

**MINUTES**  
**ELKHART COUNTY PLAN COMMISSION MEETING**  
**HELD ON THE 14<sup>TH</sup> DAY OF JANUARY 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: Steve Warner, Jeff Burbrink, Tom Lantz, Blake Doriot, Roger Miller, and Mike Yoder. 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 10<sup>th</sup> day of December 2009 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Doriot/Lantz*) that the legal advertisements, having been published on the 1<sup>st</sup> day of January 2010 in the Elkhart Truth and the 2<sup>nd</sup> day of January 2010 in the Goshen News, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Doriot/Burbrink*) 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 Officers for the year 2010.***

A motion was made by Mr. Yoder to adopt the 2010 Slate of Officers and Appointments as presented (*see attached*) and the motion was seconded by Mr. Doriot.

Prior to voting on the motion, Mr. Warner suggested the executive committee rotate to bring more leadership training to the board members and to get more of them involved in the executive committee position.

Since he's in the building most of the time, Mr. Doriot said he would like to remain on the executive committee.

Mr. Yoder asked if he's on the committee because he's a commissioner or because he's the secretary of the Board and Mr. Kolbus said because he's the secretary.

Mr. Holt felt the suggestion was a good idea and Mr. Yoder asked if they want to make changes based on that suggestion today or take it under consideration for next year.

Mr. Burbrink asked if there is anyone who is willing to fill that role in addition to Mr. Doriot. It does involve approximately three extra meetings a year, but he said they try to meet right after the regular Plan Commission meeting with the exception of the Plan Director's evaluation.

Mr. Yoder explained that the primary role of the executive committee is to evaluate the Plan Director and prepare the budgets to bring to the Board.

Mr. Warner said he's been on the committee in the past and is willing to serve again.

When asked if that would involve a per diem per meeting for the regular board members, Mr. Kolbus said he doesn't think it is set up that way. He was also asked if the number of members on the executive committee are established by some rule and he said the Rules of Procedure specify the three officers and one board member. A fifth person would constitute a majority of the Plan

Commission.

Agreeing that this is a good idea, Mr. Yoder suggested they consider a better rotation when they prepare the Slate of Officers next year. Mr. Kolbus said they could amend the Rules of Procedure accordingly once they make their decision on how they want to rotate.

A vote was then taken on the motion, and with a unanimous vote, the motion was carried.

6. The application for an amendment to an existing Detailed Planned Unit Development-A-1 to be known as **SCHLABACH HARDWOODS DPUD** (formerly known as LB Schlabach's New Beginning), for Schlabach Living Trust, Lavern J. & Fannie Mae Schlabach (trustees) represented by Brads-Ko Engineering & Surveying, on property located on the South side of CR 34, 830 ft. West of CR 43, common address of 11186 CR 34 in Clinton Township, zoned DPUD-A-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #11186CR34-091207-1*. He clarified that the variances were originally granted by the Board of Zoning Appeals in 1990 and were then reaffirmed in 1995.

Mr. Doriot noted that Lot 2 has 398 ft. of road frontage so that would not require a 3 to 1 depth to width ratio variance, but Mr. Burrow explained that the ordinance has changed since the time of granting that variance.

Rick Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9<sup>th</sup> St., Goshen, was present representing Lavern and Paul Schlabach on behalf of this request. The only comment he added is that there were eight items of concern to different departments when they met at Tech Committee last month, and those items have all been addressed and submitted back to the staff.

There were no remonstrators present.

A motion was made and seconded (*Doriot/Yoder*) 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 (*Doriot/Yoder*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for an amendment to an existing Detailed Planned Unit Development-A-1 be approved in accordance with the Staff Analysis. With a unanimous roll call vote, the motion was carried.

