

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 8TH DAY OF JULY 2010 AT 9:00 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Plan Commission was called to order by the Chairperson, Tom Holt, with the following members present: Jeff Burbrink, Roger Miller, Tom Lantz, Meg Wolgamood, Blake Doriot, and Dennis Sharkey. Staff members present were: Robert Watkins, Plan Director; Robert Nemeth, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Doriot/Burbrink*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 10th day of June 2010 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Miller/Doriot*) that the legal advertisements, having been published on the 26th day of June 2010 in the Goshen News and the 28th day of June 2010 in the Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

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

* (*It is noted that Steve Warner arrived for the meeting at this time.*)

5. A motion was then made by Mrs. Wolgamood to approve the minutes of the regular meeting of the Elkhart County Plan Commission held on the 13th day of May 2010. Mr. Doriot seconded the motion, which was carried with a unanimous vote.

6. The application for an amendment to an existing Detailed Planned Unit Development known as **TIMBERSTONE DPUD**, for Innovative Land Development, LLC represented by Brads-Ko Engineering & Surveying, on property located on the Southeast corner of Timberstone Drive and Timber Court, 395 ft. East of CR 15 in Osolo Township, zoned DPUD-R-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #0TIMBERCOURT-100528-1*. In addition, Mr. Nemeth said this will continue to be on Elkhart utilities. There is one common area, which he pointed out on the aerial photo, and in order to protect the county so it does not revert back to them, he said the ownership and maintenance is split up amongst all of the owners on the seven (7) acres.

Present on behalf of this request was Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th St., Goshen. Mr. Pharis stated that his firm represents Innovative Communities and Fireside Homes. Tim Miller, of Fireside Homes, was also present for the hearing.

Mr. Pharis relayed that approximately five years ago approval was obtained for Lot 66 of this large residential project. Upon the approval, they platted a 26 dwelling unit condominium site.

Since that time, four dwelling units have been constructed and occupied. He said Tim Miller was recently approached by a client about building the next unit. Mr. Pharis explained that the client told Mr. Miller that during their research with their bank they were advised that they could not get lending on a condominium. He shared that the clients pursued other options, however, those options resulted in the same conclusion; they could not get financing.

Mr. Pharis went on to say that Mr. Miller and his attorney attempted to explain to the financial community the expandable condominium rules under the Elkhart County Horizontal Property regime. Mr. Pharis stated that the end result was that Fannie Mae and Freddie Mac claimed that they would not guarantee lending until 70% of the condominium project is completed. Further efforts to convince the lenders that this 26 dwelling unit expandable condominium was dramatically different than a 15-story building in California or Florida, where all the condominium failures had occurred, were fruitless. Mr. Pharis noted that all other efforts to pursue financing were unsuccessful.

According to Mr. Pharis, the only solution to this dilemma is to abandon the condominium site and replat it as single family and single family attached housing, each owning their own lot. Mr. Miller has obtained the approval of the four current homeowners and he said a plat has been submitted reflecting 25 lots and 25 dwelling units in configuration of single family and single family attached with zero lot lines. Mr. Pharis noted that the other owners of the residences within Timberstone will see no visible difference so he believes this will be a seamless change for them.

In conclusion, Mr. Pharis believes the rationale for them is very simple, in that they are trying to find ways that their clients can obtain financing to build a residence. He pointed out that there is a favorable staff recommendation and indicated that he has no issues with any of the items listed as conditions or suggestions.

When Mrs. Wolgamood asked how the common area works, Mr. Pharis explained that the common area is allocated in ownership to every homeowner within the subdivision. He said the result of the joint ownership is that the maintenance and taxes are paid by the Homeowner's Association, and if there were a failure of the Homeowner's Association, the taxes are then appropriated to every individual house within the residential community. They have a lot of lakes in this project that are not only a benefit for aesthetics, but also a benefit for their retention and he said they are treated in the same way. In this particular case, Mr. Pharis said there is a fountain located within the retention pond, and in designing the lot, he noted there is a large oak tree on Lot 66C. The owner of that lot insisted that the oak tree remain on his lot, which he said resulted in a strange shaped lot.

