

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 12TH DAY OF JANUARY 2017 AT 9:00 A.M. IN THE
MEETING ROOM OF THE 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 Vice-Chairman, Roger Miller. The following staff members were present: 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.

Roll Call.

Present: Tony Campanello, Steven Edwards, Roger Miller, Lori Snyder, Jeff Burbrink, Frank Lucchese, Philip Barker.

Absent: Steve Warner, Tom Stump.

2. A motion was made and seconded (*Lucchese /Burbrink*) that the minutes of the last regular meeting of the Elkhart County Plan Commission, held on the 8th day of December 2016, be approved as submitted. The motion was carried with a unanimous vote.

3. A motion was made and seconded (*Lucchese/Burbrink*) that the Elkhart County Zoning Ordinance and Elkhart County Subdivision Control Ordinance be accepted as evidence for today's hearings. The motion was carried with a unanimous vote.

4. ***Election of Officers***

Motion: Action: Approve, **Moved by** Lori Snyder, **Seconded by** Frank Lucchese, that the request to accept the 2017 Officers and Appointments be approved.

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

Yes: Frank Lucchese, Jeff Burbrink, Lori Snyder, Philip Barker, Roger Miller, Steven Edwards, Tony Campanello.

5. The application for a Zone Map Change from R-2 to B-3, for Joel W. Nichols Trust, on property located on the East side of Kreighbaum, 200 Ft. South of Ruskin Ave., West of SR 19, North of CR 24, common address of 58164 Kreighbaum St. in Baugo Township, zoned R-2, was presented at this time.

Jason Auvil presented the Staff Report / Staff Analysis, which is attached for review as *Case #RZ-0650-2016*.

W. Joel Nichols, 17431 CR 22, Goshen, was present. He reported he had a hearing December 12, 2013, that was approved and he paid for it. He indicated he had an approval letter and wanted to get his money back. Mr. Miller inquired about the letter of approval. Mr. Nichols submitted the letter of approval [*attached to file as Petitioner Exhibit # 1*].

Jason Auvil reported in 2013, Mr. Nichols applied for an Administrative Subdivision that was approved, but was never recorded or acted upon. Part of the issue going through the Administrative Subdivision process with this particular parcel was it was identified incorrectly as an

existing B-3 parcel. When Mr. Nichols wanted to put an accessory structure on the parcel, the zoning was checked, and it was then found it was not a B-3 parcel. Mr. Auvil stated the parcel has been serving as a B-3 lot, and the Staff is trying to correct and make the situation whole. Mr. Campanello questioned if it was the Planning portion being corrected, which Mr. Auvil reported it was an error by the Building Department. He went on to say, the Administrative Subdivision was never recorded. From the audience, Mr. Nichols noted he had to pay a second time. Mr. Burbrink stated he paid for an Administrative Subdivision, not a Rezoning, and what he is asking for is something different. Mr. Miller advised Mr. Nichols to step back up to the podium to speak. Mr. Nichols reported Blake Doriot had done the Administrative Subdivision. He noted he put up a shed for an office, and he had to pay for the permit. He noted the Building Department will not give him a Certificate of Occupancy, but he does not need it because there has been work being done there for years. He indicated he does not have the four lots in one, and Mr. Doriot told him there was no sense in that. Mr. Nichols stated he tries to do things on the up and up, and when he bought it, he did it the right way. He reported a spanish guy wanted to rent it, and when that person came to the Building Department to ask questions about it, the Building Department told him about the issue. He stated he does not mind paying his share, but does not like to pay double or tripile. Mr. Nichols reported there were three lots and they were putting the forth lot in it, and that is what they did in the letter. Mr. Miller questioned if it was zoned B-3 at the time, then left it B-3 and Mr. Nichols stated the three of them were. Mr. Miller questioned if now Mr. Nichols was asking it to be rezoned, and Mr. Nichols stated, just the one lot where the building is.

There were no remonstrators present.

A motion was made and seconded (*Lucchese/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 a Zone Map Change from R-2 to B-3 be approved in accordance with the Staff Analysis.

