

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 13TH DAY OF AUGUST 2015 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, Steve Warner, with the following members present: Tony Campanello, Jeff Burbrink, Lori Snyder, Steve Warner, Roger Miller, Steve Edwards, Tom Stump, Frank Lucchese, and Blake Doriot. Staff members present were: Chris Godlewski, Plan Director; Jason Auvil, Planning Manager; Mark Kanney, Planner; Liz Gunden, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Miller/Burbrink*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 9th day of July 2015 be approved as submitted and the motion was carried unanimously.

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

4. The application for multiple corrective amendments to the text of the Elkhart County Subdivision Control Ordinance to change bonding requirements for subdivision improvements from prior to secondary approval to prior to recording of the plat; listed as follows: Section 3.17 PROVISIONS FOR COMPLETION OF IMPROVEMENTS, amending Subsection A - COMPLETION OF IMPROVEMENTS; Section 3.18 ADMINISTRATION AND ENFORCEMENT OF PERFORMANCE GUARANTEES, amending Subsection D - Release; Section 3.23 RECORDING OF SECONDARY PLAT by amending Subsection A - SIGNATURES REQUIRED; by adding Subsection B - Acceptance Required and C - Legal Effect; and amending APPENDIX B SECONDARY PLAT CHECKLIST - Subsection U, for the *Elkhart County Advisory Plan Commission*, for property located in the unincorporated areas of Elkhart County, the Town of Bristol, the Town of Wakarusa, the Town of Millersburg, and the Town of Middlebury, was presented at this time.

Mr. Auvil restated the content of the memo addressed to the members of the Plan Commission dated July 24, 2015, which was included in the Commissioners' packets.

There were no remonstrators present.

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

Mr. Kolbus reminded the Board that the amendment does not prohibit a developer from choosing to provide a bond before Secondary approval.

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

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Steven Edwards, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for multiple corrective amendments to the text of the Elkhart County Subdivision Control Ordinance be approved.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 9).

Yes: Blake Doriot, Frank Lucchese, Jeff Burbrink, Lori Snyder, Roger Miller, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello.

5. The application for a zone map change from R-1 to B-1, for *Candi L. Chupp (seller) and Thomas E. Miller (buyer)*, on property located on the southeast corner of CR 17 and Suburban Drive, west side of Christopher Drive, 800 ft. south of SR 120, common address of 54628 CR 17 in Washington Township, was presented at this time.

Ms. Gunden presented the Staff Report/Staff Analysis, which is attached for review as *Case #54628CR 17-150619-1*.

Brief discussion between Mr. Stump and Ms. Gunden resulted in a conclusion that while the subdivision surrounding the subject lot does not have city sewer, part of the subdivision might have city water. Mary Ann Lorentz, an audience member whose comments had not yet been solicited, then interjected that the entire subdivision does not have city water or sewer.

** It is noted that the petitioner arrived late. Some audience remarks were therefore taken before the petitioner's.*

Mary Ann Lorentz, 21853 Christopher Dr., Elkhart, who asked that the Board follow the staff's denial recommendation, submitted a three-page document containing 51 signatures "requesting that the zoning be denied" [*attached to file as Remonstrator Exhibit #1*]. The signatures, she said, are of Suburban Acres property owners and residents who were asked whether they were "for or against." Those who were home at the time of the door-to-door solicitation signed against the petition, she concluded.

Arthur Green, 21886 Suburban Dr., Elkhart, began by comparing the cost of water now with its much lower cost 40 years ago, when he moved to the subdivision and water use was unmetered. The comparison reveals that some of what is done is not for the best, he said, and noted that the intersection of SR 120 and CR 17 has since become the busiest intersection in Elkhart County. He said that another entrance and exit for traffic is not needed on "that road," said that the proposed building is 50 ft. from Suburban Dr., and did not know why anybody would want to put a business there, where it would have "poor access" because of traffic. Mr. Green and the Board then agreed on the density of late-afternoon CR 17 traffic.

Mr. Green then observed that the lot in question has definite area and asked where the petitioner will get more area as his business increases. He also said that more business in an area already saturated by business will add insult to injury and cause more accidents.

Larry Tinsley, 21954 Christopher Dr., Elkhart, who lives next to the subject property, said that the area is business oriented and had no problem with the clean-up of the subject property, an eyesore and a mess that he is sick of looking at, and its use for a business. He noted that the property's proximity to CR 17 means that any new traffic generated would be "in and out," acknowledging that traffic is bad all along CR 17 and asserting that "this is a business town."

