

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 11TH DAY OF SEPTEMBER 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, Doug Miller, Steve Warner, Roger Miller, Steve Edwards, Tom Stump, Frank Lucchese, and Blake Doriot. Staff members present were: 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 (*Burbrink/Doriot*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 14th day of August 2014 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Burbrink/Doriot*) that the legal advertisements published in the Goshen News and the Elkhart Truth be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Stump/Doriot*) that the Elkhart County Zoning Ordinance and Elkhart County Subdivision Control Ordinance be accepted as evidence for today's hearings. With a unanimous vote, the motion was carried.

5. The application for vacation of East-West and North-South alley, for **Cathy L. Erb**, on property located on the East-West alley between Shore Avenue and Best Avenue and North-South alley between Old US 33 West and LaRue Street, common address of 56796 Shore Avenue in Baugo Township, zoned B-3 and R-2, was presented at this time.

Before Mr. Kanney began his presentation, Mr. Doriot stated that he performed a survey of the subject property in 2013 for the sale of the home. Although the petitioner has submitted the survey as evidence, it has nothing to do with the vacation project.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #56796SHORE AVENUE-140801-1*, and noted that any utilities in the right-of-way would retain easement rights.

Cathy L. Erb, 1460 Greenleaf Blvd., Elkhart, was present and said she bought the house with address of 56796 Shore Avenue from the children of her aunt and uncle for her daughter's family. Renters occupy the house "on the other side of the fence" and "don't seem to have any respect for the property they're living in and . . . don't have any respect when they're coming on ours," she said. Drivers of four-wheelers along the alleys have almost run over kids, the garage at the rear of the residence in question has been subject to break-ins and vandalism, and the vacation is requested for the benefit of Mrs. Erb's grandchildren and a neighbor's child.

Mr. Stump asked Mrs. Erb whether the alleys are paved, and Mrs. Erb said no. Mr. Burbrink asked Mrs. Erb whether owners of property abutting the alleys in question are maintaining them as though they are part of their properties, and Mrs. Erb said no, adding that kids frequently access the

“house that’s been abandoned next door” using the alleys and break into it.

Brian Gajdowski, 56796 Shore Ave., Elkhart, said he lives in the residence in question, which is on lot 46 of Lake Shore Park. He has two young children, including a daughter who frequently crosses the East-West alley to visit the residence on lots 47 and 48, and drivers using the alleys treat them like a speedway, he said. One driver was recently observed turning at a high rate of speed from Best Ave. onto one of the alleys without slowing. He said he has attempted to talk to the occupants of homes along the West side of Best Ave. about the slowing of traffic and decreased use of the alleys, but that has only resulted in increased use of the alleys.

Kenny Rider, former owner of the residence at 56788 Shore Ave., where his son now lives, has witnessed drivers using the East-West alley damage his son’s driveway. He said that the alleys have no purpose, as access to residences is provided by Shore Ave. and Best Ave., and that he is concerned mostly about the safety of Mr. Gajdowski’s daughters. He would like to see the alleys closed down.

There were no remonstrators present.

A motion was made and seconded (*R. Miller/Burbrink*) 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** Roger Miller, **Seconded by** Tony Campanello, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for vacation of East-West and North-South alley, on property located on the East-West alley between Shore Avenue and Best Avenue and North-South alley between Old US 33 West and LaRue Street, be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 9).

Yes: Blake Doriot, Frank Lucchese, Jeff Burbrink, Roger Miller, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello, Doug Miller.

6. The application for a zone map change from PUD B-3 to B-3, for *STCR Real Estate* represented by Michael Schoeffler, on property located on the East side of SR 13, 620 ft. North of SR 120, common address of 52886 SR 13 in York Township, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #52886SR 13-140717-1*.

Michael Schoeffler, 51700 Lovejoy Dr., Middlebury, the owner of the subject property and co-owner of EverGreen Recreational Vehicles, LLC, was present. He said he would like to make the existing facility on the subject property, which had been used for furniture manufacturing, into an RV service and repair area.

There were no remonstrators present.

A motion was made and seconded (*Burbrink/D. Miller*) 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** Jeff Burbrink, **Seconded by** Tony Campanello, that the Advisory Plan Commission recommend to the Board of County Commissioners that this request for a zone map change from PUD B-3 to B-3 for *STCR Real Estate* be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 9).

Yes: Blake Doriot, Frank Lucchese, Jeff Burbrink, Roger Miller, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello, Doug Miller.

7. The application for a zone map change from A-1 to M-1, for ***KLT Realty, Inc.***, on property located on the East side of SR 13, 1,000 ft. South of Industrial Parkway, common address of 58782 SR 13 in Middlebury Township, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #58782SR 13-140722-1*, and noted that the subject property is lot 2 of a two-lot minor subdivision performed in 2013. The owner's intent at the time of the subdivision was to eventually sell to the petitioner. The petitioner would then request rezoning.

Kermit Troyer, 58565 CR 35, Middlebury, was present and stated he is in the process of acquiring and rezoning various parcels in the immediate area of the subject property. Sewer has been extended to the area, he said, and the parcel will be cleared of structures within six weeks. After that he will sell.

There were no remonstrators present.

A motion was made and seconded (*Doriot/Burbrink*) 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** Douglas Miller, **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 A-1 to M-1 for ***KLT Realty, Inc.***, be approved in accordance with the Staff Analysis.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 9).

Yes: Blake Doriot, Frank Lucchese, Jeff Burbrink, Roger Miller, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello, Doug Miller.

8. The application for a zone map change from B-3 to B-2, for ***Edwin & Edna Miller***, on property located on the Northwest side of SR 15, 1,450 ft. South of CR 20, common address of 58735 SR 15 in Jefferson Township, was presented at this time.

