

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 11TH DAY OF DECEMBER 2014 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, Steve Warner, with the following members present: Tony Campanello, Jeff Burbrink, Lori Snyder, Steve Warner, Steve Edwards, Tom Stump, Frank Lucchese, and Blake Doriot. Roger Miller was absent. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Planning Manager; Mark Kanney, Planner; Liz Gunden, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Doriot/Stump*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 13th day of November 2014 be approved as submitted and the motion was carried unanimously.

3. 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.

4. The application for a zone map change from GPUD-E-3 to R-4, for *Ann Connolly*, on property located on the East side of CR 17, 1/4 mile North of CR 8, common address of 53692 CR 17 in Washington Township, was presented at this time.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #53692CR 17-141103-1*, and an e-mail from Jeff Taylor, Elkhart County Highway Department [*attached to file as Staff Exhibit #1*].

Ann Connolly, 1060 Parkwood Dr., Nappanee, who works with a RE/MAX 100 in Mishawaka and now owns the subject property, has worked at a strip mall location near the subject property for the last four years. She bought the property, a foreclosure, hoping to no longer rent and move an in-home office into the house onsite. She said that she would like to expand to a team franchise, and the size of the franchise will be limited to the number of people who can work under her. She has not yet been told what the limit is, and she would still work as a RE/MAX 100 agent based in Mishawaka. No more than two or three other people would be under her at the new site. She might also rent a desk out to a preferred lender who will help qualify buyers.

Mrs. Connolly indicated that she would like to live onsite to shorten her drive from Nappanee and make her winter driving safer, and understood that in the R-4 zone the use in question would constitute an "in-home workshop." Currently, half the time she is in Nappanee and half the time she is at her office. Addressing traffic concerns, she said that most agents will work offsite showing houses. The office, which will generate an amount of traffic similar to that generated by a residence of a family with three teenagers, will not be a full-fledged office like the 50-agent one in Mishawaka. She chose an Elkhart County location because this county is her primary place of work.

Mr. Doriot asked whether the site would receive visits from clients or whether only agents would be onsite, and Mrs. Connolly responded that those present would only be agents and possibly

someone answering the phone. She does not meet clients at her office unless she is doing a preapproval. Sometimes lenders come to her office to meet clients; other times her clients meet lenders at their offices. She repeated that the traffic would be minimal and held that the subdivisions across CR 17, accessed via Hanover Dr., Farmwood Dr., and Woodside Dr., generate much more traffic than the subject site would. Mrs. Connolly added that her site plan, which shows two existing driveways, provides parking area, and visitors will not have to back out onto CR 17 when leaving.

Mr. Campanello asked whether a special use for a home workshop/business had been granted already, and Mrs. Connolly replied no, the subject property is part of a PUD. She said she wanted to come up with something more logical, as the PUD requires connection to city utilities including sewer, which is not present.

Mrs. Snyder agreed that traffic to the subject property would be minimal. Rarely is everybody there at the same time, she said of her own 25-agent office.

Mr. Campanello asked whether any home workshop/business status granted to the residence at the time of its construction remains effective today, as the builder of the home, Jay Krull, once operated a balloon business based there. Mr. Kolbus's response was that the matter would require research, but if any such status was granted, its effectiveness today would depend on any conditions imposed. Uses become "vested" if home workshop/business applicants "take advantage and make improvements or take other steps to use [them]," he said.

There were no remonstrators present.

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

Mrs. Snyder asked whether staff's suggestion was that the applicant wait to act until adoption of the new zoning ordinance, and Mr. Mabry confirmed that the new ordinance will permit the use in question in the R-4 zone by right subject to limitations. Mr. Doriot and Mr. Lucchese expressed concern over the amount of time between today's hearing and the proposed adoption date, February 2, 2015, of the new ordinance, and Mr. Lucchese asked how long franchise location approval would take, following Mrs. Connolly's mention that the location had not yet been approved. Mrs. Connolly responded that she did not know; she has only just begun the steps. If franchise approval is not granted, "I'll still be there working as I am," she said, adding that team franchise provisions allow signage and that team franchises are different from home workshops. Mr. Doriot then cautioned that the soonest Mrs. Connolly could receive rezoning approval is in fact the end of March 2015, following Plan Commission and Board of County Commissioners approval, and Mrs. Connolly responded, "I still think that's going to be fine because I'm still going to be doing what I'm doing."

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

Motion: Action: Table, **Moved by** Blake Doriot, **Seconded by** Steve Warner, that the Advisory Plan Commission table this request for a zone map change from GPUD-E-3 to R-4 for **Ann Connolly** indefinitely with no additional filing fee required. The motion was carried with a unanimous vote.