He said also that he had never seen "that petition" and that no one ever knocked on his door.

Mr. Miller mentioned that the subject property has no direct CR 17 access. Mr. Tinsley agreed but noted the short distance between the property's driveway and CR 17. He asserted also that the property had plenty of room for business use and offered to sell his own property to the

petitioner.

In response to Mr. Tinsley, Ms. Lorentz came forward again and said that traffic to the subject site would indeed enter and exit the subdivision, as the proposed driveway, she believed, was on Christopher Dr. She said also that the proposed driveway is a dirt driveway.

Tom Miller, the petitioner, 53855 SR 13, Middlebury, who is searching for a business site for his company, Mr. Appliance, said that the house on the subject property is acceptable but needs roofing, siding, and entryway work. The house, which will be a dispatch office, will continue to have a residential appearance; a 28×30 “residential garage” will be added at the back; and trees will be removed or trimmed to clean up the property. The chain-link fence will be left, he also said, and no more than eight parking spots will be added, as there will never be many people onsite.

In response to Mr. Doriot’s query, Mr. Miller said that Mr. Appliance is a company servicing residential appliances. Company trucks, which are out all day, will not be present on the subject property. Mr. Campanello asked whether appliances will be brought by truck to the site and asked what kinds of trucks are used. Mr. Appliance performs service in homes, but UPS and FedEx will deliver parts to the site, and employees will pick up stock from the site, said Mr. Miller. He then said, however, that employees, whom the company has “leave directly from their house,” will not necessarily have to visit the subject site in the morning and that “the inventory is basically on their trucks.” The company vehicles are vans, he also specified.

Mr. Campanello further queried about onsite retail and onsite repair and sale of old appliances. Mr. Miller answered that while people occasionally want to bring in old appliances, the company prefers that they not do that. The company does not sell used or new appliances, he said; it is strictly a service company. Mr. Campanello also asked how many vehicles the company presently has, and Mr. Miller answered that the company has four vans and four technicians, who take their vans home. Mr. Campanello asked whether the technicians will arrive at the site and pick up parts and paperwork. Mr. Miller said that the technicians will pick up parts but that they are dispatched without paper via iPad.

Mr. Campanello further asked whether Mr. Miller has bought the subject property, and Mr. Miller said that the sale has been made on the condition of B-1 approval.

Mr. Doriot asked Mr. Miller what kind of signage he was considering. Mr. Miller answered that he would maximize signage based on local sign company recommendations and cost. The sign company will handle permitting. Mr. Doriot then asked the staff what the property’s sign area limit is, and Ms. Gunden said it depends on frontage. Board members then pointed out that the property has frontage on three roads.

Mr. Miller then added that though he considered pole building construction for the garage, he will instead commit more money and build the building as a residential garage with siding. The building will not be a pole building, he stated, because of the location.

Roger Miller asked Tom Miller what kind of facility he has now. Tom Miller said that his current dispatch office is a 20×25 block structure. The structure is strictly an office, he said, and a pole barn on the current office site is used as a warehouse. Mr. Appliance, which has been in Elkhart County for nine years, does not presently have a place to “pull a van in right now,” he said, adding that he is excited about the project but that it is up to the community and developers.

Mr. Stump asked whether the subject site has access to city water. Mr. Miller’s answer was that the site, which is on well and septic, has no access to “city.” There is no record of the septic system, and hooking up to public utilities would be difficult, he said. He offered also that he would

connect to public utilities if the opportunity came up, but he will make the current septic system work in the meantime.

Mr. Warner asked about anticipated site traffic. One UPS delivery and one FedEx delivery are anticipated per day, answered Mr. Miller, and three people will work at the site during the day—two dispatch and customer service employees and Mr. Miller himself. Technicians, he further explained, sometimes will come in for parts, but parts are sometimes taken to technicians at worksites. Mr. Miller said he does not like to have technicians come to the office site if they do not need to, and summarized by saying that traffic will be minimal. He concluded by apologizing for his late arrival.

Ms. Lorentz came forward again, in response to Mr. Miller's remarks, and said that the neighborhood does not support construction of a large building for storage of appliances or parts, the traffic of four or five vans used for pickup and delivery, and construction of eight parking places. Her position of objection was strengthened by Mr. Miller's presentation, she clarified, mentioning also that no one in the area has access to city water.

