upstream of the mill pond as the reason. He explained that while initial forest-clearing agricultural development in this area left wetland, the area between the agricultural development and streams, undisturbed, subsequent development encroached on wetlands, the next available areas. Thus the natural sediment buffer between streams and initial agricultural lands was lost, and bodies of water began to contain sediment in suspension. He further explained that the increase of the drainage network has resulted in the delivery of more water to the stream that feeds the dam pond. The movement of that water is thus stronger and results in loss of sediment.

Mr. Meersman went on to say that the dam is a huge sediment trap, where water slows and sediment falls. The construction of more dams is not a solution for sediment removal, and the digging out of sediment for transport to fields is also not a solution, as sediment has been found to contain arsenic. Many communities in the St. Joe River watershed are facing similar problems generated by their own mill ponds. Mr. R. Miller followed up by asking whether government money is available for cleaning mill ponds, and Mr. Meersman redirected attention to wetland restoration, which provides the means for sediment control that will benefit mill ponds. Mr. Meersman gave the example of the Village of Paw Paw in Van Buren County, Michigan, where village tax money is being spent to install filter strips and restore wetlands upstream of the village mill pond, which is the centerpiece of the village and around which is the village's largest tax base.

Marcy Colclough mentioned that state and federal agencies have not been willing to fund sediment removal in Michigan because removal is not a permanent solution to sediment problems. Agencies have, however, been willing to fund upstream and land projects, which do provide solutions that are preventive and permanent.

Ms. Colclough then began her portion of the presentation by introducing herself as a member of the Southwest Michigan Planning Commission, a regional planning agency for a three-county area of Southwest Michigan, and participant with Friends of the St. Joe River. She said MACOG (Michiana Area Council of Governments) is the Southwest Michigan Planning Commission's Indiana counterpart, and the commission works on such boundary-crossing issues as transportation, economic development, and the environment.

Ms. Colclough said that while Mr. Meersman's emphasis was on what individuals and other

partners could do to advance wetland restoration, her interest is in demonstrating what planning commissions, those groups that decide where and how land may be developed, can do. County officials and other decision makers should be made aware of the services provided by wetlands, enumerated above, the degree of loss of those wetlands, and the options for restoration of wetlands.

Planning commissions and agencies should ensure that remaining wetland be kept on the landscape and refer landowners to the local agencies and organizations, such as Friends of the St. Joe River and the Elkhart County Soil and Water Conservation District, that will help them take advantage of the various incentives Mr. Meersman outlined. Planning commissions and agencies, said Ms. Colclough, should also consider using available grant money to purchase properties that contain or once contained wetland for use as parks.

Ms. Colclough then addressed master plans, stating they should contain discussion of services, such as sediment retention and floodwater storage, provided by wetland areas that are relevant to effective planning and development, as well as maps showing areas of residential, agricultural, and industrial development with overlays indicating existing and lost wetland. Those considering future development would then be able to see and avoid wetland occupying the areas considered. Other maps that should be included in a master plan are those showing floodwater storage effectiveness of various areas of wetland. Such maps would show areas still highly capable of storing floodwater, those that are less so, and those whose effectiveness has been greatly decreased due to development. Ms. Colclough mentioned that Friends of the St. Joe River has identified 12 different functions that wetlands serve, of which floodwater retention is only one, and a wetland effectiveness map for each of the 12 could in fact be placed in a master plan if desired. Master plans, said Ms. Colclough, should also contain goals pertaining to wetland conservation. Master plans do frequently address protection of streams, rivers, and lakes, but too infrequently do they address wetlands, the conservation of which is in fact prerequisite to the conservation of rivers and lakes. Goals must include both protection and restoration.

Turning her attention to implementation of protection measures, Ms. Colclough said that requirement by a land use plan that developers avoid wetland areas would represent one, "requirement" end of a "continuum" of implementation. The option of open space development in a land use plan might represent the other, or "allow," end of the continuum. A middle point on the continuum might be "encourage" and include incentives for wetland protection.

With respect to the requirement end, local projects should be required by local planning agencies to demonstrate adherence to federal and state laws regarding wetlands. Many Michigan communities do not require that wetland areas and hydric soils even be shown on project site plans. Appearance of wetland areas on site plans would alert planning agencies to those areas that at times lack federal or state protection. Planning agencies can then require movement of development despite lack of higher-level protection. Local planning agencies should also adopt general standards that explicitly state interest in protecting wetlands, minimizing impact on them, restricting the alteration and removal of significant natural features, and preserving natural topography. Another requirement, said Ms. Colclough, could be that for low-impact development, which requires that developers "slow [water] down, spread it out, and soak it in" rather than direct it to a pipe and get it off an area as quickly as possible, and thereby raise potential for flooding events.