5. The application for a zone map change from R-2 and M-1 to M-2, for **JBN Properties, Inc., an Indiana Corporation**, represented by Matthew Westfall, on property located on the North side of CR 10, 650 ft. East of Thornton Street, North off SR 19, and South side of Westwood Drive at South end of Southwood Drive, common address of 27773 CR 10 in Osolo Township, was

presented at this time.

Ms. Gunden presented the Staff Report/Staff Analysis, which is attached for review as *Case #27773CR 10-141015-1*.

Matthew Westfall, 22793 Flicker Dr., Goshen, of Franger Gas Company, Inc., said that the company would like to put up a structure, similar to ones put up at the company's other two plants, to be used for parking trucks out of the weather. He then indicated photos on the projection screen that showed outdoor storage of tanks to be eventually taken out and set. Mr. Westfall said also that he asked the Frangers, with the new M-2 zoning in mind, whether they had any interest in building another structure at a later time for a more intense use that would impact the surrounding area differently. They "can't come up with anything . . . It's storage," he said.

There were no remonstrators present.

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

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

Motion: Action: Approve, **Moved by** Steve Warner, **Seconded by** Tom Stump, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from R-2 and M-1 to M-2 for *JBN Properties, Inc., an Indiana Corporation*, be approved in accordance with the Staff Analysis.

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

Yes: Blake Doriot, Frank Lucchese, Jeff Burbrink, Lori Snyder, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello.

6. *Marion L. Schrock (landowner) & Prestige Sales, LLC (developer/lessor)—Approval of Commitment*

Mr. Kanney reminded the Board of its November 2014 recommendation that rezoning from A-1 to B-3 be approved for Marion Schrock, who is leasing property to Prestige Sales, LLC, a mobile home repair company, and distributed the four-page commitment that accompanies the approval [*attached to file as Staff Exhibit #2*]. He proceeded to review the content of the commitment and said that staff recommends acceptance of the commitment, if it appears as it was proposed. Mr. Kolbus commented that the content of the commitment form is accurate, based on the available meeting minutes.

The Board examined the commitment form, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Tom Stump, **Seconded by** Tony Campanello, that the Advisory Plan Commission approve the commitment form prepared for Marion L. Schrock and Prestige Sales, LLC, and presented by Mr. Kanney. The motion was carried with a unanimous vote.

7. *Jack L. Neff & Gloria J. Neff (sellers) and RLC of Michiana, Inc. (buyer)—Approval of Commitment*

Ms. Gunden reviewed the content of the commitment form prepared for Jack L. & Gloria J. Neff and RLC of Michiana, Inc., following November 2014 Board recommendation that rezoning from M-1 and A-1 to B-3 be approved. The intent of the petitioners was to build a Taco Bell restaurant, she reminded the Board. Mr. Kolbus commented that the commitment was prepared after

a review of the meeting minutes.

The Board examined the commitment form, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Steven Edwards, **Seconded by** Blake Doriot, that the Advisory Plan Commission approve the commitment form prepared for Jack L. & Gloria J. Neff and RLC of Michiana, Inc., and presented by Ms. Gunden. The motion was carried with a unanimous vote.

8. ***Agreement for Legal Services for 2015***

Mr. Godlewski indicated the contract included in the Plan Commission members' packets, which is the same as those of past years, he said, adding he would be glad if Mr. Kolbus could continue to serve.

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

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Tom Stump, that the Advisory Plan Commission adopt the 2015 Agreement for Legal Services (see attached) and retain Mr. Kolbus as counsel. The motion was carried with a unanimous vote.

9. ***Nominating Committee for Slate of Officers & Appointments for 2015***

The nominating committee will meet after today's Plan Commission meeting, and a slate of officers and appointments will be presented during the January 2015 Plan Commission meeting, said Mr. Warner.

Mr. Godlewski mentioned that Meg Wolgamood will retire from the Board of Zoning Appeals after the December 2014 BZA meetings. It is believed that her replacement on the full Board of Zoning Appeals will be Jennea Schirr, and the Plan Commission will need to designate a replacement hearing officer. Bob Homan has indicated availability.

10. ***Funneling***

Mr. Warner at this time raised the matter of funneling, a subject of much discussion during the ordinance draft approval recommendation meeting of December 2, 2014. "It is imperative that we get to work on that quickly and see how we can fit that into the ordinance," he said.