7. The application for Secondary approval of a Detailed Planned Unit Development known as **SCHLABACH HARDWOODS DPUD** for Schlabach Living Trust, Lavern J. & Fannie Mae Schlabach (trustees) represented by Brads-Ko Engineering & Surveying, on property located on the South side of CR 34, 830 ft. West of CR 43, common address of 11186 CR 34 in Clinton Township, zoned DPUD-A-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #11186CR34-091207-2*.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Lantz*) that Secondary approval of this Detailed Planned Unit Development be granted by the Advisory Plan Commission in accordance with the Staff Analysis. The motion was carried with a unanimous roll call vote.

8. The application for a zone map change from M-1 to B-2, for **North American Bristol Corp. (owner) and Bristol Town Council (applicant)**, on property located on the South side of E. Vistula

St. (SR 120) and North side of Elkhart St., between Pearl St. and Chaptoula St., being Lots 61 through 64 and 73 through 76 of Bristol (Original Town), common address of 503 E. 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 #503EVistulatSt-091120-1*.

Present on behalf of this request was Glen Duncan, the Bristol town attorney. He noted that Bill Wuthrich was also present, the town manager and president of the Bristol Economic Redevelopment Commission.

Mr. Duncan submitted three (3) letters in support of this request *[attached to file as Petitioner Exhibit #1]* to the Board. These letters are from Mary Jane Fisher, Tom & Karlene Christianson, and Laura J. Snow. Also submitted to the Board was a reduced copy of an aerial photo that Mr. Duncan displayed *[attached to file as Petitioner Exhibit #2]*.

Prior to his presentation, Mr. Duncan said they are willing to table their request if for any reason the Plan Commission feels their application is insufficient in any form. They believe they are appropriate in making this request and that the requested zone change will be compatible with the existing plan. He then reported that this is a unanimous request by the town council and has been signed by all town council members.

Mr. Duncan said he's not sure how this property was originally zoned M-1, but he suspects it was at the time the plan was developed for Bristol. This property has been in use for manufacturing purposes for a long time and he suggested it could have been a non-conforming use then. He pointed out that this zone change does not stop the owner from using that property for what it is currently being used for and they are not forcing them to discontinue that use by this rezoning.

According to Mr. Duncan, the surrounding property is all business use and predominantly B-2. He explained that they own the storage yard along the railroad and they are not asking for that zoning to be changed. Like many of the communities in this County, he said Bristol is trying to develop an image, and trying to look at its development in a comprehensive fashion. In the past few years they have established two major industrial parks, and he said its main street (SR 120) has always been retail and office. They are making an effort to renovate those buildings and bring them up to a higher standard than what they have been in the past. Although there are some residences to the south, he said there has been some talk of other businesses locating in this area. Bristol wants to try and encourage those businesses to locate in properly zoned areas and along the main thoroughfares.

While referring to the aerial photo, Mr. Duncan said Bristol has spent a lot of time and a significant amount of money developing a plan for a SR 15 bypass. They have worked with various county officials and Wightman Petrie to develop the route for that bypass. There are some limitations as you have to cross a major railroad, and according to Mr. Duncan, you only have certain ability to cross the railroads at designated crossings. Therefore, that route is Pearl Street, and once that thoroughfare is in, he said it is the intent for it to be dedicated as part of the state highway. The ability for traffic to pass through and park on the street will change, but not because of this rezoning.

Mr. Duncan went on to explain that they have set up two major TIF districts, which include the industrial parks and the route of this bypass, and they discussed very thoroughly and have included the ability to spend resources when they are available on the development of that bypass. He pointed out the location of the new railroad crossing saying it has to be where it is already

legally designated. It's not developed at this point, but he said you can drive across it. They do not have to have permission from the railroad to put the crossing there, but they will have to work with them to do the improvements. He asked why you would put it anywhere else knowing that it is connecting with SR 15 going north. The new bypass is certainly a factor in the town's decision and he said that will make the areas to the east, west, north, and south more attractive to various retail businesses.

