

October 4, 2007

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, October 4, 2007, in the Fire Department Training and Conference Room located at 5080 West State Road 46. Frank Buczolich called the meeting to order at 7:00 p.m. leading the Pledge of Allegiance.

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

Approval of the Minutes

Terry Baker made a motion we approve the September 6, 2007 minutes of the meeting. Don Calvert seconded. Motion carried.

Old Business

Plan Commission Meeting Format Change

Frank Nierzwicki conducted a PowerPoint presentation on the Plan Commission Legislative Procedures. He explained the different sections starting with:

- Section I - Election of Officers: He reviewed the duties of the President and Secretary.
- Section II - Procedures of the Agenda: Only agenda items will be discussed. Agenda items will be compiled by the Director of Planning Services with input from the President. The meeting agenda and documents for action will be posted on a Tuesday preceding each Thursday Plan Commission meeting. Items which come before the Plan Commission, not on the agenda may, by a motion of the Plan Commission and majority vote of the commission, be placed on the agenda.
- Section III - Discussion of Agenda Items: President will introduce each item on the agenda. Petitioner or representative will have 10 minutes to present. Planning Staff will have 10 minutes to make comments and recommendations. Members of the public may be able to speak with a time limit of three minutes per person. Time limit can be increased by three minutes with a majority vote of the Plan Commission. The petitioner is allowed three minutes for a rebuttal response. After public comment has been received, the Plan Commissioners can vote. If any item fails to receive a majority vote, the item may be continued until the next meeting.
- Section V - Privilege of the Floor: The final item of business prior to adjournment will be the hearing of statements from the public for matters not on the agenda. Persons shall address their comments to the Plan Commission with a maximum of three minutes for each speaker and increase by three minutes by a majority vote of the Plan Commission. If a matter is concerning the operations of one of the Town's Departments or can be resolved by the Department head, the person should contact the affected Department Head and try to resolve the issue. Employees of the Town shall not be required to answer questions during public comment time from the podium.
- Section VI - Quorum: A majority of all appointed members of the Plan Commission constitutes a quorum.

The Plan Commission can motion to table items.

Ed Bitner had a few questions under different sections.

Section I Election of Officers; if the President of the previous year is no longer on the Commission, the majority party shall designate a Plan Commission member to preside over the Election of Officers. Ed asked if the Vice-President should fill in. If they are both out then the majority will vote in the Officers. In the past, the Election of Officers was

tabled until February when all Commission members were present. Why does the Election of Officers need to be done in January? Frank Nierzwicki stated some Boards and Commissions meet irregularly and not every month. The Plan Commission meets on a regular basis and the Indiana Code states Election of Officers should be done at the first meeting of the year. Ed questioned why the Vice-President could not conduct the election. Frank Nierzwicki explained this was listed in the procedures for discussion.

Special Meetings; Ed Bitner questioned a notice being given forty-eight hours in advance. He believes this should state "two business days".

Section III line (D); when will the three minute increase be approved; during the speakers time? He was in a situation where he could not plead his case in three minutes. Frank Nierzwicki explained this was discussed and decided at the last meeting. Dianna asked if someone knew they were going to take over three minutes to present their case, could they be put on the agenda and be allowed 10 minutes to present their argument? Ed Bitner explained the issue was already on the agenda and the situation could come up again. He is not in favor of this particular line under Section III.

Section VI Privilege of the Floor; if there are two or three people waiting to speak, they should not be limited to a maximum of three minutes. When is their time limit increased? Frank Nierzwicki explained when the person has more to say, they will ask permission for another three minutes.

Section VIII Proceedings and Motions; will all votes be done with a roll call? Frank Buczolic read "motions to suspend rules have to be done by roll call vote". Sandra explained ordinances and resolutions are recommendations and not passed. Section (D) stated if a member abstains from voting on any matter, any other member may raise the question and insist that the member either vote or state the reason for not voting and be excused. Ed explained a past situation when he abstained from voting he was told he had to vote or could not speak during the discussion so he voted. The next meeting, Sandra abstained and did not give a reason. The meeting after that, Don abstained. Sandra pointed out "any member can ask for a reason why" and no one asked why. Frank Nierzwicki stated not everyone will agree on all points and the main reason for this is to have written procedures to follow.

Motions generally; Ed questioned the presiding officer making the motion shall be entered into the minutes; what about the member who seconded it? Frank Nierzwicki stated this can be added.

Motion to table; Ed questioned "the motion to table may not be debated"; it was clarified it is not tabled on a motion; it is tabled on a vote to the motion.

