

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 9TH DAY OF JULY 2009 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, Tom Holt, with the following members present: Meg Wolgamood, Roger Miller, Tom Lantz, Jeff Burbrink, and Dennis Sharkey. Staff members present were: Robert Watkins, Plan Director; Mark Kanney, Planning Manager; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Dan Piehl, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Miller/Lantz*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 11th day of June 2009 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Lantz/Burbrink*) that the legal advertisements, having been published on the 27th day of June 2009 in the Goshen News and the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Miller/Sharkey*) 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.

5. The application for the vacation of an east/west alley right-of-way for **James Mason** on property located on the East side of Burbank St. (50th St.) (a distance of 150 ft.), 128 ft. South of Wolf Avenue in Baugo Township, zoned R-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #20091778*.

Present on behalf of this request was James Mason, 30342 W. Wolf Ave., Elkhart, who said he would like to have this alley closed.

Mr. Miller asked if the alley to the east has been vacated, which is connected to the portion of the alley in question, but Mr. Mason said it is all alley from 50th Street to 49th Street. He also pointed out tree lines and other areas on the aerial map where there are alleys that have been closed.

When Mr. Kolbus asked if that portion of the alley to the east is improved, Mr. Mason said you may be able to get a car down it, but everyone has been using it as a yard.

* (*It is noted that Steve Warner arrived for the meeting at this time.*)

Mr. Burbrink asked if anyone has approached the group about closing the entire alley and Mr. Mason said he thinks they did at one time. He said the neighbors on either side of the alley don't care, but they don't want to spend the money to vacate it.

Mr. Sharkey commented that he had the same concern and he asked why they are only vacating a portion of this alley. If you close off one end, Mr. Sharkey pointed out that it would be a dead-end alley. Mr. Mason said the alley east of 49th Street was closed and he too wondered why they didn't close the entire alley.

Mrs. Wolgamood pointed out that a portion of the alley to the north is open with portions to the east that appear to have been vacated; therefore, it is her opinion that Mr. Mason is asking for

nothing different than what they've already approved to the north.

Present in opposition to this request was Richard Fisher, 30329 Blaine Ave., Elkhart, who lives on the second lot east of 50th Street on the south side of the alleyway. After recently having his property surveyed, he learned that approximately nine feet lies in Blaine Avenue so he has 118 ft. of property instead of 120 ft. Before this alley is vacated, he would like the Highway Department to figure out what they're going to do to make his property whole again. He also said the neighbors to the west on the corner of Burbank and Blaine Avenue only have 114 ft. to the edge of the road.

It was noted at this time that a portion of the alley requesting to be vacated ends in the middle of Mr. Fisher's lot.

Every time he comes to the office to request permission to clean the alleyway, Mr. Fisher said he's been told by the staff that their properties (on north and south sides of alley) meet as the alley was overlaid on their properties. He cleared his 50 ft. portion of the alley of trees and since that time he's had his property surveyed. He then reiterated that he wants the alley to remain open until he gets his 120 ft. of property back, and he indicated that all of the neighbors he talked with on the same side of Blaine Avenue feel the same.

When an alley is vacated, Mr. Sharkey asked if they go down the center of the alley.

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris. He explained that he did a survey of Lots 716 and 717 of the First Addition to Sunset Park not knowing there was a petition to the north. He then submitted copies of the Survey *[attached to file as Remonstrator Exhibit #1]* and the Surveyors Report *[attached to file as Remonstrator Exhibit #2]* to the Board.

According to Mr. Doriot, there have been statements made that the alley never existed in this block and that the properties abutted at the centerline. He also indicated that some of the planning staff was questioning if this alley did not get staked when this block was staked out. He surveyed the property and he said the section line was established and monumentations were found. He explained that Blaine Ave. is actually another 25 or 30 ft. wider to the south because the subdivision is platted and the GIS map is not correct.

Mr. Doriot continued saying they found the north line of the block is very well monumented with 2-inch iron pipes that were originally set in that subdivision plat. They also found a monument on the south right-of-way of Blaine that matched the starting calls of the subdivision. When they ran that line west to some monuments they found out in the road (49th St.), the lines were within a half minute of being parallel, which he said is extremely good for the type of equipment that was used when this subdivision was laid out. They also calculated a point, which he indicated was at Blaine Ave. and 50th St., and it fell way out into the street. After digging a foot and a half under the asphalt pavement, he said they found a 2-inch iron pipe which was the original block corner. He then pointed out other corners they found, but he said they found no corners along Blaine Ave. (between 50th and 49th St.) other than that block corner. From that block corner, he said they projected that to the east to establish the line and they found the alley.

