

July 12, 2018

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, July 12, 2018, at Town Hall located at 1150 W. Guy McCown Drive. Terry Baker called the meeting to order at 6:00 p.m. David Drake led the Pledge of Allegiance.

Roll Call: Members present were: Terry Baker, President; David Drake, Vice President; Don Calvert, Zach Michael, Brian Miller, Pat Wesolowski and Sandra Hash. Kevin Tolloty, Planning Director; and Darla Brown, Town Attorney, were also present.

Approval of the Minutes

Terry Baker entertained a motion for approval of the minutes for the regular meeting on June 7, 2018. Pat Wesolowski so moved. David Drake seconded. Motion carried.

Monthly Conflict of Interest

Old Business

Kevin Tolloty, Planning Director, requested Old Business be heard after New Business.

Petition to Vacate a Portion of the Plat and Associated Covenants, 4354 N. Centennial Drive; Petitioner: Steven Emery, on behalf of Centennial Park, LLC; Case No. PC2017-25

Comprehensive Plan

New Business

Voluntary Annexation of 5169 W. McNeely Street (14.41 Acres); Petitioners: Ned and Michelle Brown; Case No. PC 2018-10

Kevin Tolloty, Planning Director, presented a request for a voluntary annexation of 14.41 acres with one single-family home. After annexation, it will be subdivided into three lots to allow for two more single-family homes. Property is currently zoned Agricultural Rural Reserve by Monroe County and will be zoned Residential 1 (“R-1”). Staff recommends a favorable recommendation of annexation with R-1 zoning to Town Council.

Terry Baker entertained a motion. David Drake made a motion to recommend to the Town Council approval of the annexation under PC2018-10. Brian Miller seconded. Roll call vote: Terry Baker – yes; Don Calvert – yes; David Drake – yes; Brian Miller – yes; Zach Michael – yes; Pat Wesolowski – yes; and Sandra Hash – yes. Motion carried.

Development Plan Approval of a New Commercial Structure (8,500 ft² on 1 Acre) at 4501 N. Outback Road; Petitioner: Jeff Van Horn, on behalf of VanHorn Tinting; Case No. PC2018-11

Kevin Tolloty, Planning Director, explained this is a request for development plan approval of a commercial building located on Outback Road. The parcel was annexed into the Town

approximately two years ago. The building will be 8,500 ft² and will be two stories with one floor for office area. A portion of the property is located in the floodplain but all development will be outside of it. Property is zoned Commercial 1 and the land is currently undeveloped. A variance to reduce the side yard setback was granted by the Board of Zoning Appeals in 2017. Staff recommends approval of the development plan. The development plan meets all technical requirements.

Terry Baker entertained a motion. David Drake made a motion to approve the development plan for PC2018-11, VanHorn Tinting. Brian Miller seconded. Roll call vote: Terry Baker – yes; Don Calvert – yes; David Drake – yes; Brian Miller – yes; Zach Michael – yes; Pat Wesolowski – yes; and Sandra Hash – yes. Motion carried.

Rescheduling September and October Meetings

Kevin Tolloty, Planning Director, will be out of town for the September meeting and there is a planning conference the same time as the October meeting. He proposed canceling the September and October meetings and having a meeting on September 20, 2018. All agreed.

Old Business

Petition to Vacate a Portion of the Plat and Associated Covenants, 4354 N. Centennial Drive; Petitioner: Steven Emery, on behalf of Centennial Park, LLC; Case No. PC2017-25

Kevin Tolloty, Planning Director, explained the Petitioner is requesting to vacate a portion of the plat described as Lot 15 of Highland Park Estates and to vacate the covenants for the portion of the plat to be vacated. In order to vacate a plat or covenants, there are certain findings that must be met. In order for the plat, or portion thereof, to be vacated, all three of the following criteria must be met:

1. Conditions in the platted area have changed so as to defeat the original purpose of the plat;
2. It is in the public interest to vacate all or part of the plat; and
3. The value of that part of the land in the plat not owned by the petitioner will not be diminished by the vacation.

