

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 11TH DAY OF FEBRUARY 2016 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, Frank Lucchese, and Blake Doriot. Steven Edwards and Tom Stump were absent. Staff members present were: Chris Godlewski, Plan Director; Jason Auvil, Planning Manager; Liz Gunden, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board. Mark Kanney, Planner, was absent.

2. A motion was made and seconded (*Miller/Doriot*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 14th day of January 2016 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Miller/Burbrink*) 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 request for the *Elkhart County Advisory Plan Commission* concerning an amendment to the Town of Middlebury's and Elkhart County's Comprehensive Plan, which requires public input and a recommendation to the Town of Middlebury and the Elkhart County Board of Commissioners, for real estate located within the municipal boundaries of Middlebury and the urban growth boundaries in the unincorporated areas of Elkhart County, being bordered on the north by state line, bordered on the east by Elkhart County line, bordered on the south by State Road 4, and bordered on the west by CR 31, was presented at this time.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review. (The amendment is also attached.)

Board members agreed that the petition was straightforward.

There were no remonstrators present.

A motion was made and seconded (*Lucchese/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** Jeff Burbrink, **Seconded by** Tony Campanello, that the Advisory Plan Commission recommend to the Town of Middlebury and the Board of County Commissioners that this request for the *Elkhart County Advisory Plan Commission* concerning an amendment to the Town of Middlebury's and Elkhart County's Comprehensive Plan be approved in accordance with the Staff Analysis.

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

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

5. The application for primary approval of a five-lot major subdivision to be known as **BROOKHILLS FIRST REPLAT**, for Seth B. Haines & Laura E. Roggie, Terry E. & Sharon R. O'Dell, and Place Realty, Inc., represented by Lang, Feeney & Associates, Inc., on property located on the northeast corner of Osborn Avenue and Old US 20 (Lexington Avenue), common address of 55412 Priem Road in Cleveland Township, zoned R-1, was presented at this time.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #55412PriemRd-160104-1*.

Terry Lang, Lang, Feeney & Associates, Inc., 715 S. Michigan St., South Bend, was present on behalf of the petitioners. He began with petition background, stating that today's reconfiguration was requested approximately 10 years ago in the same interest: the safety of future occupants of the two lots with frontage on Old US 20. The Plan Commission approved, but the Board of County Commissioners, which "didn't like the wording on one of the parcels as an outlot," did not. Lang, Feeney & Associates was never notified of the Board's nonsignature, attested Mr. Lang, two northern homes were permitted and built on property lines, the Old US 20 problem was never addressed, and deeds based on the reconfiguration have already been issued. The goal of today's petition, Mr. Lang said, is to record the plat, which contains corrected wording.

Mr. Doriot asked how all this happened, and Mr. Lang commented only that all those involved in new projects at the subject site saw only the new platted lots and thought the plat complete. The problem was discovered only recently during an attempt to build a home on one of the vacant lots.

There were no remonstrators present.

A motion was made and seconded (*Burbrink/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** Blake Doriot, **Seconded by** Roger Miller, that the Advisory Plan Commission approve this request for primary approval of a five-lot major subdivision to be known as **BROOKHILLS FIRST REPLAT** in accordance with the Staff Analysis and as presented.

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

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

* See page 4, item 9, for the application for a zone map change from A-1 to B-3, for *Jeffrey E. & Christy L. Polk and DP & P Investments, LLC*.

* See page 7, item 10, for the application for a zone map change from M-1 to B-2, for *Ross W. Wenger, Ray A. Wenger & Susan E. McCoy (sellers) and Tamara L. Vandervort (buyer)*.

6. ***Proposed Amendment of the Northeast TIF District for the Prairie Creek Run Area (Formerly Referred to as the Sawmill District)***

Craig Buche, Yoder Ainlay Ulmer & Buckingham, LLP, 130 N. Main St., Goshen, representative of the Elkhart County Redevelopment Commission, reminded the Plan Commission of his January 2016 presentation of an amendatory resolution to add the Prairie Creek Run area to the northeast TIF district. He also reminded the Plan Commission of his January presentation of two

maps, one that showed the Prairie Creek Run area as part of the district and one that did not.