Entire ordinances can also be written that protect otherwise vulnerable wetlands lacking state or federal protection. Approximately 20 communities in Southwest Michigan have adopted

such ordinances, and standard language is available to assist in their creation. A further requirement-end option for planning agencies to exercise in wetland protection is the overlay district concept, by which a protection district is created and placed over an existing agricultural, residential, or industrial district. Such a district can place regulations on maintenance of water quality and impose wetland structure or septic setbacks, a portion of which can contain an untouched, “no-mow” zone. The widths of these setbacks depend on, among other things, the types of nutrients reaching the filtering wetland area in question. A setback of 100 ft. is standard for phosphorus and sediment filtration. Nitrogen filtration requires a setback of approximately 200 ft. Setbacks for wildlife protection may be up to 1,000 ft.

Yet another option on the requirement end of the continuum is restriction of building on hydric soils, the restriction most effective for preserving opportunities for wetland restoration. Areas containing hydric soils, no matter their current appearance, are the best candidates for restoration. Former wetlands that retain hydric soils redevelop into wetlands quickly and easily.

Open-space developments are an example of a provision that should be on the “easy,” “allow,” or by-right end. Open-space developments are those which include existing wetlands in open areas. Such developments should be incentivized through more lenient setback and lot size requirements, or density bonuses.

In conclusion, Ms. Colclough asked that the Plan Commission allow development to proceed in a manner that encourages growth while protecting assets. Ms. Colclough at this time distributed to the Board a two-page flyer titled “Wetland Wonders” and a handout that contained a checklist for use by planning and zoning staff in evaluating their jurisdictions’ level of wetland protection, and praised Elkhart County’s consideration of restriction of building on hydric soils as a “step in the right direction.”

Mr. Meersman then added that Friends of the St. Joe River is working with MACOG to develop a GIS feature that displays the significance of a wetland area of interest to the user for any of the various functions mentioned above. The feature should be available by summer or fall 2014. Mr. Godlewski mentioned that a test site is available for viewing now. Mr. Meersman also stressed that no-mow zones, where the goal is the establishment of deep-rooted vegetation, do allow for occasional mowing or burning, and that landowners will retain access to water frontage despite building setbacks imposed as part of local wetland regulation.

Mr. Kolbus asked whether the PowerPoint presentation used during the discussion could be forwarded to the Plan Commission members, and Ms. Colclough said she would provide it.

Mr. Stump commented that while the presenters quoted high percentages of wetland acreage loss, they did not quote acreage of productive farmland, which actually feeds people, gained through drainage.

10. *Certification of Residency Form for Tony Campanello, Citizen Member Re-appointment*

Chris Godlewski stated that this item would need to move to March 2014 as Mr. Campanello was absent for the February 2014 meeting. Mr. Godlewski explained that the purpose of the certification is verification of Mr. Campanello’s residence in Elkhart County. The certification is necessary for his appointment to a new four-year term following the end of his current term. Mr. Kolbus added that the certification is done only during initial appointment and

reappointment. Annual recertification is not necessary unless the appointment itself is annual.

11. ***Zoning Ordinance/Contract Update***

Mr. Godlewski said that Steve Warner gave him the name of a person who could provide a scope and outline concerning the cost of adding graphics to the new zoning ordinance. Mr. Godlewski and Mr. Mabry have met with her, and Mr. Godlewski will review her proposal.

With respect to the zoning ordinance draft itself, Mr. Godlewski said that the staff and policy committees will begin meeting again in April 2014 for a step-by-step review of the second half of the draft, which is module 3, articles 6 and 7. Drafting will occur in February and March 2014. Mr. Kolbus is drafting portions pertaining to enforcement and nonconforming uses, Mr. Kanney, Mr. Burrow, and Mr. Godlewski are drafting those pertaining to definitions, and Mr. Mabry is drafting articles 6 and 7. Mr. Godlewski stated he anticipated completion of the entire process by December 2014.

During a recent policy committee meeting, residential development in agricultural areas was discussed, said Mr. Godlewski, and goals were retention of all current standards, such as those for lot size, and the addition of limitations for development on wetlands. It was determined that development in flooding, or wetland, soils, which cover approximately 17 percent of the county, should be limited. Mr. Godlewski emphasized that the addition of this limitation is but a proposal, but he has not received objection from anyone he has spoken with.

Mr. Godlewski, in response to a question from Mr. Stump, then clarified that he had been using the terms *wetland* and *marginal area* synonymously. Mr. Godlewski explained that staff picked the poorest soils for development—approximately 17 types—and mapped them. Anyone viewing the map would be able to know where building is not permitted, but variances permitting building in some circumstances would be made optional for landowners as part of the new restrictions.