Vote: Motion passed (**summary:** Yes = 6, No = 1, Abstain = 0).

Yes: Frank Lucchese, Jeff Burbrink, Lori Snyder, Philip Barker, Roger Miller, Steven Edwards.

No: Tony Campanello.

From the audience, Mr. Nichols questioned if he could get his money back for his second permit. Attorney Kolbus noted the Board cannot do something like that. Mr. Burbrink stated if it had been done correctly, he still would have had to get the rezoning, the Administrative Subdivision, and paid the fees twice. Further, he stated that apparently it was not done right back then, which Mr. Nichols reported he did. Mr. Burbrink stated it was not rezoned at that time. Mr. Nichols noted it was according to the approval letter. Mr. Godlewski stated the perception was given in the result letter that the parcel was rezoned, but it was not. He stated it was the Building Department's error, but it still needs to be correct. The Petitioner still has to pay for a building permit as well.

5. The application for a Zone Map change from A-1 to B-3, for Rusty Wheel Acres Inc. represented by AR Engineering LLC, on property located on the West side of SR 13, 335 ft. South

of SR 120, in York Township, zoned A-1, was presented at this time.

Jason Auvil presented the Staff Report / Staff Analysis, which is attached for review as *Case #RZ-0676-2016*.

Andrew Rossell, AR Engineering, LLC, 4664 Campus Dr., Kalamazoo, MI, was present representing Rusty Wheel Acres Inc. He did not offer up anything new and stated he could answer any questions that the Board may have. Ms. Snyder questioned if the adjacent property that indents into the petitioner's A-1 property is residential. Mr. Rossell pointed it out on the aerial and stated, yes.

There were no remonstrators present.

A motion was made and seconded (*Snyder/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** Steven Edwards, **Seconded by** Frank Lucchese, 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 be approved in accordance with the Staff Analysis.

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

Yes: Frank Lucchese, Jeff Burbrink, Lori Snyder, Philip Barker, Roger Miller, Steven Edwards, Tony Campanello.

6. The application for a Zone Map change from R-2, B-2, & B-3 to B-3, for RBS Properties, LLC represented by Progressive Engineering, Inc., on property located on the Southeast corner of SR 19 & Lakewood Dr. & Northeast corner of SR 19 & Lake View Ave., 2,000 ft. North of CR 4, common address of 51530 SR 19 in Osolo Township, zoned B-2, B-3, R-2, was presented at this time.

Jason Auvil presented the Staff Report / Staff Analysis, which is attached for review as *Case #RZ-0596-2016*.

Brad Kramer, Progressive Engineering, 58640 SR 15, Goshen, was present representing RBS Properties, LLC. He stated the desire today is to obtain rezoning. He understood from the last hearing issues came up leaning this towards a DPUD, which he believed should be addressed when the development plans are prepared for buildings on the two lots. The two lots are proposed to be built and then developed, but at this time the petitioner is trying to take care of the zoning to make it consistent.

Sue Hobson, 26355 Lakewood Drive, adjacent property owner, was present in remonstrance. She reported at the end of the week after the December 8, 2017 hearing, Mr. Harper had someone out to reposition the lights on the car lot that illuminate her residence. She read from the Zoning Ordinance, which she stated was vague. Ms. Hobson showed a picture board, Exhibit A, and noted the lights are high intensity lights that are used on footballs fields and jails; not by someone's house and expect them to sleep. She reported on December 20, 2017 at 8:00p.m. she opened her garage door, stood inside with all the lights off and it was so bright she could read a book. Ms. Hobson indicated moving that type of light down is not going to fix the problem. Mr. Miller questioned if the pictures were taken after the lights were repositioned, and Ms. Hobson stated yes, it was December 20, 2017 on the south side of her house. Ms. Hobson showed another picture board; Exhibit B, of the north side of her house. She reported it is where her bedrooms and