As monumented, Mr. Doriot said the lots would be 128.34 ft. and the alley would get its 14 ft. as platted so there is a slight underage on the dimension of the lots. Because Mr. Fisher has assumed that his line was in on his property, he installed a fence that is shown on the survey as being 3.93 ft. past the centerline of the alley. Therefore, when this vacates, there will be a fence encroachment and he said he doesn't know how that is handled. He questioned if the government can push on to private individuals a property dispute.

In conclusion, Mr. Doriot said the alley should be vacated, but he feels they should vacate the entire alley. He suggested the Plan Commission notify the other people involved to advise them the entire alley will be vacated, and he pointed out the properties of two neighbors he met that would also like to see it vacated.

Also present in opposition to this request was Linda Fisher, 30329 Blaine Ave., Elkhart, owner of Lots 716 and 717. If the alley is vacated, she too wanted to know how their property will be made whole again. She asked if that is something this Board addresses or where she would go from here. Mrs. Fisher said they have been sued by Mr. Mason due to the misconception of where the easement is located and she has no idea how to determine its location.

Mr. Doriot interjected that their concern is about the pavement on the south edge of the property that extends between six and eight feet into their property. He said these roads were unimproved for years and the Highway Department came in and paved them. According to Mr. Doriot, they paved over the property line outside of their right-of-way.

If they took that much of their property for a public road, Mrs. Fisher asked how they get compensated for it other than the easement. She was then advised to address that with the County Highway Department or the County Commissioners as this Board has no authority over that issue.

Mr. Mason offered no comments in rebuttal at this time.

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

During discussion, Mr. Sharkey commented that he would like to see this tabled pending a petition to vacate the entire alley. In the meantime, he said they can possibly work out some of the other issues.

If the consensus of the Plan Commission is that they have no issue with vacating the entire alley, Mrs. Wolgamood asked if they have the authority to ask the staff on behalf of the Plan Commission to file for vacation of this alleyway in its entirety. Mr. Kolbus said a vacation has its own separate statute, which he would have to review. Usually, he said you have to have a percentage of the property owners involved in the petition for a vacation.

According to Mr. Burrow, Mr. Lord (county attorney) has indicated that it would require only one person having adjacency to the right-of-way who could petition for the entire right-of-way. The county ordinance does not specify that the Plan Commission or the Plan Commission staff has the ability to instigate the vacation of a right-of-way, but he said the County Commissioners could.

For clarification, Mr. Kolbus said that Mr. Mason could amend his petition to request that the entirety be vacated and Mr. Burrow said that is correct. Mr. Kolbus then advised that the Board's recommendation would be to table the request to allow the petitioner to amend his petition to vacate the alleyway in its entirety, and if not amended, the Board would act on the petition as it is next month.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Sharkey/Lantz*) that this request be tabled until the August 13, 2009, Plan Commission meeting to allow the applicant to amend the petition to vacate the entire alley right-of-way, if he desires. The motion was carried with a unanimous roll call vote.

Mr. Burrow then explained that the staff would re-advertise and re-notify neighboring property owners of an amended petition. When questioned about the advertised date to go before the County Commissioners, Mr. Burrow said the Commissioners have no record of the vacation until the staff presents it to them.

6. The application to amend the text of the Elkhart County Zoning Ordinance by adding **SECTION 9: ELECTRONIC MESSAGE BOARDS to SPECIFICATIONS H – SIGNS** for the Elkhart County Advisory Plan Commission on property located in the unincorporated areas of Elkhart County, Indiana; and the incorporated areas of the Town of Bristol, Indiana; the Town of Middlebury, Indiana; the Town of Millersburg, Indiana; and the Town of Wakarusa, Indiana, was presented at this time.

* *(It is noted that Blake Doriot arrived for the meeting at this time.)*

Mr. Nemeth said the staff has tried to simplify this ordinance and what he considers the best version was then submitted to the Board *[attached to file as Staff Exhibit #1]*.

In reviewing the ordinance with the Board, he said the three problems they want to try to solve is the glare at night, proximity to residences and flashing. They want to permit electronic message boards in the Business, Manufacturing and Development Park (E) zoning districts. In addition, he said there are certain land uses in the Agricultural and Residential zones that will want to request a sign such as fraternal organizations, churches and day cares so the staff would like them to apply to the Board of Zoning Appeals for a Special Use Permit on a case-by-case basis. He then said the size of the sign will be subject to the standards of the zoning district it's located in.

