

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 14TH DAY OF MAY 2020 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, Zoning Administrator; Mae Kratzer, Planner; Doug Powers, 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, Philip Barker.

Absent: Frank Lucchese.

*Burbrink appears by WebEx.

2. A motion was made and seconded (*Stump /Edwards*) that the minutes of the last regular meeting of the Elkhart County Plan Commission, held on the 9th day of April 2020, be approved as submitted. The motion was carried with a unanimous vote.

3. A motion was made and seconded (*Warner/Stump*) 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 a zone map change from R-1/R-3 to R-1, for 202 Jefferson LLC represented by Progressive Engineering, Inc., on property located on the east side of Jeanwood Dr. (CR 13), 1,560 ft. North of Bristol St., common address of 1720 Jeanwood Dr. in Osolo Township, zoned R-1, R-3, was presented at this time.

Doug Powers presented the Staff Report / Staff Analysis, which is attached for review as *Case #RZ-0209-2020*.

Stephanie Floyd, Progressive Engineering, 58640 SR 15, Goshen, was present via WebEx representing the petitioner. She stated that they discovered property had two different zonings. She added that they are requesting the rezoning so the property will all be the same zone.

There were no remonstrators present.

A motion was made and seconded (*Edwards/Warner*) 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** Lori Snyder that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from R-1/R-3 to R-1 be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: Jeff Burbrink, Lori Snyder, Philip Barker, Roger Miller, Steve Warner, Steven Edwards, Tom

Stump, Tony Campanello.

5. The application for a zone map change from A-1 to A-4, for Brookins Farms, LLC represented by Kindig & Sloat, PC, on property located on the west side of CR 121, 1,800 ft. North of CR 142, common address of 67261 CR 121 in Jackson Township, zoned A-1, R-1, was presented at this time.

Doug Powers presented the Staff Report / Staff Analysis, which is attached for review as *Case #RZ-0242-2020*.

Charlie Zercher, Kindig & Sloat, 102 Heritage Pkwy, Nappanee, was present representing the petitioner. He explained that they are looking to rezone 40 acres of the parcel to A-4. He added that in order to rezone to A-4 the property has to have a minimum of 40 acres. He mentioned that the A-4 zone is necessary in order to construct the 4th barn and the combined animal units will be over the threshold limit. He stated that the IDEM permit is set to expire in the fall of 2020. He added that it is possible to obtain an extension if need be. He explained that the petitioner raises these chickens for Miller Poultry. He mentioned that the fourth barn will be built to the same standards as the other three existing barns. He explained those existing barns are constructed to Miller Poultry standards. He added that the A-4 zone requires a consent form to be signed by neighboring property owners. He explained that the owner to the north has signed the consent which has been submitted along with the petition. He stated that a sign has to be up to notify neighbors of the rezoning hearing. He added that the sign was put up 10 days prior to today's hearing. He stated that Mr. Brookins and Ms. Lehman from IDEM are present.

Jason Auvil stepped up to the podium. He stated that he wanted to remind the Board that when Staff review these petitions, it is based on information that they have. He mentioned that there is a petition in remonstrance signed by 13 surrounding property owners [*attached to file as Remonstrator Exhibit # 1*]. Mr. Auvil stated the concerns include effects of property values, smell, dust, dirt, and concerns about how the operation is being run. He added that there are videos that will be shown as well. Another concern is that if the property is rezoned to A-4 then the business and buildings can be expanded further than just one additional barn. Mr. Auvil clarified that in terms of land use, intensity should be considered and if it fits or a balance. He stated that the request asks for one more barn. Mr. Auvil added that when the property is zoned to a straight A-4, there is nothing to stop the owner from going to IDEM to obtain additional permits for more than this one barn. Mr. Auvil listed names and addresses on emails that were received in remonstrance [*attached to file as Remonstrator Exhibit # 2*].

Dennis Chupp, 67267 SR 15, Goshen, was present in remonstrance. He stated that several people could not be present today due to COVID-19 concerns. He stated that his concern is the property having a straight rezoning to A-4. He is concerned about the possibility of expanding their use. He questioned if some of the property that is to be rezoned is currently zoned R-1. Mr. Miller explained that the property is going from A-1 to A-4. Staff noted that the adjoining property to the east is zoned R-1. He stated that he has a video to be shown from December 8, 2017. He stated that he was outside in his yard when he came into his residence his wife stated that he smelled of chemicals. The video shows manure blowing, and slowed traffic on SR 15 from the manure blowing. He stated that he has printed the Nuisance Code [*attached to file as Remonstrator Exhibit # 3*]. He stated that he believes Brookins Farms is in violation of at least three of the items in the code. He mentioned that they cannot have a meal in his backyard due to the odor. He stated that licensed appraisers and realtors have told them that their property values will be adversely affected. When Mr. Campanello questioned how long they have resided there, Mr. Chupp answered since 2000. Mr. Campanello stated that he

has not seen any prior complaints. Mr. Chupp indicated he attempted to make calls but did not know who to contact.