Recalling a recent proposal for development on a 32-inch water table, Mr. Warner expressed agreement with the restrictions and past reluctance to vote favorably for some projects because of soil problems.

Mr. Godlewski recommended that the Commission members review the map to gain an understanding of the soil types at question and offered to resend it to them, but Mr. Stump said that while water table concerns and soil type concerns are related, water table is a more important one. It is a more difficult problem to overcome, he said, and expressed skepticism at the emphasis on soil type.

Mr. R. Miller asked for confirmation that a landowner can encounter soil on which building is not permitted, request a variance, be granted one, and be able to build, and Mr. Godlewski confirmed that such building may occur, provided that the landowner submit the appropriate information. Mr. Burbrink clarified that such information would address engineering issues presented by poor soil.

Mr. D. Miller asked whether draft review would include discussion of how county ditch maintenance and the clearing of streams and rivers would impact drainage. He said, “From a building standpoint, if we can’t use the facilities that are there, that impacts some of those wetland areas and how builders can mitigate and make those properties viable for homeowners.” Mr.

Godlewski responded by saying that that was “the big picture” and that concern over soil type could be raised by the health department as well, in its determination of placement of septic systems, for example. The work of the ordinance draft, however, must focus on what the building department can control and what belongs in the ordinance; drains and septic systems can, though, be addressed at a later time “to make sure we’re all working together.”

Mr. R. Miller mentioned he had heard that the state, via new legislation, was to allow counties to make their own decisions regarding farm, grower, or animal protection in and around residential areas. Mr. Godlewski said he had heard of some discussion about documentation of agricultural operations used to harm those operations, but he and Mr. Stump stated they knew nothing more. Mr. R. Miller said he had been alerted by the phrase “right to farm,” and Mr. Kolbus stated that state agents have disguised themselves as farm work seekers and subsequently taken pictures documenting alleged animal abuses and that “they’re trying to curb that activity.” Mr. Burbrink and Mr. Lucchese stated that that sounded familiar.

Duane Burrow indicated that the state may take CAFOs (confined animal feeding operations) out of local regulation; regulation of CAFOs through local zoning would then no longer be permitted. Mr. Godlewski explained that CAFOs comprise the most intense category of agricultural use, with 1,500 or more animals such as dairy cows, for example, in a confined area. He also stated that while Elkhart County does contain some CAFOs, no CAFOs of that intensity are in the county. Mr. Burbrink said that CAFOs’ movement into state regulation would affect the county’s zoning rules, but Mr. Godlewski’s response was that “our standard is so high . . . you’d have to have a very considerable operation before you trigger local rezoning.” Mr. Stump said he thought such large operations were controlled by the state now, and Mr. Burbrink said that they are and that a zone that provides more protection is available through the current ordinance upon request. Mr. Burrow confirmed that a CAFO containing 1,500 or more animals comprises industrial farming, and Mr. Godlewski added that the required zoning is A-5, which is not in use in Elkhart County at this time.

Mr. Warner indicated that he was glad that the committees’ work has been moving along, and Mr. Godlewski said movement has been at a steady pace, leaving no stone unturned. Mr. Warner added that he has been pleased by the committees’ interest in communicating the results of discussion to the public.

12. *Response to “REQUEST FOR SUBDIVISION CONTROL AND ZONING ORDINANCE CHANGE(S)”*

Mr. Mabry called Commission attention to a letter from Jones Petrie Rafinsky and a staff response included in the members’ packets. The letter requests three amendments to the Subdivision Control Ordinance, and Mr. Mabry summarized the contents of the letter. The first request is that submittal of a SWPPP (Stormwater Pollution Prevention Plan) be moved from the time of submittal of a subdivision plat to the time of building permit issuance. The second request is that the Plan Commission rather than the Board of County Commissioners make final decisions on Secondary approvals for major subdivisions. The third request is for reinstatement of the industrial subdivision process, through which engineers or surveyors submit plats showing only subdivision boundaries and rights-of-way and which allows internal lots to be parceled out by metes and bounds rather than

by Plan Commission or Board of County Commissioners approval. The reason for the reinstatement request is the unpredictability of needed commercial and industrial lot sizes.

Mr. Mabry said staff response included agreement to the second and third requests but concern over the first. He requested Plan Commission discussion of the matter and direction to staff regarding what amendments, if any, to the Subdivision Control Ordinance should be considered, written, and submitted to the Plan Commission.