Liz Gunden presented the Staff Report/Staff Analysis, which is attached for review as *Case #58735SR 15-140804-1*. She noted also that the property is now owed by Carrie Van Deventer, not Edwin and Edna Miller, the original petitioners.

Jack Birch, Birch Law Firm, LLC, 101 E. Main St., Suite A101, Syracuse, was present on behalf of Mrs. Van Deventer. He stated agreement with staff and said the uses surrounding the subject property are residential and agricultural, adding that some B-2 zoning is present. He said he did not know how the subject zoning became B-3 and believed the residence onsite has been present since 1964. His client bought the property unaware that the rezoning petition had been filed but would like to follow through with the petition and remove the residence's nonconforming status.

There were no remonstrators present.

A motion was made and seconded (*Doriot/Burbrink*) 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** Blake Doriot, **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 B-3 to B-2 for *Edwin & Edna Miller* be approved in accordance with the Staff Analysis and as presented.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 9).

Yes: Blake Doriot, Frank Lucchese, Jeff Burbrink, Roger Miller, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello, Doug Miller.

9. The application for a zone map change from A-1 to M-1, for *Marcile Gabriel, trustee 1/2, attn. Gladys Troyer (seller), and Grand Design (buyer)* represented by Jones Petrie Rafinski, on property located on the South side of CR 2, 2,400 ft. West of SR 13, in York Township, was presented at this time.

Brian Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 2-140725-1*.

Roger Miller asked whether Grand Design Recreational Vehicles is on the North side of CR 2, across from the subject property, and Mr. Mabry said he believed it is. Mr. R. Miller also asked whether the property lines referenced in staff-recommended commitment 2b separate the subject property from a residential use, and Mr. Mabry said they do, indicating the house documented by the fourth photo in the Staff Report. Mr. R. Miller then asked whether the buffer referenced in staff-recommended commitment 2 was to appear along the entire length of the West line of the subject property, and Mr. Mabry said it was.

Peter Schnaars, Jones Petrie Rafinski, 4703 Chester Dr., Elkhart, was present on behalf of Grand Design, buyer, which may already be owner. Grand Design is the owner of the facility across from the subject property on CR 2 and is acquiring it for undetermined future development. Grand Design is also working with area property owners and developers to establish a Middlebury exchange TIF that will generate money for infrastructure, including sewer. The company is working toward sewer extension but does not know when it will be completed.

Mr. Schnaars stated that JPR is basically in agreement with staff's recommendations but observed that only two residential uses abut the subject property. One residence is 100 ft. East of the subject property's Westernmost East property line, and the other is 200 ft. West of the property's West property line, he said. He said that the staff-recommended 50 ft. West buffer would be appropriate if the uses West of the property were to remain residential but that "there's a good chance that that property may also go another way." The buffer commitment should, then, be modified so that it is effective only until the adjoining use is no longer residential, said Mr. Schnaars.

Mr. Campanello asked whether the petitioner planned to subdivide the property, and Mr. Schnaars said no, the intended use is manufacturing. Mr. Campanello then asked how the gas trunk line that bisects the property is used, and Mr. Schnaars responded that two lines are in fact present, accompanied by a blanket easement "on the entire property." A procedure is available, however, whereby the blanket easement can be exchanged for an easement extending 50 ft. from each of the two lines, resulting in a total easement width of 150 ft., which is equal to the width of the clearing seen in aerial views of the property. The owner will have to account for the easement during development, and access roads are probably the only use that will be permitted on the easement. Mr. R. Miller asked how far a building must be from the lines, and Mr. Schnaars repeated that a 50 ft. distance must be observed from each line. He clarified that the 50 ft. begins at the gas lines themselves and extends North from the North line and South from the South line; it does not begin

at a center line between the gas lines.

Mr. Campanello asked for further clarification of staff's West buffer recommendation, and Mr. Schnaars restated staff's recommendation, reiterating his request that the buffer requirement be lifted upon the cessation of abutting residential uses.

Mr. R. Miller asked how far away sewer is currently, and Mr. Schnaars responded almost three miles. The installation of a force main "goes a long way" and is cheap, he said. Mr. Burbrink asked whether sewer is to be routed from the North, and Mr. Schnaars and others said it would be routed toward White Pigeon. The regional sewer district has approached the Board of County Commissioners about the project, Mr. Lucchese commented.

Angela McCraner, 11356 CR 2, Middlebury, who owns the home to be protected by the buffer referenced in staff-recommended commitment 2b, asked whether the buffer would be big enough, how much noise would be generated by sewer installation, whether the installation would affect her well, and whether the rezoning, and the transformation of the area surrounding her home to a manufacturing area, would affect her property value. "If I go to sell that, am I going to get my money out of it? I've been there for 27 years," she said.

Mr. R. Miller asked Ms. McCraner whether her home is shielded by a natural buffer now, as the wooded area surrounding her home appeared thick to him, and Ms. McCraner indicated the dark areas on the projected GIS image as existing woods South and West of her home. She said the areas are thickly wooded and expressed concern over the removal of approximately 50 acres of woods. Mr. Doriot reminded Ms. McCraner of the staff-recommended buffer requirement and explained what 50 ft. looks like, and Ms. McCraner then repeated her concerns, adding those over wind and tree-removal noise. Mr. Doriot asked her how old the home is, and she responded that the current home was built in 1995. A mobile home, now no longer present, predated the current home.

