

## June 3, 2004

The Ellettsville, Indiana, Plan Commission met in regular session on Thursday, June 3<sup>rd</sup>, 2004 at the Town Hall. Ed Bitner called the meeting to order at 7:21 PM and led in the Pledge of Allegiance.

**Roll Call:** Don Calvert, Terry Baker, Lisa Creech, Ed Bitner and Jeffrey York, Planning and Zoning Administrator were present. Frank Buczolic, David Drake, Sandra Hash and Rick Coppock were absent.

### Approval of Minutes

Ed Bitner stated the minutes were approved as read by all for May 6<sup>th</sup>, 2004.

### Old Business - None

### New Business

#### **Discussion concerning Kinser's Mini-Warehouse Facility located at 110 Ridge Springs Lane**

**Lisa Creech** asked Jeff York to give a brief synopsis of the history of this facility to start off the discussion.

**Jeff York** stated the development is zoned C-1 and was approved through a couple of Plan Commission meetings in May and June of 2003. Long standing issues of the property being zoned incorrectly needs to be discussed. He stated the Plan Commission relied on two experts Bill Land, former Planner for the Town and Rick Coppock the Town's Engineer in determining if the facility would be allowed in the C-1 zoning. According to the old code, which was in place when Mr. Kinser started his project, it doesn't say specifically if it is a permitted use. But Mr. Land and Mr. Coppock collectively felt due to the wording of the C-1 regulations would fit, because the traffic amount would be less than some of the other uses listed under C-1. So it was a permitted use and subsequently approved by the Plan Commission. Jeff listened to the original tapes of the minutes from those meetings and that was his interpretation. The Plan Commission guidelines in place do not require public notification to neighbors if a development plan is the only request up for discussion.

The Commission approved the landscape plan with street screen trees along residential areas 10-20 feet on center at least two inches in diameter. The types of trees were to be deciduous, red oak, poplar and ash. The landscape plan showed 20 feet on center and met the standards according to the old code. Mr. & Mrs. Benninger have written several letters concerning Mr. Kinser's landscaping. He has spoken to the Town's Attorney on the issues surrounding Mr. Kinser's facility and landscaping.

Jeff stated when he was hired as the Town's Planner Mr. Kinser didn't have any landscaping and when Mr. Kinser applied for his second building permit he informed him that he had thirty days to put the landscaping in place on the first building prior to getting a second permit issued. Mr. Kinser has planted a row of deciduous shrubs (spirea) which do not get very tall. The Benninger's do not think this is sufficient and doesn't meet the requirements. They want Mr. Kinser's landscaping bumped up. At the Benninger's request to add evergreen trees he and Sandra Hash went to speak to Mr. Kinser and found evergreens were being planted at the entrance to the facility. They thought it would be good alternative to have a double row of plantings of the spirea and the evergreen trees. He found out today the evergreens normally grow to height of fifteen feet with a width of four and half feet. The plantings are dense; there is an evergreen tree or a spirea shrub every three feet alternating a tree then a shrub. He added the Plan Commission is the only governing body that can change a plan that was approved previously and he is requesting they review Mr. Kinser's current landscaping. He stated the Plan Commission has to decide whether they want to approve Mr. Kinser's current landscaping of evergreens and spirea or whether they want to force Mr. Kinser to return to the original landscaping plan which was approved last year. This decision is according to what Attorney Mike Spencer advised the Plan Commission to do. Mike Spencer's letter dated May 28<sup>th</sup>, 2004 reads:

Dear Jeff,

At the request of the Town Council, I have reviewed the planting issues concerning the mini-

warehouse. Specifically, on Friday, May 28<sup>th</sup>, you and I reviewed the design plan for this project. That particular plan provided for one row of trees, two inches caliper, of red oak, ash and poplar, alternately planted. This row would line the front of the property which faces the Benninger property. Closer to the intersection, the plan provided for three 6-foot blue spruce and eight Pfizer junipers. It is my opinion that the Plan Commission can enforce this planting design plan.

At our meeting, however, you informed me that you and Sandy Hash, in an effort to resolve this matter, met with the developer and he agreed to replace the dogwood trees with two to three foot evergreen trees that would grow to four or five feet in height, alternately planted with the spirea bushes which would grow to three to six feet in height. It is my understanding that the developer has already made this change.

You indicated that you had also listened to the tape of the various meetings and nothing specific was heard on tape concerning the planting.

After reviewing the code provisions which applied at the time the plan was approved, it is my opinion that the planting design complied with the tree planting requirements according 830-56(g)(3), Screen Trees. The code provided: "Screen trees shall be planted to produce a continuous strip 10 to 20 feet on center depending on the diameter of the mature canopy in either a single or double row... Screen trees should be of one-inch caliper measure." The planning design for this development proposed trees that were twice as large as that required by the code. The code does not indicate that they cannot be deciduous and, quite frankly, the reference in the code to "mature canopy" suggests that deciduous trees were contemplated.

