

June 15, 2004

The Ellettsville, Indiana, Plan Commission met in special session on Thursday, June 15th, 2004 at the Town Hall. Frank Buczolic called the meeting to order at 7:07 PM.

Roll Call: Frank Buczolic, Terry Baker, Lisa Creech, Sandra Hash and Jeffrey York, Planning and Zoning Administrator were present. Ed Bitner and Don Calvert were absent. One vacancy is still to be filled.

Purpose: To decide whether Don Kinser's landscaping plan for the Mini-Warehouse Facility located at 110 Ridge Springs Lane was sufficient or whether additional landscaping was necessary.

Jeff York summarized the last meeting's discussion on the landscaping. He explained any changes to the original approved landscaping plan had to be approved by the Plan Commission. He passed out copies of the information concerning the trees and the letter from Mike Spencer on this issue. He has contacted a landscaping expert from Cedar Bluff Gardens named Randy. The proposed street trees according to Randy will develop a 30 foot spread and reach up to 50 feet high. These trees have trunk space of 6 to 8 feet before limbs begin. The Old Code requires 2 ½" caliber width size trees at planting. So the trees would be between 12-14 feet in height at planting. The new code does not have landscaping standards, which needs to be revised. Ash and Poplar are fast growing types of trees growing about 10-12 inches a year. The Red Oak grows at a medium rate growing about 6-10 inches per year. At maturity all trees should reach 50 feet in height and are all deciduous. Randy said the spring bushes would probably survive along with the trees proposed; he had some doubts about the spirea. He said the evergreens chosen are good for screening. According to Mike Spencer's letter, it is his opinion that the Plan Commission should not revise the plan because these trees are more appropriate for street trees. He explained Mike Spencer had stated in his letter that he discussed this issue with his senior partner and evergreens are not recommended for street trees because they block the view for traffic.

Mike Spencer's letter

I received your e-mail today concerning the information that developed at the Plan Commission meeting last night. Based upon this information, I do need to revise my previous opinion since it concluded that the approved landscape design provided for screen trees. I was under the impression that the design did provide for screen trees at 10 to 20 feet on center. According to your e-mail, the Plan Commission determined that the design plan provided for trees at 40 feet on center.

In light of this, it appears that the Plan Commission in fact approved a landscape plan that provided for street trees. The question now is whether or not the Plan Commission can revisit that decision and require the developer to plant something else. Without doing extensive research on this issue, it is my opinion that the Plan Commission should not revisit its prior decision.

It is clear that the Plan Commission determined that the street trees were the appropriate trees to plant along the street. One can hardly argue with this. I discussed this issue with my senior partner, Frank Barnhart, who has been involved in many planning and zoning issues throughout his long career, and he pointed out that evergreen, generally, are never approved as street trees because they prevent drivers from seeing what is close to the roadway. Visibility is crucial in the area next to streets and evergreens hinder such visibility. In this situation the Plan Commission was faced with competing issues: highway safety versus the desire to screen residential developments from commercial developments to improve quality of life. Both are laudable goals, but in this case the Ellettsville Code and the Plan Commission chose highway safety as a priority.

Considering all of these issues it is my opinion that the existing landscape design is the one specifically provided for by the Town Code, and it should be enforced. The town code does provide a procedure for a person to appeal a decision of the Plan Commission when a person is unhappy with that decision. The Plan Commission's decision approving the landscape plan occurred at a public meeting. The time for appeal of the decision concerning the landscape plan has long passed. Finality of Plan Commission decisions is important in order to provide decisions

upon which people can rely and to avoid endless litigation. If you have any questions, please do not hesitate to contact me. Michael J. Spencer

Glenn Benninger said the letter from attorney says it is just street trees and he does think that is the correct interpretation. He believes his home is contiguous because the property lines butt up together. He doesn't know why they can't have the evergreens because they would be planted several feet off the road and shouldn't block traffic view. The speed limit is 20 m. p. h. so there isn't high speed traffic. There is a procedural problem in appealing because it was all approved in one meeting. He added the adjoining property owners were not notified and saw nothing in the newspaper(s). The neighbors couldn't appeal the landscaping plan if they wanted to because they didn't know it was being approved. They just want the place to be more eye appealing and cover it up as much as possible. He also pointed out that Mr. Kinser is using temporary Coca-Cola signs for advertisement.

Lisa Creech said there is not supposed to be more than one sign. Jeff stated there could be more than one sign, up to 80 square feet total, and that temporary signs were allowed for up to two weeks.

Sandra Hash stated Mr. Kinser has applied for sign permits.

Lisa Creech asked about the word contiguous to clarify the wording in the landscape code.

Contiguous means any touching property when annexing. It would be like the street was not there and she felt it meant the same here. Therefore screen trees would be required on the front of the property as well as the back and sides.

Terry Baker replied this case has nothing to do with annexation.

Lisa Creech expressed dissatisfaction on the way things were going and left the meeting before adjournment.

Adjournment

Terry Baker made a motion to adjourn the meeting since they do not have a quorum any longer. Sandra Hash seconded. All members present agreed. Meeting was adjourned at approximately 7:20 PM.