

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 12TH DAY OF FEBRUARY 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: Jeff Burbrink, Lori Snyder, Steve Warner, Roger Miller, Steve Edwards, Tom Stump, Frank Lucchese, and Blake Doriot. Tony Campanello was absent. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, 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 (*Doriot/Burbrink*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 8th day of January 2015 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Edwards/Doriot*) 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 a zone map change from GPUD E-3 to R-4, for *Ann Connolly*, on property located on the East side of CR 17, 1/4 mile North of CR 8, common address of 53692 CR 17 in Washington Township, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #53692CR 17-141103-1*.

Ann Connolly, 1060 Parkwood Dr., Nappanee, who bought the subject property last year and intended to use the house as a home office, learned recently that real estate industry laws now allow her to maintain an office that is separate from that of her broker and features signage. She has been working at a strip mall location near the subject property and has not been allowed to display signage. Her 50-agent corporate office is in Mishawaka, and she now has the opportunity to invest in a team franchise, the location of which may be staffed only by her and a couple of agents under her, she emphasized. Other Mishawaka agents will not use the office, and she is the property owner, not her broker. She said further that the office's impact on area traffic will be no higher than that of a family with driving-age children.

Calling attention to staff's denial recommendation, based partly on lack of interior-road access, she said that such access is still not possible because the GPUD area is yet undeveloped. Though city water runs in front of the subject piece, sewer is not available, and the property is on septic and well. Thus she cannot conform to E-3 requirements, she said.

Mr. Doriot asked Ms. Connolly whether she was willing to sign a commitment limiting use of the property, and she said, "I can." Mr. Doriot then said that any use other than a residence or real estate office would require Plan Commission approval. Ms. Connolly repeated that she had no problem putting that in writing and said she had no intent to rezone just to sell the house for more money.

Ms. Connolly further explained that RE/MAX has approved the location and the house as it looks now, without any renovation. Citing a letter dated January 7, 2015, from Stacy A. Gillen,

director of regional operations, to Marsha (no last name given) outlining rules governing RE/MAX team franchises, she said that the approval is based on appropriate zoning and permission to place signage. Mr. Kanney then distributed to the Board a copy of this letter (*attached to file as Staff Exhibit #1*).

Mr. Warner asked whether RE/MAX requires that property be rezoned before a team franchise may be opened on it, and Ms. Connolly responded that a franchise may only be opened on appropriately zoned property. Rezoning is not necessary if it is legal for the team franchise, which requires a five-year commitment from the agent to RE/MAX, to be in there, she specified.

Mr. Miller asked Ms. Connolly whether she had a response to the December 9, 2014, e-mail from Jeff Taylor, Elkhart County Highway Department, to Mr. Godlewski (which is attached to the rezoning file). Ms. Connolly responded that she was not sure whether the highway department knew at that time the exact size of the office or type of traffic, but she then expressed doubt that she and Mr. Miller were referring to the same e-mail. Mr. Doriot summarized Mr. Taylor's December 9, 2014, statements by saying that Mr. Taylor did not believe access was a problem but was worried about a straight rezoning. Mr. Doriot then guessed that a written commitment from Ms. Connolly would allay Mr. Taylor's concern. Ms. Connolly said that Mr. Taylor's statements must mean that "he has no idea what might pop up there" following a straight rezoning, and the Board agreed. Upon realization that Mr. Taylor was a staff member of the highway department, Ms. Connolly then said that she talked to a woman at that department who did not feel that the proposed use would be a problem, based on office size and traffic impact.

Mr. Edwards asked Ms. Connolly whether she could commit to an absolute maximum number of employees at the subject location, and, referring to the January 7, 2015, letter, she responded that the number may not exceed five. The office may not be and may not appear to be a stand-alone office, she added.

Ian Griffith, 110 W. Waverly Ave., Goshen, is building a home in Woodfield Villas, which adjoins the subject property at the south. His company, Innovative Home Design, is building two additional homes in the same subdivision, which is zoned R-1. Farther east lies Pheasant Ridge, both subdivisions feature upscale housing, and he expressed concern over the rezoned property's fit with the area. He stated concern over the rezoning's effect on area property values, the area subdivisions' ability to attract further development, and what might appear on the subject property at the end of the applicant's five-year commitment to RE/MAX. The curb cut could attract those who would develop the property for a use such as a gas station or drug store, and he raised the prohibition of additional curb cuts on CR 17.

Mr. Doriot responded that a commitment that the building be used only as a real estate office would require that a proposal for a different use come before the Plan Commission, and that the applicant's submitted site plan shows a few parking places on the east side of the existing driveway. Regardless of future development of the subject property, Mr. Griffith then said, the owner of Woodfield Villas properties is concerned presently about the appearance of property zoned R-4 or "commercial property" with signage right next door.