This position is further supported by reference to subsection (i) that deals with the screening of outdoor trash receptacles which specifically indicates that trash receptacles could be "screened from residential view by an evergreen screen". Thus, one may conclude that when the ordinance intends to require an evergreen screen, it so states.

It is my opinion that this issue should be resubmitted to the Plan Commission. Any change in the landscape plan should be approved by the Plan Commission. Any person who is not in agreement with the decision of the Plan Commission can appeal to the Board of Zoning Appeals. Therefore, it is my suggestion that both the developer and the Benningers be notified that this matter will be addressed at the next Plan Commission meeting. At that time both parties can express their positions and the Plan Commission can make a decision.

**Lisa Creech** asked how long it will take the evergreen trees to grow to the maximum height.

**Jeff York** stated he only asked general questions when he spoke to the representative at Cedar Bluff Gardens. They told him they would grow quickly.

**Terry Baker** said generally evergreens after planted in the first year wouldn't grow a lot and then after that about one and a half foot or so a year.

**Ed Bitner** asked what the purpose of the trees were, was it for a screen?

**Jeff York** stated yes. Landscaping for a screen buffer is required in the Town's Code and Mr. Kinser's development plan was approved showing a landscaping plan.

**Ed Bitner** asked are screen trees supposed to totally block it from view on Ridge Springs Lane at full maturity. If so, by his calculations according to how far apart the trees and shrubs are planted and the width they reach at full maturity, there will still be a gap of two feet between each of the evergreens.

**Jeff York** said yes but he doesn't know how wide they will get but they will have some depth.

**Lisa Creech** cited and read the Town's Code concerning landscaping pointing out the landscaping is supposed to help control the noise and glare. The Benninger's had mentioned the lighting, glare and noise issues at Council Meetings. The screen trees would help with these issues.

**Ed Bitner** said according to the Town Code the landscaping is supposed to be a continuous strip, with no gap.

**Terry Baker** said when planting you can't plant trees so close that they don't have room to grow because it will kill them. You have to leave some space for growth. That is why they went with the alternating spirea shrubs.

**Don Calvert** asked if the Benningers were more concerned with the height or width of the landscape buffer. The height would knock off the glare and the width would be to keep it from being easily seen.

**The Benningers** stated they were concerned with both factors.

**Glenn Benninger** stated they didn't want to see any part of the structures for twelve months out of the year; they want the entire development to be covered over as if it weren't there at all. He doesn't really care how this is done as long as it is blocked as much as possible from their view, that's the goal. He went on to explain the different requirements between street trees which are required on public streets and screen trees. Ridge Springs Lane is a public street and the street trees should be a minimum of two and one half inch caliper measure but Mr. Kinser's plan shows two inch caliper trees which is inadequate. The screen trees only have to be one inch caliper measure and they are okay but on the drawing they more like forty feet on center instead of twenty. If it was doubled then it would be an adequate screen. He showed pictures of Don Kinser's current landscaping pointing out it appears they are all in a row instead of a double row. The landscaping stops at one point by his neighbor's house. He showed his proposal with six foot evergreen trees screen that they would find acceptable and the removal of the telephone poles without the lights to help clean up the view. Mr. Kinser currently has three, large telephone poles with flood lights and security cameras on them and this doesn't go with the neighbor's surroundings. He said when the whole issue was started it was determined the facility was zoned C-1 and it should have been zoned C-3. He's spoken with several attorneys that believe it should have been zoned C-3, so clearly this shouldn't have been allowed to be built here. It would be hard to remove so he would be satisfied if it was cleaned up and covered up sufficiently. He said they have four requests and read aloud to be placed in the official minutes. They are as follows:

1. To complete a proper landscape buffer with evergreen trees as they have suggested. Evergreen trees do not lose their leaves in the winter months.
2. To reduce the lighting intensity overnight. They suggest repositioning the lights and cameras so they are closer to the ground and more beneficial to Mr. Kinser's facility as well as for their privacy.
3. To remove the six, large telephone poles and reposition the cameras to make the facility blend more with the neighborhood. One of the neighborhood's selling points is it has buried utilities to increase beautification.
4. To finish seeding the bare soil and place sod around the facility to keep the dust down and increase beautification.

He added the run off is causing an erosion problem, the silt is washing into the drainage retention pond.