Vacation of the covenants from a vacated part of a plat must meet one of the following three criteria:

1. The platted area is within an area needing redevelopment and the covenant vacation would promote a recovery of property values in the area needing redevelopment by allowing or encouraging normal development and occupancy of the platted area;
2. The covenant vacation is needed to secure for the public adequate light, air, convenience of access or safety from fire, flood or other danger; or
3. The covenant vacation is needed to lessen or avoid congestion in the public ways.

Originally, when platted the cul-de-sac showed an ingress/egress easement. In 1976, the final plat no longer showed the ingress/egress easement. In 2005, an extension of Centennial Drive to the north was indicated as part of Phase II review. Centennial Park was annexed into Ellettsville in 2008 and preliminarily platted for 78 lots. Review of the minutes show both the county engineer and planning director provided information to the Town that there was an easement to connect the street into Centennial Park. In 2010, the court ruled that it

was not an ingress/egress easement. The Ellettsville Plan Commission granted a waiver allowing 40 homes with one ingress/egress through Ribbon Court in 2016. In 2017, Lot 15 of Highland Park Estates was annexed into Ellettsville. The developers built an ingress/egress easement across Lot 15 which was challenged in court and found to be in violation of the covenants and is currently under appeal. At this meeting, the Plan Commission will decide whether or not to grant a plat and covenant vacation. If so, the Plan Commission must find the aforementioned criteria have been met. Mr. Calvert asked if it is under appeal, why are they acting on it.

Steve Emery, Attorney and Principal of Centennial Park, LLC, doesn't know how or when the appeal will come out. This is a way to resolve the issue short of waiting for the court to rule. Centennial Park was approved for 78 lots in 2008. At the time, everybody believed the 50' strip would be allowed as an ingress/egress easement and in 2010 that turned out not to be the case by a court order that was not appealed. The previous owner of Centennial Park was granted a variance to allow 40 lots with a single entrance through Woodgate by the Plan Commission. Residents of Woodgate would like to see this happen to reduce the amount of traffic from Centennial Park through their development and to provide them with better access to State Road 46 and a signalized intersection. People have to go to Deer Park Drive which is a bad access point to State Road 46. Their proposed findings have been submitted and the criteria have been met. It requires the Plan Commission to make all three findings for the vacation of the plat and one of the three findings for the vacation of the covenants. The first criteria they have to decide is whether or not the conditions in the platted area have changed so as to defeat the original purpose of the plat. Clearly, from the time the Plan Commission made the decision to allow Centennial Park to be developed with 78 lots until now, a significant change occurred to everyone's belief. The opponents will state it never was an access point but the county Plan Commission and engineer at the time and this Plan Commission thought it was and were told the same. He doesn't think anyone intentionally misrepresented it to the Plan Commission. When the 78 lots for Centennial Park were approved everybody thought it was an ingress/egress point. The court ruling in 2010, is a change in the condition which defeats the original purpose of the plat which was to provide the access. Another big change that occurred, was the annexation of Lot 15 by the Town of Ellettsville and it is no longer under the jurisdiction of the county which is a change of condition that defeats the original purpose of the plat. The most recent court decision is under appeal but it prohibits them from allowing a connection between Centennial Park and Centennial Drive which was originally contemplated to be the case. The second criteria being it is in the public interest to vacate all or part of the plat is straight forward. At a recent Town Council meeting, both the Fire and Police Chief indicated their approval of the connection between Centennial Drive and Centennial Park because it would improve public safety with access for fire, police, ambulances, school buses and all residents of Woodgate and Centennial Park who will live there in the future. The third criteria, the value of that part of land in the plat now owned by the Petitioner will not be diminished by the vacation. There is a 50' strip of land everyone thought would be a road and was later found not to be the case. Property values will not be diminished but enhanced. They believe the criteria for the findings have been met. Only one of the criteria for vacation of the covenants must be met with that being the need to secure for the public adequate light, air, convenience of access, or safety from fire, flood or other danger. With the access there will be greater convenience for the public and it will lessen and avoid congestion in the public ways, specifically Deer Park Drive, Union Valley Road and Lost Man's Lane.