Lee Garner, 19767 CR 142, was present in remonstrance. He explained that in the notice of public hearing letter he did not see that it was for 40 acres. He stated that he has no issue with one more barn. His only concern is future possibility of adding more. He mentioned that he spoke with the landowners which stated that there was only going to be one barn. He questioned if there was a way to limit it to only one barn. He noted they smell it at times but it is nothing for him to be concerned about now on his end.

Phillip Veil, 19354 CR 142, home at end of CR 127, was present in favor of the petition. He stated that he has no opposition to them adding the barn. He has lived there since 1986, and Brookins have been good stewards of the land. He added that occasionally they put manure on the land. He added that he has hardly ever smelled chemicals. He mentioned that he did smell it once but only on a walk on 127 and were close to the buildings. He explained that he does not see any reason why they cannot add another barn. Mr. Miller questioned additional barns and Mr. Veil's thoughts. Mr. Veil stated that if they do, they will have to return to a hearing and it could be discussed then.

Rolly Hilty, 19061 CR 121, was present in remonstrance. He stated that he grew up on a farm and the state in the past did not regulate what they do now with chemicals. He stated that it is hard to control the chemicals. He is concerned about water being contaminated. He added that he does not want something similar to COVID-19 to happen in the land owner's water. Mr. Campanello suggests he talks more about land use.

James Mullet, 19384 CR 142, was present in remonstrance. He stated that they live directly south of the barns. He and his wife take lots of walks down CR 121, and the only time he smells chemicals is when stuff is spread. He mentioned in his opinion it is minimal. He added that he has never had dust on his house. He stated that it has impeccable management of land, no trash blowing around like trash blowing from south. He added that he believes there is a lot of speculation about what could happen. He explained where his residence is which is south of the subject property furthest to the west. When Mr. Miller questioned how long he has lived there, Mr. Mullet stated they have lived there since 2004.

Doug Steury, 19728 CR 142, was present in remonstrance. He questioned if the operation could go to the north. Mr. Barker stated the property he is referring to belongs to someone else. He mentioned his concern is that he does not want to see 10 buildings. He added that he does not have a problem with one more building. He questioned a concession to less than 40 acres since it is just for one additional building. Mr. Miller noted it must be 40 acres to get the permit.

Chris Godlewski noted that there are people present online. Mr. Miller questioned if any of them wanted to speak.

Mr. Zercher returns to the podium with a petition with signatures in favor of petition [*attached to file as Petitioner's Exhibit # 1*]. He stated that as far as expansion goes the 40 acres is only for the zoning A-4. He stated that they could have asked to rezone the whole parcel however they limited the request to 40 acres. He mentioned that yes, they have room to add additional barns in the future. He stated that any additional barns would require permitting by IDEM. Mr. Campanello suggested a commitment for only one chicken barn on the 40 acres. When Ms. Snyder questions how long they have been on the property, Mr. Zercher stated since 2016 is when it was completed. He added that the 114 acres on the west side of CR 121 is under one ownership. However, it could be split up in different ownership with additional barns built on the southern part of the property. He explained that there are

common farming practices of spreading manure on the land. Mr. Campanello noted you must have enough extra land to spread manure. Mr. Zercher stated that it is not limited to onsite, it can be spread on other ground with a contract or permission. Mr. Miller questioned about water usage. He stated that IDEM has requirements that must be met. He added that the last inspection was in 2017 and there were no violations. He added that the operations are in compliance. Mr. Miller questioned what the regulations are with the state due to their strict rules.

Melissa Lehman, Agronomic Solutions, 7070 S. 500 W. Topeka, IN, was present also representing the petitioner. She stated she has worked with Brookins and records can be accessed. She stated that IDEM requires an operating record to be kept on the farm. There is also a list of required records that must be kept in the book on the farm as well. She explained that they have required inspection records. She stated that Miller Poultry has no chemicals used, and no antibiotics. She added that birds are grown 4-5 weeks in a barn, they will compost manure between cycles. She added that depending on how the water lines are adjusted, and if extra water drips, then it creates an ammonia smell. She stated that the ammonia smell is what people believe is harmful. She stated that since chicken manure is being composted it becomes awesome product. She added that IDEM permits are good for 5 years, which triggers inspections. She stated that there will be an inspection this fall. Mr. Miller questioned water contamination. She mentioned that this is a solid manure storage system. She added that there are no manure pits, and the manure is tested. She stated that because it is composted it is very rich in nutrients.

