

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 11TH DAY OF FEBRUARY 2010 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: Dennis Sharkey, Blake Doriot, Jeff Burbrink, and Meg Wolgamood. Staff members present were: Robert Watkins, Plan Director; 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 (*Doriot/Burbrink*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 14th day of January 2010 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Doriot/Wolgamood*) that the legal advertisements, having been published on the 30th day of January 2010 in the Goshen News and the 1st day of February 2010 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

* (*It is noted that board member Roger Miller arrived for the meeting at this time.*)

4. A motion was made and seconded (*Doriot/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. ***Election of 2010 Plat Committee Chairman***

Mr. Burbrink explained that according to the Rules of Procedure, the Secretary of the Plan Commission also serves as Chairman of the Plat Committee; however, that was not reflected on the 2010 Slate of Officers and Appointments adopted at the January 14, 2010, Plan Commission meeting. Therefore, he said they need to correct the Plat Committee appointments to establish Mike Yoder as the Chairman.

Mr. Doriot moved to amend the 2010 Plat Committee appointments establishing Mike Yoder as the Chairman (*see attached*). Mrs. Wolgamood seconded the motion, which then carried with a unanimous vote.

6. The application for a zone map change from R-1 to B-1 for ***Brian D. & Velma A. Rodgers (owners) and Cynthia J. Mannia (buyer)*** on property located on the North side of Vistula Street (SR 120), at the intersection of Vistula Street (SR 120) and Maple Street, common address of 502 W. Vistula St. in Washington Township, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #502WVistulaSt-091223-1*. He reported that the petitioner's site plan has been revised to illustrate a four-foot hedge on the south side of the parking lot and adjacent to SR 120, which was then submitted to the Board for review [*attached to file as Staff Exhibit #1*].

Present on behalf of this request was Cynthia Mannia, 53671 Mark Dr., Bristol, who said

she is trying to restore a very old house and add something to the community of Bristol.

There were no remonstrators present.

A motion was made and seconded (*Sharkey/Doriot*) 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 and seconded (*Wolgamood/Doriot*) that the Advisory Plan Commission recommend to the Bristol Town Council that this zone map change from R-1 to B-1 be approved in accordance with the Staff Analysis. The motion was carried with a unanimous roll call vote.

7. An informational update on the *Countywide Utility Study* was presented at this time. Mr. Watkins explained that there was discussion three years ago about the urban growth areas and utilities for the area east of CR 17. He said the Commissioners facilitated the Countywide Utility Study to look at what they would potentially be doing with utilities countywide in the future. The Redevelopment Commission then funded the study, and after running into a number of roadblocks trying to get communication between some of the city utilities, he feels they are at a point where this study can be finalized. The discussion today is to present the findings and familiarize the Board with what the study is all about. For the study to have any real use, he said it then needs to be adopted as part of the Elkhart County Comprehensive Plan.

Presenting the findings of the study was Ken Jones of Wightman Petrie, Inc., 4703 Chester Drive, Elkhart. He explained that the draft plan was completed within the designated timeframe, but the discussion with the municipalities continues today. Their goal is to make sure they are partners, which he said they have to be or the plan doesn't work. They developed a power point presentation to present to the Plan Commission, Redevelopment Commission, the County Commissioners, and the Regional Sewer District.

In presenting the power point presentation to the Board, Mr. Jones said they started this study three years ago and the primary purpose was to support the Elkhart County Comprehensive Plan adopted in early 2006. The Comprehensive Plan Commission was the beginning of the partnership with the municipalities where the Plan Commission and County Commissioners are going to try to move significant development back up to the urban centers. It was a conceptual plan and did not have details included so to accomplish all of the goals in the plan, he said they needed to pull all of the documents together. Every set of goals in the Comprehensive Plan talks about the need for adequate utilities, integral planning with the municipalities, and responsible and balanced growth and he said this document (Elkhart County Utility Master Plan Commission 2010 - 2020) fully supports the approved Comprehensive Plan.