Kyle Kunisch, 11748 CR 2, Middlebury, who in approximately 2012 bought Patchwork Quilt Inn, a home now used as a bed-and-breakfast that has been present since 1883, submitted a five-page packet of photos *[attached to file as Remonstrators Exhibit #1]* and a copy of *InMiddlebury Magazine* turned to page 25 *[attached to file as Remonstrators Exhibit #2]* and clarified for the Board the location of the inn, on the East side of the Southernmost bend of CR 2 in the subject area. He also told the Board of his appearance before the Board of Zoning Appeals to request permission to operate a wedding venue onsite and of his investment of \$600,000 in the property, "and now they're saying we'll face a factory." He expressed contentment with the staff-recommended buffer but said he had heard from "Mr. Petrie" that the buffer will one day be absent. Mr. Kunisch also listed the various restrictions on wedding activities placed by the Board of Zoning Appeals and indicated his willingness to comply with them, but said that wedding bookings through 2016 have been made on the basis of the presence of trees. Clients who have already booked will be unhappy about the presence of a factory.

** It is noted that Jeff Burbrink stepped down from the Board at this time and was not present for the remainder of the meeting.*

Mr. Kunisch then clarified for Mr. R. Miller the location of the trees referenced, and Mr. Doriot commented that the distance from CR 2 to the West property line of the subject parcel is 1,320 ft. Mr. Kunisch also said he cannot plant his own trees between the wedding venue and the subject property because of restrictions placed on his septic system and the requirement that it be

expanded, adding his anticipation of the appearance at the hearing of owners of property adjoining the West side of the subject parcel, among whom is one who bought his property only two months ago. On behalf of other property owners, he also regretted the possible loss of the required buffer, the additional restrictions imposed by the trunk line easement, and the presence of through trucks on CR 2, which were prohibited by a sign before the construction of Grand Design's 11333 CR 2 location and whose drivers now use a segment of CR 2 near his property to turn around and thereby damage his property. "When they built that factory, I'm assuming, somehow that sign came down," he said.

Mr. R. Miller asked whether new residential construction had occurred nearby recently, and Mr. Kunisch said two residences had been constructed recently in the subject area and asked how JPR could say the residential uses will be gone, in light of the two new residences and his own recent investment in Patchwork Quilt Inn, which had been "in dire straits" before his purchase but whose guests often comment on the beauty of the area. "If we look at a factory, that's going to seriously affect us," he warned. Mr. Doriot asked to be reminded of the period during the year in which weddings are permitted, and Mr. Kunisch replied May through October.

Sean Berkey, 12268 CR 2, Middlebury, whose family has lived along CR 2 for 50 years, expressed concern over the possible moving of materials from one Grand Design property to the other across CR 2. He asked whether such moving and the company's expansion would cause an increase in traffic and pose a danger to area children, some of whom ride their bicycles on CR 2. Speaking for himself and two other owners of new houses in the subject area, including his sister, he feared that the project would affect property values. Mr. Berkey commented also that he would hate to see Patchwork Quilt Inn, "an asset for the community," affected by the project, given the work the current owners have done to revive it. He concluded by asking whether the project is the result of "spot zoning." He said the surrounding area is residential and agricultural and stated the subject parcel is an "odd spot" for a manufacturing zone, though he understood the need for jobs and business.

Wayne Chupp, 11744 CR 2, Middlebury, said he lives in the home immediately West of the subject property, East of Patchwork Quilt Inn. He moved from Michigan recently, chose his location because of the woods and agricultural surroundings, is skeptical of the manufacturing use coming in, and added to concerns over property value. He said he is not against the county's growth and addition of jobs but suggested that the staff-recommended buffer be increased to 100 ft. in width, a fair increase "that might be asking a bit much from whoever's developing it" but that would preserve property values. In the subject property, "the trees don't grow down very much, so . . . the branches start way above your head," Mr. Chupp said. The clearing of the trees will result, then, in a loss of privacy.

Mr. Schnaars began his response by acknowledging that nothing the remonstrators said was untrue. He pointed out, though, that the bed-and-breakfast is 1,000 ft. away from the subject parcel and that 150 ft. of woods separates Mr. Chupp's residence from the subject property. JPR does not object to the 50 ft. buffer but asks only that the requirement be dropped if the Western adjoining properties become nonresidential, he reiterated. He also stated "complete agreement" with the staff's other recommendations.

A motion was made and seconded (*R. Miller/Warner*) 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** Roger Miller, **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 A-1 to M-1 for *Marcile Gabriel, trustee 1/2, attn. Gladys Troyer (seller), and Grand Design (buyer)* be approved in accordance with the Staff Analysis with the following condition imposed:

1. Approval of the request is not effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Plan Commission staff for placement in the petition file.

And with the following commitments imposed:

1. Permitted uses in the M-1 zoning district may only take place on the subject property after the property is served by an approved and accepted public sewer line.
2. A vegetative buffer a minimum of 50 feet in width and generally consisting of the trees existing on the property at the time of submittal of the rezoning petition (July 25, 2014) must be maintained:
 - a. Along the Western property line of the subject parcel; and
 - b. Along both property lines that are 361.5 feet in length at the Northeast corner of the subject property.
3. The buffer is not required where the trunk line gas easement intersects with the Western property line.
4. Ordinary maintenance and pruning is permitted within the buffer areas.

Vote: Motion passed (**summary:** Yes = 5, No = 3, Abstain = 0).

Yes: Blake Doriot, Frank Lucchese, Roger Miller, Steve Warner, Tom Stump.

No: Steven Edwards, Tony Campanello, Doug Miller.

Absent: Jeff Burbrink.

10. The application for a zone map change from Planned Unit Development R-1 to a Detailed Planned Unit Development R-1 to be known as **BAYRIDGE SECTION 4 DPUD**, for The Land Company, Inc. (owner), and Capsized Capital, LLC (developer), represented by Marbach, Brady & Weaver, Inc., on property located on the Northwest corner of Old Port Cove and Bayridge Drive, 250 ft. North of Vistula Street (SR 120), and North end of Bridge Town Road, 1,000 ft. North of Old Port Cove, 950 ft. West of Bayridge Drive, 3,400 ft. East of CR 21, in Washington Township, was presented at this time.