Mr. Buche detailed that the Prairie Creek Run area was left out of the district because it was already developed and thus would not benefit the district. Area study and January Plan Commission discussion, however, have resulted in a finding that the omission was an oversight and that the area should be included. He then reminded the Plan Commission that the area is completely surrounded by annexed area and distributed a northeast TIF district map showing inclusion of the subject area *[attached to minutes as Petitioner Exhibit #1]*.

The redevelopment commission has adopted a map-amending resolution, and with Plan Commission amendment approval today, the amendment will appear before the Board of County Commissioners and then reappear before the redevelopment commission during a public hearing, continued Mr. Buche. The project to follow is area study in the interest of extension of municipal sewer and water and eventual annexation, and the project includes elimination of vacant, abandoned, and blighted structures, he said. The Plan Commission must today decide whether the plan and proposal conform to the county's comprehensive plan, and a form titled "Written Order for the Amendment of the Northeast TIF District" is available for Plan Commission signature *[attached to minutes as Petitioner Exhibit #2]*.

Ms. Snyder asked whether the main purpose of the amendment is area clean-up and extension of city water and sewer. Mr. Buche answered yes but added that another purpose of the amendment is to secure funding for area work, as TIF funds have not been applicable. Ms. Snyder asked also what increase in taxes area properties would see at project completion. Mr. Buche did not know but said the JPR study will in part estimate the cost of water and sewer extension and utility-use costs that users will see.

Mr. Miller asked why "holes," or areas left out, appear on the edges of the district. Mr. Buche's response was that everything around what is shown in pink on the distributed map is in the city. Areas shown in orange are within existing TIF districts.

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

Ms. Snyder further asked, noting the diversity of uses in the Prairie Creek Run area, whether all area uses including commercial ones will be forced to connect to city water and sewer at project completion. Mr. Buche believed that current law permits the city to require hookup when water and sewer are available, and said that county uses are required to connect to available water and sewer only in the event of onsite-system failure.

Mr. Miller commented that the subject area needed help and that the map amendment seemed the only way to provide it. Laura Coyne, redevelopment commission coordinator, commented that the city's intent is unclear but that the commission would like to compel the city to help area residents without water and sewer. She hoped that the Plan Commission would find that the proposal conforms to the comprehensive plan.

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

Mr. Doriot agreed that the project needed to be done. Ms. Snyder asked why help has taken so long. Mrs. Coyne answered that the city has not been interested in annexation, which is the only way area residents can receive services. Today's proposal takes a stab at the goal of annexation.

The Board examined the request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello, that the Advisory Plan Commission approve the amended northeast TIF district map and recommend approval of the resolution.

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

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

7. ***Board of County Commissioners Approvals Following Plan Commission Recommendations***

The Board of County Commissioners acted in accordance with all December 2015 Plan Commission recommendations, reported Mr. Auvil, adding that a commitment allowing the continuation of a residential use was imposed on the rezoning for petitioners David E. & Jennifer L. Berkey.

8. ***Subdivision Ordinance Discussion***

The Plan Commission will hear a Subdivision Control Ordinance amendment March or April 2016, said Mr. Godlewski. The amendment comprises minor clean-up and reformatting.

9. The application for a zone map change from A-1 to B-3, for ***Jeffrey E. & Christy L. Polk and DP & P Investments, LLC***, represented by Brads-Ko Engineering & Surveying, Inc., on property located on the west side of SR 15, 630 ft. north of US 6, in Jackson Township, was presented at this time.

Ms. Gunden presented the Staff Report/Staff Analysis, which is attached for review as *Case #00000SR 15-151222-1*.

