

MINUTES

ELKHART COUNTY PLAT COMMITTEE MEETING

HELD ON THE 11th DAY OF JULY 2013 AT 8:30 A.M.

MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING

4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Plat Committee was called to order by the Chairperson, Roger Miller, with the following members present: Blake Doriot, Jeff Burbrink, and Roger Miller. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Planning Manager; Mark Kanney, Planner; Duane Burrow, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Doriot/Burbrink*) that the minutes of the last regular meeting of the Elkhart County Plat Committee held on the 13th day of June 2013 be approved as submitted. The motion was carried with a unanimous vote.
3. A motion was made and seconded (*Burbrink/Doriot*) that the Elkhart County Zoning Ordinance and Elkhart County Subdivision Control Ordinance be accepted as evidence for today's hearing and the motion was carried unanimously.
4. The application for Primary approval of a two-lot minor subdivision to be known as **TRUCK STORAGE COUNTY ROAD 17 MINOR SUBDIVISION**, for the Board of County Commissioners represented by Abonmarche Consultants, Inc., on property located on the Southeast corner of CR 38 and CR 17 zoned A-1, was presented at this time.

** Tom Stump joined the meeting at this time.*

Brian Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #21924CR 38-130603-1*.

Mr. Stump saw that Mr. Doriot seemed to have some concerns and asked him what they were. Mr. Doriot stated that any other development that any other individual would plan for would require drainage in the plans, and they would be required to go through other hoops. He felt if the public needs to provide that information, than other entities need to as well.

Roger Miller read, "The Plan Commissioners' attorney has advised Staff that the County is not required to adhere to its own regulations in regard to platting." Mr. Stump asked about the memorandum from John Bowers talking about using existing swale for drainage. He questioned whether that met the criteria. Mr. Doriot stated that they are required to maintain additional water runoff generated by their development onsite or detain it onsite. Roger Miller commented that would be for building a house; not storing salt. Mr. Doriot replied that the drainage requirements are for building a house, a factory, or a salt shed. Mr. Burbrink thought what Mr. Doriot was referring to is that it appears by not putting a drainage catching system in, it would drain off the property to the west and into another piece of County owned property. He agreed it is not keeping within the rules of drainage and it is going off into the drainage swale to the left. Mr. Doriot said

legally they can do this, but he is just making a statement that if another petitioner did this, the Staff would be forced to recommend denial. Mr. Stump was getting at the fact that the drainage along CR 17 is adequate to handle this. Mr. Doriot believed it is a double standard. Mr. Stump stated what he would be concerned with is what happens when the County goes to sell this property. Then there would be a private individual draining their surface water into County property. The County owns the road, the drainage swale, and the truck route, so he thought it seemed like it was the same owner, so it seems logical that they could use it. Mr. Doriot replied that with Mr. Stump's statement, the County cannot sell CR 17. Mr. Stump clarified that he was talking about the truck route, so why doesn't the Plan Commission have some kind of stipulation that if this area is sold someone has to provide onsite stormwater retention. He believed if the County owned this property and they were draining their water onto someone else's property that would be wrong, but they are draining it onto their own property. However, if they ever go to sell the property, then something has to be done.

Roger Miller wanted more clarification on what it is that says that the County does not have to adhere to its own regulations. Mr. Kolbus explained the Subdivision Ordinance is the regulation they are talking about. Indiana law provides that when a government is providing function, which is a maintenance building for the road that they are obligated to maintain, then they do not have to comply with the Subdivision Ordinance. Roger Miller did not believe that the County was breaking any rules, and there are rules that say we are not breaking them. Mr. Kolbus explained that technically, they are not following the Ordinance because of a legal out.

Mr. Stump thought the Federal Government does that all of the time and the City Government does it. He asked Mr. Kolbus if there should be some type of stipulation for this issue. Mr. Kolbus told them that this is for Primary approval, so they could require that stipulation be put on the plat and then when they bring back their Secondary plat that statement would have to be on there. Mr. Stump stated that would satisfy his concerns. Mr. Doriot brought up the fact that if somehow the County gets runoff from the salt shed it would be running off on someone else's property. He said if they have onsite retention or detention that water would first go on to this site and at that point they would have at least a time frame before it goes offsite. The salt shed has to be covered by MS4, etc.; however, he agreed there is a difference of ownership. Mr. Doriot said it takes a lot more for a County government to sell a public right-of-way than it does to sell a public parcel. It does not have public access of use, but he felt they should move forward on it.