For clarification, Mr. Sharkey said there were currently four residences there and no other lots have been sold. Mr. Pharis indicated that was correct. Mr. Sharkey asked if the owners of those lots are required to pay their share of the cost of maintenance and taxes on that common area and Mr. Pharis said they will be once the subdivision is platted. Currently, he said it is set up as a condominium in the horizontal property regime.

According to Mr. Pharis it was initially established that the owners of Lot 66 would pay and maintain everything themselves and they would be excluded for the entirety with the exception of a small fee that every homeowner pays for general entry, landscaping, etc. When this is re-platted into single family like everything else in the subdivision, the condominium will be disbanded. Mr. Pharis explained that the four existing homeowners, as well as the potential 21 homeowners, will become part of the Timberstone Homeowner's Association.

Until that happens, Mrs. Wolgamood said the property is in Firesides' name and Mr. Miller maintains everything. Mr. Pharis indicated that she was correct and that Innovative Communities

takes care of everything now.

Mr. Sharkey sought clarification concerning how the fees were currently split. He asked if the maintenance and taxes on the common area were split four ways or 25 ways and Mr. Pharis stated that the costs are spread 25 ways. He then clarified that the four homeowners are paying their 1/25th and Innovative Communities pays the remaining twenty-one 1/25^{ths}. Ultimately, he said Mr. Miller will be completely out of it.

There were no remonstrators present.

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

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Doriot/Wolgamood*) that the Advisory Plan Commission recommend to the Board of County Commissioners that this request be approved in accordance with the Staff Analysis with the following to be noted in the text of the DPUD Amendment Ordinance for clarity associated with the adopted Site Plan / Support Drawing:

1. The project will be allowed to be phased as needed by the developer in compliance with the subdivision control ordinance and county street standards.

The motion was carried with a unanimous roll call vote.

7. The application for Secondary approval of a Detailed Planned Unit Development to be known as **REPLAT OF LOT SIXTY-SIX (66) TIMBERSTONE DPUD**, for Innovative Land Development, LLC represented by Brads-Ko Engineering & Surveying, on property located on the Southeast corner of Timberstone Drive and Timber Court, 395 ft. East of CR 15 in Osolo Township, zoned DPUD-R-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #0TIMBERCOURT-100528-2*.

Barry Pharis of Brads-Ko Engineering and Surveying, 1009 S. 9th St., Goshen, was present on behalf of this request and he offered no additional comments.

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

8. The compliance report for **VIM** was addressed by Mr. Watkins at this time. When the Board passed a resolution amending the DPUD due to EPA requirements for some restructuring of the berms, he said they asked for a status report at the same time. However, he said he's attempted to arrange a meeting with Ken Will for the last couple of weeks and has been unsuccessful. Mr. Will wanted him to meet with representatives from Soil Solutions who he explained are the designated contractor by EPA to take care of the fines. Mr. Watkins noted that while that meeting has not yet happened, it has been scheduled to take place at 10:00 a.m tomorrow (July 9th).

Mr. Watkins went on to say that he has been assured through emails between IDEM and the EPA, and through a conversation with one of the Soil Solutions representatives, that the berms are under reconstruction and will be reconstructed according to the EPA plans soon. He then indicated that he would provide more information once he's had the opportunity to meet with all parties involved.

Mr. Kolbus advised Mr. Watkins to let the Board know how serious the EPA is concerning

this matter. When he asked when their last meeting was held at the site, Mr. Watkins replied Sunday morning, July 4th.

9. The next staff item Mr. Watkins addressed was the proposed amendment to the Subdivision Control Ordinance with regard to the Extension of Primary Plats. Based on representations in the minutes of the last two meetings, Mr. Watkins said it was stated that the previous Subdivision Ordinance allowed for extensions; however, he said it does not. He said it is very clear that at the end of two years the preliminary expires. He advised the Board that what they are considering is a policy change.