Mark Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #0000BAYRIDGE DRIVE-140804-1*. Mr. Kolbus asked whether final action on the petition would be taken by the Town of Bristol rather than the Board of County Commissioners, and Mr. Kanney said yes, the town would have to adopt the Detailed Planned Unit Development and later approve final platting.

Chris Marbach, Marbach, Brady & Weaver, Inc., 3220 Southview Dr., Elkhart, was present on behalf of Capsized Capital, developer and, as of last week, owner. He said the subject property is within the existing Bayridge subdivision on SR 120 and is surrounded on the South, West, and East sides by section 1 of the subdivision. Section 3, at the North, closes off the central portion, 7.3 acres in area, which was never developed. Mr. Marbach noted that in 1992, when section 3 was platted and developed, a proposed layout of the infill section was shown. The layout featured a connector road between sections 1 and 3, a West cul-de-sac, and 24 lots. The current proposal, Mr. Marbach

said, features a connector road in an identical position; a more traditional West cul-de-sac that will use less pavement and allow for more green space and developable area; lots of increased size, resulting in a total of 21 lots; and the conversion of lot 19 of section 1 into a 9,500 sq. ft. common entranceway area for signage, amenities, and landscaping on which no house will be built.

Average lot size, he said, is a little over one-quarter of an acre, average width is 70 ft., and average depth is 160 ft. The development will observe R-1 building setback specifications. Requested deviations from the provisions of the ordinance include lot width deviations for lots 97–101, which surround the cul-de-sac, and lot coverage deviations as specified by a chart included with the application.

Mr. Marbach further noted that the development will connect to Bristol water and sewer. Roads will feature 24 ft. of asphalt and a 2 ft. concrete curb-and-gutter section on each side to match existing roads. The owner is currently finalizing applicable conditions, covenants, and restrictions, he said, and the section 4 draft is similar to those of sections 1–3 but includes some additions.

Some discussion will be had over protection of berms on the subject property, Mr. Marbach anticipated. At the time of the development of section 1, in 1987, dirt removed during excavation for sewer, water, roads, and homesites was spread along the perimeter of the subject property. Mr. R. Miller asked about the size of the berms, and Mr. Marbach said they range from three to five ft. in height, have 4:1 side slopes, and are “fairly straight.” He added that the section of berm on lot 108 will not be removed.

Owners of property adjoining the subject section have begun voluntarily maintaining the outside areas of the berm at their own expense, Mr. Marbach said, but those areas have been on the developer’s property the whole time. All iron pipe–identified rear lot corners have been found, and the berm is entirely within the subject piece, he emphasized, as shown on the provided drawings. Mr. R. Miller asked who has been maintaining the interior piece, and Mr. Marbach said it is fallow and unmaintained.

Mr. Marbach noted also that the tops of the berms are mostly within the 25 ft. rear setbacks of the proposed lots but that exceptions occur, in the Southwest corner of the subject area, for instance. The developer makes it clear that the berm can be reshaped or relocated and proposes replacing half the berm with a retention wall for added level ground in backyards as appropriate.

He concluded saying that the developer, Reid Deputy, is himself a resident of the subdivision and member of the architectural control committee and is interested in continuing to meet the high standards of the development. The project will upgrade fallow ground within town limits to create taxable, buildable space and “might actually save a cornfield from development for a little while.”

Mr. R. Miller asked whether any retention areas are planned, and Mr. Marbach replied that section 1 received storm sewer installation, and a connection point for the subject section was planned during original 1987 planning. The subject section will plug into a 24 in. storm sewer pipe. Road plans and sewer-and-water plans have been submitted to the Town of Bristol and are under review, he added, and a SWPPP has been filed.

David Benak, 9769 Old Port Cove, Bristol, who lives at the Southwest corner of the subject property, requested “that the berm be kept as is” as a condition of approval. It is a unique structure that has added aesthetics for the homeowners and would serve as a barrier for privacy, he said. He said also that a common belief of most homeowners in the development has been that the berm area is common property, though he was not sure how the belief came about. “There are individuals who

will say that agents associated with the sale of the . . . lots informed them that that was common property,” he asserted, and “it isn’t individuals, it is the homeowners’ association that has maintained that for over 20 years.” An irrigation system in the berm that is maintained by the homeowners’ association is connected to a well “dedicated for irrigation of common property” and “put in by the homeowners’ association,” he also said, and the berm area has been otherwise maintained by the association during that 20 years. Any reasonable purchaser of property adjoining the subject area would be “under the illusion that that is common property.”

Mr. Doriot asked Mr. Benak whether the homeowners’ association has been paying taxes on the subject property, and Mr. Benak said he did not know. Mr. Campanello then said that the petitioner stated “the berm was going to stay other than certain areas that would affect certain properties” and asked whether Mr. Benak would, if “95 percent of [the berm]” were to be kept, have a problem with the reshaping of the rest of it to work for the layout of the parcels. Mr. Benak said he would have a concern because of the number of huge oak trees in the subject area. The relocation of the barrier would either require or cause the destruction of the oak trees, he said. Mr. Stump asked who paid for the installation of the irrigation system, and Mr. Benak said he did not know. Mr. R. Miller asked when the system was installed, and Mr. Benak said it was installed before his arrival in Elkhart 13 years ago.