bathrooms are. She stated the repositioning did not help. She indicated she is not against Mr. Harper, and the rezoning. What she is against is the Petitioner not taking care of the neighboring residential properties. Ms. Hobson noted what she found in the Zoning Ordinance is the conservation of property values, and questioned how this is going to conserve her property value. She went on to say, she does not believe it will. She reported Mr. Harper has removed all the trees, bushes, and grass on the west and north side of her property, and there is no buffering. She indicated this has been going on for two years. Ms. Hobson believed without a specific plan in place and specific restrictions, nothing is going to be fixed. She noted the Board has the ability to agree to the rezoning, but requested restrictions be put on what Mr. Harper can do and time limits on what he has to do. She also asked that he not devalue the property at Simonton Lake to the east and north of her. Mr. Campanello questioned if the exhibits portray the lighting off of this property and where it shines. Ms. Hobson pointed out on the aerial where the lighting is coming in. She noted the glare on her windows. She reported she is trying to remedy this and is afraid once the rezoning is approved this will continue. She noted Mr. Harper did back the cars away from SR 19 approximately a week ago. Ms. Hobson questioned what the remedy would be when the cars are moved back. Mr. Campanello questioned Attorney Kolbus about conditions or commitments, which Mr. Kolbus stated it was not part of the petition. He went on to say that the Board can place commitments or deny the petition and request a Planned Unit Development. Ms. Hobson questioned if the complaint about the lighting and the buffering is valid.

James Begley, 1503 W. Bristol Street, was present representing RBS Properties, LLC. He reported the lighting was readjusted again on January 2, 2017. He noted Ms. Hobson's complaint is with Mr. Harper's property, not RBS Properties, LLC. He stated the trees have not been taken down on their property. Mr. Miller requested to be shown on the aerial where their property is. There was discussion on where the property is located. Mr. Campanello questioned Mr. Begley if he was aware of where Ms. Hobson's house is. Pointing out on the aerial, Mr. Campanello questioned Mr. Begley if another company, not affiliated with RBS Properties, LLC, owns the other property, and Mr. Begley stated, yes. Mr. Begley questioned Ray Begley, who was in the audience, if that was correct. Mr. Ray Begley reported they lease out the property. Mr. Campanello confirmed that RBS Properties, LLC, does own the property. Mr. Ray Begley reported RBS Properties, LLC, does own the parcel that is being looked at. It has nothing to do with Mr. Harper other than they lease to him. Mr. Edwards asked Mr. Ray Begley to come up to the microphone.

Ray Begley, 1503 W. Bristol Street, was present representing RBS Properties, LLC. Mr. Miller questioned if Mr. Begley owned the property, and if he has anything to do with the car sales. Mr. Begley reported he does own the property, but the only thing that he has to do with the car sales is that he leases the property. Mr. Miller questioned if he was the one requesting the rezoning, which Mr. Begley stated, yes. Mr. Campanello questioned about another property, and Mr. Begley stated he does not own it. Mr. Begley pointed out on the aerial what properties he owns. Mr. Burbrink questioned if the person he leases the property to owns the lot or runs the lot. Mr. Begley reported he owns the lot, and that is where the trees had been cleared out. Mr. Begley indicated he believed all the property should be zoned B-3 consistently, no matter what is going on with the lighting. Once they get ready to build, the law should change and they will not be required to do setbacks and lighting. At this point, they do not believe they have done anything to devalue the property except for tearing the old building down. Mr. Begley reported in 24 months they will build something new, but hope to get it done this year in 12 to 18 months. Mr. Campanello questioned if approved; if he would be against coming back with a Detailed Planned Unit Development, which