Mr. Doriot disclosed past private surveying work in the subject area done for another owner but said he is not under contract with the petitioners. Mr. Kolbus thanked Mr. Doriot for the disclosure and found no conflict.

Mr. Kolbus then asked Ms. Gunden whether the Brads-Ko commitment letter to Mr. Auvil dated January 25, 2016, was received before or after the staff formulated its recommendation. Ms. Gunden said before.

Barry Pharis, Brads-Ko Engineering & Surveying, Inc., 1009 S. Ninth St., Goshen, was present on behalf of the petitioners. The Polk family for many years has conducted sales of refurbished agricultural implements immediately south of the subject site, he began, and the Polks have made use of the existing facilities. Mr. and Mrs. Polk would now like to expand their business by using three newly acquired tracts, the subject property. The property would see display and sales of new farm equipment, a new building for equipment servicing, and a new building for offices.

Mr. Pharis then said, without reference to any specific dated list, that “we submitted a list of certain types of B-3 uses that we would not permit,” to demonstrate self-restriction to only the above-mentioned uses, and, following this, distributed to the Board a document titled “Commitment,” an undated one-page outline of eliminated uses *[attached to file as Petitioner Exhibit #3]*.

Referencing this document, Mr. Pharis said, “We have taken, of the 41 permitted uses of the

B-3, 12 and said we won't allow them," emphasizing the elimination of fuel sales, "which means there will be no convenience store on this property," and emphasizing the intended expansion of the Polks' business. All uses not eliminated, which include offices, retail sales, service, and repair, comprise the intended use of the property, then, Mr. Pharis further explained.

Mr. Pharis went on to detail the status of surrounding properties: almost all land within the existing B-3 zone immediately south of the subject property is used up, all land adjoining the east side of SR 15 is either railroad owned or state right-of-way, and all area land between the mentioned railroad property and CR 23 is for the most part built up. He also indicated agreement with the Staff Report's observation that the subject area, four miles south of New Paris and sewer and seven miles east of Nappanee and city water, is not urban.

The Polks' decision to keep the expansion of their business, one that serves the agricultural industry, close to the existing location was a responsible one, he held, and the petitioners have put off development of the subject property until rezoning is complete.

Staff understanding of rezoning petitions relies on conversations between staff members and petitioners, as rezoning petitioners have no opportunity to appear before the technical committee, Mr. Pharis said next. He also said that had his communication with the staff been better, the staff would have been on board, but he agreed that the county's comprehensive plan asks that development like that proposed be near municipal services.

Mr. Doriot asked whether any basements are planned, and Mr. Pharis said no, it will be difficult enough in area soils to get footers. He said that development will be engineer designed, however, and will make use of perimeter drains and the ditch at west, and was aware that the subject land is not prime farmland and not residential land. Mr. Doriot then asked whether "the auction" would be moved, and Mr. Pharis said no, it will stay where it is.

Mr. Pharis clarified for Mr. Warner that no other types of business will arrive onsite; the rezoning is only for the expansion of the Polks' agriculture-related business. Mr. Warner then indicated consent to the petition, heard January 2016, regarding Hoover Feed Service's move west to farmland, as the use, though intense, was agriculture related.

Ms. Snyder asked whether any portions of the subject property are within a floodplain. Portions of the property near the west ditch are, said Mr. Pharis, and the petitioners must observe a 75 ft. setback from the ditch. The rest of the property is not within a floodplain, though it features a high water table.

Ms. Snyder then observed the Staff Report's finding that no plan of development had been supplied, in contrast with the presentation of a plan today. Mr. Pharis repeated that he had no opportunity to appear before the technical committee and thus "gave them this letter and said we have a plan but all [the eliminated uses] can be out of there."

A switch to B-3 will result in a business out in the middle of nowhere, said Mr. Miller. The switch will result in a business next to business that is already out in the middle of nowhere, corrected Mr. Pharis. Mr. Miller acknowledged the correction but called the proposal a change from a limited business to a development of "pretty good size." Mr. Pharis responded by again inviting observation of the self-imposed use limitations. Mr. Kolbus then confirmed for Mr. Miller that commitments can run with the land and prevail despite change of ownership.

