

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 12TH DAY OF OCTOBER 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 Chairman, Roger Miller. The following staff members were present: Chris Godlewski, Plan Director; Jason Auvil, Planning Manager; Mae Kratzer, Planner; Matt Shively, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

2. A motion was made and seconded (*Warner/Burbrink*) that the minutes of the last regular meeting of the Elkhart County Plan Commission, held on the 14th day of September 2017, be approved as submitted. The motion was carried with a unanimous vote.

3. A motion was made and seconded (*Burbrink /Edwards*) 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. The application for Primary approval of a 42 lot major subdivision to be known as FIELDSTONE ESTATES, for Big M Inc., represented by Progressive Engineering, Inc., on property located on the West side of CR 19, 500 ft. North of CR 20, 19 in Jefferson Township, zoned A-1, was presented at this time.

Chris Godlewski presented the Staff Report / Staff Analysis, which is attached for review as *Case #MA-0608-2017*.

Mr. Burbrink questioned why the Board needs to hear this petition if it does not meet Tech standards. Mr. Godlewski stated that if the Tech Committee states that it does not meet the standards of the Subdivision Ordinance it goes to the meeting as recommended for denial. Mr. Campanello questioned who suggested that way to get approval. Mr. Godlewski stated that it came from the reviewers from the Tech Committee. Mr. Lucchese questioned limiting the lots. Mr. Godlewski stated that they felt the land could handle about 15 lots. Mr. Miller questioned if they are familiar with the property to the North of subject property, and how it looked like it has a mound system on that. Mr. Godlewski stated that residence is not on the subject property, and it was not researched.

Brad Cramer, Progressive Engineering, 58640 SR 15, was present representing the petitioner. He mentioned that one of the issues is the drainage. He stated that the lots would have mound septic systems. He added that the Northwestern half of the subject property had holes that filled up with water and did not drain. He mentioned that a soil scientist came in and tested the soil. He stated that there is a house and barn on the property that will be removed. Mr. Miller questioned how many lots are being proposed. Mr. Cramer stated it is staying at 42 lots. Mr. Stump questioned where Indian Creek is located. Mr. Barker stated that it is to the Northeast, and is the closest outfall they could come up with. Mr. Stump questioned the South side of CR 20. Mr. Barker stated that

they would run a tile across the North part of the property. Mr. Miller stated he thought the property drained to the South. Mr. Barker stated you can see the drainage ways. He continued stating that the further North you go, there is high pressure gas to be dealt with. Mr. Cramer stated they have also designed the volume of the storage in the North and South to be three times greater than what was calculated. Mr. Stump questioned the tile draining into Indian Creek coming out of retention area and if it drains the retention area into the tile. Mr. Barker stated there is no tile currently, but it is proposed. He added that there will be a detention area then it would go into the tile. Mr. Barker mentioned that every foundation out there would have to have a perimeter drain. Mr. Stump questioned the retention areas having water in them all the time. Mr. Barker answered yes, and there is red sand in the South retention area which has higher clay content. Mr. Lucchese questioned the retention area depth to the South which Mr. Cramer stated 8 to 10 feet. Ms. Snyder questioned if the drain tile will be shooting towards the creek. Mr. Cramer stated that the Technical Review Board suggested trying to drain from the North pond across the road towards the ditches up to the Northeast. Ms. Snyder questioned if he knew how far the distance was between the North pond and the ditches to the Northeast. Mr. Barker stated about a quarter of a mile.