Steve Carlson, 3346 Bridgetown Rd., Bristol, has lived on lot 108 for 14 years, has owned his home since it was new, and does own a small piece of the berm. He repeated Mr. Benak’s assertions concerning what has led to belief in common berm ownership. He said, though, that no adjoining homeowner objects to the Deputy’s development of the subject property and that “we all knew when we bought our properties and built our homes that that someday was a possibility.” Mr. Carlson said also that several homes have been built within the last year on lots that abut the berm, and in at least one case the owners placed trees on the berm to ensure privacy in the event of interior development. He argued that not once during the years of association maintenance of the berm areas did anyone come forward on behalf of the petitioners to permit its continued maintenance while warning of its true ownership, but he then stated realization of the presence of surveyor’s stakes, saying, though, that most homeowners do not know where to look for them or what to look for.

Mr. R. Miller asked Mr. Carlson to say what he meant by “common property,” and Mr. Carlson replied that Bayridge contains common area, which defines, for instance, “the whole area out along SR 120,” the Bayridge entryway, the tennis court, and the maintenance building, which the homeowners own and maintain. Mr. R. Miller then asked whether the homeowners pay taxes on that area, and Mr. Carlson said yes, the association does. Mr. Carlson could not say who pays taxes “on the berm.” Mr. R. Miller asked whether the berm along SR 120 is platted, and Mr. Carlson said it is part of the original Bayridge plat, platted as common area, added Mr. Kolbus. “Whereas the land behind there is not?” asked Mr. R. Miller, and Mr. Doriot said it would be on the physical plats if it were common area. Mr. Carlson then said that the berms, to his knowledge, are not platted as common area. Mr. Doriot further added that the berm is not within any of the properties he surveyed recently that adjoin the subject property on its West side.

Steven Edwards, who lives in a subdivision similar to Bayridge, asked whether the planting of trees in the so-called common space by homeowners was ever subject to any homeowners’ association approval procedure. There is some confusion, he contended, regarding why homeowners would plant trees in an association-owned common area; “that’s a big assumption on the residential side.” Mr. Carlson said there was no such procedure; the berm as “represented by

developers and realtors and just by history” would always be there, it was understood.

Mr. Campanello asked Mr. Kolbus whether any statute of limitations applied to the subject property, maintained as it had been for so long by the adjoining homeowners. Mr. Kolbus replied that it is not the Plan Commission’s prerogative to address that issue today. Mr. Doriot added that provisions for acquiescence and adverse possession do exist, and Mr. Kolbus said that depending on the circumstances, one of two or three different time periods could apply. Mr. Campanello said that were he a resident of the area, he would have done what the adjoining homeowners have done, maintained the beauty of the berm area knowing it is not his.

Mr. Carlson said finally that while the Deputys’ current developer has stated to homeowners interest in maintaining the berm and working with adjoining homeowners, there is nothing in any plat or presentation that requires such maintenance. A seller of an undeveloped lot that will require berm reconfiguration will be more concerned about the buyer than an adjoining homeowner, and “our request is that something be put in this final plan that requires that [that] berm stay in place,” he said.

Michael Harbaugh, 9695 Old Port Cove, Bristol, lives on lot 20 of section 1 and said that though he submitted a letter to the “planning board” (received September 4, 2014) listing several concerns, his concern today was over the continuation of Bayridge Dr., which would require removal of a large section of berm along his lot. As lot 19, which is East of lot 20 across Bayridge Dr., will remain undeveloped, Mr. Harbaugh asked that the approach of Bayridge Dr. be moved East to preserve the section of berm in question. Mr. Edwards asked Mr. Harbaugh whether he built the home on lot 20, and Mr. Harbaugh said he and his wife bought the home already built. They have lived in the home for approximately 15 years.

Brian LaShure, 3378 Bridge Town Road, Bristol, who lives on lot 112, expressed concern over stormwater drainage. He said he understands that a 24 in. pipe will be used but did not know whether that size is smaller or larger “than what we have existing.” He said that when he bought his lot and built in 2000, there were empty lots on both sides of his, but with the development of the lots has come drainage to his. He has installed a dry well in his backyard to alleviate flooding on his lot, but the two lots adjoining his do not hold water, and a nearby undeveloped lot is very low and is almost always holding water. Removal of the berm from behind his house and the building up of the nearby undeveloped lot will result in much more water directed to his lot, he feared, and described the condition of the West area of section 4 as “similar to a swamp condition.” A better plan for storm drainage is needed, possibly using retention, he thought.

Mr. Marbach began his rebuttal stating the owner has paid taxes on the subject property since he took ownership. He stated also that the 1992 section 3 plat designates no common area, even within the central green area at question. Addressing privacy, he stated that buyers of lots in the subject area would not want the berm removed either. The preservation of the berm is everyone’s best interests, and “it just may need to be modified . . . in some form along the way.” Addressing the approach of Bayridge Dr., he stated that a connection has been made to what is already built but that “there will be some hope to put some landscaping back in along that edge, as that berm in that area has been removed.” Addressing drainage, he said road plans call for low roads, and water generated by the new lots will run toward them into the stormwater collection system, which runs from the cul-de-sac to the intersection of Bayridge Dr. and Bayridge Ct. He said he has not noticed any standing water or drainage issues on the subject property so far.

Mr. R. Miller asked Mr. Marbach to address the pipe size question raised by Mr. LaShure,

and Mr. Marbach replied that engineering plans call for 12 in. pipes that will collect water in the cul-de-sac and pipe it to the intersection of Bayridge Ct. and Bayridge Dr. Those pipes will connect to an existing 24 in. pipe running along Old Port Cove that conveys water ultimately to the river. The 1997 construction plans called for the pipe's 24 in. size, appropriate for the subject property's development, which has been planned for since 1987.