Mr. Duncan said they're not here to criticize how the current owner has used the property. He recalls that over time there have been problems with traffic, semi's parking on city streets and with noise, but he acknowledged that the current owner has not owned the property or operated the business at this location very long. This company uses a plastic material and he said there have been complaints about a white dust. There have also been complaints about running over sidewalks and knocking down landscape trees the town has planted. He said Bristol takes care of itself and if they have problems with a business, they work it out with the owners of the business. The owners of this real estate have worked with the town in the past to try and resolve those issues, but he said he won't say those issues won't come up again. He explained that they are trying to move large pieces of pipe from the factory across to the storage yard with no way to get there except to drive down city streets. He's not sure that all of the equipment driving down city streets much less down a state highway in the future are going to be properly licensed, but he reiterated they have the legal right to stay there and continue to use the building for what it has been used for.

Mr. Doriot asked if they have offered to reimburse the property owner for their loss of the value of the property, but Mr. Duncan said he's not convinced there is a loss of value. When asked if there have been any appraisals of the property, Mr. Duncan said he's not seen any in the property owner's presentation and he doesn't believe that one was required of the town.

Mr. Doriot then asked if the town has a specified use for this property. He suggested that the Redevelopment Commission may want to purchase it because he's sure it is for sale. Mr. Duncan said that may happen some day, but right now they are only suggesting the appropriate use for this property where it's currently located and given what's going to be located next to it in the future is B-2 and not M-1. They are not doing this because of how the property has been used or due to complaints, he said the purpose of this request is to make the property conform with the surrounding property. They feel that B-2 is a more appropriate use, and he said the Bristol Town Council's long-range plan is to further improve and encourage B-2 type uses along that stretch of the road.

In conclusion, Mr. Duncan said they would be happy to present any additional information the Board feels they have left out to make their decision. He said they would like to have the Plan Commission's support and they are willing to have this matter tabled until they can present any requested information. Once the Plan Commission has made a recommendation, he said this will go back to the Town Council.

Also present was attorney John Neslage, an employee of Westlake Chemical, 2801 Old Post Blvd., Houston, Texas, the parent company for North American Bristol Corporation. He explained that he is here to ask for a negative recommendation from the Plan Commission for this proposed rezoning because they feel it is a bad idea. There is a non-conforming use allowed, but due to the economy, he said their company has made the decision to withdraw from the facility. They have attempted to find a purchaser who can continue the use and jobs; however, due to the proposed rezoning, the one purchaser they had interested did not want to sign any contract until this issue is resolved. They understand the town is not in any hurry, but they are because it is preventing a

proposed transaction that would preserve the existing jobs.

According to Mr. Neslage, the interested person would continue some of the use of the facility, but he asked why anyone would want to purchase the property not being able to say definitively what they could or could not do. They feel this really does rise to the level of a taking because it prevents their effective use, which has been owned, occupied and utilized for one particular purpose for over 55 years. The building is designed for a particular use, so even if there is some wish for it to be something other than the large manufacturing facility it is, he said it would cost hundreds of thousands of dollars to raise the building and make it "shovel ready" for any type of redevelopment. The unemployment rate is what it is already in this area, and he said the fact that there is now a Subway in Bristol that people are excited about shows the level that retail will rise to.

Mr. Neslage then referred to a letter they wrote on their behalf, which lays out their position on this request very clearly. It was verified that a copy of this letter was included in the Board's packets so Mr. Neslage indicated he would not restate what the Board has in front of them. He did say, however, that even though the surrounding parcels are not being proposed for rezoning, the fact that the main parcel is renders it useless and there would be no use for the other parcels if they weren't able to manufacture. Having a non-conforming use is nice, but he said any prospective purchaser must be worried about the next person down the line or their ability to transfer the land, and if the next person would be interested in manufacturing pipe or something that conforms to Indiana Land Use statutes.