Stephanie Floyd, Progressive Engineering, 58640 SR 15 was present. She stated that this has been worked on with the Technical Committee for about ten months. She mentioned that additional testing has been done and she believes that it will work. She stated that the retention ponds need to be entered first before they can go any further on this project. Ms. Floyd stated that they have designed the houses to be elevated so the perimeter drains will work all the way around them. She added that they have done triple the factor calculations and built in massive safety factors for this site. She stressed that they are aware of the concerns. She stated that they have stipulated that they will build the retention sites first, have them reviewed, and if need be, they can make changes. Mr. Campanello questioned moving water so it will not get into the basement of the homes. Ms. Floyd stated that the homes are designed to have a sump system built in, and they will be built at an elevation. Mr. Campanello questioned the testing during different times of the year. Ms. Floyd answered yes, and they wanted to see how the soil was ponding, and that is how they discovered that the South was dry and the North was not. She continued stating that the Northern lots will be bigger. Mr. Campanello stated that the lot sizes look to be about 25,000 square feet. Ms. Floyd stated yes, between 20,000 and 25,000 square feet. Ms. Snyder questioned if all 42 lots will be elevated and have the perimeter drain. Ms. Floyd stated that the residences in the Southeast portion will not be as elevated as the ones in the Northwestern area. Ms. Snyder questioned how many lots will be elevated. Ms. Floyd stated about 50%. Mr. Stump questioned build up which Ms. Floyd stated it will depend on what the retention ponds looked like. She continued stating that the Health Department will also have their input when they start the foundations and septic systems.

Mike Anderson, P.O. Box 961, Goshen, was present in remonstrance. He mentioned that he owns the property to the West of the subject property. He stated water management and pollution are his main concerns. He mentioned that the normal drainage is from CR 19 towards his land. He added that when there is rainfall he has a lot of water on his property. He is concerned about the long retention pond on the South property line. He added that there will be extra water going into the retention pond other than rain water due to the development plan. He mentioned that there is clay, and it could block off the drainage area. He stated that when there are accumulating rains, the retention pond will get fuller. He added the ground will not perk because his land does not perk. Mr. Campanello questioned if he knew for a fact it will not perk and had it tested. Mr. Anderson stated

that he has not had it tested. Mr. Anderson mentioned that they will have the water drain Northwest to Southeast which will eventually go to the brim. He added that when there is a major rainfall, it will run into a full retention pond, and then it will flow through the downhill end and go onto his property. He mentioned that pollution is his other concern. He stated that perimeter drains will be placed around the septic systems, and then there will be pathogens going into the retention pond. Mr. Campanello stated the health department will not allow pollution into the water with the septic systems. Mr. Anderson stated that he did research with the state. Mr. Anderson said that Indiana State Code for septic systems stated that they do not endorse perimeter drains around septic fields. He added that he contacted Purdue University Department of Agricultural and Biological Engineering and the reply from the head of the department stated that this is a bad idea. Mr. Anderson said that if for some reason this gets approved, and he gets damage from the overflow, he will be looking for some relief. Mr. Stump questioned if he is speculating that in the Southwest corner will overflow to his property. Mr. Anderson answered yes. Mr. Stump questioned the Board who is responsible to fix the damage if Mr. Anderson's scenario happens. Mr. Barker stated if there is elicit discharge and the swpp does not work, the developer or the owner of the property is responsible. When Mr. Stump further questioned if the County would be held responsible, Mr. Barker stated that petitioner of the lawsuit would go to the Storm Water Board requesting storm water money. Mr. Stump stated that the County would then be paying for it. Mr. Barker added that it has to be built properly.

Ruth Wagner, 58761 CR 19, was present in remonstrance. She stated her property is bordering the subject property to the South. She mentioned that her drainage goes Northwest. She added that if they double berm the retention pond, her property will be flooded and the Southern bordering properties as well. She mentioned another concern she has is the amount of water that will be brought into the retention pond. She stated that one person, on the low side, uses 100-160 gallons of water per day. Ms. Wagoner stated by the end of the year the total would be 4 million gallons of water that is not only rain water. She added that she has walked the area on the Southside and she has not seen the holes drain completely. Mr. Campanello questioned if they fluctuate. Ms. Wagoner stated that they will fluctuate a little bit however it took until the end of August to go down. Ms. Wagoner stated her other concern is the ground water and the wells. She mentioned that her well is over 100 feet deep, and she is having problems with it. She added that when she turns on the water, the pressure drops. Ms. Wagoner mentioned that if the water doesn't drain completely, it creates a breeding ground for mosquitoes. She added that there are existing problems with the wet grounds and mosquitoes being on her property. She mentioned the potential to have West Nile virus which could be fatal to her horses.

