

November 1, 2007

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, November 1, 2007, in the Fire Department Training and Conference Room located at 5080 West State Road 46. Sandra Hash called the meeting to order at 7:00 p.m. leading the Pledge of Allegiance.

Roll Call: Members present were Don Calvert, Terry Baker, Dan Swafford and Dianna Bastin. Sandra Hash, Secretary and Frank Nierzwicki, Director of Planning Services were also present. Frank Buczolic, President and Ed Bitner, Vice President were absent.

Approval of the Minutes

After a lengthy review of the minutes Terry Baker made a motion we approve the minutes of the October 4, 2007 meeting. Dan Swafford seconded. Motion carried.

Sandra Hash requested the meeting format be changed this evening to have the New Business come before the Old Business. Frank Nierzwicki requested the meeting start with Planning Staff Comments. There were no objections and the meeting started with Planning Staff Comments.

Planning Staff Comments

Black Signs

Frank Nierzwicki had been asked to research the “black signs” appearing throughout Ellettsville. He described the signs as black background with neon lettering. According to Town Code, illegal signs are signs that are movable on wheels or stands. He introduced Glen Witham, owner of ANEW BLACK SIGNS.

Glen Witham is new to the area and the state of Indiana. He gave a brief background on himself; Mayor of a small town, President of a Planning Commission and a retailer for twenty years. He spoke with Frank Nierzwicki three or four months ago, before he started doing business in town, they discussed the town’s sign ordinance and Frank asked him not to do business in Ellettsville. Mr. Witham asked the Commission to review the current sign ordinance and consider changing it to be more user-friendly to the merchants. He feels the present sign ordinance is very restrictive in regards to any signs. Since that conversation, Mr. Witham received many calls and requests from the merchants of Ellettsville to bring his product into town. At that point, Mr. Witham drove through Ellettsville and counted over 65 illegal signs in town, as per the ordinance, including one advertising the Fall Festival. Signs are a merchant’s tool to promote and advertise their businesses at an affordable price. Mr. Witham e-mailed Frank Nierzwicki and requested to come before the Plan Commission to plead his case. He gave examples of the different towns that allow his signs.

Don Calvert asked Mr. Witham if the signs are sold, rented or leased. Mr. Witham rents them out for two weeks to one month. He discourages the purchasing of the signs because he wants his signs to look a certain way and renting them out allows him to maintain control. Mr. Witham suggested he would carry sign permits to fill out on the spot of renting the sign and registers them himself. He attempts to do business in a respectable way. Dianna Bastin asked about the business he does in Greenwood. Mr. Witham explained Greenwood allows all types of temporary signs and their law allows a business to have a temporary sign every six months for up to two months. Frank Nierzwicki feels signs left for a longer period of time become less effective.

Dan Swafford asked how many “black signs” are in Ellettsville. Mr. Witham answered six. Sandra asked about the term of the contracts. Mr. Witham said all contracts are thirty days. Dianna feels some of the signs are a safety issue; being too close to the street or in a sight right-of-way. The agreement with Greenwood directs any issues with his signs to him. Dan Swafford’s concern is all these signs plastered up and down State Road 46; can we put a control limit on the number of signs up at one time? Mr. Witham suggested the Plan Commission enact a distance restriction between signs. Frank Nierzwicki asked Jeana Kapczynski, of the Main Street committee, her thoughts of these signs downtown.

Jeana Kapczynski has seen the signs popping up everywhere. She has always disliked the flashing signs and agrees there are a lot of illegal signs in Ellettsville. As for downtown, ideally, the area will be pedestrian friendly, village type and antique looking. The “black signs” would not be the look the Main Street committee is trying to achieve. She asks the Plan Commission to keep uniformity in the downtown area. She requested all flashing and portable signs be banned.

Frank Nierzwicki stated there is an element in Indiana Code regarding illegal signs; any signs on wheels or legs that are movable. There are no permits for these signs and there have not been any confiscated. Mr. Witham has been working with the local merchants, there seems to be some confusion on the sign requirements and they have not been able to get any clarification. He suggested a guideline be put together by the Town, merchants and downtown area. Frank Nierzwicki held a seminar over a year ago at Eagles Landing and had a representative of INDOT to talk about the signs. He is willing to do this again. Dianna would like a distance restriction from any government owned building.

Sandra has been on this commission for eight years. A Comprehensive Plan was put together with sketches of what could be. It strongly encouraged monument signs on the highway. Merchants are allowed those signs with a height requirement and light. The Town is trying to promote a pretty corridor. All utility lines have been put underground. If the Town does not take a stand, we will never improve. She does not see the need for temporary signs. The “black signs” are eye catchers but she feels they are annoying to the eye. Dan, being a business owner, feels if temporary signs are allowed; people will not get correct signage. It is very expensive to have a big sign. Sandra added this was discussed last year, in depth, trying to find the correct signage for the merchants. Sandra appreciates Mr. Witham’s comments and will take it under advisement but the sign ordinance has already been relaxed.