Mr. Zercher returned to the podium. He stated that the petitioner agrees to a commitment of one additional barn. He stated that the characterization of the area is residential, however Mr. Zercher disagrees. He noted that there is a GPUD nearby. He added there is an A-4 zone to the west at CR 142 and CR 121 where the whole 97 acre parcel was rezoned. He mentioned the landowner to the north has a PUD for A-1. He stated that the 2017 application of the manure was the first time it was applied to the east side and has not been applied again to the area. He resells to area farmers. He added that Mr. Chupp lives within the GPUD B-3 and has sold him property to allow him to expand. He mentioned that if there is a problem the state chemist would get involved. Mr. Burbrink noted that the manure is applied at an agronomic rate and have two factors of Nitrogen and Phosphorus levels. He added which is how the water pollution is limited. He added that growers are very sensitive to that. He mentioned that there are many situations in the county where there is a barn similar to this request on possibly 3 acres. He added that they do not need the acreage to apply the manure to, but what they simply want is an agreement to neighbors where they can apply the fertilizer to.

A motion was made and seconded (*Campanello/Edwards*) 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** Steve Warner that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from A-1 to A-4 be approved in accordance with the Staff Analysis with the following commitment imposed:

1. Approval is limited to one chicken barn.

Vote: Motion passed (**summary:** Yes = 7, No = 1, Abstain = 0).

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

Campanello.

No: Tom Stump.

6. The application for a zone map change from A-1/B-2 to M-1, for Grand Design RV, LLC represented by Abonmarche Consultants, on property located on the north side of CR 2, 2,900 ft. west of SR 13, in York Township, zoned A-1, B-2, was presented at this time.

Mae Kratzer presented the Staff Report / Staff Analysis, which is attached for review as *Case #RZ-0240-2020*.

Crystal Welch, Abonmarche Consultants, 1009 S. Ninth St., Goshen, was present representing the petitioner. She stated that this will allow for the expansion of the existing facility which is located to the south.

There were no remonstrators present.

A motion was made and seconded (*Stump /Edwards*) 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/B-2 to M-1 be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: 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-1 to M-1, for Town of Middlebury on property located on the west end of W. Spring St., 820 ft. west of Main St. (SR 13), in Middlebury Township, zoned R-1, was presented at this time.

Mae Kratzer presented the Staff Report / Staff Analysis, which is attached for review as *Case #RZ-0241-2020*.

Mary Cripe, Middlebury Town Manager, was present as petitioner. She stated that the reason for this petition is the water tower is reaching its end of life and if moved to another location it would be costly. She added which is the reason this site was chosen for the water tower.

Jim Freeze, 211 W. Spring St., was present in remonstrance. He added that he is also present on behalf of his wife. He read from his wife's letter. He stated that they support the zoning of the property for the water tower. He added that they do not support the parking lot placed on the property. He stated that it will change the dead end road from a quiet private area to a very public area. He explained that the parking lot would promote negative weekend activity on the property and increase of traffic on the very narrow street. He added that the road is two vehicles wide, already has traffic congestion, and navigating onto SR 13 is already a problem. He elucidated concerns about illegal, destructive, or negative activity in the parking lot. He mentioned that there will be additional dangers to the bikers due to increase traffic. He stated they have been there over 20 years, and has a petition signed by all 11 residents on street opposed to parking lot [*attached to file as Remonstrator Exhibit # 1*]. He stated that he loves the Pumpkin Vine. He added that they use it and support it. He mentioned that cars have the right of way however bikers cross the street without looking or stopping. He stated that

neighbors park on the street, kids live there, and there is a horse and buggy on the street as well. Mr. Campanello questioned if the parking lot will be used for shopping down town or mostly used for trail. Mr. Freeze stated it will mostly be used for the trail. He is concerned about safety issues especially late at night. Mr. Campanello asked Mary Cripe if the parking lot is needed for maintenance of the water tower. Ms. Cripe responded that they will have to build something anyway to access the tower. She added with regards to the concerns there are several people in the town that have to drive to a location to get to the pumpkin vine. She added that trailheads are full and this would create another access point. She added that there are a lot of residences in the community that would like to access the trail there.