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

Motion: Action: Approve, **Moved by** Tom Stump, **Seconded by** Jeff Burbrink to grant Primary approval of this two lot minor subdivision with the condition that if the property is sold the County has to provide onsite drainage for the lot in question.

Vote: Motion carried. (**summary:** Yes = 3, No = 1).

Yes: Jeff Burbrink, Roger Miller, Tom Stump. **No:** Blake Doriot

5. The application for Primary approval of a two-lot minor subdivision to be known as **STOLTZFUS MINOR**, for Eric & Ruth Stoltzfus represented by Cardinal Point Surveying, on property located on the East side of CR 19, 2,020 ft. South of CR 126 in Jefferson Township zoned A-1, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #60896CR 19-130530-1*. Mr. Kanney clarified that Lot 2 will be utilizing the private driveway to the house as access.

Phil Barker, Cardinal Point Surveying, 1002 Zollinger Road, Goshen, represented this petition. He noted that the private access on this property is also utilized by the parcel to the north. They have an easement from the owner of the 50 ft. strip in place that is recorded. Mr. Barker said they will be recording a similar easement, because they don't really have one, in favor of the Stoltzfus property shown on the plat. Lot 1, the property to the west, actually does meet the frontage requirement. It fronts on CR 19, and they will access off the private drive. Lot 2, which is one acre, will front on the private drive. There were no further questions from the Board. Roger Miller opened the hearing to the public.

Brandon Marriott, 60880 CR 19, Goshen, owns the property to the north of the petitioner. He questioned whether Mr. Stoltzfus had a platted easement back to Mr. Marriott's pole barn. He said he understands the history of the property and how it was originally subdivided by the Bontragers before he bought his property. He was reviewing the Subdivision Control Ordinance, and thought this petition actually qualifies as a major subdivision because the subdivision request is for a formal, legally defined easement in the plat. One of the requirements for a major subdivision, not a minor subdivision, is the existence of a new easement. Mr. Doriot informed him this was a new right-of-way. Mr. Marriott informed them that there were some papers drawn up to the effect that it is called an easement and Ms. Grose, who lives to the east, has been asked to sign them. He said the documents were new to him when he returned from vacation this weekend and he has had very little time to review them.

Mr. Doriot stated as he understands it the Marriott property to the north has an easement written over it so he has access to his home. He explained what these people are asking is the same thing, which is an easement written over the property which someone else owns, and he has a right to grant an easement over that property. Even in the granting of that he cannot encumber the usage there.

Mr. Doriot asked if this needs to be a major or minor. Mr. Kolbus clarified that a minor subdivision is when someone is opening a new public right-of-way, and since this is a private drive, it is not a public right-of-way. It does not matter how many people you give access to off of it. He asked Staff for their opinion and they agreed. Mr. Doriot said if they were dedicating it as a road and the County was to take it over and maintain it then they would be required to go through a major subdivision.

Mr. Marriott indicated that he just wanted to be on record that as he understands the Ordinance, that is not the interpretation he had, so he wanted to be on record asking for clarification. Mr. Kolbus clarified that a public right-of-way and private easement are two different things.

Roger Miller asked if he had any other issues with this petition and Mr. Marriott replied that he cannot tell someone how to use their property. He just wanted to make sure he understood what the legal ramifications were of calling this an easement, based on the legal papers that he was presented with earlier this week. He explained that he has different issues with the legal paperwork that defines this as an easement and about the maintenance of that new easement and the financial burden it would imply if it is maintained. Mr. Marriott said if that is an impediment to granting any further approvals at this meeting he believed that needed to be taken into account.

Mr. Doriot was certain that Staff would look at everything in the Staff review for Secondary. The Staff reviews of minor subdivisions, now they do not come back to the Board, but he is sure that since this was brought up they will review it. Roger Miller informed him that this is a Primary which means that there will be a Secondary on it, where they would find discrepancies.

**Doug Miller joined the meeting at this time.*

Mr. Kanney indicated that the first parcel does not have an easement to it. Mr. Kolbus said it does not stop this Commission from acting. If Ms. Grose grants an easement, it goes forward with Secondary, and if it doesn't, then it doesn't.

Melissa Grose, 60894 CR 19, Goshen, said like Mr. Marriott, she certainly was not going to tell anyone how to use their property. Frankly, she wished the property would stay as it currently is. She has the property to the east and purchased it about 1 ½ yr ago. After having lived in a subdivision for 14 years she wanted to get out where she had more space and where nature abounds.