Mr. Neslage pointed out that even if there were retail on the site, there would be no reduction of noise, pollution and traffic. In fact, he feels it would be increased by the development of retail. What's important, he said is that the town wishes to remove manufacturing from its downtown, but manufacturing has been there and could theoretically continue to be there. Zoning reclassifies it, but what really happens is harm to them as the landowner, and the inability to transfer the land to a willing purchaser who would continue its use and maintain or even increase jobs in Elkhart County. He then noted that their plant manager is also present to address any questions he can't answer from the Board.

When there is a non-conforming use, Mr. Doriot asked if that clouds the ability to mortgage property. Mr. Neslage said it might because it restricts the future use and adds a layer of approval that must be obtained. There are limitations to what can be done there, and if the next person would want to borrow money to finance some type of expansion, he said they would have to seek approval for that expansion or modification.

If the bypass goes in, Mr. Lantz asked if they agree their options would be much greater and the opportunity to keep the property or sell it would be better. Mr. Neslage said he is not familiar with the bypass, but if the town does have an economic redevelopment commission and some broad vision for what it wishes to see, then they would ask that it acknowledge the obvious and compensate their company accordingly because it's taking the property based upon the elimination of its intended use.

In rebuttal, Mr. Duncan said all zoning restrictions, setback requirements and other regulations for property use impact what a mortgage lender thinks. He's had the benefit of talking with the attorney who represented their potential buyer, but he did not get a feeling of a long-term commitment and he suggested that that individual is a turnaround buyer. They have watched the use of this building in terms of the number of employees decline, and he said the building has sat vacant for many months. They were not told in advance that they were moving out, although he

said they did not have a legal obligation to do that, and he assumes they did that for their own economic business plan. Mr. Duncan said they are focused on the actual use of that property, not whether this is good for Elkhart County in terms of employment. Therefore, there is nothing that has been before the Town Council in making this decision that indicates this was a good or bad decision.

When looking at the land use and plans for the future development of the bypass and the downtown area of Bristol, Mr. Duncan said it needs to be looked at as a whole and he feels they need to foster good growth on that stretch of road. At the same time, they would not be trying to prevent people from continuing to use it as it has been used for the past 50 years. Once the new road is put in, he feels the property will be worth a lot more as a business use, although he admitted he has no appraisal indicating that.

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

Mr. Doriot pointed out that they could do a B-2 use on this property today or tomorrow. He believes that when you borrow money on something and there is some type of non-conforming use, then the value of the mortgage is less than it is with a conforming use. If someone had a purchase agreement or owned the property and wanted to down-zone the property, it would be approved. Mr. Doriot said he's been on the Board for 17 years and he does not recall one time where the Board has recommended a forced rezoning. He indicated this is a property rights issue, but he acknowledged the fact that it is legal.

When the staff was asked if this (M-1) is the original zoning, Mr. Burrow said he understands it is. Mr. Doriot suspects the homes to the south were purchased after Bristol Pipe was already there and in operation. He feels this is a bad step for the Board, but he is not opposed to Bristol wanting this rezoned. He feels they need to find a purchaser rather than taking this away from the owner.

Mr. Yoder asked if everyone agrees that rezoning the property would make the current use a non-conforming use and that that use can continue forever as long as there is no interruption of the business for a specified length of time no matter who owns it. Mr. Kolbus said the continuity of the use is what matters and not ownership. Mr. Doriot asked if it has to be used for the exact same process and Mr. Kolbus said you have to look at the exact wording in the Zoning Ordinance.

In further discussion of non-conforming uses, Mr. Burrow pointed out Section 3 of non-conforming uses, which is change of use. This section states that the use has to be the same or a more restricted character. In certain circumstances, changing the use may cause an issue and he said they may be required to go before the Board of Zoning Appeals.

Mr. Kolbus explained that you have to compare the current operation to the proposed operation by looking at the intensity of use and how it will affect traffic and noise. Each time a new use would be proposed he said it would have to be evaluated.