Mr. Jones went on to say that the document includes a fairly comprehensive socio-economic profile. According to the trends using the 2000 census, he said they would expect to have another 8,000 homes in the county by 2015. They also did a key leadership survey with 26 community leaders who are listed in the appendix of the document. Sixty-three percent of the respondents support sewer and water service areas, and he said 63 percent indicated that updated infrastructure was the strongest need for growth and development.

In addition, Mr. Jones said all of the physical development features are also included in the plan. When the document is completed and the planning staff or Plan Commission want to do an evaluation for a development site, or if there is a request for a reaction from the Sewage District to do a project or introduce a utility into an area, he said all of the information would be at the fingertips of that reviewer. For example, he said topographic features, water resources, soil

conditions, protective wetlands, and flood prone areas are all included in the document for every township. All of this information can be uploaded to the County's GIS, and he said they actually used the GIS for the basis of all of their mapping products.

Mr. Jones then explained that the circles shown on the map (Figure 5-68) represent the wellhead protection zones for all municipal and semi-municipal water wells in the county. By law, he said there are certain restrictions they now have to acknowledge in planning and that is one critical piece they will need as they go forward into the next cycle of development in Elkhart County. As an example, he said they would not be able to build a standard Elkhart County dry retention area in the wellhead protection area for the Town of Middlebury without providing some type of liner.

Mr. Jones further explained that they categorized land use, both residential and commercial un-served by public utilities, using a broad description. On the map (Figure 5-69), he said the un-served areas in the residential category is represented in blue and he went on to review the criteria for selecting those areas with the Board. What he found interesting was the significant amount of un-served residential areas that were in the city of Elkhart. When that was completed, he said they evaluated the existing water systems within the county. Eleven public systems were identified and mapped into the GIS, and they also inventoried their growth master plans and their capacities. The evaluation shows the providers of those systems are doing a good job making sure all of their systems are at the highest quality.

* *(It is noted that board member Mike Yoder arrived for the meeting at this time.)*

According to Mr. Jones, the county has a high quality prolific aquifer and all of the rural areas of the county are adequately served by private wells. We have some of the best water in the entire state and he said it is a highly valuable resource that a lot of areas in Indiana do not have. They are concerned about point-source hazards to the water supply, which he said they have identified and included in the document, and they have also made some preliminary determination that most of those point-source hazards are near municipal water systems. He then referred to a map in the document that came from MACOG (Figure 6-13), which indicates there are 231 known groundwater contamination sites in the county. He pointed out that a great majority of those sites are near population centers where they can get access to municipal water if their well is threatened. Most would require a capital project and he said they would have to figure out a way to pay for it, which is one of the purposes of this document.

In their conclusions, Mr. Jones said the municipal systems are well positioned for growth. He said all municipal providers have been considering this and are ready if the county enters into a partnership with them to expand their systems into the unincorporated jurisdictions. However, he said the county is very adequately served by water wells and the idea of extending municipal services for potable water and fire protection out into the townships doesn't make sense when we have such a prolific aquifer that is in such good shape. From now going forward in the future, he said we need to be sure we are taking steps to protect that resource, and to do that, we will need some education and outreach to property owners so they understand how important it is to them. They are going to recommend in the document that the county consider a water well ordinance, and he pointed out that they have included an example ordinance in the Appendix.

With regards to existing public waste water systems, Mr. Jones they looked at their capacities and studied all of their master plans, and he said they also looked at what the unincorporated areas are currently doing to treat waste water. They had to select a ten-year window so they looked at 1996 through 2006, and in all of those townships, he said they found 2,391 septic

system repair/replacement permits that occurred within that period.

* *(It is noted that Mr. Sharkey was not present for the remainder of the meeting.)*

Mr. Jones continued saying Elkhart County had a significant building boom between 1996 and 2006, and every township had a significant number of new septic system permits issued with the exception of Olive. They found that a lot of those septic systems are reaching their threshold age so they will probably have to look at a repair or replacement of at least their leach field in the next few years. They also found that those lots were built under Elkhart County's former standards where you could build a house, garage, swimming pool, septic system, and a well on a 15,000 sq. ft. lot so they will need to develop some protocol for responding to today's standards for isolation from water wells. If you go back to the township inventory for repair or replacement he said you can start to see trends where that's going to occur and there is probably going to be some need for them to take some action.