In response to Mr. R. Miller's request for clarification of the first request, Mr. Mabry said an approved SWPPP, which details a petitioner's plan for prevention of pollution during and after construction, must accompany each subdivision petition. JPR's request is that submission of a SWPPP not be required until the time of application for a building permit.

Staff's first concern is over contractors assuming responsibility for securing SWPPPs rather than the engineers who perform initial plat design. The concern is that building contractors assuming a project's readiness for a building permit may be surprised at the new requirements. Mr. Mabry did concede that awareness of the new procedure would build over time. A second concern is over the intent of SWPPPs, which is coverage of entire subdivisions, not individual lots.

Mr. Mabry said that a compromise option would be permission of late SWPPP submittal only in cases of industrial subdivisions and not in cases of residential subdivisions, as lot sizes in residential subdivisions are known at the time of plat submittal.

Mr. Mabry then added that he sees the industrial subdivision more as a nonresidential subdivision because commercial projects, whose final individual lot sizes are equally unpredictable, should be included. Following mention by Mr. Mabry that commercial developments have no minimum lot size, Mr. R. Miller said that a certain amount of paving calls for a certain amount of retention and that engineers should be responsible for retention design, not contractors. Mr. Mabry's response was that SWPPPs cover more than detention and should be provided by engineers. Mr. R. Miller gave the example of the decrease in size of a planned retention pond following increase in size of a building on a three-acre parcel and insisted that regulations provide for the amount of retention needed. "They're not something we guess at," he said. Mr. Godlewski indicated agreement with Mr. R. Miller's concerns, stating that in cases of such building size changes, a SWPPP should be submitted at the beginning of the process rather than at the end.

Mr. Marbach came forward at this time and indicated that drainage size and retention size are examined during site plan review and have nothing to do with the SWPPP. "The SWPPP is to protect that area after it's built and during construction. . . . The SWPPP is, once you have that layout done, how do you protect it, how do you build it, in a conservation method?" he said. Mr. R. Miller indicated understanding following Mr. Marbach's comments.

Mr. Burbrink said he asked Soil and Water staff for their opinion in response to JPR's letter, and staff stated ahead-of-time review was better. Planning and Soil and Water should have a sense that a project is professionally designed, Mr. Burbrink said.

Mr. Godlewski said that the three requests had to do with process only and not planning concepts. He also said that since Planning is at this time working on the new zoning ordinance and implementation of new permit software, amendments to regulations should wait until late summer or early fall 2014. Mr. R. Miller asked Mr. Godlewski what action he wanted from the Plan Commission in regard to JPR's letter, and Mr. Godlewski said this item should be moved to March 2014. Mr. Mabry asked whether a workshop is planned for March 2014, and Mr. Kolbus said that if

the Plan Commission needs more information before acting, the item should be assigned to the March workshop. But if the Commission has enough information now, it may act now.

Mr. Stump said that developers and the planners seem to agree to the second and third requests and asked for confirmation that staff had no objection to them, and Mr. Mabry confirmed but cautioned that if final decisions on Secondary approval for major subdivisions are to rest with the Plan Commission, approval of road bonds and plans will be required earlier, placing new pressure on developers to produce those items sooner. Developers would gain a quicker decision in exchange for a shorter period of time to produce surety and road plans. Mr. Stump said that if developers want the process to move more quickly, the tradeoff is realistic. Mr. Mabry then mentioned that Secondary approvals for PUDs will still have to receive Board of County Commissioners approval.

Mr. Lucchese said that the item regarding Secondary approvals for major subdivisions should be raised at the February 17, 2014, meeting of the Board of County Commissioners for consideration by the other two commissioners, and Mr. Godlewski agreed, saying the change would require an amendment.

Mr. Stump said the Plan Commission could vote on the JPR requests during the March 2014 meeting, and Mr. Godlewski said a workshop for discussion should be held following the meeting if no votes are taken. Mr. Kolbus said there is no need to rush. The SWPPP submittal matter and the matter concerning Secondary approval of major subdivisions seem to require workshop discussion, but the industrial subdivision matter does not. During clarification of staff concerns over the second JPR request for Mr. Stump, Mr. R. Miller mentioned that “we have trouble getting [road plans] in anyhow,” and Mr. Mabry reminded the Commission that in fact one Plat Committee item (Olive Minor) had to be tabled today for that very reason. Mr. Stump’s response was that that item has been in process for several months, and that petitioners should have things lined up.

Mr. Warner said discussion of the JPR letter would continue during the planning workshop of March 2014.

13. A motion to adjourn the meeting was made by Mr. R. Miller and seconded by Mr. Stump. With a unanimous vote, the meeting was adjourned at 10:46 a.m.

Respectfully submitted,

Daniel Dean, Recording Secretary

Steve Warner, Chairman