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

Mr. Campanello noted that the additional traffic of four vans on Suburban Dr. and CR 17 would not present a nuisance to a subdivision of approximately 50 homes housing parents and children who are all car owners. Board members then observed that while the company has only four vans, eight parking spots are planned for the subject property. Mr. Burbrink observed that a B-1 zone, which will outlast any one property owner, can see many more uses than just office use, and stated he was not sure that a B-1 zone fits the subject area. He had no problem, however, with the arrival of the petitioner's exact business.

Mr. Doriot asked what the area of the subject property is, and Ms. Gunden answered 0.53 acres. Mr. Doriot asked whether the figure accounts for CR 17 right-of-way take, but no answer was given. He then noted the property dimensions written on the submitted site plan.

Ms. Snyder commented that the intersection of CR 17 and SR 120 is extremely dangerous, noted the proximity of Suburban Dr. to the intersection's traffic signal, and warned that the appearance of another business near the intersection could cause a lot of problems.

Mr. Doriot asked what uses can appear in the B-1 zone. Mr. Auvil said that the B-1 zone allows residential uses and light commercial activity. Mr. Doriot then expressed support for the petitioner's business but did not think the subject area was the right place for it. He said the proposal is not that intrusive but seconded above comments observing the openness of the B-1 zone. He also said that were he the business owner, he would not want to deal with CR 17 traffic every day.

Mr. Campanello asked Mr. Kolbus whether a commitment limiting the property's use to only that of the business in question could be levied. Mr. Kolbus's response was that the Board would have to table and write up a number of commitments.

Mr. Doriot then wanted to know whether the petitioner will build another building; whether the petitioner will add parking area; whether the above-given lot area accounts for CR 17 right-of-way take; whether there is enough area onsite for a secondary septic system; whether there is enough area onsite for both a new septic system and a secondary system, in case the existing primary system cannot be used; and whether the well will observe a 50 ft. separation from septic systems.

Mr. Kolbus queried the Board's willingness to allow commercial breach of the residential

area in question. Ms. Snyder indicated unwillingness, but Mr. Doriot said the area had already been breached, by Pheasant Ridge Development, which has office area north of the subject property.

Mr. Stump said that questions relating to septic systems would be answered by the availability of city water, but said also that he did not know why city water was available to Suburban Acres but not the subject property. Mr. Doriot's response was that "they don't have city water," and Mr. Stump said that the availability of city water is unknown.

The residential area is being intruded into already, agreed Mr. Miller, who noted that maintenance of the subject property similar to the petitioner's maintenance of his current facility would constitute a major improvement of the subject property.

Mr. Auvil then read the B-1 district's purpose statement from the zoning ordinance.

Mr. Doriot noted the Suburban Acres zone, R-2. Mr. Stump recalled a recent rezoning petition for property at the southeast corner of CR 20 and Page St. The petitioners wanted to place a laundromat onsite. Mr. Campanello remembered that the feasibility of septic system installation was a challenge to the project, and Mr. Stump commented that that challenge notwithstanding, the Board was ready to approve. He mentioned also that while laundromats require huge septic systems, the use now in question will not require such a system.

Mr. Campanello said that he could not approve based on the site plan submitted. He said that the petitioner should determine the availability of city water and sewer and submit a better site plan showing the location of the house and where the storage building and any new septic system will be placed.

Board members asked Mr. Auvil for examples of B-1 and R-2 uses, and Mr. Auvil read several from the zoning ordinance.

Mr. Warner cited the site's CR 17 location as the only factor preventing his endorsement of the rezoning. No CR 17 curb cut is requested, however, said Mr. Stump. Mr. Miller did not consider traffic an issue, but he and Mr. Doriot did express concern over lack of information.

At the time of Mr. Campanello's motion to table (see below) Mr. Kolbus sought confirmation that the purposes of tabling were to provide the petitioner time to answer the Board's questions enumerated above and to provide the staff time to work up commitments to be levied in the event of Board approval. The Board confirmed.

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

Motion: Action: Table, **Moved by** Tony Campanello, **Seconded by** Tom Stump, that the Advisory Plan Commission table this request for a zone map change from R-1 to B-1 for *Candi L. Chupp (seller) and Thomas E. Miller (buyer)* until the September 10, 2015, meeting of the Elkhart County Advisory Plan Commission.