Mr. Nemeth said they are proposing a 300 ft. minimum separation distance between the message board and the closest residence. Electronic message boards are almost incompatible if next to a house so one of the ways to address that is to put some distance between them. If they want the sign to be closer, he said they can apply to the Board of Zoning Appeals as a developmental variance on a case-by-case basis.

He went on to say that light levels during the daytime need to be bright because of the sun, but it doesn't need to be as strong in intensity at night because it is not competing with other light sources. Therefore, the staff proposes to require light levels to drop to a maximum of 500 NITS, which is a unit of measurement for light. Included is a definition for night of one-half hour before sunrise and one-half hour after sunset, which he said is consistent with language in a hunting license and from a driver's education manual.

Mr. Nemeth then explained that NIT levels will be calculated based on the light meter's specifications of the manufacturer as they all have different criteria. If there is a question of enforcement, he said they have required that the person in violation submit documentation to Code Enforcement showing they are in compliance.

The staff would also like to require no flashing. He said the purpose of the message boards is to convey information and on site sales and services. If the message board is flashing without a message content, he said it is not really conveying a message, it instead is serving to distract. With the way they have written into the ordinance by combining technique and content of the message, he said they hope they will be able to eliminate flashing. Also added was a definition for flashing, which Mr. Nemeth said is to give off light in transient bursts.

Mr. Kolbus asked where it specifies how long a message can display. He recalled discussion that it could only change very five seconds, but Mr. Nemeth said that is no longer in the ordinance. He explained that they originally wanted to set-up times for movement and stillness, but based on conversation at the public hearing last month, it appeared the Board was favorable for allowing animation and scrolling so the staff decided to focus on the three problems and advance the sign regulations with achievable goals.

Mr. Sharkey clarified they are approving scrolling and Mr. Nemeth said yes.

Mr. Kolbus said this ordinance may change when the new Zoning Ordinance is drafted and adopted, but this will get something in place now.

Mr. Miller wondered if there is anything new coming in the signage industry that the Board should be looking forward to.

Responding to the question was Lyle Ryman from Sign Image and Design, 1617 Cassopolis St., Elkhart, who said that holographic signs are coming in the future. Currently, he said there is a 20-story building in Korea where LED light bars run the complete height and width of the building so it is nothing more than a big sign. He said the signs change each day, especially as they are going digital.

Mr. Ryman then submitted to the Board to review at their convenience a manual of how billboards are constructed *[attached to file as Petitioner Exhibit #1]*.

Mr. Ryman said he supports having a code for digital displays, and he appreciates the work being done on this ordinance as he believes this will be a blueprint in the future for other municipalities in Elkhart County. This ordinance allows the sign companies some guidelines, and he said it also allows him an easier way to design a digital display for his customer by having these guidelines. It keeps him from having to come before the Plan Commission every month asking for a variance for a digital display. It saves the customer money and saves the Board time, which he said is valuable. At the same time, it will allow Elkhart County to have a good digital display in signage that will not look like Las Vegas.

Mr. Ryman then went on to describe the various statistics on billboards, which he said is up and coming. Some billboards have a combination of light and color of 4.4 trillion different variations, and they have 256 different levels of brightness all the way up to as much as 7,000 NITS. He explained that all of the signs can be manually or automatically changed in brightness, and the standard LED display is about 500 NITS at night and 1,250 NITS during the day. Most of the manufacturers use an automatic dimming mode so it would automatically dim when there is a storm, and the brightness would go back up again when the bright light comes out.

When asked if this is primarily LED as opposed to a projection, Mr. Ryman said there are two styles of billboards now. One style is like a projection that is basically a lighted picture that changes to another lighted picture, and the other type in the article is like a TV.

Included in the manual he submitted previously (Petitioner Exhibit #1) were photos, which Mr. Ryman said gives some of the details and statistics, and also shows how LED signs are produced.

Mr. Miller asked if there is a way that light can be deflected so it doesn't spread out. For example, he said street lamps have the ability to be directed down and light up the area they want as opposed to spreading out. Mr. Ryman said it depends on the manufacturer. He explained that some have a directional LED, which goes out in a straight beam of light. The changes with that is now it's not a directional LED, but an LED that you can see almost from a 90 degree angle. Most billboards have an average viewing distance of 170 meters, and as you get closer to the sign, he said it will be brighter; however, he said there are adjustments on almost every manufacturer for this.