In response to Mr. Doriot's request for a summary of what may appear in an E-3 zone, Mr. Mabry said light industrial office parks. The zone is not like M-1 or M-2; it permits enhanced office park-style industry and offices. Mr. Doriot then indicated that that is what is currently allowed in the area immediately north of Woodfield Villas. In response to Mr. Stump's request for a summary of what may appear in an R-4 zone, Mr. Mabry described R-4 as a mixed-use district that allows small-scale nonresidential uses, limited by parking, signage, and building size restrictions, and residential uses. He further specified for Mr. Stump that gas stations are not permitted in the R-4

zone but that drug stores are, subject to building size and residential setback limitations, which he quoted from the zoning ordinance. Mr. Lucchese commented that he did not think the property was big enough to accommodate either a gas station or a drug store, adding that no sewer is available.

Mr. Doriot asked Mr. Griffith to say the values of the homes he is building, and Mr. Griffith said the last home built sold for \$350,000. The homes he is building in Woodfield Villas, central site of the 2015 Parade of Homes, are custom, upscale homes, he explained. Mr. Miller asked Mr. Griffith whether the current use of the subject property was a problem, and Mr. Griffith said no, as the building is unoccupied. Mr. Miller then asked Mr. Griffith whether he would have any objections if the building were unaltered and left the same, and Mr. Griffith said that he and the part owner of the properties he is developing in Woodfield Villas on whose behalf he was commenting object to the proposed signage, which will give the appearance of business use.

Ms. Snyder indicated the present GPUD E-3 zoning adjacent to Woodfield Villas and advised Mr. Griffith that new construction near the intersection of CR 17 and CR 6 exemplifies what may appear adjacent to Woodfield Villas. Mr. Griffith indicated understanding.

When asked for input by Mr. Doriot, Rob Letherman, 3414 CR 6, Elkhart, stated he was “just watching out for curb cuts and precedent.” Mr. Warner agreed, saying that CR 17 was designed to be a traffic mover. Mr. Doriot said the subject property’s curb cut is existing, but Mr. Burbrink replied that it is a house’s curb cut. Mr. Warner then observed that the area is in transition.

Mr. Letherman then clarified that while he had no problem with Ms. Connolly’s activity, he had a problem with its proposed location. The county highway department has requested a major traffic study for CRs 6 and 17 so that collector roads may be installed, he said, and thought that private drives along CR 17 were to be closed.

He mentioned also that owners of home-based businesses along CR 17 have been denied signage for 15 years, and warned that many owners will begin asking for permission to place signage upon approval of the subject project.

In response, Ms. Connolly stated understanding of the remonstrators’ concerns, but “that’s the problem that goes along with growth.” She said also that she did not know what zones the referenced home-based businesses that may not use signage appear in, and seconded Ms. Snyder’s observation of the adjacent E-3 zone’s eventual effect on Woodfield Villas, which will be larger and more commercial than that of the proposed activity. Additionally, the proposed use and the continued use of the subject building as a residence will have the same impact on traffic, and most agents will work outside the office showing homes, she said.

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

Mr. Miller summarized by stating that a CR 17 project goal was to shut down curb cuts, permitting signage could bring a reaction from other CR 17 business owners, and what could ultimately happen on the rezoned subject property is the problem, not the proposed use. Ms. Snyder asked whether a rezoning review can be required, as Ms. Connolly will enter a five-year commitment with RE/MAX, and Mr. Doriot said no. Mr. Stump asked whether commitments imposed on a rezoning follow the rezoning forever, and Mr. Mabry said yes. Mr. Warner again observed that the area is in transition and therefore indicated willingness to agree to the rezoning on conditions, acknowledging the problems that permitting signage on the subject property might create. The Board then observed and commented on surrounding zoning.

Mr. Doriot then commented that since subject property signage will be permitted only because of the rezoning, owners of other CR 17 businesses who want to place signage will have to

seek rezoning as well. He said also that the curb cut will be present regardless of the use of the subject building—family-occupied residence or real estate office—agreeing that “hardly anybody comes in and out” of a real estate office.

Mr. Stump asked how the subject property received its current zoning designation, and Mr. Letherman and Mr. Doriot agreed that many property owners, approximately 150, signed on to the common designation at the time of rezoning, around 2000. Mr. Doriot commented that he would deny a request for a new curb cut if such a request were part of the current petition.

Mr. Stump asked whether a real estate office is permitted by the GPUD E-3 zone, and Mr. Mabry answered that in order to allow the real estate office, the GPUD E-3 zone would have to be finalized and a DPUD submitted. Such a course would not make sense on an isolated parcel and would fail to account for the surrounding GPUD that would remain.