Mr. Burbrink asked what the current uses on the west side of CR 23, north of US 6, were, and Mr. Pharis said that all properties in the referenced area are zoned "M-1." Board members then noted the various industrial and business uses north, east, and south of the subject property,

including fence galvanization, fertilizer manufacture, and truck stop. Ms. Snyder asked whether the land north of the subject property is still farmed, and Mr. Pharis believed it was.

The appearance of an agricultural business in an agricultural area made sense to Mr. Campanello, as tractors need service and parts. Ms. Snyder asked what size future buildings will be, but Mr. Pharis would not comment on building design, as he did not know the building area necessary for farm equipment sales.

Mr. Auvil then came forward again, maintaining that the representative had an opportunity to supply any form of supporting documentation and upholding the Staff Report's finding that no plan of development was submitted. He said the staff asked what the petitioners' intent was and was told there was no plan. Rather, the representative submitted a list showing only what the petitioners did not want to do, and could not tell the staff what they did want to do. Mr. Auvil indicated that had the staff been privy to an intended business expansion at the time of submittal, the staff recommendation might have differed.

In response, Mr. Pharis said he did not recall saying the petitioners did not know what they wanted to do. Though he might have said that plans were not firm, he knew all along what the petitioners wanted, he said. He apologized for any unclear wording that prevented a thorough staff vetting of the petition, but thought the staff recommendation would still have been denial had the petition been clear.

There were no remonstrators present.

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

The business expansion, a fit for the subject area, might attract implement businesses to the county, following the departure of major implement businesses like John Deere because of company rules, said Mr. Doriot. He added that the existing site, an auction-day destination surrounded by heavy uses, is neat and orderly; that with approval the petitioners will have a lot of site-preparation work to do; and that the expansion site is not prime farm ground. Mr. Burbrink had no problem with the petition, and he and Mr. Warner agreed that similar uses adjoin the subject site.

Mr. Miller expressed concern over placement of a new large building on the subject property, far from utilities. He acknowledged the presence of businesses on the east side of SR 15 but said that those businesses occupy land that is no longer farmland, and he lamented the continued elimination of county farmland.

Mr. Burbrink pointed to the presence of neighborhood-serving businesses without city utilities near the intersection of SR 15 and US 20 and called the subject area a rural neighborhood in need of the services the proposed expansion will provide.

Afraid of a finding, following the rezoning process, that area soils would limit building size, and with concern over future sale of the subject property, Ms. Snyder said that the business owners should have been present today to provide more detail. The business owners know the property's limitations, Mr. Doriot countered. Mr. Warner did not share Mr. Miller's concern over building size and said that the expansion of an existing agricultural business was his interest instead.

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

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Tony Campanello, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from A-1 to B-3 for *Jeffrey E. & Christy L. Polk and DP & P Investments, LLC*, be approved as presented and with the following commitment:

Elimination of the following 13 permitted uses:

1. Bar, microbrewery or tavern
2. Country club
3. Membership club or lodge
4. Winery
5. Stadium, arena, running track or ball field
6. All restaurants
7. Catering establishment, small scale
8. Restaurant, drive-in or drive-through
9. Pet shop or groomer, outdoor pens or runs
10. Barber or beauty shop
11. Funeral home
12. Veterinary clinic or hospital with outdoor pens or runs
13. Fuel sales, retail

Elimination of the following three limited uses:

1. Tattoo parlor
2. Fireworks sales
3. All light industrial except:
 - a. Building and development contractor establishment
 - b. Welding, tool repair or machine shop

Elimination of the following five requiring special use permits:

1. Casino
2. Marina
3. Track, vehicle race
4. Kennel
5. Fuel sales, bulk

Vote: Motion passed (**summary:** Yes = 5, No = 2, Abstain = 0).