A copy of the proposed amendment to the Subdivision Control Ordinance was then distributed to the Board (*see attached*). Referencing Section 1.09 B. 2, Mr. Kolbus said the Board requested they add language that the primaries approved under the old ordinance be allowed two years from the date of the new Zoning Ordinance. Therefore, the language deleted from this section was, "*within two years of primary approval*", with the following language added, "*before March 2, 2011, unless the Plan Commission grants an extension under section 3.10 C, Extensions of Primary Approval.*" Mr. Kolbus then explained that Section 3.10 C is an entirely new section and is shown in red on the proposed amendment. He said the Plan Commission minutes and old ordinances were reviewed and there was nothing within those items that gave the Board the authority to grant the extensions.

Mr. Kolbus said he attempted to make this language consistent with the Board's discussion the previous month. He pointed out that they may request an extension for a period of up to five years, and the request should be made in writing and should describe the need. It will then be discussed and considered by the Plan Commission as a non-public hearing item, and the maximum number of requests permitted is two. Basically, he said this would allow an additional ten years beyond the initial two years. If the Board is satisfied after reviewing the proposed amendment, he said it can be set for public hearing in August; however, he pointed out that the Board also has the option of looking at it and discussing it again next month. Mr. Kolbus believes that something needs to be done soon to prevent the primaries approved under the prior ordinance from lapsing.

Mr. Sharkey recalled that there was plenty of discussion in June on this subject and he thought the consensus of the Board was that this is the direction they wanted to go. Mr. Kolbus agreed.

Mr. Doriot asked if a blanket extension would be granted for existing subdivisions or if something would appear in the legal ads, which may not be seen by many of the developers. Mr. Kolbus asked for clarification of a blanket extensions and Mr. Doriot explained that he was referring to existing open subdivisions. If approved, Mr. Kolbus feels that some type of notification should be sent out to inform developers that they have until March 2, 2011, to either obtain secondary approval or request an extension.

Mr. Doriot then moved to set this proposed amendment to the Subdivision Control Ordinance for public hearing at the August 12, 2010, Plan Commission meeting. Mr. Miller seconded the motion, which carried with a unanimous vote.

10. Mr. Watkins explained that the subscription for the Planning Commissioners Journal is due for renewal and he's looking for direction on what the Board wants to do with that subscription as he's noticed that not all are being taken. It was pointed out that the cost is \$177 per year for 11 copies. After a brief discussion, it was the consensus of the Board to renew the subscription as is.

11. At this time, Mr. Watkins expressed regret that he was unable to share the 2011 budgets with the Board, but the deadline of July 6, 2010, precluded him from sharing the information prior to submission. He reported that there is a significant decrease in the Plan Commission budget due to two vacancies that he will allow to remain vacant. His goal is to keep the positions, but he said they will not be funded at this time. There is also an unfunded position in the Code budget as a building inspector position is and will remain vacant. He said the result is a minor reduction in the Code budget with an almost 11% reduction in the Plan Commission budget. The other budgets under his control are the GIS and MS4 budgets, and he said all budgets are at or below what they were in 2010. He then encouraged the Board to contact Kathy Wilson or himself with any questions.

Mr. Sharkey commented that the budgets are going to be tougher this year than last year due to the fact that the Planning and Code Enforcement income was significantly reduced. Mr. Watkins agreed, stating that the income has been reduced over the past three years.

Mr. Burbrink moved to approve the 2011 Plan Commission and Code Enforcement budgets as submitted. Mr. Warner seconded the motion and the motion was carried with a unanimous vote.

12. A motion to adjourn the meeting was made by Mrs. Wolgamood and seconded by Mr. Miller. With a unanimous vote, the meeting was adjourned at 9: 28 a.m.

Respectfully submitted,

Teresa McLain, Transcriber

Kathleen L. Wilson, Recording Secretary

Tom Holt, Chairman