**Don Kinser** said he didn't know what to say. He then rebutted with the statement that he did what Mr. York asked him to do. He took out the dogwood landscaping he had planted and replaced it. He had only went so far with the landscaping because he is not finished building and would have to just remove it again when he started on the other buildings and road. He seeded the dirt again yesterday (6-2-04). It had been seeded once prior to that also. He is using the same telephone poles the Town of Ellettsville uses for street lights in the subdivision. He asked that Mr. Benninger not trespass to get on to his property to get information but added if he would call him he would escort him onto the property. He asked the Plan Commission to approve the new landscaping. He added a little background history to the property stating when he proposed to purchase the property the original owner came before the Town Planning for a clarification of the zoning on the property. It was determined to be zoned commercial prior to his purchase in 1989 and he has a letter from the Ellettsville Clerk-Treasurer's Office stating it is zoned commercial. In 1999 he came before the Plan Commission to put up seven duplexes on the property which he really didn't need to do. All he technically needed to do was file a claim because it met the zoning, but he came to the Commission because his intent was to give the property to his children and grandchildren so the property would have needed to be subdivided. It was voted down because of the complaints against duplexes. His children then decided to forget the idea because of all of the complaints. He said he's received a steady trial of complaints no matter what he wants to do and he's tired of the harassment. Some of his customers have told him they have been harassed as well. He doesn't want to lose business because of the harassment. He added Mr. Benninger wrote a letter with his complaint and attached photos with it of Mr. Kinser's customers unloading their items into one of the storage units. He believes this

is a privacy issue and customers shouldn't have to put up with this because they're not doing anything wrong, everything is legal.

**Ed Bitner** stated the customers being photographed was a civil matter concerning privacy and the Plan Commission had nothing to do with that matter.

**Don Kinser** said the only other complaint he has received is from the Benninger's neighbor Joann Bowen at 115 Ridge Springs Lane. A few months ago when all the lights were still on he spoke to her husband and asked if he had any problems with the facility. Don said his reply was that it was a little brighter than he was used to but he would live with it. He told him if he had any problems to let him know and he hasn't heard from them since. Consequently after the Benninger's complained repeatedly about the lights he removed the ones that were causing the problems, but for some reason the Benninger's are still complaining. He spoke to the neighbors to the west to see if the lights were bothering them and they told him they were glad to have the storage facility particularly because it would be less noise than other possible commercial businesses. He added, in fact, several of his customers are from the Ridge Springs and Richland Manor subdivisions because people generally don't like to drive more than 3 or 4 miles to store their belongs. He closed by saying he would like the change to the landscaping to be approved.

**Jeff York** clarified to Mr. Kinser if the new landscaping plan was approved that the same plantings would have to be along the entire length of the building.

**Don Kinser** said he understands and that the landscaping would be added as the buildings were completed. This is a long term project which will take probably three or four years. He also said he was adding additional black fence around the facilities. He said he will build on demand, in fact, he may never get all of the buildings he originally planned built and he would just build as needed.

**Jeff York** said yes, as they are developed. He stressed if Don makes any changes what's so ever differing from the new landscaping plan, if approved, he would have to return to the Plan Commission to seek approval for any new additional changes.

**Don Kinser** reiterated saying he understood that he would have to either continue this all the way or file for a change.

**Lisa Creech** said she was confused because earlier Don said the landscaping would be done and the buildings were built but now he's saying it may take three or four years to finish building all of the buildings if at all. She doesn't want the facility site to set unfinished for years waiting for Don to complete the landscaping because he's not finished and may never finish all of the buildings. She wants to make sure the site is beautified for the neighborhood.

**Joann Bowen**, 115 Ridge Springs Lane said she was the Benninger's neighbor and was also concerned that if Don takes a few years to finish the entire building project that he will wait to fix the landscaping to block her view of the facility.

**Don Kinser** assured her that the view is going to change whether or not he's going to construct another building. He is going to level it out and gravel it for now and she will be able to see the woods until he puts up the next building.

**Ed Bitner** suggested to Don to leave the additional fencing down for now and bring the landscaping down to where the fence stops now. He said this would block off the view for the neighbors and Don would still be able to build.

**Terry Baker** said this way Don could come in to construct the other building where the fence stops and that way the landscaping wouldn't have to be removed to build as Don informed earlier.

**Don Kinser** said he could do that.

**Jeff York** suggested giving Don a time frame to complete this landscaping.

**Ed Bitner** asked Don when he could have the landscaping added to the end of the current fence line.

**Don Kinser** said he would have it done by the next Plan Commission meeting which is July 1<sup>st</sup>. He wants his place to look nice also.

**Joann Bowen** brought up a point that the types of shrubs he has chosen get damaged easily because she has had to remove them from her yard because of this reason.

**Jeff York** agreed this is a good point and suggested making the replacement of damaged shrubs and plantings a condition of approval of the new landscaping.

**Ed Bitner** stated this main discussion is about Don's landscaping but asked if he could put up shields on the lights to help deflect some of the glare for the lighting issue.

**Don Kinser** stated the Benninger's had contacted Cinergy several times about the lights and there wasn't anything that could be done, so finally he took down the back lights that they were complaining about.