Mr. Witham would like a compromise. A compromise meaning a temporary sign is temporary and not permanent. It is something that could be used as an advertising tool on a temporary basis. He would like to have restrictions set up that would be workable for both sides.

Sandra stated Mr. Witham is well organized and the signs are well maintained. If the Town makes any changes, this could be a possibility.

Mr. Witham went on to explain the six merchants who have the signs will tell you they work and will rave about them. He charges \$125 for a thirty day rental. Sandra asked Frank Nierzwicki to get a copy of the Greenwood sign ordinance for review.

Jay Brinegar request for a goat at his place of business

Frank Nierzwicki stated he reviewed the code and found a goat to be improper. A letter was given to Jay Brinegar and Frank Buczolic a month ago. Jay Brinegar has chosen to appeal this decision. Frank Nierzwicki reads the code as “the Board of Zoning Appeals could hear Mr. Brinegar’s concerns concerning Frank’s interpretation of Town Code”. Code 152.331 Board of Zoning Appeals Officer’s Meetings Procedures (B) *states the Board of Zoning Appeals is also empowered to hear appeals related to administrative interpretation of zoning code. The fee for this appeal is \$100.* Mr. Brinegar feels his appeal should fall under code 152.003 Permitted Land Use *Where the Director of Planning Services shall make a finding and can not tell the difference or where the Director finds that the requested use shall qualify for a change in zoning or a special exception or a variance of use. The request shall be referred to the Plan Commission or the Board of Zoning Appeals for hearing.* Mr. Brinegar has filed his request with the Plan Commission and paid \$150 for that. Frank Nierzwicki asked if he should schedule a meeting for the BZA to hear this case or should it be on the next month’s Planning Commission agenda? Terry Baker asked if a tenant can request a land use change or does the owner of the property need to make the request? Frank Nierzwicki answered that for a change of zoning; it has to be the owner of the property. The way Frank interprets it, as an administrative person, it can be appealed and the way he reads it is “appeals would go to the Board of Zoning Appeals”. Jay Brinegar is focusing on the line that says “the request shall be referred to the Plan Commission or the Board of Zoning Appeals”. The issue with a rezone would go to the Plan Commission. A variance would be heard at the BZA. In the old code, Special Use variance applies to the use while the person is at the residence. This section did not make it to the new code so this would not be an option at this time. Jay Brinegar can appeal Frank Nierzwicki’s decision and does not think the owner of the property would want to rezone to Agriculture Use.

Dianna asked if Jay Brinegar comes to the BZA to change Frank’s decision and the goat lives on property he does not own, is there a chance people could complain because it is on property owned by the property owner. Could this turn around against them? Frank Nierzwicki explained there are a lot of things we do not foresee because it is difficult to write a zoning ordinance that covers everything. If the BZA hears the case and has a different interpretation of the code then that could change the use of the code. If people see that it is okay to have a goat there then it would be okay to have one somewhere else in town. It is a community decision where we want this to go. Dianna had someone tell her they did not want the goat there; then we should go to the property owners.

Sandra stated the goat is an emotional issue and it is real easy to look at the human side. It does not seem to be bothering anyone but it is against our code. Dan asked why the goat isn’t kept at a family residence if it’s a family pet. Why is it at a business and left there over night? Frank Nierzwicki said the issue on residency is separate. Dan asked if Eagles Landing is Jay’s permanent residence. Sandra stated she did not think there is a code that says you can not live in a commercial facility. Frank Nierzwicki looked in the code and explained you can live in a commercial zone with the minimum requirements for housing in that type of an area; having a working bathroom, facility for cooking and sleeping quarters. There is a safety issue; if people are living in a commercial business and a fire breaks out, do we have working smoke alarms. If people are living in a commercial facility, the fire department needs to know. It is not a personal issue but a safety issue. Sandra feels a safety issue is much bigger than having a goat. Frank Nierzwicki said to be fair to Jay Brinegar; a decision needs to be made if he should appeal to the BZA or Plan Commission. If he is appealing to the BZA, \$50 needs to be refunded to him and a date needs to be set. After the goat issue is resolved, the residency issue will need to be looked at.