Jim Woodsmall, Warrick & Boyn, LLP, 121 W. Franklin St., Elkhart, attorney for the developer, said that among the requirements for adverse possession are that "it be open, notorious, exclusive and that you pay taxes on it." This is open property, he said, and it is not exclusive for any of the property owners. The owners have paid taxes on the section 4 property all along, he added. He stated also that no one representing the owner or the developer has told anyone that the section 4 property is common area. The berm constitutes excess dirt generated during construction of the other sections and is not uniform, varying in height and width and in some places extending into buildable area and encroaching upon proposed public right-of-way. Lot 85 in fact comprises mostly berm, and the owner and future developer must have freedom to modify, he said. Mr. Woodsmall expressed understanding over the remonstrators' desire for privacy ensured by berm preservation, but they are not the owners of the subject property, and the developers are not responsible for privacy, he said.

Mr. Edwards asked Mr. Woodsmall whether the builder has an active role in the homeowners' association, and Mr. Woodsmall responded that Reid Deputy will be on the control committee. Reid Deputy, 53786 Pheasant Ridge Dr., Bristol, then came forward, and Mr. Edwards asked him why the homeowners' association never communicated to adjoining homeowners, who have clearly been investing in portions of the subject property, that the property is not common area, as "it's obviously yours, but you're allowing otherwise." He responded that he has only been owner for two weeks and is a relative of the first developer. Three developers have owned the property, he said. The Land Company acquired it in 1987 and then sold it to Borger Pletcher Development. The Land Company later reacquired select parcels of the overall Bayridge project, and Mr. Deputy acquired the subject property two weeks ago. Mr. Edwards's question, then, is better answered by a representative of Borger Pletcher, which is now The Borger Group, Mr. Deputy said.

Mr. Doriot mentioned that the new zoning ordinance does not call for like uses to be buffered from one another. He stated his observation during private work in the area of the amount of work some adjoining homeowners have put into the berm and his discovery that the berm does not delineate property lines. He also expressed sympathy for the homeowners but said they do not own the subject property.

A motion was made and seconded (*Campanello/R. Miller*) 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** Tony Campanello, **Seconded by** Frank Lucchese, that the Advisory Plan Commission recommend to the Bristol Town Board that this request for a zone map change from Planned Unit Development R-1 to a Detailed Planned Unit Development R-1 to be known as **BAYRIDGE SECTION 4 DPUD** be approved in accordance with the Staff Analysis.

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

Yes: Blake Doriot, Frank Lucchese, Roger Miller, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello, Doug Miller.

Absent: Jeff Burbrink.

11. The application for a zone map change from General Planned Unit Development R-1 to a Detailed Planned Unit Development R-1 to be known as **CAMDEN PARK VILLAS DPUD R-1**, for Windshire Corp. represented by Brads-Ko Engineering & Surveying, Inc., on property located on the South side of Washington Street, 1,465 ft. West of Elkhart Street (CR 3), in Olive Township, was presented at this time.

Brian Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #000WASHINGTON STREET-140804-2*. He also presented a handout titled "September 9, 2014, Drainage Board Minutes" [attached to file as *Staff Exhibit #1*], which documents a drainage board vote approving a reduction of Wertz Ditch's North setback to 40 ft. Approval was granted on the condition that no walkout basements be permitted along the ditch, Mr. Mabry said.

** It is noted that Doug Miller stepped down from the Board at this time and was not present for the remainder of the meeting.*

Barry Pharis, Brads-Ko Engineering & Surveying, Inc., 1009 S. Ninth St., Goshen, was present on behalf of the petitioner. The General Planned Unit Development called for single-family homes along Waterford St. and in the Northwest portion of the subject area, North of Wertz Ditch, and called for villas in the Northeast portion, he said. Camden Park DPUD R-1, a 10-lot subdivision, was approved, and the approval sought now is that for a 32-lot subdivision for villas, which the Town of Wakarusa "enthusiastically" supports. Brads-Ko has appeared before the Wakarusa Technical Review Committee, which must send a letter of approval to the Plan Commission, and drainage board approval was received September 9, 2014. The town wants the development to connect to its sewer main, which runs along the South edge of the ditch, and permission was requested and received to connect under the ditch. Brads-Ko also requested and received permission to down-drain two proposed retention areas into the ditch and requested that the North-side ditch setback be reduced to 35 ft., as Brads-Ko is providing ditch access easements on the East and West sides of the new subdivision for maintenance. Board discussion resulted, however, in the approval of a 40 ft. North ditch setback.

Brads-Ko has also requested approval from IDNR to bench, or widen, the ditch, Mr. Pharis said, so that water flow can be controlled by the proposed retention areas, preventing Westward rush toward Baugo Creek and positively impacting future flooding. The size of the tube, 72 in., under Washington St., and the ditch's S-curve at the South end of the area of Camden Park Villas, limits the East-to-West flow of water and is responsible for area flooding, and Brads-Ko has suggested that the town install additional pipes in that location. The combined effect of the additional pipes under Washington St. and Brads-Ko's Camden Park drainage design addresses flooding and benefits the town, Mr. Pharis said.

Returning to the subject of the Camden Park Villas homesites, Mr. Pharis said that each single-family attached residence will be built on its own lot, and single-family attached homes are divided by a firewall from basement floor to attic, which permits legal ownership of one-half of a combined building. Some lots on the cul-de-sac, however, may permit only single-family detached homes.

Mr. Pharis then said that the subject of walkout basements was not raised at the drainage board meeting but was mentioned by Mr. Doriot before today's Plan Commission meeting, and

stressed that Brads-Ko's client is an experienced builder and developer and is not the general public. While the Plan Commission can prohibit walkout basements along the ditch, Mr. Pharis said, Brads-Ko suggests instead the approval condition that walkout basements along the ditch be at least 2 ft. above the ditch's flood plain. Mr. Pharis noted that the floodway extends only 15 ft. on each side of the ditch for the entire segment near the subject development and that Brads-Ko's plan is for water storage and slow release through 8 in. pipes.