Mr. Warner observed that the Board’s options were to restrict and to deny, and Mr. Stump replied that rezoning with commitments solves the problem in light of the difficulties of using the present zoning. Mr. Miller agreed that rezoning takes care of the problems but said he did not want the proposed use to have signage, which could generate a reaction from other CR 17 business owners. Mr. Stump then expressed doubt that 150 property owners agreed to the common GPUD E-3 zoning, but Mr. Doriot countered that property owners who shared a vision for the use of the area could agree to the designation.

The attempt to coordinate a uniform plan for the area was accomplished via an interchange overlay, said Mr. Kanney. Piece-by-piece development is undesirable, and Ms. Connolly will not be able to have sewer extended to the subject property. A GPUD E-3 zoning requirement is that 40-acre tracts be developed. If owners of properties that comprise a 40-acre area agree to the designation, extension of sewer and installation of roads with common access are worth the expense, the stopping of commercial trucks can be avoided, and a really nice area can be developed. The developers of Elkhart East, for example, have done a superior job. If the organization of the subject area is broken up, however, driveway coordination will never happen and sewer will never arrive on the east side of CR 17, and three more stoplights are already planned for the subject area.

A further E-3 provision is that only 6 or 8 percent of an area zoned E-3 may be used for retail sales, in an effort to keep E-3 developments looking like the area of the RV/MH Hall of Fame, and access must be kept internal to avoid multiple driveways along CR 17, continued Mr. Kanney. He concluded suggesting that a use variance be applied instead of rezoning.

Mr. Miller asked whether a use variance is possible, but Mr. Mabry suggested against it, as application of a use variance within a GPUD or DPUD is not ideal.

Ms. Snyder commented that the GPUD E-3 zone will remain for a while, as growth in the subject area has not yet expanded south, and that the residence in question is present and accepted. The driveway is present also and the usage is low. A five-year commitment can be imposed, as nothing will change in the property’s corner of the GPUD within that time.

Mr. Stump asked Mr. Kolbus whether a five-year commitment can be imposed as a rezoning condition, which would require review at the time of its expiration, and Mr. Kolbus replied that he has not seen a time limit placed on a rezoning. He then listed other possible commitments, which would run with the land until a change were requested before the Plan Commission, and indicated that determining whether a time limit could be placed would require research.

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

Motion: Action: Denied, **Moved by** Roger Miller, **Seconded by** Jeff Burbrink, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone

map change from GPUD E-3 to R-4 for *Ann Connolly* be denied in accordance with the Staff Analysis.

Vote: Motion failed (**summary:** Yes = 3, No = 5, Abstain = 0).

Yes: Jeff Burbrink, Roger Miller, Steve Warner.

No: Blake Doriot, Frank Lucchese, Lori Snyder, Steven Edwards, Tom Stump.

Motion: Action: Approve, **Moved by** Steve Warner, **Seconded by** Tom Stump, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from GPUD E-3 to R-4 for *Ann Connolly* be approved with the following commitments:

1. Approved for a realtor's office with the number of employees limited to five.
2. Signage to be in accordance with the R-4 zoning district.

Vote: Motion passed (**summary:** Yes = 5, No = 3, Abstain = 0).

Yes: Frank Lucchese, Lori Snyder, Steve Warner, Steven Edwards, Tom Stump.

No: Blake Doriot, Jeff Burbrink, Roger Miller.

Mr. Doriot then asked Mr. Lucchese to mention during the March 2015 hearing before the Board of County Commissioners that no new curb cuts are permitted.

5. *Plan Commission Basics—Public Hearings*

Mr. Kolbus at this time distributed to the Board a 10-page printout of a slide presentation titled "Plan Commission Basics" (attached to minutes). He began by covering the statements appearing on page 2, adding that while staff items appearing on an agenda are not public hearings, the Board can solicit public input on staff items like the county bike plan introduction below. He added also that traffic is an example of an issue frequently raised by the public that is not relevant to the Plan Commission.

Mr. Kolbus then moved to page 3, again giving the example of traffic as an issue that should not be heard by the Board. After moving to page 4, he added that using only a petitioner's or agent's first name to address her or him might imply acquaintance and favoring. Talking out of order, he added, includes unsolicited background audience commentary, and nonpublic exchange between Mr. Kolbus and Plan Commission members is an attorney/client privilege.