If there is a large board being proposed, Mr. Miller asked if the Plan Commission could stipulate that the direction of light not be allowed to go off to the side and light up an adjoining subdivision 100-yards away and Mr. Ryman said you could. There are manufacturers who only have directional LED's, and he said you could also put on a requirement for brightness.

Mr. Miller said he would not be happy if he had a billboard 300 ft. from his residence that is flashing, which is indicated in the ordinance. He asked if the size of the sign is restricted in a

residential area, and Mr. Nemeth explained that it would have to go to the Board of Zoning Appeals first to look at the location and surrounding area and the size would be addressed at that time. He then clarified that the maximum size is 20 sq. ft. in a residential zone.

Mr. Doriot reiterated that this ordinance is a beginning and will most likely be revisited when the zoning ordinance is revised and Mrs. Wolgamood agreed that was the intention all along.

There were no remonstrators present.

A motion was made and seconded (*Doriot/Sharkey*) 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, a motion was made (*Miller*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request to amend the text of the Elkhart County Zoning Ordinance by adding **SECTION 9: ELECTRONIC MESSAGE BOARDS to SPECIFICATIONS H – SIGNS** be adopted.

Referring to Section 1.b. (page 2 of 4) in the ordinance, Mr. Kolbus advised that “Special Use Site Plan” should be changed to “Special Use Permit” and Mr. Nemeth agreed to make that change.

Mr. Miller then amended his motion to include the change in Section 1.b as follows: “Electronic Message Boards may also be considered in “A” Agricultural and “R” Residential zones within a part of a Special Use Permit if specifically requested and approved by the Board of Zoning Appeals”. Mr. Lantz seconded the motion, and with a roll call vote, the motion was carried with Mr. Holt voting in opposition.

7. There were no audience items.

8. Mr. Burrow presented a request for a minor change to the Site Plan Commission / Support Drawing for **Sylvan Woods PUD** at this time. He submitted a handout to the Board [*attached to file as Staff Exhibit #1*], which contains his report to the Plan Commission, a letter dated June 17, 2009, from Jeff Chupp of Pheasant Ridge Development Company, a copy of a portion of the plat highlighting the area in question, and a typical footprint shown on the property.

In presenting his report, Mr. Burrow said approval of a minor change would allow for portions of the platted Lot 7 to be sold to the adjoining landowners as non-buildable tracts, and the remaining 21,654 sq. ft. of Lot 7 (northern most tract) will be considered a buildable lot provided a septic system and well can be designed and installed in compliance with the standards of the Health Department. The issue is that there are two other property owners who own certain portions of this parcel. The location of Lot 7 was then reviewed.

According to Mr. Burrow, under the DPUD Ordinance, the staff is allowed to make certain minor changes to the site plan, but it can be referred to the Plan Commission when it becomes complicated like this is.

When Mr. Kolbus asked if the parcel left to build on is 07-09-251-025 (shown on the plat), Mr. Burrow said that parcel is the subject of this request.

He went on to say that referral to the Plan Commission was made because past attempts that affect Lot 7 met with significant remonstrance from Sylvan Woods. The staff, Plan Commission, and Board of Zoning Appeals have left covenant enforcement up to the owners of the real estate. The issue with the Sylvan Woods covenants is that they were used as a material factor of getting this DPUD approved so the staff questions if this decision should consider recorded covenants, and

how much they should be involving the homeowner's association. He then pointed out that the covenants indicate that any divisions of the property have to be approved by the homeowner's association or their committee (Architectural Control Committee). The last issue is if they should cause this to be re-platted, or just allow it to be established by metes and bounds.

Mr. Burrow said he presently has two signed affidavits from the other property owners agreeing to relinquish any access or rights to build on their portion of the property until they go through a rezoning or subdivision to include it into their parcel or to be able to build on it.

Mr. Kolbus said this would not be here if this was a regular subdivision because you can designate parts of a lot as a zoning lot. If that zoning lot meets the requirements, you can build on it so the only reason it's before the Board is because it's a PUD and it had a Site Plan. Mr. Burrow added that at the last hearings affecting Lot 7, either the homeowner's association or just individuals had issues with the re-platting of that portion of the lot into another parcel.