Sandra asked about the section under "Special Meetings" stating the Secretary will do all the noticing. Currently, the Director of Planning Services does this; is this subject to change? Frank Nierzwicki said the Director of Planning Services can take care of this. Sandra would like to have this clarified and the wording changed in the procedures policy. Dianna suggested it say "and/or". Sandra summarized the present procedure as Frank Nierzwicki prepares the notifications and she sends them out.

Dianna complimented Frank Nierzwicki on taking all the ideas from the last meeting and putting them all together.

Sandra stated the confusion on the rules were all clarified and holds the Commission to a standard. When there are challenges on issues, they have something to look back at.

Jay Brinegar questioned "a person from the Town can not address anybody except you five not including Sandra Hash and Frank Nierzwicki". Frank Nierzwicki explained a person could address the Board on issues. Jay clarified the wording states you can not address anyone but those five. Frank Nierzwicki agreed this was correct. Dianna explained this was discussed at the last meeting; the Commission vote on the issues and the Director of Planning Services does not, so that is why the petitioners should address the Board. Sandra read the top of page 3 of the Plan Commission procedures and explained what it meant. If a person has a problem with a Department Head they should try and resolve it at the place of business and not be put on the spot from the podium. Frank Buczolic explained the Plan Commission is an advisory board and make recommendations. Jay Brinegar is mistaking the Plan Commission for the Town Council. Jay read Frank Nierzwicki's job description and pointed out the Town Council and Plan Commission Presidents are Frank's Supervisors. Frank Buczolic will look into that.

Stuart York questioned Dianna’s statement “we talked about this last week”; when and where was that meeting. Dianna meant to say “last month” and apologized.

Frank Buczolich asked if it was the desire of this Board that the changes are implemented and document be resubmitted to us in a month. Ed Bitner made that motion as such. Terry Baker seconded. Motion carried.

New Business

O’Reilly Auto Parts request for new store at 5227 West State Road 46

Frank Nierzwicki explained the O’Reilly Auto Parts Store, out of Springfield, Missouri, would like to build a 6,400 square foot store at 5227 West State Road 46 next to Papa John’s Pizza. Frank Nierzwicki outlined the site review:

- C-3 zone; consistent with the use
- Twenty-five regular parking spots and two handicapped
- Landscaping will consist of two Red Maple trees along the highway
- Grading Permit Plan approval is required by Town Engineer
- Flood Plain Issues must be approved by the Town Engineer

The Planning Staff recommends conditional approval depending on flood plain issues.

Frank Nierzwicki explained this was brought to the Plan Commission last year and had issues with the flood plain. They are back with a redesigned plan. Frank Nierzwicki pointed out the location using PowerPoint and Google Earth. Frank Nierzwicki first thanked Kevin Patton and Mike Cornman, from the Fire Department, for the help installing the PowerPoint. Google Earth will give 3-D projections and help the Plan Commissioners when reviewing different presentations.

Frank Nierzwicki pointed out the Development Plan for the O’Reilly facility. He pointed out the location and front of the building.

Rick Coppock explained O’Reilly engineers submitted a flood plain study to deal with the flood plain issues. He pointed out a retaining wall and a lowered excavated area to provide storage of water during heavy rains and flooding. Rick explained the building will be two feet above the flood plain elevation. Don Calvert asked when the ditch and wall are put in; moving the water faster in one direction as opposed to letting it spread out, affect the people down stream. Rick explained the ditch and wall will not move the water faster and not affect the people downstream but upstream. In accordance with the DNR regulations, you can not increase the elevation by one tenth of a foot upstream. The “ditch” is more like a holding pond. Ed asked “how tall is that retaining wall going to be”. There was discussion and conversation amongst different people over the different maps. Ed announced Dianna found on the map where the retaining wall will be four feet.

Evelyn Ryle, Reeves Road resident is concerned with the runoff from the retention pond. Since the runoff will be coming from the parking lot; cars dripping oil and other products, is there anything to filter that out before going into the flood plain. Rick explained an additional half inch of rain will be stored in the pond for that area, the pollutant is filtered out through the grass and then into a piping system. Frank Buczolich stated there is a recommendation of conditional approval. Frank Nierzwicki said the Planning Department now has an “approval recommendation” since he received a report from Rick, they are waiting on the flood plain issues and how the water was being addressed.

Ed Bitner is glad to see more businesses coming into town. He wanted to make sure O’Reilly knew they were in a flood plain. Rick Coppock informed the buyer, marketing and engineer knew the site was in a flood plain and would be hard to develop on.

Dianna Bastin made a motion that we approve O’Reilly Auto Parts request for a new store at 5227 West State Road 46. Terry Baker seconded. Roll call vote: Don Calvert – yes; Terry Baker – yes; Frank Buczolich – yes; Ed Bitner – yes; Dianna Bastin – yes; Sandra Hash – yes. Motion carried 6-0.