Vote: Motion passed (**summary:** Yes = 8, No = 1, Abstain = 0).

Yes: Blake Doriot, Frank Lucchese, Lori Snyder, Roger Miller, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello.

No: Jeff Burbrink.

6. *Major/Minor Change to a DPUD for a Commercial Use Development Located in Fireside Center Second Subdivision in Concord Township, Zoned DPUD R-4*

Mr. Auvil at this time summarized the content of a memo addressed to the Plan Commission dated July 24, 2015, and included in the members' packets. Tim Miller requests that the owners of new Fireside Center buildings be permitted to place wall signs, not just monument signs, Mr. Auvil said. Mr. Doriot asked whether the standards governing maximum sign area would continue to apply, and Mr. Auvil said they would. Mr. Kolbus mentioned that the development's own covenants will be amended also, and Mr. Auvil agreed.

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

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Tom Stump, that the above-described change to the Fireside Center Second DPUD be considered a minor change and be approved by the Advisory Plan Commission. The motion was carried with a unanimous vote.

7. *Zoning Ordinance—Funneling*

Mr. Auvil at this time distributed to the Board a document *[attached to minutes as Staff Exhibit #1]* containing a proposed zoning ordinance amendment regulating waterfront and backlot development. The proposed amendment is modeled after LaGrange County's waterfront development regulation, and the funneling committee felt that the LaGrange County regulation fit Elkhart County well, said Mr. Auvil. The amendment ensures that a single funnel lot serving a backlot development has an appropriate amount of water frontage, he summarized. He then read water frontage minimums from the end of paragraph A of the proposed amendment. The amendment neither prohibits nor encourages funneling, Mr. Godlewski then said, but if funneling will happen, the amendment provides the way it should happen.

Mr. Stump asked whether the amendment would apply to condominium development, and Mr. Auvil said it would. Mr. Stump then asked whether the amendment guidelines are more restrictive than the guidelines governing condo development on Lake Wawasee. Mr. Godlewski's response was that LaGrange County's and Kosciusko County's zoning ordinances were considered and that Kosciusko County water frontage provisions are less restrictive than those of the proposed Elkhart County amendment. The amendment requires more water frontage than Kosciusko County provisions do. Mr. Auvil further explained that the amendment, based on dwelling unit number, would have the effect of limiting multifamily unit size.

Mr. Doriot said that the amendment appears to allow a single residential unit on a lot with 50 ft. of water frontage but prevent the single residential unit on a backlot that funnels to the lot with 50 ft. of water frontage. He asked whether the amendment infringes on the right of the owner of the single backlot residential unit to enjoy both the use of the vacant funnel lot and the offlake quiet of a backlot home location. He also asked whether, under the amendment, an owner of a waterfront lot could sell to IDNR so that a ramp can be installed, and asserted that the amendment provisions "keep a state lake private." Mr. Godlewski's response was that the provisions do not prohibit backlot development but do prohibit high-density backlot development. Mr. Doriot then asked whether, under the amendment, residents of a backlot development may use a waterfront lot that does not meet water frontage standards simply as a yard for nonaquatic recreation. He also asked whether swimming would be a permitted form of recreation at the lot not meeting water frontage

standards. Mr. Auvil and Mr. Godlewski both answered yes without saying which of Mr. Doriot's questions they were answering. Mr. Stump and Mr. Doriot then agreed that the amendment prohibits recreation on the lot in question, without specifying the kind of recreation, because of its failure to meet water frontage standards. "Then it could go to the minimum lot size. I think 50 is probably a common one, then," said Mr. Godlewski. "The lake's 35," added Mr. Lucchese.

Mr. Doriot and Mr. Miller agreed that the overall goal of the amendment was to prevent a development of hundreds of residents from funneling to a single 50 ft. waterfront lot, but Mr. Doriot then said that under some ordinance provisions, multistory homes that observe only minimum side setbacks may be built on the very kinds of lots that the proposed amendment prevents from seeing use as funnel lots.

In response to Mr. Doriot's concerns, Mr. Kolbus suggested that the figures at the end of paragraph A of the amendment be reduced to 30, 25, and 25. Mr. Doriot indicated willingness to approve a reduction and disapproval of the amendment's first figure, 100. John K. Letherman indicated approval of the current amendment figures during a committee meeting, Ms. Snyder mentioned. Mr. Doriot then decried state residents' inability to access state lakes and said that amendment opponents he has talked with accuse amendment proponents of seeking county sanction of private-only lake access.