adds conditions and commitments they would have to live by. In response, Mr. Begley stated he is against it for now, until they get ready to do something, and at that point the Board can put restrictions on it. He reported the two parcels are split now anyways, and it really does not hold him up for what he wanted to do today, but it is for long term. He noted he would like to get it rezoned to B-3. Mr. Campanello questioned the lights Ms. Hobson was talking about and what type of lights they are. Mr. Begley indicated he could get something from the electric company that shows what they illuminate. Mr. Campanello stated that would be done by an electrician, but the right type of light has to be used. He continued saying that is when a Detailed Planned Unit would come in with stipulated requirements that are approved through the Board. Mr. Campanello went on to say, a Detailed Planned Unit Development cleans things up and makes it a lot easier for the petitioner and the surrounding home owners. Mr. Godlewski reported Code Enforcement did go out before the December 8, 2017, hearing and after. There were some changes to the lighting, but he noted the Zoning Ordinance, is very general, by stating light must be kept on the property which makes it difficult to talk about lumens and know what an appropriate lumen is. He suggested other lighting along SR 19 may also impact the residential areas. Mr. Miller reported he thought he read the lighting had to be directed down. Ms. Snyder questioned Attorney Kolbus if a condition could be put on the zoning regarding the lights. She also questioned if the lights could be turned off at a certain time, which Mr. Begley stated he did not know if the lights could be turned off. He reported he could probably put a restriction on that in two years to get the lighting issue resolved. He hoped everything will be brand new by then. He indicated he knows when they build new they will have to change, and there will be new setbacks and lighting rules, the same as any other place they have built. Mr. Burbrink stated that is why it makes more sense to do a Detailed Planned Unit Development since the petitioners are in the planning process now which is what a Detailed Planned Unit Development does. The Detailed Planned Unit Development will allow the petitioner to plan it out and the Board will look at the plan and work on it together which makes more sense than doing a rezone. Mr. Miller indicated he believed this would make the neighbors happier because they will know what is going to happen and the petitioners will be able to see what the Board's concerns are. Specifically, he noted keeping the cars back from the road and a requirement for buffering. Mr. Begley noted he believed the neighbors will be happy when they change this, but the biggest issue will be getting Mr. Harper to change. Mr. Campanello questioned if Mr. Harper owns the property. Mr. Begley stated no, he owns the property and pointed out on the aerial what property he leases to Mr. Harper and pointed where the biggest issue will be. He noted in the morning he sees kids standing there, and believed they appreciate the lights. Ms. Snyder stated it would be nice to know if there could be some kind of time period the lights could be shut off. Mr. Begley noted the lights are dusk to dawn and could not be changed without putting up all new lighting. Mr. Edwards questioned what was done when the lighting was turned down and Mr. Begley reported the lighting was turned down 15 degrees on January 2, 2017. Mr. Begley questioned Ms. Hobson where the lighting is coming from on her house, which she stated it was from the north and south sides.

Attorney Kolbus questioned Ms. Hobson if she wanted her picture boards entered in as exhibits. She submitted both boards at that time *[attached to file as Remonstrance Exhibit # 1 and # 2]*.

Lynetta Martin, 26242 Lakewood Drive was also present in remonstrance. She reported she is six houses down the road from Cassopolis Street, and can see the lighting from her kitchen table. If she has her blinds open, the light is so bright she can pick out her NipSCO bill laying in a pile. She pointed out on the aerial where the lighting is coming from in her kitchen. Ms. Martin noted when she was at the December 8, 2016, hearing she spoke about the vehicles being too close to the

highway, and someone was supposed to go out and look. She questioned if that had happened, and Mr. Campanello reported he went out on his own and the cars met the setbacks. Ms. Martin then questioned if anyone had gone out before the cars were moved, which Mr. Miller stated he did and the cars were parked out by the road. Ms. Martin questioned Mr. Miller if he had difficulties pulling out on Cassopolis Street, which he stated he was driving north as he went by. Ms. Martin had a photo she submitted *[attached to file as Remonstrance Exhibit # 3]*. She noted she would like to see the vehicles on the north moved back as well. Mr. Edwards advised Ms. Martin that would have to be another hearing; this is only related to the southerly properties. She stated the parcels are connected and leased by the same person. Mr. Edwards reported they are not part of this particular petition.