Mr. Miller asked if it would be the same if someone wanted to build travel trailers in an M-1 zone. Depending on the amount of improvements that needed to be made, Mr. Burrow said they would just need to show they could do all of their manufacturing on site. However, he said the issue of removing and replacing structures becomes a little more problematic. If the company were to replace the structures for health and safety reasons, that is covered under the Zoning Ordinance. If they were just taking the structures down and then wanted to replace them two years from now, he said they would be required to go before the Board of Zoning Appeals for a Use Variance because that is a change of use. In this case, he pointed out there is outside storage and the staff's

position is if that ever gets removed, it's gone because it's a discontinuance of that specific use.

If he were the town of Bristol, Mr. Yoder said he would want to know the likelihood of how long that building will be empty. It would be one thing to rezone it to B-2 and hope that someone will buy it for that use, but they now have a potential occupant for the building who will be providing jobs and paying taxes. To rezone the property now, they would run the risk of the building being empty and the question is for how long.

Mr. Yoder agrees with Mr. Doriot that this is entirely legal, but he's not sure if this is a taking. He doesn't feel this is the way they normally do business in Elkhart County. If the County was looking at building a project along there like the bypass, they would purchase that property now and rent it to the new owners. They could use the property until the County needed to do their improvement, and then at that time, the County would rezone the property and sell it back after the project was completed.

Mr. Holt said this is based on speculation of whether the bypass is or is not going to happen and he feels they are running the risk of creating another Brownfield. If they can bring jobs to Bristol by not rezoning the property, he thinks that is the priority.

Agreeing with Mr. Yoder's comments, Mr. Miller feels the right way to do this is for Bristol to buy that property and make the changes.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Lantz*) that the Advisory Plan Commission recommend to the Bristol Town Board that this request for a zone map change from M-1 to B-2 be denied. The motion was carried with a unanimous roll call vote.

9. There were no audience items.

10. With regards to the *Uniform Schedule of Fees* discussed at last month's meeting, Mr. Watkins explained the staff is recommending they approve the proposed fees so they are treating all subdivision applications the same. They are also suggesting a fee for Variances because of the repeat occurrences.

Mr. Doriot said it was his understanding that administrative subdivisions were supposed to be quick and not painful to the public. He explained that when he does work for someone, about a third of his price is due to fees. and Mr. Warner felt that's the way it should be if it reflects the cost.

Mr. Watkins said he is looking at this as a fairness issue and the only difference with an administrative subdivision from a regular subdivision is that there is no public hearing.

When Mr. Burbrink asked if the cost is less because they don't go through a public hearing, Mr. Doriot said administrative subdivisions are not advertised and he's not required to submit 13 copies for the various departments' staff to review. He's the person doing all of the leg work for his client to go to the Highway Department, Health Department, etc., otherwise, it is all done by the staff no a regular minor subdivision.

When Mr. Yoder questioned the current fee for an administrative subdivision, Mr. Watkins said nothing. If the Board feels the fees are too high, he said they can adjust them, but the staff's observation is that they need to do something to make a level playing field.

The reality, Mr. Yoder said, is that Elkhart County has a budget that relies on these fees to help support this department.

It was then clarified that the current fees are those not marked with an asterisk. Those

marked with an asterisk are the proposed fees. Mr. Kolbus also advised that the Major Primary Subdivision fee of \$200.00 is currently in place on Exhibit B, but is not shown on the list at this time.

In further discussion, Mr. Yoder said you either have to pay for the services you require or you expect the entire community to cover the cost by the services.

A motion was then made and seconded (*Yoder/Warner*) that the new Schedule of Fees be approved. The motion was not carried due to the following results of a roll call vote: Warner – yes; Burbrink – no; Lantz – no; Doriot – no; Miller – yes; Yoder – yes; and Holt – no.