Planning Staff Comments

Frank Nierzwicki gave an update on the Capitol Avenue Apartments situation. Meetings have been conducted and there is a tentative agreement with the parties. Frank is hoping to have this finalized before the next Plan Commission

meeting.

Frank Nierzwicki gave an update on the Jack and Jill Daycare sign. He has been in contact with Town Attorney, Mike Spencer, and they will be working on a resolution with the Town Council to rectify the situation.

Frank Nierzwicki announced the Planning Department is accepting applications for an Administrative Assistant position. This is a professional position that will be helping with the BZA, Redevelopment Commission and Plan Commission. Deadline for applications is October 9, 2007 at 4:30 p.m. Frank Nierzwicki stated Micah Austin, the graduate intern, helped with this.

Proposed Zoning Changes within Ellettsville Redevelopment Area

Frank Nierzwicki explained the proposed zoning change within the Ellettsville Redevelopment Area is between the one way pairs. They would like to zone this C-2 Commercial to make the area more consistent with our plans for redevelopment. With zoning changes, businesses will not be closed nor will people be forced to move. They will be grandfathered in at their current zoning. When the property changes hand is when the new zoning will take effect. The future plans for downtown will be to have more commercial businesses, shops, professional offices and possible Bed and Breakfast businesses along the creek area. Redevelopment is working on a trail for recreational green space. Frank Nierzwicki outlined the process; all plans from the Redevelopment Commission need to be presented to the Plan Commission for approval on zoning. Once the approval on zoning is done, it goes back to Redevelopment then Town Council and then comes back to Redevelopment. There will be certified letters sent out next week to owners of affected parcels. Ed Bitner asked “if you are adjacent to what’s already a C-3 and you are going to make a whole area a C-2, can you make your area a C-3 later on in the future”? Frank Nierzwicki explained the difference between a C-2 and C-3. Their goal is for the main downtown area to have more commercial tourist type businesses. They would like the gas stations and auto repair to be outside the central core area of downtown. Ed Bitner asked about the gas stations on the eastbound side of town and none on the westbound side. Frank Nierzwicki explained the area on the west side of town will be developed in the future. They would like the area between the one way pairs to not have any gas stations or auto repair. The example of the Shell gas station on the corner was used; if and when they sell or move, that property will become a C-2 zone. Don Calvert asked about a family business being passed down. Frank Nierzwicki explained it would depend on the type of business and he will check on it.

Privilege of the Floor – non Agenda Items

Jay Brinegar received a letter with “Office of the Plan Commission” letterhead. The letter states he is violation of Town Code 152.001 and verified Frank Buczolic received a copy of this letter. Jay asked how a single pet goat can change a land use. He is being accused of using C-3 Commercial land for Agricultural use because he has a pet goat on the property. Frank Nierzwicki explained the citation states “not inclusive of” and lists several different livestock animals. It was Frank Nierzwicki’s opinion the goat is a farm animal and agricultural livestock. Jay Brinegar stated if he kept the goat for milk and sold the milk or raised the goat for food; that would be agricultural use. He pointed out the primary purpose of agricultural zone is the purpose of agricultural business. The goat has no business use for agriculture; it is a family pet. Jay stated the code was drawn up in 2003 and read the list of animals; there were quite a few “obscure animals” like ostrich, oxen and buffalo and stated goat is a common animal. He addressed the first line “domesticated farm animals”; a dog is a domesticated farm animal. If the goat is in violation then every dog is in violation as well. He does not want to lose his goat that has been with the family for eight months. Frank Nierzwicki read *Town Code 152.001; agriculture use is the use of land for the production, keeping, pasturing, and confine, feeding or breeding of livestock*. Frank Nierzwicki sees “keeping and pasturing” at this location. Jay Brinegar does not agree and understands he can approach the Board of Appeals and file a variance for \$300. He has approached everyone around the area and no one has complained; they are actually supporting him. The letter Jay received from Frank Nierzwicki stated many complaints had been received. When Jay asked Frank about the complaints, Frank would not be pinned down to what the complaints were or how many. It took Jay three days to get the copies of the complaints from Frank; all the complaints were anonymous. One anonymous complaint was received at 9:30 and Frank’s time of response was 10:00. Someone is accusing Jay and has a complaint; is it common practice to investigate anonymous complaints. The same complaint can be used to get rid of a dog and Jay does not think this is fair.