David Drake asked why they are dealing with this legal issue. If everyone thinks that was suppose to be a plat and it makes sense, why is there all of this legal turmoil. Mr. Emery explained in 2010, the owner, Bob Crider, filed a quiet title action in Monroe Circuit Court to have the 50' strip of land declared not to be a right-of-way that everyone believed was a right-of-way in 2008. Mr. Drake asked why that was done. Mr. Emery answered on the final plat that was recorded the 50' easement designation was no longer there. In that case, the judge decided there was no access point. Mr. Drake wondered why they're against this when it has been that way for 40 years.

Jeff Crider explained his father, Bob Crider, owned the property and had it platted in the 1970s. The preliminary plat is a working document and was filed as a final plat in 1976 and there was never an access point. His father never intended for it to be an access. The developer wants access to get more lots and generate revenue. They prevailed in court twice. The developer will get access to about 300' to the east in due time. Vacating the covenants that have been in a subdivision since 1976 diminishes the property value for those lots in the cul-de-sac. He doesn't feel right about running a road through a cul-de-sac. It's not fair to bring a road through a cul-de-sac or change the restrictions. An easement was never recorded on the final plat and it wasn't there in 1976. He doesn't believe the conditions have changed enough to remove the restrictions. Mr. Wesolowski asked if the people who purchased the homes in the 1970s still live in them. Mr. Crider answered yes. Mr. Drake asked why he and the developer can't get together and build a street that connects the two developments now. It costs money but at the same time they're concerned about public safety and having multiple entrances. If everyone is truly concerned about it then that would be the simplest solution. Mr. Crider maintained the street to the east is available for the developer if they want to build it at this time. Mr. Drake stated it would have to be built on their property. Mr. Crider said that's correct but they chose not to at this time because the developer doesn't want to pay for it. Mr. Drake commented normally people do not build streets on other people's developments, do they? Mr. Crider answered no but his point is they will give the developer access and if it is so important to them they will put the road in as it has always been shown on the plans. Mr. Drake noted the plans show the road is in the last phase of their development and they have no idea when it would ever be built. Mr. Drake thinks it's more reasonable to connect with Centennial Drive than people driving through the different curves and then coming back onto Centennial Drive through the back side. Mr. Crider reiterated it was never platted that way and there was never an easement. It was only shown to be a stub.

Mike Carmin, Attorney for Highland Park Estates, reminded the Plan Commission that during the meeting for this issue the vote was to table it and wait on the court decision. If their action will be not to care what the court has to say then why did they wait? He assumes they're going to give credence to the court's decision. The judge decided what they're doing is wrong. It is a nuisance, annoyance and substantially and dramatically alters the neighborhood. They weren't the original developer. When the developer purchased the property the court decision stated there is no easement. They purchased the land knowing they could not develop 78 lots. The first criteria means they have to find that the plat for a residential subdivision has failed.

Doug Hackman owns Lot 16 and they purchased their home in 1998 because it was in a cul-de-sac. Sometimes there's additional traffic in their cul-de-sac because people want to see the subdivision. One of the findings stated it will increase traffic by 2,000 vehicles a day. This will cause the value of his land to decrease. Requirements for the annexation stated it

had to be 1/8 contiguous and 150' is not contiguous. Lot 15 is 134' wide so the annexation is not valid. The original Centennial Park was dependent on a 20' strip of land for their contiguity so that annexation is also not valid. According to I.C. 16-4-33, Authorization for Annexation, shoestring annexations don't meet the contiguity requirements. Grandfathered land cannot be used for annexations. So, the annexation of 40 acres north of Centennial Park is not valid. This should be considered in the final decision.

Dave Grimm lives on Centennial Drive. Is there a precedent in Ellettsville of turning a cul-de-sac into a thoroughfare? How many of the new developments in Ellettsville have cul-de-sacs? People who purchase homes on cul-de-sacs need warned that it may turn into a road.