Mr. Jones then reported that Elkhart, Goshen and Nappanee have all started their CSO long-term control plans and are taking actions to alleviate their direct discharge into the area streams and rivers. All of the systems are very well maintained with high technology in every case.

Referring to the evaluation and analysis portion of the document, Mr. Jones said they wanted to assemble something that was repeatable with an easy to use ranking system that could be used by anyone to come to the same conclusion they came to. Therefore, they developed a simple matrix, one for water and one for waste water, to go through the primary things you would look at in review of a future development project. In this final section of the report, he said they needed to prioritize the county's actions as that is where the responsibility will lie. They did the same thing for sewer, and he said it's very important that this information be available for everyone to review. One of the most important categories, he said, is proximity to an established urban services boundary. For example, if the city spent a significant amount of money doing a utility study and established an urban services boundary, but the county ignores that, he said the partnership would be lost so that is a conflict they have to avoid.

From that exercise, Mr. Jones said they identified 39 specific priority service areas, which are the blue areas on the map (Figure 8-1). That is done by using the ranking chart in the Appendix of the document, which was then shown to the Board. If they are going to begin planning and develop protocol for a 20-year period, he said they know already where the priorities are that they need to react to. He then clarified that all of those priority service areas follow property lines and are available on the GIS.

For the first eight priority services areas, Mr. Jones said they felt it was important to develop what they would consider to be present-day costs so they could get a feel for what kind of challenge this is going to be. Referring to page 108 of the document, he said there are 1,670 residential equivalents in that priority service area. To completely water and sewer that area, he estimated a capital project of 21 million dollars; however, after they looked at an alternate to remove the water component in those first eight priority service areas, he said the estimate dropped down to 12 million dollars. He then explained that they're recommending water well testing to confirm they don't need to have a water project; therefore, they would do random samples throughout the neighborhood to make sure there isn't a high nitrate problem. He also said this is recommended for an inter-local agreement with the city of Elkhart because it's completely within their urban services boundary, it's next to their sewer and water utilities, and it's the highest priority.

In projecting costs, Mr. Miller asked if they're assuming the water or sewer lines would just be available and that it did not include the cost for the owner to connect to that facility. Mr. Jones

clarified that this would only be the public works cost.

After evaluating every priority service area, Mr. Jones said they jumped into the implementation portion of the document (Section 9). He advised the board members that this portion of the document is the one they should particularly review because it has some of the most pertinent information. All of the extra territorial service policies for all of the 11 municipalities are shown in that document, including the Heaton Lake area, and the Simonton Lake and New Paris Conservancy Districts. He then reported that the information has been reviewed by all of the municipalities and they agree.

Mr. Jones said they are not recommending that they develop a new utility anywhere in the county to serve its citizens. Because all of the municipal treatment centers are in such good shape and have the potential for growth, he said they are recommending a broadened partnership is the direction the county should go. Those partnerships are fairly typical and he said they've done them in almost every case. They have provided some inter-local frameworks, and he said they've provided some sample rate structures for those eight primary service areas and they are primarily looking at the end cost to the user.

Mr. Jones said the importance of the treatment center partners can't be stressed enough. As the county goes forward with the adoption process, he said they need to fully bring in those partners. He added that the cost of the end user is going to be less if they make sure these partnerships are built. One of the critical issues the cities and towns will be concerned about is that they want to maintain their right to provide direct service to a client, especially if it is within their urban service area. Under this plan, he said the cities and towns have to understand that they're not going to constrain their growth. They have to be able to grow like they always have, and he said the sustainable framework with the municipal partners is critical because they want to make sure they're going forward with the plan even 20 years from now.

Currently, Mr. Jones said they are talking with the County Regional Sewage District about some problems they've had for some time in the county near the city of Nappanee. They are also looking at the industrial development zone around the Middlebury interchange to see if they can find some funding mechanism to solve that issue. If that were to go forward, he displayed what the organizational chart would look like with the end user being the person who is going to support the capital cost and operation of any new utility. By law, he said they can't do that with money generated from any other area except from revenue from utilities.