Ms. Grose said when she first spoke with Mr. and Mrs. Stoltzfus that area was completely undeveloped. She felt it was a nice haven for the wild life. Roger Miller asked if the road was there when she purchased it. Ms. Grose said the road was there. She did not put it in; however, she felt that she did not do her due diligence and was not aware of whether it was a private or public road.

Mr. Doriot clarified it is a private road. Ms. Grose said currently her bank owns the road.

Phil Barker, Cardinal Point Surveying, 1002 Zollinger Road, Goshen, clarified that as far as he knows Ms. Grose owns the private road. When the driveway was installed, which is when Bontrager owned it, the Stoltzfus' paid for part of that driveway so they could have access to it. At this point, they have at the very least a prescriptive easement across that access. He explained that, granted, they do not have anything in writing like the parcel to the north, but he said that is all he knows about it.

Roger Miller stated that, fortunately, or unfortunately, he does not know that what the issues are here is something that would have to be dealt with. Mr. Kolbus said it does not affect their actions or would not affect granting of the Secondary approval.

Mr. Doriot decided that they should go forward with this and let the parties involved present the information to Staff. If the Staff wants to refer it to the full Board they would have the right to do that.

Mr. Burbrink questioned whether the owner of the property could get rid of the easement. Mr. Doriot stated that they can extinguish the easement. Mr. Barker disagreed. Mr. Doriot explained that if the owner wanted to say they did not want use it anymore they could extinguish that easement themselves. He clarified that they cannot extinguish any rights that the Stoltzfus' have gained; they can only extinguish their own. Mr. Kolbus agreed. Mr. Doriot said Ms. Grose cannot tell Mr. Stoltzfus they cannot use it, because of the prescriptive easement. When Ms. Grose bought the property she knew other people were using the easement.

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

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Tom Stump for Primary approval of the two lot minor subdivision as presented and in accordance with the Staff Analysis with a condition that there needs to be a Staff review before the Secondary and to forward it on to the Plan Commission or a Plat Committee Secondary.

Vote: Motion carried with a unanimous vote.

6. The application for Primary approval of a one-lot minor subdivision to be known as ***THE REFUGE AT LEHMAN HILLS***, for John E. & Pamela S. Lehman represented by Brads-Ko Engineering & Surveying, on property located on the East side of CR 25, 2,540 ft. North of US 6, in Jackson Township zoned A-1, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as

Case #0000CR 25-130603-1.

Barry Pharis, Brads-Ko Engineering, 1009 S. 9th St., Goshen, was present to represent the petition for the owner of the property, John and Pamela Lehman. In 2001 they purchased three tracts of land. One of the tracts was 40 acres, the second was 30 acres, and there is a wooded tract of land. Based on 1,300 ft. of frontage they obtained a building permit for their residence on the 30 acres, with about 14 acres of land that needs to be maintained. Mr. Pharis stated that due to age and health over the last 12 years it has become a hardship for them to maintain the 14 acres, so they approached a realtor about selling the land. They attempted to market all three tracts as a 100 acre farmette without much success.

Mr. Pharis informed the Board that the realtor suggested that they come back and create a residential parcel on the 30 acre parcel that they own, and maintain the 40 acres of tillable land that they lease to the farmer until the market changes. The realtor has located a buyer, so last month they came before the BZA and created a 50 ft. strip that came out and gave them driveway access. He said they needed a variance for less than 100 ft. of frontage which was granted. Mr. Pharis said they also needed a 3 to 1 variance with 50 feet of frontage and that was also approved. He said they have submitted a line of site survey showing that driveway has adequate site line. Mr. Pharis added that the drainage is maintained onsite with their own pond and as there will be no construction, so they are not required to submit a Rule 5 plan. He asked for approval of this subdivision. John and Pamela Lehman have an active buyer and terms have been agreed upon, so all they need to do now is finalize the plat to proceed. There is a positive Staff Report and he asked for approval today.

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

Motion: Action: Approve, **Moved by** Jeff Burbrink, **Seconded by** Blake Doriot that in accordance with the Staff Analysis, the Plat Committee grant Primary approval of this one lot minor subdivision.

Vote: Motion carried with a unanimous vote.

7. The meeting was adjourned at 9:04.

Respectfully submitted,

Sandra Herrli
Recording Secretary