Sherry Crist, 203 W. Spring, was present in remonstrance. She stated she lives on Spring Street and has grown up there. She stated in response to Mary Cripe's comment about needing extra parking, the Town Marshall mentioned that there is not a problem. She stated that if it is not that big of a problem then why is there a need for the parking spaces at the end of the dead end street. The town approached Ms. Nobles home in March wanted them to move the cars for construction. She explained that Ms. Noble was not home but her teenage daughter was. She added the teenage daughter had to move the cars. Their residence has no driveway. She stated that they started cutting down trees and cutting the curb off the street. She stated that they went down there and was informed that there was going to be a parking lot placed there. She explained that they have no problems with the water tower going there. Ms. Crist stated that Ms. Noble was unaware of the town putting in a parking lot. She stated that later in the afternoon a town employee passed out fliers to the residences on the road. Ms. Crist added that she called the Building Department on Friday, April 3, 2020, and left a message for Jason. She added that she did not hear back from Jason. She explained that she called back on that following Monday. She spoke with Jason and asked questions about if they could do that. She added that Jason stated that they have filed for a rezoning that morning. She stated that she is concerned about the safety, the approach, and does not want the parking lot there.

Mary Cripe reiterates the request.

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

Mr. Stump questions after they act on this the request then goes to Middlebury Town Council for approval. Mr. Auvil stated that is correct. Mr. Stump stated that he agrees with both remonstrators. He added that it is disconcerting to him that the Town of Middlebury did not notify neighbors on the street until after they started the work.

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

Motion: Action: Deny, **Moved by** Tom Stump, **Seconded by** Steve Warner that the Advisory Plan Commission recommend to the Middlebury Town Council that this request for a zone map change from R-1 to M-1 be Denied.

Vote: Motion passed (**summary:** Yes = 7, No = 1, Abstain = 0).

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

No: Roger Miller.

8. The application for a zone map change from A-1 to DPUD A-1 and for Primary approval of a 1-lot minor subdivision to be known as STEEL MASTER ROOFING DPUD, for Glenn Graber represented by Progressive Engineering, Inc., on property located on the west side of US 33, 2,150 ft. north of CR 42, common address of 66607 US Highway 33 in Elkhart Township, zoned A-1, was presented at this time.

Jason Auvil presented the Staff Report / Staff Analysis, which is attached for review as *Case #DPUD-0235-2020*.

Stephanie Floyd, Progressive Engineering, 58640 SR 15, Goshen, was present representing the petitioner. She stated the primary reason is for storage of building materials.

Matt Miller, he is the owner of the roofing company present on behalf of his brother.

There were no remonstrators present.

A motion was made and seconded (*Stump /Barker*) 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** Lori Snyder, **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 A-1 to DPUD A-1 and for Primary approval of a 1-lot minor subdivision to be known as STEEL MASTER ROOFING DPUD be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

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

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

Jason Auvil reported that on April 20, 2020, the Elkhart County Commissioners denied the vacation of Nursery Drive. He added that on April 20, 2020, the Elkhart County Commissioners approved a vacation for CR 137, a zone map change from GPUD R-4 & GPUD B-1 to A-1. They also approved a zone map change from GPUD E-3 to DPUD E-3 and for primary approval of a 1-lot minor subdivision to be known as Tiara RV DPUD.

10. ***Hearing Officer***

Chris Godlewski stated that Denny cannot do Hearing Officer next week and want to reappoint Roger Miller.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Steve Warner that the Advisory Plan Commission approves Roger Miller as Hearing Officer for the May 15, 2020 hearing.

11. ***NWG Rezoning***

Chris Godlewski stated that in July we are planning on attempting that rezone in the Northwest Gateway. He stated that they did a survey and only 15% responded to the survey. He stated that they will do notice of the petitioners even though the petitioner is the Plan Commission. Plan Commission is petitioning to rezone Old US 20 corridor to B-2/B-3. He stated that only one response was not in favor. There are 25 landowners and 37 parcels. He stated that the Commissioners will have final say. Three of the responses were very favorable. He stated that there were questions about non-conforming which is fine but cannot expand.

Steve Warner questioned the drag strip. Mr. Godlewski stated that the Commissioners attorney Mike DeBoni was going through information in order to respond on the County's behalf. However, there is nothing to report at this time.

12. A motion was made and seconded (*Miller/Edwards*) that the meeting be adjourned. The motion was carried with a unanimous vote, and the meeting was adjourned at 10:41 a.m.

Respectfully submitted,

Kristi Miller, Recording Secretary

Roger Miller, Chairman