Steve Emery noted the Plan Commissions findings are given great deference by the court should the decision be challenged. He disagrees with Mr. Carmin in that they don't meet the first criteria because the plat was a failed purpose which is not in the statute. The statute says "Conditions in the platted area have changed so as to defeat the original purpose of the plat." The 50' strip shown in the preliminary plat and designated ingress/egress was later found not to be by a court decision in 2010. However, the Plan Commission believed it was a right-of-way in 2008 when the subdivision was approved. If it wasn't a right-of-way and was not given a lot number why was it there in the first place? The access point that may occur 300' to the east will come down and connect to Centennial Drive. Highland Park Estates has been under development for 40 years so the connection to the east may never happen. If the connection to the east would be built traffic will flow onto Centennial Drive in front of Mr. Grimm's home. Highland Park Estates' preliminary plat shows the last final phase of five lots and they never have to develop it or make the connection. As for trying to work it out, they have had several conversations. In the last conversation they offered to cut-in the roadway, do all of the excavation and put in the base level of gravel so it could be used for access in an emergency but Mr. Crider wants them to put in the sanitary sewer, waterlines and storm sewers. Essentially, they would build the road, put it in place and they can put the utilities where they want it. Two connections are better than one even if the road to the east does go in some day. It would allow for better traffic flow and better access for emergency vehicles. He personally knows of two cul-de-sacs that have been extended into further subdivisions. One is on Mesa Lane in the Indian Echo Hills subdivision off of Stipp Road near the intersection of Moffit Road. The other is on Blue Bird Lane off of Snoddy Road. Mr. Wesolowski asked when they purchased the land and conducted a search of the covenants/restrictions, did they know at that time they were not going to be able to put a road through the 50' strip of land. Mr. Emery answered no because he gave careful consideration to the covenants/restrictions of Highland Park Estates. In reading the covenants, they believed in good faith that they would not be violating them by putting in an easement and building the road across the west half of Lot 15. Mr. Wesolowski asked if there was a court decision. Mr. Emery answered there was not a court decision at that time. The court decision came after they purchased it and started to build. Mr. Wesolowski asked if they knew they could not use the 50' strip of land for the road. Mr. Emery answered no. They want to use the western most 50' of Lot 15 in Highland Park Estates. They knew they couldn't use the 50' strip on the final plat because it is not an easement. They created a new 50' strip immediately east of and adjacent to it as a right-of-way and easement. They did not know that there would later be a court decision that in December 2017 there was a violation of the covenants/restrictions. They believed in good faith, and he still believes because they're appealing the court's decision, that it is not a violation of those covenants/restrictions. It

merely states you “can’t do anything that would create a nuisance or annoyance in the neighborhood. A street, in his opinion, is not a nuisance or annoyance because everyone lives on a street. The trial court disagreed and said it was a violation and this is why they’re requesting a vacation of the covenants as to Lot 15 only. It will remain zoned as a single-family and when the development is completed it will be sold and occupied. Mr. Wesolowski thinks this is a catch-22. He understands people living in a cul-de-sac don’t want a road going through but they have to also look at the safety of the area. It will be a difficult decision.

Jeff Crider doesn’t believe there are permanent cul-de-sacs that have been converted to permanent roads. It’s about the developer getting more lots. They will get access to the east. It will affect lots of people in Highland Park Estates if the covenants and plat are vacated. It is purely for access. They’ve seen it through and will continue to do so. The developer and Woodgate will get their access to the east.

Raymond Moore, Partner in Centennial Park, LLC, asked what the 50’ will be used for if it was never intended to be an easement. The traffic will be the same amount in Highland Park Estates after he puts the stub in as there would be with the entrance in the cul-de-sac. The county Highway Commissioner met with them and suggested they do away with the cul-de-sac and make it an “S” curve to slow down traffic into the Centennial Park subdivision through the 50’ they’re proposing to use. Traffic will only affect four houses and one of them is owned by Centennial Park, LLC and one of the homeowners told him it does not bother him at all because if it doesn’t go by one side it will go by the other side. Coming out of the stub to the east in Highland Park Estates, headlights will shine into two houses. It is unknown how long it will take Crider to get to the final phase and the proposed entrance to the east because it has taken them 40 years to build 40 houses. Mr. Crider has said they just want the other 40 lots and of course they do but why does he care because competition is good for that area. It’s pure greed to deny them use of the 50’ strip for an access.