Steven Lusher, 51474 C Street, was present in remonstrance. His concern is the traffic on SR 19. He reported he was the project manager back in 1989 and 1990 for Brooks's construction. They rebuilt Cassopolis Street, and there is a major amount of curb cuts. He stated if all the parcels are approved to B-3 zone, he would like to see the curb cuts to the property be closed and the egress/ingress to the properties be off of Lakewood and Lake Drives. Mr. Campanello advised Mr. Lusher that is the State Highway, and the Board cannot do anything. Mr. Lusher questioned if the property would have to be zoned through the State Highway, and Mr. Campanello stated that is where the Detailed Planned Unit Development comes in. Mr. Lusher noted there is a tremendous amount of traffic on Cassopolis Street and CR 6 north to the lake, which is known as "accident alley". Mr. Edwards noted a Detailed Planned Unit Development would address his concerns.

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

When Mr. Campanello questioned the appropriate time to complete the Detailed Planned Unit Development, Mr. Auvil stated the Detailed Planned Unit Development would come before the building permit for any work on the property. Mr. Campanello questioned if Mr. Ray Begley could be required now to bring the Board a Detailed Planned Unit Development. Attorney Kolbus stated by recommending denial, and then suggested a General Planned Unit Development. He went on to say, the standards on lighting are not specific enough for this particular situation. If you want more control, do a Detailed Planned Unit Development or commitment. Mr. Campanello questioned Mr. Kolbus if it was approved with the commitment if any further development on the property would then require a General Planned Unit Development. Mr. Barker stated the idea of a Detailed Planned Unit Development is to limit what is going to happen, and this screams for a Detailed Planned Unit Development. Mr. Burbrink stated this is a recommendation to the County Commissioners. Mr. Miller explained in more detail about the General Planned Unit Development.

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

Motion: Action: Deny, **Moved by** Roger Miller, **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 R-2, B-2, & B-3 to B-3 be denied, because a GPUD is believed to be appropriate in this case.

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

Yes: Frank Lucchese, Jeff Burbrink, Lori Snyder, Philip Barker, Roger Miller, Steven Edwards, Tony Campanello.

It should be noted that Mr. Barker recused himself and stepped down

7. The application for a Zone Map Change from GPUD A-1 to a DPUD A-1 to be known as Little Bluestem Farm, for Ryan L & Donna Shenk Sensenig represented by Philip Barker, on property located on the Northwest corner of CR 28 and Zollinger Road, common address of 18529 CR 28 in Jefferson Township, zoned GPUD A-1, was presented at this time.

Jason Auvil presented the Staff Report / Staff Analysis, which is attached for review as *Case #DPUD-0667-2016*.

Denny Lyon, Cardinal Point, 21138 SR 120, Elkhart, was present representing the petitioners. He stated he agrees with the Staff Analysis.

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** Roger Miller, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a Zone Map Change from GPUD A-1 to a DPUD A-1 to be known as Little Bluestem Farm be approved in accordance with the Staff Analysis.

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

Yes: Frank Lucchese, Jeff Burbrink, Lori Snyder, Roger Miller, Steven Edwards, Tony Campanello.

Absent: Philip Barker.

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

Mr. Auvil reported the following petition was acted upon December 19, 2016, by the Board of County Commissioners and approved.

1. *Pecan Plantation LDT for a zone map change from GPUD B-3 to a DPUD B-3.*

9. *PC Rules of Procedure change regarding notice outside of Elkhart County*

Mr. Auvil read from item #9 of the PC Rules of Procedure change regarding notice outside of Elkhart County. Mr. Auvil stated notice on petitions involving parcels within Elkhart County is not required. However, he stated notice will be given in an attempt to be good neighbors.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Frank Lucchese, that this request for PC Rules of Procedure change regarding notice outside of Elkhart County be approved.

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

Yes: Frank Lucchese, Jeff Burbrink, Lori Snyder, Philip Barker, Roger Miller, Steven Edwards,

Tony Campanello.

10. A motion was made and seconded (*Edwards/Miller*) that the meeting be adjourned. The motion was carried with a unanimous vote, and the meeting was adjourned at 10:14 a.m.

Respectfully submitted,

Andrea Wyatt, Recording Secretary

Roger Miller, Chairman