Frank Nierzwicki sees the difference between farm animals and dogs. There are items in the code regarding dogs and

noise. He has received complaints on barking dogs. Dogs are permitted in Town. Frank Nierzwicki feels the issue is zoning. The Town has agriculture zones allowing farm animals. Jay asked Frank if he would use this zoning issue to get rid of dogs. Frank said no. Jay stated the only complaint stated “the goat behind Eagles Landing”. Frank explained “a goat, as I interpret the Town Code, is not a permitted use”. Jay asked Frank if he is bound by the ordinance to the interpretation. Frank said yes. Jay went on to read 152.003 Permitted Land Use in its entirety and feels not all decisions are up to Frank Nierzwicki and he is bound by the Code. The goat does not cause any traffic uses, demand on transportation or other infrastructure. The goat is a very clean animal, vegetarian and has no top teeth. Dogs are more dangerous. Frank Nierzwicki has nothing against goats and the issue is on zoning and the property uses within the zoning. Frank Nierzwicki mentioned to Jay he can go to the Board of Zoning Appeals on this. Frank went on to say if we allow this, the Town will have “spot zoning” and that is something we do not want to have. If there is a miniature horse on one side of town, that would allow miniature horses throughout town. If we allow goats in one area, we are going to different types of animals everywhere and it will be too late to draw the line. Jay’s argument is where will the line be drawn between a dog and a goat; a dog, by definition, is a domesticated farm animal. There was discussion between Frank Nierzwicki and Jay Brinegar regarding interpretation of the Code.

Frank Buczolic stated the interchange of opinions could continue with neither coming to an agreement. He recommended, procedurally, this is an issue for the BZA. They can determine if this is a problem and if a variance needs to be issued for it. Jay asked if it is the Board’s opinion that Frank (Nierzwicki) has the power to interpret words if they are not written by definition in this particular Town Code. It should go by Webster’s dictionary. Frank Nierzwicki explained throughout the Town Code there are areas with the definitions; Jay stated domesticated farm animals are not defined by this document. Terry Baker interprets the code the same way as Frank. Don Calvert needs to study the Code; he asked where the animal is kept? Jay explained the goat is kept outside all day on a 40 foot tether, has a shelter, well maintained, bathed regularly and not within 200 feet of any neighbor. Jay went on to explain the tricks the goat can do and how it has no agricultural use. Ed Bitner asked why we are going out on an anonymous complaint. Jay explained it took three days to get copies of the complaints and they were written strangely. Ed Bitner feels he has been blind sided by this; he has not had time to do any research. Jay wrote a letter to The Editor in The Journal.

Dianna Bastin knew about this and different people have mentioned it to her but she does not know who they are. She thinks Frank Nierzwicki is protecting people who may have a different opinion than the owner of the goat. She does not think Frank Nierzwicki has to write the names. Dianna researched on-line if a goat is a pet and could not find anywhere that says “a goat is a pet”. Goats are traditionally farm animals but they do make good pets. Dianna’s personal opinion is it is cruel to keep a goat on a tether. There are places in Ellettsville where you can have a goat. Dianna urged Jay to go to the Board of Appeals.

Danna Jackson, resident of Monroe County for 45 years pointed out the definitions of the livestock and domesticated animals; rabbits are listed under livestock and Bloomington lists them under domesticated animals. She explained the very same animal with the same DNA is different depending on how it is used. She gave the example of two German Shepherds from the same litter; one is trained to be a guide dog and the other could be a pet. Guide dogs can go into restaurants, libraries and stores; a pet can not. All animals are born wild and bred for docility. Ms. Jackson went on to give examples of other animals. Things change; locking things into a traditional use from the 19th century is fading. Eyes are closed to the reality of living in a suburban and urban environment where there will be very few livestock animals used for livestock. Ms. Jackson stated IC 15-5-16 defining livestock as any animal or fowl raised for commercial purposes. She interprets this to mean any dog or cat bred for sale. Ms. Jackson clarified Eagles Landing has a C-1 zoning and suggested the Plan Commission look at the back half of the property because she doesn’t think the zoning on Ritter should be commercial. Ms. Jackson reiterated the real issue is an animal used for purposes or is it a pet? This goat has not produced a dime and never will. She suggested the Plan Commission unlock their minds, look at the Indiana Code and think about how animal uses are changing.

Mark Brinegar does not think this is a question on zoning. One goat does not make a farm just like one dog does not make a kennel. He does not think we are discussing agriculture; we are defining “what is a pet”? He does not think the Director of Zoning should have the authority to determine what a pet is.

Adjournment

Dianna Bastin made the motion to adjourn. Terry Baker seconded. Motion carried. Meeting adjourned 8:20 p.m. Next meeting will be November 1, 2007.