Mr. R. Miller asked whether flooding was the reason for the change of the Camden Park DPUD R-1 lots, which are South of the ditch along Waterford St., from single-family attached to single-family detached, and Mr. Doriot said that while Camden Park DPUD R-1 originally featured a central road and homesites facing away from Waterford St., the town required lot frontage along Waterford St. instead.

There were no remonstrators present.

A motion was made and seconded (*R. Miller/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:

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Steve Warner, that the Advisory Plan Commission recommend to the Town Council of Wakarusa that this request for a zone map change from General Planned Unit Development R-1 to a Detailed Planned Unit Development R-1 to be known as **CAMDEN PARK VILLAS DPUD R-1** be approved in accordance with the Staff Analysis with the following additions to the ordinance that grants the DPUD:

1. The Homeowners Association for the subdivision is responsible for all maintenance, repair, and plowing of the private road known as Wingate Court on the attached Site Plan / Support Drawing. The Town of Wakarusa has no role in maintenance, repair, plowing, or any other aspect of the private road.
2. That the Advisory Plan Commission recommend that the Town of Wakarusa put in the ordinance that walkouts should be two feet above the 100-year floodplain.

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

Yes: Blake Doriot, Roger Miller, Steve Warner, Steven Edwards, Tom Stump, Tony Campanello, Frank Lucchese.

Absent: Jeff Burbrink, Doug Miller.

12. *Smart Cabinetry DPUD, Major/Minor Change*

** It is noted that Mr. Doriot stepped down (recused himself) from the Board for the duration of the Smart Cabinetry presentation due to a potential conflict of interest.*

Mr. Mabry called Board attention to a letter (received July 9, 2014) from Michael Harris, 70600 CR 23, New Paris, included in the Board members' packets that outlines five complaints concerning Smart Cabinetry's new facility in New Paris. A code enforcement officer inspected the facility, and the findings are outlined in a cover letter, also included in the Board members' packets, dated September 4, 2014. Mr. Mabry also distributed a drawing showing the approved DPUD and a preliminary as-built drawing produced by Mr. Doriot, which shows what is currently on the ground.

Mr. Mabry then read the code enforcement officer's findings: 1) Twelve loading docks are

present while only seven were approved. 2) Three silos are present on the North side of the facility, the heights of which are addressed in Mr. Harris's letter. 3) A North fenced-in area Mr. Harris identified as a drainage or retention area is in fact a fire pond and not used for outside storage. 4) A portion of the apron of the North driveway encroaches onto Mr. Harris's property but is within county right-of-way. The Board of County Commissioners must, then, address this dispute. 5) The property line dispute is not within our area of enforcement.

Mr. Kolbus asked whether the problems found can be summarized as the presence of 12 loading docks instead of seven and the presence of three unapproved silos. Mr. Mabry responded that he was not sure whether a number of silos was specified on the Site Plan/Support Drawing; a rectangular area labeled "Dust Collection" is all that appears. Mr. Mabry asked Ronnie Weiss, the code enforcement officer, who was present, to confirm that the three South-side silos shown in a projected photo viewable by the Board are different from the single North-side silo, and he confirmed. Mr. Campanello asked whether the single North-side silo constitutes what is referred to as "Dust Collection" on the approved Site Plan/Support Drawing, and Mr. Mabry said yes, nothing on the approved drawing shows dust collection on the South side. Mr. R. Miller observed that the as-built does show South-side dust collection, and Mr. Mabry agreed.

Mr. Mabry then projected photos of the North driveway apron and the fire pond. The fire pond appears on the as-built but not on the original drawing. Mr. Edwards indicated the fire well labeled on the original drawing, and Mr. Campanello said it is used to supply the facility's fire sprinkler system. A fire pond, Mr. Campanello said, is required in the absence of a city water connection, and Mr. Doriot's as-built cover letter states that the fire pond was built because no well could supply the gallons per hour required by the insurance company.

The changes being considered constitute a major change, asserted Mr. Campanello, which does not imply the fire pond is unnecessary, and Mr. Mabry agreed that the fire pond is necessary. Mr. R. Miller asked how an engineer could at first determine a well alone is adequate for fire suppression and later determine it is not, and Mr. Campanello said the well is an adequate water source but cannot supply enough pressure for fire suppression. Mr. Stump agreed with Mr. R. Miller regarding the need for accurate assessment of water requirements but said also that engineers might not know whether an aquifer can supply a needed volume.

Mr. Warner stated that any one of the three changes considerable by the Board is significant, and Mr. Kolbus and Mr. Mabry summarized the procedure to follow should the Board declare the change major.

Following Board examination of the three changes to the Smart Cabinetry Site Plan/Support Drawing considerable by the Board (an increased number of loading docks, added South-side dust collection, and an added fire pond) and consideration of the nature of the changes as summarized above:

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Tom Stump, that the three Board-considerable changes to Smart M-1 DPUD be considered a major change by the Advisory Plan Commission. The motion was carried with a unanimous vote.

13. *Zoning Ordinance, Module 4*

Mr. Mabry began by stating how far along the ordinance process is. Module drafting is still under way, and a consolidated draft, containing all four modules, should be ready in September

2014. A Board recommendation for ordinance approval will be sought in November 2014, and adoption by the Board of County Commissioners will be sought in December 2014.

Mr. Mabry then reminded the Board that zoning is the set of laws that implements the policies of the comprehensive plan. Those policies arise from public input, specifically from the policy committee, which comprises farmers, private surveyors, real estate professionals, and others.

Module 4 contains three articles. Article 8 covers nonconformities and their treatment. Nonconformities are conditions that were within the rules at one point but no longer are, largely because of zoning ordinance adoption or amendment. Article 9 covers enforcement, violations, and penalties. Article 10 covers definitions and will feature an abbreviations table. Mr. Mabry cautioned the Board that the module 4 draft distributed to the Board contains no technical committee or policy committee feedback, and asked the Board to note his comments and questions appearing in the draft.