Don Calvert stated we should be dealing with the property owner instead of Jay. Don thinks the goat should stay until the property owner decides what kind of business is going to be there and whether or not they are going to adhere to our codes, rules and regulations. Dan asked what would happen if a pet shop goes into the building. Frank Nierzwicki sent a notice to Beth Pyclik and spoke with her briefly over the summer. Dianna stated it doesn’t matter who is responsible for the goat it is still a goat in Ellettsville that is not allowed. Frank Nierzwicki explained as long as Jay is in the appeals process, there will be no fines. After the last appeal; fines will be given to the owner of the property. Jay Brinegar and the owner of the property know this. Sandra said the BZA denied another request for an animal on a residential property. Because of that denial, this one stands out more. Since this is in a different zone, does that change the situation? Frank Nierzwicki can not state what he thinks the BZA decision will be. The previous decision they made will not influence this decision. If the appeal is not going to be heard by the Plan Commission, there should not be any more comments or discussion.

Terry Baker made a motion that we forward this to the Board of Zoning Appeals. Dianna Bastin seconded. Motion carried. Frank Nierzwicki will let Jay Brinegar know the decision and request the \$50.00 be refunded.

Introduction of Connie Griffin

Frank Nierzwicki introduced his new Administrative Assistant, Connie Griffin.

Old Business

Plan Commission Meeting Format Change

Sandra Hash asked Frank Nierzwicki if he made the changes Ed Bitner requested. Frank Nierzwicki explained the changes using PowerPoint. Frank Nierzwicki reviewed Ed’s question:

- If the President does not return; should the Vice-President run the Election of Officers? Frank Nierzwicki stated the Director of Planning Services shall preside over the Election of Officers at the beginning of the year. Once the Officers are elected, the meeting will be turned over to the President.

Sandra suggested tabling this until the next meeting allowing everyone time to look over the revisions (including Ed who is not at the meeting). Don Calvert had a question about Section 3 (b) When a petitioner is presenting an item, who and how are they notified of the ten minute time limit. Frank Nierzwicki explained when the petitioner files with him; they are given a procedure listing of what is expected of them. Don asked about Section 7 Minimum Vote

Requirements (a) requirement that resolutions will be passed by a majority vote. Sandra does not feel it is a Plan Commission action to pass resolutions. Can a general statement be made that it requires a quorum to make a decision with a majority. Don Calvert asked about Section 8 Voting Procedures (d) any other member may raise the question and insist that a member either vote or state the reason for not voting and be excused. Don asked if you have to explain why you are abstaining. Sandra stated you are supposed to explain why you abstain. Sandra researched this and found in the Quarterly Publications of the Planning Commissioners Journal explaining when you abstain from voting you should state your reason. If you have a conflict of interest, a simple reason needs to be given, you are not supposed to ask questions from the table and you need to move to the audience. Don wants written clarification of the procedures. Dianna requested the Indiana Code be quoted.

Frank Nierzwicki would like changes sent to him via e-mail and Connie will make the changes. It is important we have procedures in writing for reference. Don Calvert likes this approach because this Plan Commission is “cleaning up” old business using precise procedures and taking a precise stand on issues. We need to get the codes and protocols correct and in writing for the next Commission. Frank Nierzwicki is in the process of writing a grant for INDOT for \$40,000 - \$50,000 for planning assistance. One of the items would be for training of Elected and Appointed Officials on planning issues. Frank also discussed the plans for the Planning Department.

Don Calvert asked what the Planning Department is doing about office space. Frank stated there have been issues with office space and they are working with the Township Trustee’s Office. Don Calvert stated we need to have a better imagine and look professional. We are headed in the right direction.

Dianna Bastin made a motion to table the Commission Meeting Format change until December’s meeting. Don Calvert seconded. Motion carried.

New Business

Trinity Lutheran Church relocation request at 501 Temperance Street

Frank Nierzwicki explained the Trinity Lutheran Church is requesting relocation to 501 Temperance Street. The location has a 6400 square foot space zoned C-3 which is consistent with the church use. There will be 20 regular parking spots and 2 handicapped. The Town Engineer is requesting an 18 foot wide paved area to permit two-way traffic in and out. No grading permit is required, per the Town Engineer. A grading permit will be needed to extend the driveway. Frank will check on that and have the permit before the driveway is complete. Frank Nierzwicki is recommending this for approval. He went on to show the location using Google Earth. Don Calvert would like to table this so they can review the elevation of the area. The building is close to where it floods and the proposal is incomplete. Frank explained the use is correctly zoned, the parking is fine, they have their commercial permit but there is a question regarding the entrance. They could apply for their building permit. Frank brought it to the Commission as a courtesy. A stipulation could be added stating before occupancy can be permitted, a grading permit needs to be approved. Sandra remembers when the Town flooded (twice) she does not think the area in question flooded. The flood elevations are okay. Google Earth was brought up to show the elevations of the street and property. There was discussion about the different buildings and elevations. Don Calvert does not like incomplete proposals but he can see why it was done this way. The church is presently working on remodeling the interior of the building. There is a conflict in the actual proposal. There was conversation and discussion while reviewing the plans. Dan asked about the in and out easement; the Village Video does not want people using their driveway. It was shown there is a 24 foot easement owned by the Church and the State; they have legal access. Micah, SPEA intern working with Frank, explained this is an existing building. The issues are more with the road and grading.