Mr. Jones acknowledged that they do have significant challenges and they're going to have to develop some protocol for this. They do have some good opportunities with their municipal partners and resources are available to allow some of the priorities to be addressed within the next five years. He explained that money has been made available to local governments from the federal level down to the state level through grants, and the filing deadline for some of those grants is the end of April so it's something they should probably react to quickly. The local partnerships will require a strengthening to accomplish the end game, and they believe the Elkhart County Regional Sewer District is the agency that will need to take the lead.

Mr. Jones then reviewed their recommendations with the Board, which are listed in item #8 on page 104 of the document. A revised version of the Wastewater Assessment Matrix, also included in the document, was then explained to the Board. If you score within a quarter mile of the urban services boundary, Mr. Jones said you will have to provide a study and written acknowledgement from the city that says you can't connect, they don't want you to connect, or that services are not available to you; otherwise, you will have to connect. The planners will then go

forward and they will know right away that the developer will have to provide an engineering report that says they're not going to connect as part of the submittal. This report will also need to specify an alternative such as on site treatment or something that is more advanced than a normal septic system.

Also looked at is the wellhead protection area to make sure it does not overlap with the one, five or ten year time of travel, flood prone areas, and ground cover. Mr. Jones said the idea is to try to give the planners, Plan Commission, and the developer a tool they can work with.

In conclusion, Mr. Jones said they would like to give the Plan Commission a month to review this plan. He explained that the document will be loaded on their website and they can then download it to their individual computers. He also indicated that he would leave two copies of the document with the planning staff in case a board member would want to come in and go through it. He then anticipates coming back to the Board next month for an amendment to the Comprehensive Plan.

When Mr. Miller asked if storm water run-off is an issue to be dealt with in this document, Mr. Jones said no as there is already a program in place for that. He said Elkhart County has a Storm Water Management Board primarily in the urban planning area in which all of the town and cities are members. That effort was already underway and he said it didn't seem logical to try to pull that into this document because they feel it's going to be sufficiently separate.

When asked about chemical leaching into rivers and streams, Mr. Jones said the primary function of this document was to inventory and make recommendations related to the countywide utility needs. He said they didn't spend time looking at surface water run-off.

Mr. Burbrink asked if they have presented this to any municipalities yet. Mr. Jones said they've had two meetings with the municipalities and they have all reviewed three versions of the document. They do not have a written position from any one of them, although he said they have asked for them in writing at least twice. He said their goal is to have those written positions included in the appendix of the document so they know if they are a partner if this plan is adopted.

Mr. Jones said the municipalities are not going to do anything to cost their current rate payers any money, which they shouldn't. If they take on this responsibility and develop protocol, whatever it might be in the future, he said it can't put additional cost on those municipal treatment centers. It has to be self funded and self supporting, otherwise, he said there is no logic for them to participate. If the municipalities come back and say they're not going to participate, he said they would have to go back and review some of the conclusions and recommendations that were included; however, he doesn't believe that is going to happen. He anticipates the municipalities are going to approve of the adoption with some conditions.

8. At this time, Mr. Watkins asked if any board members have questions on the email he sent a few days ago with an update on the VIM site and EPA's involvement. He reported that he and Mr. Kolbus will be meeting with the EPA representative after the Plan Commission meeting today to clarify some issues.

Now that the EPA is involved, Mr. Miller asked if that means they are cleaning the site up. Mr. Watkins explained that Paul Ruesch reported at the December meeting that the site was pretty much cleaned up and the material of concern is being taken care of by the end of the year. The EPA involvement with the site in terms of an agreed order is over, and it's his understanding that IDEM and the EPA have come to an agreement to keep Paul on site to oversee the rebuilding of the berms. However, he said they have started the reconstruction of the berms higher than the requirement of

the DPUD.