Mr. Doriot asked if Lot 7 was platted as unbuildable, but Mr. Burrow said it was platted as a buildable lot. Technically, Mr. Doriot said parcel 025 is the only buildable portion today; however, Mr. Burrow clarified it is not buildable until the Board says it is a minor change.

Mr. Kolbus then advised that they still have to get permission from their architectural committee, and Mr. Burrow said he's also asking for guidance from the Board on whether or not he should get a release from the homeowner's association because they normally do not enforce the covenants. Mr. Doriot said the covenant is already there and the Board has no authority to lift a private agreement and Mr. Kolbus agreed.

Mr. Burrow asked if they want to get in the situation where he issues a building permit, which could possibly be the only time the homeowner's association gets notice there is something going on, because they've accepted covenants as a material representation to the Plan Commission on a private street.

When asked if a building permit will increase the density of the subdivision from the way it was presented to the Plan Commission, Mr. Burrow said no. He was then asked if the dashed lines through the lot (shown on the drawing with the footprint) are easements and he explained that is the location of the existing drive for a house on this site.

Mr. Sharkey commented there are no easements, buried pipelines or high powered lines through there and Mr. Burrow said there are not suppose to be.

For clarification, Mr. Miller said the request is for a minor change so they can request a building permit without re-platting and Mr. Burrow said that is correct. If a permit is issued, Mr. Miller said that doesn't mean the homeowner's association has to be notified and Mr. Burrow said he does not notify them.

When asked if they would notify the homeowner's association on any other lot, Mr. Burrow said he does not have any other lot that requested deviations from the original approved site plan. Mr. Doriot then commented that it is not really deviating because it's not increasing the density; however, Mrs. Wolgamood said it is dividing the lot.

Discussion continued about enforcement of the covenants and restrictions, and whether the Plan Commission should be managing them. Mr. Kolbus indicated they should not be managing the covenants, but it was pointed out that they do take them into consideration. Mr. Burrow said it is brought up quite a bit, but the Board of Zoning Appeals takes each case individually.

Mr. Holt then asked if the covenants were attached to the ordinance. Mr. Burrow said they were not placed in the ordinance the Plan Commission adopted, but the ordinance and the plat were recorded against each other.

Again, Mr. Burrow asked if they should involve the committee, and if not, the question is if this is a minor change as it has been presented to the Board.

Mr. Doriot's feeling is that they have a 65,000 sq. ft. lot that has been divided in ownership, but those people who own the other two parcels have relinquished their right to build on it so there is no net change. They still have a legal lot by the ordinance, and he said it would be the same if there was some type of other easement across the balance of it. He feels it is no different than if he had requested a building permit on Lot 13 because they wouldn't notify everyone.

The issue according to Mr. Burrow is that they are trying to place the septic, the well and the house onto the lot with no pool, and there are some unique setbacks required by the homeowner's association that are within the covenants. The only notification they will get is when they start to put in the forms and foundation and they would have to go to court to stop that. He then clarified that it will be subject to the Health Department releasing a septic and they are in the process of working on that issue.

It was Mr. Holt's opinion that this is a major change and should be brought back for a public hearing.

If they could build a house on Lot 7 as is, Mr. Sharkey asked what difference it makes if they split off a couple unique areas and sell them to the neighbors. He said they are just changing the configuration of the development a little bit, but Mr. Burrow said they are selling a portion of the parcel outside the PUD. He said you have to remove that from the PUD, and the last time they tried to do that they met with a lot of resistance.

Mr. Miller moved that the Advisory Plan Commission consider this request a minor change with no stipulation of a release from the homeowner's association. Mr. Doriot seconded the motion with the comment that this house will not increase the density as the two remnant parcels of Lot 7 (07-09-251-028 and 027) have submitted affidavits relinquishing their request for building permits.

Mr. Miller then amended his motion to include Mr. Doriot comments as part of the motion. A roll call vote was taken and the motion did not carry with the following results: Wolgamood – no; Miller – yes; Lantz – no; Warner – no; Doriot – yes; Burbrink – no; Sharkey – yes; Holt – no.

A motion was then made by Mrs. Wolgamood that the Advisory Plan Commission consider this request a major change to the Site Plan / Support Drawing and the motion was seconded by Mr. Doriot. A roll call vote was taken and the motion was carried with Mr. Doriot and Mr. Sharkey voting in opposition.

9. The meeting was adjourned at 10:08 a.m.

Respectfully submitted,

Kathleen L. Wilson, Recording Secretary

Tom Holt, Chairman