Dianna Bastin made a motion to table this issue until the next meeting. Dan Swafford seconded. Motion carried.

Personal Observation to Frank Nierzwicki

Sandra Hash stated Frank Nierzwicki uses “Office of the Plan Commission” letterhead listing all officers and members of the Plan Commission. She thinks his correspondences are misrepresented because people want to talk to the President even though Frank Nierzwicki signed the letter. She recommended that when he has personal correspondence, it would be nice if he used letterhead with “Director of Planning Services”. Dan Swafford agreed.

Proposed Zoning Change within Ellettsville Redevelopment Area

Frank Nierzwicki is requesting the change of zoning between the one-way pairs from C-3 and Industrial zone to C-2 which is more commercial. There is currently some commercial industrial use allowed downtown and a C-2 would be more of a tourist type zoning with restaurants, Bed and Breakfasts, shops and professional offices. Present uses would be grandfathered in. Changing the name, the business or selling the business would constitute a change of use and allow for the rezone. This was discussed at the last meeting. Frank Nierzwicki would like to have a map created, with staff assistance. The map would be placed at the Fire Station, Town Hall and the library for public review. Eighty parcels would need to be contacted by a certified letter before the December meeting. Frank Nierzwicki would like to go on record, stating publicly, what we are looking at and have documents prepared within two weeks from today for public display for comments and review. Sandra asked where the money for the maps will come from and requested, as the Fiscal Officer, Frank not order a map until after January. Frank stated maps could be printed from Plexis or Google. Dianna requested any map printed be e-mailed to everyone in case they are approached on the street with questions. If approved today, it will go to Town Council for approval and then back to the Redevelopment for completion. Terry Baker feels this should be on the agenda by itself with nothing else on it other than dealing with this. Sandra thinks this should be very well published, stating where the map will be located with times available. The public needs to know their input would be considered.

Frank Nierzwicki stated the office will provide maps and literature for public review and comment at the Fire Station, Town Hall and at the library within two weeks of today. Sandra added to provide public information concerning the Redevelopment Area with display of maps and informational pamphlets. Don Calvert so moved. Terry Baker seconded. Motion carried.

Privilege of the Floor – non Agenda Items

Don Calvert asked if anything has been done with the drainage in Springs Valley Phase I. Frank Nierzwicki understands there are some legal proceedings on a property but it has not been instituted by the Town of Ellettsville. Sandra explained there is a long standing drainage issue in Springs Valley. During the grading, there were swells installed between existing properties and the new development. The swells have disappeared or been rerouted causing flooding with the existing neighborhood. The Plan Commission has been asked numerous times to act on this. Rick Coppock was asked to be involved. Don asked in a previous meeting; if a home goes up for sale, before the builder can list it for sale, it should pass an occupancy test at that time instead of after it is sold. The builder should be responsible. Frank Nierzwicki will look in to the Indiana Case Law on this issue. Sandra asked if this is something we could ask our town employees to correct. Frank Nierzwicki stated this is private property. Dan Swafford said to wait and see what guidance Rick Coppock can give. This problem has been going on for two and half years.

Sandra Hash asked the progress of the illegal sign at the daycare. Frank Nierzwicki stated the minutes of the proceedings were approved by the BZA and passed on to the attorney. Sandra stated the town attorney is waiting to hear from the Town Council on how they want him to pursue it.

Dianna Bastin asked if the agreement on Capitol Avenue was put into writing and was the issue closed. Frank received a call from Fred but has not been able to return the call. He does not think there is an agreement yet. Dianna complimented Frank's work to get the neighbors and builders to meet and work things out themselves. Dianna would like to have the agreement in writing and the issue closed.

Don Calvert asked about the bridge that needed to be put in at the driving range. Frank Nierzwicki explained the Georges will not be putting in a bridge. They will, instead, be having a parking area before you get to the bridge and drive people to the driving range in golf carts.

Frank Nierzwicki explained the 50+ homes approved for the Alan Dick's subdivision located south of Union Valley Farms is under way. The roads will be in before the change of the weather. The Thoroughfare Plan calls for, just south of there, a roadway connecting Lakeview Drive and Union Valley which could provide access to the driving range.

Adjournment

Terry Baker made a motion we adjourn. Dianna Bastin seconded. Motion carried. Meeting adjourned 8:42 p.m. Next

meeting will be December 6, 2007.

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