**Don Calvert** asked if the Benninger's would be satisfied with the new proposed landscaping plan because he said there isn't a need for the Plan Commission to approve this if all parties are not going to be happy and further action is going to be taken.

**The Benninger's** said no. They wanted six foot trees planted now to cover the chain link fence, possibly white pine.

**Jeff York** said the issue is whether the Plan Commission is going to approve the new landscaping plan or not because the current plantings do not meet the Code.

**Lisa Creech** said we should go by the Town's Code as well as Indiana Code still keeping in mind what is in the best interest of all parties. She added she thinks the Plan Commission should use the original landscape plan that was previously approved.

**Laura Benninger** asked for clarification saying she thought Mr. Kinser was supposed to put in both the street trees and the screen trees.

**Terry Baker** was on the Plan Commission when this was originally approved and he said the original intent was for the side of the development facing the Ridge Springs neighborhood that screen trees were to be planted and for the side of the development not facing a residential side street trees were to be planted.

**Ed Bitner** said he liked the idea of planting the evergreens but wished they were bigger when they were planted. They would make a good screen for coverage and would be good for a sound barrier all year round. He suggested planting the evergreen trees and moving them closer together, planting them all the way to the end of the fence. He said the spirea weren't necessary but were acceptable to use if Mr. Kinser wanted to plant them.

**Terry Baker** agreed with Ed in favor of the evergreens being planted closer together the entire length of the fence now. He added white pines would not be a good choice; they don't get dense enough, cedar would be a better choice.

**Lisa Creech** suggested Jeff York taking a landscape specialist from Cedar Bluff Gardens, Ellettsville Landscaping and/or Able Nursery along with Mr. Kinser, the Benningers, the Bowens, and whoever wants to come along to the facility to get a better idea what would be appropriate landscaping to achieve the landscape buffer desired. She suggested to then having a special session to discuss the results from the landscape specialist's review of the site and everyone's comments so that the Plan Commission can make an informed decision on the landscaping.

**Jeff York** said that would be fine with him.

**Ed Bitner** asked Don if he was okay with that idea.

**Don Kinser** said that would be fine, but said he would need an extension on the time to plant the recommended landscape because he doesn't think it's a good idea to plant trees in July or August. October or November would be a more acceptable month for the tree or shrub to have a good, healthy start.

**Lisa Creech** said they could have a meeting soon and make a decision, so that Don could get the landscaping done sooner than that.

**Don Kinser** said that's fine. He knows the evergreens are in stock; he could get them and get it done.

**Don Calvert** recommended all parties sign a mutual agreement ahead of time that they will be satisfied with the landscape specialist's advice on the landscaping and that is what will be done. This would save a lot of trouble.

**Lisa Creech** said she doesn't think that can be done. The next step after the Plan Commission's decision would be to go to the BZA if not satisfied and then after that it would be a civil issue.

**Terry Baker** said everybody needs to give a little to make this a workable solution for all parties. He suggested if after the landscape specialist gives the recommendation then if it is not acceptable then they should return to the original landscaping plan that was approved.

**Glenn Benninger** said he wanted to state for the record that he took the picture from his living room window which is public view.

**Ed Bitner** and **Terry Baker** both stated this wasn't an issue the Plan Commission needed to discuss.

**Lisa Creech** asked for the list of questions to be decided on and read them aloud.

1. What height and caliper of trees should be planted? What will be their final growth rate?
2. If an evergreen tree is chosen, what would be the best type of evergreen to achieve the goal of a sound barrier, year around coverage and glare control.
3. Also if the trees Mr. Kinser has selected are useable to achieve the same goals.

**Don Kinser** stated he's recently noticed several cars using his driveway entrance to the storage facility and the driveway to the house across the street as a turn around. He counted twelve cars in a row on Saturday morning turning around and even followed one to find out where they were all going and they ended up at the Edgewood High School. It has the potential to be a hazardous situation with cars doing quick turn arounds so close to the highway. They are not his customers and he asked what could be done. He was wondering because he doesn't want to get blamed for the influx of traffic when it isn't even his traffic.

**Ed Bitner** said the highway split and the new traffic pattern has caused some confusion. He said this sounds like a signage issue which the Plan Commission doesn't deal with normally. The school does need signs. He suggested Don Kinser consult with the Town Council or maybe even the State Highway Department.

Lisa Creech made a motion to have a special session with the tree specialist on June 15th at 7:00 p. m. Terry Baker seconded. Motion carried.

- **Special Session will be Tuesday, June 15<sup>th</sup> at 7:00 p.m. at the Town Hall**

**Privilege of the Floor** - None

**Adjournment**

Lisa Creech made a motion to adjourn. Terry Baker seconded. Motion carried. Meeting was adjourned at approximately 9:00 PM.