** It is noted that Don Shuler replaced James Kolbus as Board Attorney for the remainder of the meeting.*

11. The application for a zone map change from A-1 to M-2, for ***Amy L. Miller, Mark A. Salee & Stephen C. Salee (owners) and Sand Bar Investment Group, Attn. Tim Roeder (developer)***, represented by Brads-Ko Engineering & Surveying, Inc., on property located on the Southwest corner of CR 2 and East County Line Road, in York Township, was presented at this time.

Mr. Mabry presented three staff exhibits: a letter from Barry Pharis, Brads-Ko Engineering & Surveying, Inc., to Mr. Mabry dated December 4, 2014 [attached to file as Staff Exhibit #3]; a two-page fax from Peter Andrews to Steve Warner [attached to file as Staff Exhibit #4]; and an e-mail from Rex Pranger, LaGrange County surveyor, to Hillary Chrisman-White, Brads-Ko Engineering &

Surveying, Inc. *[attached to file as Staff Exhibit #5]*. He did not present the Staff Report/Staff Analysis, which is attached for review as *Case #00000CR 2-141103-1*.

Instead he began by stating that owners of property east of East County Line Road who were entitled to notice did not receive it. In spite of the Staff Report's conclusions and because of insufficient public notice, the staff strongly recommends tabling, he said.

In consideration of insufficient notice, Mr. Warner asked the Board whether it wanted Mr. Mabry to move ahead or to table, and Mr. Campanello suggested moving ahead. Mr. Shuler said that before Mr. Kolbus left he recommended that no public comment on the petition be taken. Moving forward and making a decision today is problematic, and moving forward today would require that public comment be taken twice, Mr. Kolbus told him.

Mr. Doriot commented that the situation was unfortunate, as the petitioner and neighboring property owners were present and all neighboring property owners entitled to notice might in fact be present. The Board then briefly reviewed the repercussions of moving forward, and this review concluded with Mr. Stump's observation that no board he has served on has ever gone against legal counsel.

The Board examined the matter as outlined above, and after due consideration and deliberation:

Motion: Action: Table, **Moved by** Jeff Burbrink, **Seconded by** Tom Stump, that the Advisory Plan Commission table this request for a zone map change from A-1 to M-2 for *Amy L. Miller, Mark A. Salee & Stephen C. Salee (owners) and Sand Bar Investment Group, Attn. Tim Roeder (developer)*, until the January 8, 2015, Elkhart County Advisory Plan Commission meeting to allow for proper notification to neighboring property owners.

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

Yes: Blake Doriot, Frank Lucchese, Jeff Burbrink, Lori Snyder, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello.

Mr. Doriot then announced to those in attendance that public notice of the January 8, 2015, hearing will be given to Elkhart County property owners in accordance with Elkhart County standards and LaGrange County property owners in accordance with LaGrange County standards.

** It is noted that Blake Doriot was absent from the Board for agenda item 12.*

12. The applications for an amendment to the Site Plan/Support Drawing and for Secondary approval of an existing Detailed Planned Unit Development known as *SYLVAN WOODS THIRD, DPUD*, for June V. Seegers-Reynolds represented by B. Doriot & Associates, Inc., on property located on the southeast side of Whispering Hill Drive (Private Street), 750 ft. north of CR 16, 2,500 ft. west of CR 23, common address of 56332 Whispering Hill Drive (Private Street) in Jefferson Township, zoned A-1, were presented at this time.

Brian Mabry presented the Staff Reports/Staff Analyses, which are attached for review as *Case #56332Whispering Hill Dr. (Private Street)-140804-1* and *Case #56332Whispering Hill Dr. (Private Street)-141126-1*. Restating the staff analysis paragraph, he said the petition is that the triangular piece that forms the southeast portion of the subject property be added to the overall Sylvan Woods DPUD. The addition of the piece would allow the subject property to be divided into two lots, which would be part of the DPUD. Roughly half the triangular piece is buildable, as the southeast portion of the piece features a wide gas line easement. Mr. Mabry then submitted to the

Board a handwritten agreement from Mr. Doriot *[attached to file as Staff Exhibit #6]*.

Mr. Stump asked why the subject area was not included in the DPUD originally, and Mr. Mabry said he did not know. Mr. Stump then asked for confirmation that the goal of the petition was the creation of two lots, and Mr. Mabry confirmed, indicating the rectangular shape of the total area at question.

Jeff Sager, B. Doriot & Associates, Inc., PO Box 465, New Paris, was present on behalf of the petitioner and stated agreement with the Staff Report and that all PUD restrictions will be met. He stated also that a letter of approval from the homeowners' association has been sent. Mr. Stump asked whether a copy of the letter had been provided to the Board, and Mr. Mabry said he did not recall any such letter. Thus it would not have been provided to the Board.