Yes: Blake Doriot, Frank Lucchese, Jeff Burbrink, Steve Warner, Tony Campanello.

No: Lori Snyder, Roger Miller.

10. The application for a zone map change from M-1 to B-2, for **Ross W. Wenger, Ray A. Wenger & Susan E. McCoy (sellers) and Tamara L. Vandervort (buyer)**, on property located on the northeast corner of CR 3 and CR 22, common address of 59188 CR 3 in Baugo Township, was presented at this time.

Ms. Gunden presented the Staff Report/Staff Analysis, which is attached for review as *Case #59188CR 3-160104-1*.

Tamara Vandervort, 30890 Refuge Dr., Osceola, said that with rezoning approval she will buy the subject property, an eyesore in the Jimtown community; convert the residence onsite into a salon; and use the other building onsite as a community center. The center will house a backpack ministry supplying Jimtown students with food and school supplies, she said, adding that the center will serve the community for whatever needs there are.

It will be exciting to have the commercial building onsite, now an eyesore and once the site of a movie-rental business, fixed, said Baugo Twp. resident Justin Hurtekant, 30869 Refuge Dr., Osceola.

There were no remonstrators present.

A motion was made and seconded (*Doriot/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** Blake Doriot, **Seconded by** Lori Snyder, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from M-1 to B-2 for ***Ross W. Wenger, Ray A. Wenger & Susan E. McCoy (sellers) and Tamara L. Vandervort (buyer)*** be approved as presented and in accordance with the Staff Analysis.

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

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

** It is noted that Mr. Doriot stepped down from the Board at this time and was not present for the remainder of the meeting.*

11. ***Workshop Continuation: Jeff Burbrink***

Mr. Burbrink at this time began a continuation of October 2015 training review by explaining that finding of fact involves separating fact from opinion. Board members should state facts when making motions. The Plan Commission, a recommending body, is not legally required to make such statements, however, although they do help the Board of County Commissioners and those in attendance during Plan Commission meetings know why the Plan Commission voted the way it did, said Mr. Kolbus.

The Plan Commission, which is not a committee of compassion, is not required to bend to petitions that are only a tweak off, Mr. Burbrink further said, and despite an outpouring of public sentiment against petition approval, the Plan Commission should grant approval if it is appropriate.

Mr. Miller said it is hard to know the difference between vote influenced by personal knowledge and vote influenced by bias. He said he has been able to process the conflict by talking to staff members. Mr. Godlewski encouraged openness before the audience.

The county's zoning ordinance is subject to periodic review, and long spans between reviews should be avoided, Mr. Burbrink then said. He said also that the Plan Commission sets Board of Zoning Appeals (BZA) tempo; Plan Commission expectations regarding such things as doddy houses are conveyed to the BZA. Mr. Burbrink also defined ex parte communication as communication outside the meeting room between Board members and the public, and Board members must inform the Board of ex parte approach by members of the public. Mr. Godlewski mentioned that BZA members are held to a higher ex parte standard, as BZA decisions are final.

Mr. Miller asked what the main purpose of Elkhart County's plan commission is. Mr. Godlewski answered that it is to provide professional land-use advice. Mr. Kolbus elaborated, saying the Plan Commission assists the county's legislative body with formulation of land-use plans.

Answering a question from Mr. Miller about the hearing officer, Mr. Burbrink and Mr. Godlewski agreed that the hearing officer hears "lighter petitions" that do not need to appear before the BZA. The hearing officer also hears unsafe-building cases, said Mr. Godlewski. Mr. Miller and

Mr. Kolbus agreed that the hearing officer may pass petitions on to the BZA.

12. A motion to adjourn the meeting was made by Mr. Miller and seconded by Mr. Campanello. With a unanimous vote, the meeting was adjourned at 10:35 a.m.

Respectfully submitted,

Daniel Dean, Recording Secretary

Steve Warner, Chairman