Mr. Kolbus then asked the Board how they feel about the last three fees on the schedule that do not involve the administrative subdivision. Those fees are for Appeals, a request for a minor change determination, and for a site plan review.

When Mr. Doriot asked what is involved in a minor change, Mr. Burrow said the staff would meet with the applicant and then the applicant has to put together a request. The staff would then review the request against the file to see if what they are asking for is a major or minor change. He said it takes about two to three hours of the Planners' time, but it does not include the Planning Assistant's time with the applicant. He indicated that it also takes planning to make sure it is put on the agenda.

Mr. Doriot then questioned if the site plan review is for a building permit and Mr. Burrow said yes. Although the staff is not charging for the site plan review at this time, he said it is currently in the building department requirements. It is usually the Planners who do the plan review and they try to make sure the applicant knows they have to get approval from the Highway Department for their drainage plan and they have to have a SWPPP. Under the present Ordinance, Mr. Burrow said they do require more site plan reviews to confirm that they are in compliance with the previous site plans that were submitted and the site plan they are proposing to make modifications.

If there is no advertising or public hearing costs, Mr. Burbrink said he was questioning whether the fees were too high for the administrative subdivision. However, Mr. Watkins said it probably takes the staff more time to do an administrative subdivision than it does a minor or major subdivision.

At this time, a motion was made by Mr. Doriot to leave the fees as they currently exist. In discussion about the cost of doing business, Mr. Watkins explained that the cost of overhead is never calculated in any of the fees.

The motion then died due to the lack of a second.

When Mr. Watkins asked for further direction on this matter, Mr. Miller suggested they cut the fees in half.

Mr. Yoder thought there was a county ordinance stipulating that the fees should represent up to half or half of the cost. According to Mr. Burrow, these fees are one-quarter of what the staff originally estimated. Mr. Watkins was not aware of a local ordinance, but he said the state law prohibits them from charging more than their cost. He doesn't think there was a recommendation from the County on how to do that or what the percentage should be.

Mr. Yoder explained that the State of Indiana has capped property tax revenue and the County is maxing that out now with residential properties. If they can't generate fees, he said something will have to be cut. If you can't afford to pay a couple hundred dollars in fees to get a permit, he asked why you would be building a home.

Mr. Holt suggested they consolidate the permits from the various departments so



individuals would know the cost up front. Mr. Yoder didn't disagree with that concept, but he felt it would be more difficult to implement.

Mr. Burrow pointed out that the staff helps a lot of people avoid problems before they start construction so there is a positive effect when they do plan reviews. Because they don't do a site plan review, he said an oversight could cost a homeowner \$3,000 a year for flood insurance.

\* *(It is noted that Mr. Doriot left the meeting at this time.)*

Mr. Burbrink reiterated that he thought the administrative subdivision fees were a little high, but he wasn't aware that the staff was spending more time on those than they were traditional subdivisions. He too felt the administrative subdivisions were supposed to simplify things, and if simpler, it should be a lesser fee so he is comfortable with what is being proposed.

Mr. Watkins explained that the staff basically serves as educators to the public when doing an administrative subdivision as opposed to surveyors bringing something in and taking it through Tech. Administrative subdivisions should be easy, and although there have been very few, he feels they spend more time on them. Mr. Burrow agreed saying they spend an inordinate amount of time getting the documentation in place.

In further discussion, Mr. Watkins suggested they lower the Administrative Subdivision Primary application fee to \$100 instead of \$150 and leave the rest of the fees as they are.

Mr. Warner moved to adopt the proposed fees as presented with no change (*see attached*). Mr. Yoder seconded the motion, and the motion was carried with Mr. Holt voting in opposition.

11. A motion was then made and seconded (*Burbrink/Warner*) that the meeting be adjourned. With a unanimous vote, the meeting was adjourned at 10:27 a.m.

Respectfully submitted,

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Kate Keil, Transcriber

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Kathleen L. Wilson, Recording Secretary

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Tom Holt, Chairman