Edward Gerwels, 56452 Whispering Hill Dr., Bristol, was present representing his brother, who is president of the homeowners' association but could not attend today's hearing. Mr. Gerwels stated that his wife, a member of the association, was not part of any meeting during which approval or disapproval of the petition was given.

Speaking first as a homeowner, not an association representative, Mr. Gerwels, who owns adjacent lots at the subdivision entrance, said that the NIPSCO gas line easement "makes these lots a lot smaller in comparison to their neighboring lots." He said he would like to see them sold so that more income for the association can be generated, but he wanted to make sure the future houses go along with those already there.

He then indicated the small rectangular parcel between the subject property and the property on which the nearest house north lies. The parcel, he said, was sold by the petitioner to the owners of the home, and the purchase enabled them to install a raised septic system. Restriction to two-bedroom homes on small lots, he worried, would make building of homes in line with those of the neighborhood difficult. If the subject parcel were maintained as only one lot, Mr. Gerwels offered, there would be no difficulty installing a septic system that would support a four-bedroom house, but he added that other lots farther down Whispering Hill Dr. are similar in size to proposed lots 1 and 2.

Mr. Gerwels went on to explain that his original plot in fact shows two lots on the subject site, and Mr. Mabry mentioned that the site contains two lots already and is to be replatted as two lots. The two lots on the original plot, Mr. Gerwels then said, were 36,000 sq. ft. and 37,000 sq. ft. in area. He said that an original north lot was divided in a deal not approved by the homeowners' association between the petitioner and the owners of the home with address of 56250 Whispering Hill Dr. to enable the above-mentioned septic installation. The division made the north lot in question even smaller than it was.

Mr. Gerwels then clarified that he would prefer to see three- or four-bedroom homes on the new lots and asked whether two-bedroom homes would require mound septic systems. Bill Hartsuff has stated that a basic system will support a two-bedroom home and has recommended two-bedroom homes, Mr. Mabry summarized, and said that technology might permit additional bedrooms. Mr. Gerwels then repeated his desire not to have two small two-bedroom homes appearing in the neighborhood and said that the builder will have to follow association rules.

Mr. Campanello indicated the two lots, lots 12 and 13, across from the subject property, which are much smaller in area than the two proposed lots, and said the size of each of the proposed lots is close to the average lot size in the subdivision. Mr. Gerwels indicated understanding. Mrs. Snyder, Mr. Lucchese, and Mr. Gerwels then agreed that the builder will have to adhere to any

covenant setting a minimum building size.

Mr. Stump asked whether the lots Mr. Campanello indicated above may only contain two-bedroom homes. Mr. Campanello asked whether the DPUD ordinance addresses the question. Mr. Mabry responded that bedroom limitations would be part of the covenants. Mr. Stump then asked what the homeowners' association's response to the petition is and asked about the letter referred to by Mr. Sager. Mr. Gerwels replied that while he was not aware of any letter, the association would like the lots to be sold. The association, though, wants the future houses to be of value similar to that of area homes, and the similarity will be difficult to achieve if the houses have only two bedrooms. Mr. Campanello countered that the same thing is going to happen across the street. "And I'll probably be in here talking to you then, at that point also," Mr. Gerwels responded. He again indicated the NIPSCO easement, which causes a loss of "a third or more" of available area in which to install septic systems. Mr. Campanello indicated for Mr. Gerwels the B. Doriot & Associates, Inc., survey, which demonstrates "more than enough room" for septic systems and reserve locations, and Mr. Gerwels responded only that he is not a septic expert.

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

Mr. Stump stated his concern was not over septic systems, as the soils present did not seem too restrictive, but over conservation of area home values, which could be impacted by the sizes of the two future homes. He did note, however, that the restriction is on the number of bedrooms, not the sizes of the houses or the number of occupants. He then asked Mr. Gerwels whether the surrounding homes have basements and whether the area water table is high, and Mr. Gerwels responded that all the homes have basements. Mr. Warner and Mr. Edwards then agreed that the homeowners' association must address the home size issue, not the Plan Commission.

Mr. Stump then pointed out that while Mr. Sager said that a letter of approval from the association had been sent, none was actually supplied. Mr. Mabry again confirmed that no such letter was provided. Mr. Sager came forward at Mr. Warner's request but was able to say only that the petitioner received an OK from the association and that "there was a letter sent to the staff."