Paul Gittinger, 20641 CR 20, was also present in remonstrance. His property is to the South of the subject property. He is concerned about the water flow from the South to the North. He mentioned that there is an underground pipe that runs from his property to the Northwest. He added that he has two sump pumps, and when the ground gets saturated, his pumps runs about every three minutes. With two pumps, using six gallons of water each time it runs, he stated that is equal to about 240 gallons of water per hour. He is concerned about his property when it rains heavily. He added that when there is heavy rainfall, his yard and CR 20 are completely covered in 12 to 18 inches of water.

Carl Evans, 55513 CR 23, Bristol, was present representing Bill Evans in remonstrance. He mentioned that there is a ditch that runs through several properties to the South of the subject

property. He added that it is a ditch that sometimes it turns into a creek. He stressed his concerns about where the water will go.

Dennis Roberts, 58179 CR 19, was present in remonstrance. He mentioned that he wants to explain the water tile. He stated that its Pine Creek not Indian Creek. He added that he lived on both of those farms, and Indian Creek is more West. He stated that if the water is drained Northeast, it would run through his property into Pine Creek. He mentioned the ground is wet, and there will be too much water. He stated that a new ditch was created on his property, and sometimes the water will go over the road. He mentioned one of the properties that will also be affected has a berry farm. He stated that if we get a heavy snowfall and a fast thaw, it could be bad.

Casey Swinehart, 58569 CR 19, was present in remonstrance. He stated that his property is to the East, bordering the subject property. He mentioned that his pond will not drain, and you can hear the water moving. He stated that the egress window will fill up with water and has damaged his basement. Mr. Campanello questioned what Mr. Swinehart thinks about the elevation of the residences and Mr. Miller questioned if his residence was elevated. Mr. Swinehart responded yes and added that in hard rain, it will overflow and run to the back of his property.

Mr. Cramer returned to the podium. He stated that the drainage to the South will continue to drain the same way as it currently is. He mentioned there will be a swale and will be in the 500 foot conservation area. Mr. Miller questioned the fine sandy loam in the retention area. Mr. Cramer stated the soil types are straight from the County soil book. Mr. Burbrink states that the lines that differentiate the soils represent approximately three acres per sample, which is the reason the Health Department goes out to see if the septic is feasible in a certain location. Mr. Cramer stated that the soil on the Southside of the retention pond will catch any offsite drainage coming onto the property. He added that they will not stop the water, and it will continue to drain. He mentioned that the homeowners' association would be responsible for the maintenance and repair of the retention ponds. Mr. Cramer stated that the natural flow of the ground is East to West and the South retention pond will have no berm. Mr. Barker questioned the berm on the Southeastern part of the subject property. Mr. Cramer answered yes, it will not be stopped or hindered but it will be redirected. Mr. Barker questioned the plan for the berm to be on the South side of the retention pond. Mr. Cramer answered that it would be the West half of that retention pond. Mr. Barker stated that there are a lot of ponding soils along that area, and particularly in the dark areas on the Southern part of the property. He added that it would affect the Southern and Southeastern bordering properties adversely. Mr. Cramer mentioned that the perimeter drains around the septic systems are required by the County Health Department. He stated that those are particularly for mound systems not for conventional systems. Mr. Campanello mentioned that it is a normal standard practice which Mr. Cramer confirmed.

Ms. Floyd returned to the podium to state that each site had individual borings, and they had three borings per site. Mr. Miller noted at the bottom of the page it states that it is well-drained soil but then Progressive Engineering states that it is not. Ms. Floyd stated that Don Schnoeblen did soil borings on every site that they are proposing. She reiterated that the mound septic systems will be to the North of the property. Mr. Stump questioned if only some of the lots will need mound systems. Ms. Floyd responded yes, based on the requirements from the Health Department they have stated which lots will be required to have mound systems. Mr. Stump mentioned that he asked prior how much fill would need to be placed on top. He added that it will also determine what kind of fill will go in there also. Ms. Floyd stated that he was correct, and that the Health Department will be more

involved with this project. Mr. Miller questioned if the Northeast side of subject property has well-drained soil. Ms. Floyd answered that was per all the different borings. She added that the borings were done in 2009 and again in 2016. Mr. Campanello wanted clarification if each lot had three borings done, which Ms. Floyd confirmed, and added that the borings were a lot deeper than normal.