Elaborating on the content appearing on page 5, Mr. Kolbus mentioned that an audience exacting pressure on Board members represents only a loud part, at one time, of the whole community. Moving to page 6 and in further support of giving signed petitions only the weight they deserve, he added that signers' addresses are often not included and that a signer's address alone does not reveal how close the signer's property is to the subject one. A petition that demonstrates the proximity of a signer's property to a subject property has added credence. Further, signers who sign just to avoid being "the bad guy" in a neighborhood often determine, upon investigating a proposed use for themselves, that their interests are contrary to those of the signature seeker.

Mr. Kolbus then discussed the content appearing on page 7. During review of the content on pages 8 and 9 of the slide presentation printout, he emphasized that ex parte communication should be avoided when possible, even though it is not prohibited in Indiana and elected officials such as Mr. Lucchese, Mr. Doriot, and Mr. Stump are expected to communicate with applicants, proponents, and opponents. Letters sent to Plan Commission members ahead of a hearing are examples of communication that should be turned over unread to planning staff and discovered only during the hearing.

During review of the content of page 10, Mr. Kolbus mentioned that Board member site visits, in groups of no more than four, are allowed and appropriate. Members should, however, limit discussion outside a hearing.

6. ***Introduction of County Bike Plan***

An IUSB professor has asked the planning staff to work with a group of students who need to complete a project working with a public agency, said Mr. Mabry. The staff determined that preliminary work on a bike plan would make a good project, as Elkhart County is among few counties that see not only recreational and fitness-related bike use but also faith-mandated bike use. Promotion of public health and safety is a big part of planning, and while the county has established trails such as the Pumpkinvine Nature Trail, bike accidents, often fatal, still occur on roadways.

One task, Mr. Mabry said, is to determine bike ridership in the county by researching census data, designing and conducting a survey, and finding and supplementing existing research. Another task is to begin a social media campaign raising awareness of biking opportunities in the county and soliciting information about where biking facilities are needed.

The group comprises three or four students, who have submitted a letter stating understanding of what the planning staff wants and have laid out a schedule of their proposed activities. The students will work during the 2015 spring semester, and the information they generate could lead to a true county bike plan.

Mr. Lucchese suggested that the group obtain biking maps from MACOG, and Mr. Mabry mentioned that Ms. Gunden is coordinating the group's work.

Mr. Stump expressed support for the project but said that rules governing biking at night need to be created, as Goshen bicyclists who ride at night often ride without lights or reflectors. Such behavior is a real problem in Goshen, and he has not been able to generate interest in adherence to night bicycling rules or their enforcement.

Mr. Godlewski concluded saying that planning staff can keep the Plan Commission up to date on the project.

7. ***Extension of Primary Approval for Jackson Terrace Subdivision***

** It is noted that Mr. Miller stepped down from the Board at this time.*

** It is further noted that Mr. Doriot stepped down from the Board at this time due to a potential conflict of interest.*

Mr. Kanney distributed to the Board a letter from Mr. Doriot to the Plan Commission, accompanied by a drawing of the subdivision demonstrating the unplatted area, requesting a time extension of the Jackson Terrace Primary plat (*attached to minutes as Staff Exhibit #2*). The original Primary approval, for 49 lots, was granted in 2006, when the subdivision was known as King's Court. Secondary approval of section 1 was given in 2007, and Secondary approval of section 2 was given in 2009. Mr. Kanney said that 33 of the 49 lots have been platted, and no work has been done during the last six years because of the economy. Roadways and facilities have yet to be platted as well. The staff sees no problem with the approval, he concluded.

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 extend the Primary approval for Jackson Terrace Subdivision for five years. The motion was carried with a unanimous vote.

** It is noted that Mr. Miller and Mr. Doriot returned to the Board at this time.*

8. ***Miller, Salee & Salee (owners) and Sand Bar Investment Group (developer)—Approval of Written Commitment***

Mr. Mabry presented the commitment form prepared for the above petitioners following January 2015 Plan Commission recommendation of rezoning approval and included in the Commissioners' packets. Mr. Kolbus mentioned that he, Mr. Doriot, and the planning staff worked on preparation of the commitment and feel that it satisfies the intent of the motion.

The Board examined the commitment form, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Frank Lucchese, that the Advisory Plan Commission approve the commitment form prepared for Amy L. Miller, Mark A. Salee & Stephen C. Salee and presented by Mr. Mabry. The motion was carried with a unanimous vote.

9. ***Steve Warner—Certification of Residency***

Finally Mr. Mabry submitted into the record a certification of residency form for Plan Commission member Mr. Warner. Mr. Warner then signed the form, which accompanies the February 2015 Plan Commission minutes.

10. A motion to adjourn the meeting was made by Mr. Lucchese and seconded by Mr. Doriot. With a unanimous vote, the meeting was adjourned at 10:15 a.m.

Respectfully submitted,

Daniel Dean, Recording Secretary

Steve Warner, Chairman