In response to further query from Mr. Stump, Mr. Mabry said that the existing two lots that comprise the subject property are developable despite the sale of the small parcel that adjoins the property with address of 56250 Whispering Hill Dr., given that the lots are part of an approved DPUD and an approved secondary plat. Mr. Campanello and Mr. Stump asked whether the petition is simply that the lots be enlarged, and the Board and Mr. Mabry responded yes, with Mr. Burbrink adding that the proposal will transform two lots with odd shapes that presently are only weed lots into practical, usable lots. The triangular piece to be added to the DPUD will have some unusable area but much usable area, he said. The transformation makes sense, concluded Mr. Burbrink, even if the homes are smaller.

Mr. Stump presented Mr. Gerwels with the finding that the lots are to be enlarged, not reduced in size, and Mr. Gerwels responded that he would like a copy of the letter referenced by Mr. Sager, expressing concern over transactions performed without association approval, such as the sale of the small, 40-foot-wide parcel mentioned above. Mr. Stump then asked whether the sale of the small parcel in question affected the buildability of the existing lot from which it was formed, and Mr. Mabry said that the sale could have affected the lot's ability to accommodate a house and septic system, though the matter was never presented to Mr. Hartsuff. Mr. Gerwels then expressed concern that the sale of the small parcel will influence the ability of a builder working on the

original north lot, whose exact area, he said, “no one has figured . . . out yet,” to follow covenants. Mr. Campanello read the area figures of proposed lots 1 and 2 from the B. Doriot & Associates, Inc., survey, and the Board agreed that the figures are of buildable area only.

Mr. Stump repeated concern over an expectation shared by area residents that houses only of a certain size would appear in the neighborhood, but Mr. Campanello said that the owner of a home near the subject property was aware of the building limitations presented by the two lots mentioned above across Whispering Hill Dr. from the subject property. “Maybe he knew it, maybe he didn’t,” responded Mr. Stump.

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

Motion: Action: Approve, **Moved by** Jeff Burbrink, **Seconded by** Frank Lucchese, that the Advisory Plan Commission recommend to the Board of County Commissioners that the request for an amendment to the Site Plan/Support Drawing of an existing Detailed Planned Unit Development to be known as *SYLVAN WOODS THIRD, DPUD*, be approved in accordance with the Staff Analysis.

Vote: Motion passed (**summary:** Yes = 6, No = 1, Abstain = 0).

Yes: Frank Lucchese, Jeff Burbrink, Lori Snyder, Steve Warner, Steven Edwards, Tony Campanello.

No: Tom Stump.

Absent: Blake Doriot.

Motion: Action: Approve, **Moved by** Jeff Burbrink, **Seconded by** Steven Edwards, that the request for Secondary approval of an existing Detailed Planned Unit Development known as *SYLVAN WOODS THIRD, DPUD*, be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 7).

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

Absent: Blake Doriot.

** See page 3, item 6, for Marion L. Schrock (landowner) & Prestige Sales, LLC (developer/lessor)—Approval of Commitment*

** See page 3, item 7, for Jack L. Neff & Gloria J. Neff (sellers) and RLC of Michiana, Inc. (buyer)—Approval of Commitment*

** See page 4, item 8, for Agreement for Legal Services for 2015*

** See page 4, item 9, for Nominating Committee for Slate of Officers & Appointments for 2015*

13. *Zoning Ordinance Draft*

The zoning ordinance draft will appear before the Board of County Commissioners during a December 15, 2014, public hearing, said Mr. Godlewski. Comments, letters, and e-mails regarding the draft received between the December 2, 2014, and December 15, 2014, public hearings will accompany the draft, and December 15, 2014, Board deliberation will cover the subject of fines, among other subjects.

Mr. Burbrink asked whether fines are designated by the state, and Mr. Godlewski said that fines, the subject of much recent debate, are designated by the state, and much of the language covering fines appearing in the ordinance draft is taken from the old ordinance. The attorney for the Board of County Commissioners will weigh in if any of the language is incorrect. Mr. Lucchese, who is one of the County Commissioners, said that only one letter concerning fines was received and agreed that fines are state proposed.

Mr. Burbrink recalled that enforcement rarely goes to the level of fine collection, though the figures look significant. Mr. Godlewski said that fines are set by a judge, and Mr. Shuler agreed. The county can only ask that fines be imposed, he said. The amounts in the ordinance are maximums, and judges assess the amounts they deem case appropriate.

Mr. Warner asked whether any Plan Commission members have received comments since the date of approval recommendation, and Mr. Lucchese mentioned the letter addressing fines. Mrs. Snyder mentioned that during discussion of the ordinance draft during a recent board of realtors meeting, no comments except those of commendation were made.

14. The meeting was adjourned at 10:04 a.m.

Respectfully submitted,

Daniel Dean, Recording Secretary

Steve Warner, Chairman