According to Mr. Watkins, they are also asking that the berms be constructed on the east side, which is not shown on the DPUD, but he feels both issues are enhancements to the requirements. He said he wants to make sure the legalities or anything they need to do to change the DPUD is addressed. He reported that they are pulling all of the gypsum material out, which is one of the sources of odor, and they are also cutting through the berm periodically so he can verify the materials that are there. Mr. Reusch has verbally indicated the materials in the berms are acceptable to stay there as berms, but Mr. Watkins said they should probably get that in writing.

Mr. Doriot wanted to make sure the changes the Plan Commission agreed to complies with what the state is doing in their lawsuit as far as shutting VIM down. Mr. Watkins said he tried to contact the state representative from IDEM as well, but he has not received a call back. Mr. Kolbus added that they are trying to get some confirmation in writing that says what they want.

According to Mr. Watkins, the berms will be taller at the top and they will extend on three sides of the site, which is all in addition to what the Plan Commission was requiring.

Mr. Burbrink asked if they have to do an amendment to the DPUD and Mr. Kolbus advised that those would be a minor change, but he doesn't want to present that to the Board until they get confirmation in writing.

9. Mr. Watkins gave a brief update on the status of planning manager Mark Kanney at this time.

10. A proposed amendment to the Plan Commission Rules of Procedure was distributed to the Board (*see attached*). According to the Plan Commission's rules, Mr. Kolbus said we have to get the owner's consent to file an application if you're purchasing property under a land contract or an option to buy, but state law allows a Plan Commission or legislative body to bring a proposal in front of the Board. Therefore, he said Article 4, 4.01 G. Applications, which exempts the Plan Commission and legislative body from getting owner consent, needs to be amended because it conflicts with the state law. When the rules were written, he said they were thinking about the everyday petition that comes in, not one initiated by the government or one of their agencies. It was noted that the proposed change is shown in red.

Mr. Burbrink moved that the Advisory Plan Commission amend the Elkhart County Plan Commission Rules of Procedures, Article 4, 4.01 G. Applications, as follows: "Except for proposals initiated by the Commission or by a legislative body, the owner(s) of property included in any petition before the Commission must consent to the filing of the application. Such consent may be evidenced by the owner's signature on said application or by signature of a person having power of attorney authorizing such signature. In the case of property which is being purchased under a land contract or an option to buy, the signature's of both the purchasers and sellers or the duly authorized agents shall be required. Staff shall be entitled to rely upon the representations made and the documents submitted by the person filing the application as to ownership. Mr. Miller seconded the motion, which carried with a unanimous vote.

11. Based on changes that have recently been made, Mr. Doriot said he feels they need to review the minor subdivision process, especially the notification afterwards. For example, he said he filed a minor subdivision in Goshen on January 27th and it will be signed and recorded on February 17th.

When Mr. Burrow explained that the Goshen Plan Commission accepts the right-of-way, Mr. Doriot asked why we don't. By state statute, he said the Plan Commission is allowed to accept right-of-way and the commissioners do not have to sign it. He then described the process for Kosciusko County, which allows for three simple splits. Mr. Burrow pointed out that they don't require a building permit, but Mr. Doriot said they do. Rather than making things more cumbersome, he feels they need to streamline the process more.

When the staff started discussing the fee schedule, Mr. Burrow said the Plan Commission did give them direction of establishing a one-step minor, but they have to figure out how they're going to do it and who is going to do it. However, they are in the process of rewriting the zoning ordinance so he doesn't feel it is appropriate to start that at this time.

Mr. Kolbus verified that state law does allow a streamlined process, but up to this point, they have chosen not to do it that way so that is something they can look in to.

Mrs. Wolgamood said she would like to see the procedure that Goshen is following and she requested a copy be included in their packets next month to review. Mr. Kolbus suggested the staff compare the difference between Goshen's minor subdivision and the County's if they have time. Mr. Doriot indicated that it is pretty much minor text changes and everything else is about the same.

12. Mr. Miller moved to adjourn the meeting and the motion was seconded by Mrs. Wolgamood. With a unanimous vote, the meeting was adjourned at 10:08 a.m.

Respectfully submitted,

Kathleen L. Wilson, Recording Secretary

Tom Holt, Chairman