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

Mr. Stump asked Mr. Barker if the pipe that is proposed on the North side will drain just the North. Mr. Barker stated he wanted it drained to the South. Mr. Stump questioned why an open ditch was never created. Mr. Barker said he could not answer that. He added that the tiles in the center of the North section will have to be rerouted as they cannot build over them. Mr. Barker stated that the soil is wet as can be and the water is moving horizontally.

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

Motion: Action: Deny, **Moved by** Roger Miller, **Seconded by** Steven Edwards that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for Primary approval of a 42 lot major subdivision to be known as FIELDSTONE ESTATES be denied in accordance with the Staff Analysis.

Vote: Motion passed (**summary:** Yes = 7, No = 2, Abstain = 0).

Yes: Frank Lucchese, Jeff Burbrink, Lori Snyder, Philip Barker, Roger Miller, Steve Warner, Tom Stump.

No: Steven Edwards, Tony Campanello

5. The application for Primary approval of a 15 lot major subdivision to be known as WINDING RIVER ESTATES PHASE THREE, for D Afton Development & Rose Hill Capital, LLC, represented by Abonmarche Consultants, on property located on the West side of CR 37, 1,200 ft. South of CR 10, in York Township, zoned R-3, was presented at this time.

Jason Auvil presented the Staff Report / Staff Analysis, which is attached for review as *Case #MA-0691-2017*.

Barry Pharis, Abonmarche Consultants, 1009 S. Ninth St., Goshen, was present representing the petitioner. He stated that Pete Letherman was present as well. He mentioned that this site has had dramatic impact. He added that since 2009, phases one and two have slowly started to develop into a community. He mentioned that the market is strong for single family residences. He mentioned that the West side of the proposed property will be approved tentatively. He stated that the borings have been scheduled for the following week, and they agree to not submit a Secondary Plat until they have met the Health Department and Planning Department requirements.

There were no remonstrators present.

A motion was made and seconded (*Edwards/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** Tony Campanello, **Seconded by** Tom Stump that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for Primary approval of a 15 lot major subdivision to be known as WINDING RIVER ESTATES PHASE THREE be approved in accordance with the Staff Analysis.

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

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

6. The application for a Zone map change from A-1 to M-1, for KLT Realty, Inc., on property located on the 417.39 ft. East of SR 13, 741.69 ft. North of CR 20, in Middlebury Township, zoned A-1, was presented at this time.

Matt Shively presented the Staff Report / Staff Analysis, which is attached for review as *Case #RZ-0676-2017*.

Kermit Troyer, 58621 CR 35, Middlebury, was present. He stated that they want to access the subject property from the front.

There were no remonstrators present.

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

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

Motion: Action: Approve **Moved by** Tom Stump, **Seconded by** Steven Edwards that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a Zone map change from A-1 to M-1 be approved in accordance with the Staff Analysis.

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

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

7. The application for a Zone map change from R-2 to B-2, for Panchos Land Development, LLC, represented by Dave Singell, on property located on the Southwest side of US 33 and East side of CR 13 at the corner and on the Northwest side of Jewel Ct., common address of 59156 CR 13 in Concord 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-0680-2017*.

Dave Singell, 2809 Ferndale Rd., Elkhart, was present representing the petitioner. Mr. Kolbus questioned what lots are being rezoned. Mr. Singell stated that there are two lots side by side. He stated that there is a house and garage that will be torn down. Mr. Campanello questioned the proposed use on that property. Mr. Singell stated that they plan to have a car sales lot.