The first figure in Kosciusko County's counterpart to the portion of the Elkhart County amendment containing water frontage figures is 50, said Dennis Pedler, president, Indiana Lake Association, who added that he would have no problem with a figure of 35. He said that waterfront lots typically only have 25-35 ft. of water frontage because of their pie-slice shape, and asked Mr. Godlewski how long the LaGrange County funneling provisions after which the proposed amendment is modeled have been in the LaGrange County ordinance and whether the provisions have caused any problems. Mr. Godlewski said that the referenced provisions have been in place 10 years and that they are not perfect. Owners of vacant lots cannot be kept from using them as they choose. The provisions, he said, communicate that high density on backlots is discouraged but that an option that allows it is offered.

Mr. Pedler then said that if IDNR wanted to build a ramp to Indiana Lake, which he described as a private lake, the IDNR-acquired lot featuring the ramp would have to be large enough to accommodate the ramp and parking area and would have to have more than 50 ft. of water frontage. He concluded affirming Mr. Doriot's frontage concerns.

Mr. Kolbus then suggested paragraph A water frontage figures of 35, 25, and 20, and Mr. Doriot countersuggested 35, 35, and 35. An amendment that creates many legal nonconformities should not be passed, Mr. Godlewski added. Kosciusko County's figures are 50, 25, and 15, Mr. Pedler said, and Mr. Doriot said, "We need to look at the lots that are there, even the existing lots." Any funneling amendment must provide a way for owners of waterfront lots to rebuild after loss of homes to fire or dilapidation, Mr. Doriot and Mr. Pedler then agreed.

Kosciusko County water frontage provisions have been in place four or five years, said Mr. Pedler, who was able to cite only one occasion when the provisions blocked an investor from building.

Mr. Miller added his support for restrictions that address big buildings and protection for owners of existing lots experiencing home loss.

Mr. Kolbus suggested that the staff do more research on public lakes, and Mr. Doriot affirmed the suggestion. In clarification of the status of Indiana Lake, Mr. Doriot said that it is

owned by the state, Mr. Pedler said that it is classified as a public lake, and several Board members agreed that it has no public access. Mr. Godlewski asked whether the amendment should appear before the Plan Commission during the September 2015 public hearing, and Mr. Doriot's response was that lakes like Hunter Lake and Simonton Lake should be looked at first. Mr. Godlewski said that consideration of Simonton Lake lots, which taper to a point, could not contribute to discussion about water frontage minimums. The amendment should address the status of existing lots, said Mr. Doriot. Mr. Kolbus suggested that the amendment provide that lots that predate it be considered legal nonconforming, and said that he would work with the staff on the amendment language. Mr. Pedler mentioned that Kosciusko County's ordinance contains such a provision, and Ms. Snyder indicated that the Elkhart County funneling committee affirmed inclusion of such a provision.

Mr. Campanello mentioned that waterfront properties are now connecting to city sewer and asked whether cities are aware of the potential for multifamily waterfront development. He also asked why the ordinance could not be amended to simply ban the multifamily development at question. Mr. Godlewski answered that sewer connections are designed for what is there, and the Board agreed. Sewer access, which obviates septic installation, allows larger building footprint, Mr. Godlewski also said.

The impact of development of a hundred-unit condo on Lake Wawasee, a huge lake, would be less severe than the impact of such development on Indiana Lake, observed Mr. Stump. Such development on a small lake is unsustainable and has to be limited, he said. Mr. Godlewski mentioned that Elkhart County and LaGrange County waterfront development is predominantly single family and that Kosciusko County and Steuben County waterfront development features many condominiums.

Mr. Campanello expressed interest in viewing water frontage provisions affecting development on Michigan's Diamond Lake and indicated confidence that those provisions ban multifamily development. Ordinance research, which was somewhat extensive, said Mr. Godlewski, brought together four ordinances—two Indiana ordinances and two Michigan ones.

An artist's rendering or aerial photos showing backlots and waterfront lots would be helpful, noted Mr. Burbrink.

8. A motion to adjourn the meeting was made by Mr. Miller and seconded by Mr. Burbrink. With a unanimous vote, the meeting was adjourned at 9:59 a.m.

Respectfully submitted,

Daniel Dean, Recording Secretary

Steve Warner, Chairman