Article 8, Mr. Mabry then said, addresses treatment of properties, uses, or structures that were established legally at the time of their establishment but do not conform to today's standards. Nonconforming properties have a nonconforming status and may continue but may not be intensified or expanded without approval from the appropriate approving body, ordinary maintenance and repair notwithstanding. The addition of a bedroom to a residence in a B-3 zone, for instance, would require a use variance or a rezoning.

Another type of nonconformity is a nonconforming parcel that was platted in accordance with the rules in place at the time of its creation. Such a parcel may continue to see use without special approval so long as it meets 60 percent of today's standards for such things as width and area. Owners of such parcels have a variety of means to address the nonconformity, including rezoning, combining of adjoining parcels, and developmental variances.

An example of a nonconforming use, Mr. Mabry said, is a residence built many years ago over which M-1 or M-2 zoning has been applied. Legal recognition of the residence would require a use variance or rezoning, and cessation of the nonconforming use would occur, for instance, when the house deteriorates and the property on which it appears begins to see actual M-1 or M-2 use.

An example of a nonconforming structure is one that was built to comply with height or setback standards no longer in place. "So if they build," Mr. Mabry said, "they can continue to modify it and build onto it, but they just have to meet the current setbacks." Mr. Campanello asked whether, if something were to happen to a structure's setback-violating roofline, that roof could be rebuilt, and Mr. Mabry said that rebuilding would have to observe current setback requirements if no developmental variance is requested. The work at question is a repair to a nonconforming building feature only, Mr. Campanello clarified, and not the creation of a nonconforming feature. Mr. Mabry then said that if the cost of the repair is at least 60 percent of the value of the property, the zoning ordinance views the structure as a total loss. Mr. Doriot asked whether repairs to the nonconforming feature in question costing 20 percent of the value of the property could be done, and Mr. Kolbus responded yes, the structure could be rebuilt as it was. Mr. Mabry added that 60 percent is a standard percentage among zoning ordinances and mentioned Mr. Kolbus as the person responsible for much of the article 8 material, as it is legislative in nature. Mr. Kolbus mentioned that many of the article 8 provisions originate in the statute or case law interpretations and are not things that the staff simply chose to put in.

Article 9, Mr. Mabry continued, states that the zoning administrator enforces the ordinance and spells out what actions constitute violations, one of which is the building or use of a structure in

a way not permitted. He gave the examples of a stand-alone commercial greenhouse in an R-1 zone built and operated without a special use permit and a bookstore built in the appropriate zone but without a building permit. Another example he gave was building in way not approved by a valid use variance, special use, detailed planned unit development, or the like. Enforcement is complaint driven, Mr. Mabry added.

Penalties range from \$2,500 to \$7,500 per day, but the goal is compliance, not fee collection, as Mr. Kolbus has to be paid attorney's fees for the court appearances necessary for fee collection. Mr. Kolbus explained that the penalty range above is but a limit on judges' orders, when such orders are requested, and the penalties are not automatically imposed. Courts' goal is also compliance, and when penalties are imposed, they are often removed after violators have undone violations. Mr. Kolbus said that in 20 years he has only collected a couple of thousand dollars in fines, and he stressed that fines are not imposed at the staff or administrative level.

Mr. Campanello asked how permit, special use, or other revocation occurs, and Mr. Kolbus responded that the Board of Zoning Appeals can consider revocation, as in cases of egregious violation of the provisions of an approved special use or variance. In some cases revocation does not make sense, as in a case where only one out of nine commitments associated with a special use has not been met. In such a case the better option is to ask a court to force the petitioner to simply meet the ninth condition.

An abbreviation table is a feature of article 10, Mr. Mabry then said. In addition, definitions of terms no longer used in the ordinance have been removed; definitions that included standards, such as those for *home workshop/business* and *home occupation*, have been moved to article 5; new definitions, for terms such as *microbrewery* and *farmers' market*, have been added; and some terms have been modernized as necessary.

Mr. Mabry then reminded the Board about the four October town hall meetings, at the Baugo fire department and the town halls of Middlebury, Millersburg, and Wakarusa, which will give property owners a high-level view of what the new ordinance will accomplish. A press release concerning the meetings will go out September 15, 2014.

14. *Plan Commission Appointment to Board of Zoning Appeals*

The vacancy on the Plan Commission left by Doug Miller, who is departing to serve on the state legislature, will be filled by Lori Snyder, said Mr. Mabry, but his replacement on the Board of Zoning Appeals needs to be determined. Mr. Kolbus said the person has to be a citizen member, and Kathy Wilson and Mr. Kolbus said the candidates, then, are Mr. Warner, Mr. Edwards, Mr. R. Miller, and Ms. Snyder. Mr. R. Miller said he could switch but could not sit on both Boards, and Mr. Mabry and Mr. Kolbus said the appointment needed now would be an interim appointment, valid only for November and December 2014. Mr. R. Miller then said he could take the Board of Zoning Appeals position for November and December 2014.

The Board examined Mr. R. Miller's candidacy as interim member of the Elkhart County Board of Zoning Appeals, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Blake Doriot, **Seconded by** Steve Warner, that the Advisory Plan Commission appoint Roger Miller as Board of Zoning Appeals member for November and December 2014. The motion was carried with a unanimous vote.

15. A motion to adjourn the meeting was made by Mr. R. Miller and seconded by Mr. Edwards. With a unanimous vote, the meeting was adjourned at 12:00 p.m.

Respectfully submitted,

Daniel Dean, Recording Secretary

Steve Warner, Chairman