Teresa Kline, 59190 CR 13, was present in remonstrance. She stated that she lives two residences South of the subject property. She mentioned that her concern is where the access to the car lot will be. She added that her other concern is that Concord Intermediate School is right across the street. She stated that Jewel Court is not a road, and it should not be used as an access point due to it being an alley where children play. She mentioned that there are 11 car lots on US 33 between Meijer and Mishawaka Rd., and feels that there should not be another one. Additionally, she

expressed concern about the space for a car lot on the proposed lots. She stressed that they want to preserve what is there and keep it residential. Mr. Miller questioned her access being off of CR 13 and her neighbor having access to her home off of Jewel Court. Ms. Kline responded that they do not have a driveway off of the front it is off the back which is Jewel Court.

Susan Davis-Krallman, 59178 CR 13, was present in remonstrance. She mentioned that she has lived at that location for 31 years. She stated one of her concerns is her property value. She mentioned that she has grand children that play in her back yard, and other neighboring residences have children that play outside as well. She noting that she and her husband are retired, if the property value is reduced, they will be left with very little.

Dave Singell returned to podium. He stated that he would have access from CR 13 and US 33. He mentioned that he does not see how it would hurt the neighborhood. Mr. Campanello questioned if he had plans showing the traffic and proposed lighting. Mr. Singell responded that they do not have any plans showing that as of yet. He added that they wanted to get the rezoning approved before creating those. Ms. Snyder questioned if the main entrance would be off of US 33. Mr. Singell answered that since there are existing curb cuts on US 33 and CR 13 they would like to utilize those. Mr. Campanello questioned if they can approve it and require him to do a DPUD. Mr. Godlewski answered that they would have to add a lot of commitments or deny the petition and have them come back for a DPUD. Mr. Campanello stated that the lighting could create issues especially in a residential area. Mr. Burbrink stated that lighting is a big deal and even if the lighting is only directed inward, it will still reflect outward.

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

Mr. Campanello stated that he is for the development; however he wants to see a plan first.

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

Motion: Action: Deny, Moved by Tony Campanello, **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 R-2 to B-2 be denied in accordance with the Staff Analysis.

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

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

No: Tom Stump.

8. The application for a Zone map change from M-2 to B-3, for Makayla, LLC (Land Contract Holder) & Robert Smead (Land Contract Purchaser), on property located on the Southwest side of CR 45, 3,952 ft. Northwest of CR 13, common address of 24266 CR 45 in Concord Township, zoned M-2, was presented at this time.

Mae Kratzer presented the Staff Report / Staff Analysis, which is attached for review as *Case #RZ-0685-2017*.

Robert Smead, 24266 CR 45, Elkhart, was present as the petitioner. He stated that in the future he wants to build a warehouse to store supplies for tattoo shops. Mr. Stump questioned why he could not do it in the present zoning. Mr. Smead answered that he cannot tattoo in the M-2 zone.

He added that he has a private studio set up in the front of the building currently. He stated that he will not advertise the business as it will be just for his own clientele.

There were no remonstrators present.

A motion was made and seconded (*Edwards/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** Tom Stump that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a Zone map change from M-2 to B-3 be approved in accordance with the Staff Analysis.

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

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

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

Jason Auvil reported that on September 18, 2017 the Elkhart County Commissioners approved a Zone map change from A-1 to M-1 for Jeffery K. & Karen S. Smaka, and a Zone map change and Primary approval of a 1 lot minor subdivision to be known as Damar Wood Products DPUD.

9. ***2018 Planning Calendar***

Jason Auvil stated that the calendar is in proper order and has been reviewed multiple times. Mr. Auvil added that this calendar needs to be formally approved.

Motion: Action: Approve, **Moved by** Jeff Burbrink, **Seconded by** Steven Edwards that the Advisory Plan Commission recommend to the Board of County commissioners that the Planning Calendar be approved. The motion was carried with a unanimous vote.

10. There was discussion amongst the Board about CR 17 between CR 18 and US 33.

11. A motion was made and seconded (*Miller /Warner*) that the meeting be adjourned. The motion was carried with a unanimous vote, and the meeting was adjourned at 11:04 a.m.

Respectfully submitted,

Kristi Shaffer, Recording Secretary

Roger Miller, Chairman