Doug Hackman noted there are five houses in the cul-de-sac. All of the traffic will have to go through once the stub is put in that part of Highland Park Estates. Mr. Moore is correct in that there will be substantial traffic through his cul-de-sac.

Pat Wesolowski referenced the earlier comments on annexation and grandfathering. What was the gentleman referring to about grandfathering in annexations? Mr. Tolloty explained the annexation code changes every year. There is language about certain annexations that are not allowed. He doesn’t know when the language was put into the code or how it applies to previous annexations. Ms. Hash added the annexation of the Centennial Park development was controversial. There was a driveway that was part of the annexation and they were guaranteed by the advisors they had at the time that it was a true acceptable way to annex that parcel. Mr. Drake remembers at the time the annexations were done, you could use what was at the end of the strip as contiguity for an annexation but could not use the strip that got you to that point as contiguity. The City of Bloomington had the same issue for years with Leonard Springs Road and Bloomfield Road. The difference is you can’t annex off of the little strip that went to the highway to get there. Ms. Brown noted the annexations were voluntary. The Planning Director is very careful in his work on annexations and what is allowed by statute to ensure all requirements are met.

Terry Baker asked Ms. Brown's recommendation on how to proceed. Ms. Brown explained it is a two-step process. They first decide whether or not they want to vacate the plat and there are three criteria the Plan Commission has to find as follows: The conditions have changed so as to defeat the original purpose of the plat, it is in the public interest to vacate part of the plat and the value of that part not owned by the petitioner will not be diminished by the vacation. Step 2 is whether or not they want to vacate the covenants/restrictions and there are three things to consider and the Plan Commission has to find that one of them is true. The Plan Commission has to make written findings pursuant to the statute. If the Plan Commission was to vote and make findings, they could work on the written findings at the next meeting. Whatever findings are put on the record at this meeting they are committed to them. She suggested they table this to the next meeting to give themselves an opportunity to look at Mr. Emery's proposed findings. She had asked both Mr. Emery and Mr. Carmin to submit proposed findings some time ago. Mr. Carmin provided her with his proposed findings but she did not pass them around to anybody because shortly thereafter Mr. Emery withdrew his petition. If Mr. Carmin still wants to use the same findings she can provide them as well as the Petitioner's to everyone so they have time to review them. Mr. Wesolowski asked if this is in the court. Ms. Brown explained the decision Mr. Emery and Mr. Carmin are referring to is the injunction Highland Park filed against Centennial Park and the court ruling in February 2018 and it is now before the Court of Appeals. Mr. Michael asked if it is appealed and the original finding is upheld, how would it affect the decision of the Plan Commission should they decide to vacate both the plat and covenants/restrictions. Ms. Brown would not know until she read the appellate court opinion. The Town was not a party to the underlying cause of action. The injunction is directed specifically to Centennial Park, LLC. Mr. Drake commented the injunction says the covenants/restrictions do not allow the road to be put through. The Plan Commission is considering whether or not to remove the covenants/restrictions so it is two separate issues.

Terry Baker entertained a motion to table it to next month so they have a chance to read all of the findings. Pat Wesolowski made a motion to table PC2017-25 to the August meeting. Zach Michael seconded. Motion carried.

Darla Brown, Town Attorney, asked at the August meeting if they're inclined to accept more evidence or will it be a discussion among board members on what findings they want to adopt. All agreed to review the findings at the meeting in August.

Terry Baker announced the next meeting will be August 2, 2018.

Comprehensive Plan

Kevin Tolloty, Planning Director, advised the Comprehensive Plan will be coming before the Plan Commission at the August meeting.

Planning Department Update

Kevin Tolloty, Planning Director, mentioned there will also be a plat amendment for Edgewood Village and Edgewood Heights at the August meeting.

Privilege of the Floor

Adjournment

Terry Baker entertained a motion to adjourn. David Drake so moved. Pat Wesolowski seconded. Motion carried. Terry Baker adjourned the meeting at 7:11 p.m.