

# April 3, 2008

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, April 3, 2008, 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. and lead the Pledge of Allegiance.

**Roll Call:** Members present were: Sandra Hash, President, Terry Baker, Vice President, Frank Buczulich, Don Calvert, Willis Ziese, Phillip Smith and Dan Swafford. Frank Nierzwicki, Director of Planning Services, Connie Griffin and Micah Austin were also present.

## Approval of the Minutes

**Sandra Hash** entertained a motion to approve the minutes from February 7, 2008. Dan Swafford made a motion that we approve the minutes of February 7, 2008, Terry Baker seconded the motion, all approved of the February 7, 2008 meeting minutes, motion carried.

## Old Business

**Request for new communication tower on West SR 46 (Chapel Hill Wilderness LLC) Smithville Telephone Petitioners-update.**

**Frank Nierzwicki-** Discussed items in the agenda packet. Confirmation from Paul Dugan of payment, and all agreements and compliance issues completed. No further action is required on our part.

## New Business

**Rezoning parcels within the Heritage Redevelopment Area-discussion**

**Sandra Hash-** Sandra thanked Frank for providing a time line for the rezoning process.

**Frank Nierzwicki-** Frank discussed the time line and the dates of the current rezoning process for 2007 and then proceeded to discuss the 2008 time frame. May 1, 2008 the plan will be formally presented to the Plan Commission, we are seeking adoption. The Plan Commission can approve, disapprove or amend the resolution and the redevelopment plan. May 12, 2008, which is the first Town Council meeting in May, we are scheduled to have the Town Council approve with all rezoning and everything else that goes a long with that. After that, if it is approved on May 12, 2008, everything after that is tentative pending approval. May 19, 2008 we will have an impact study on the other taxing units within this area. I will supply this information on the 19<sup>th</sup>, as well as an adoption of the plan with a hearing notice in the Journal. June 12, is a tentative date for the Redevelopment Commission to hold a public hearing and have final approval of the redevelopment plan completed. When that is completed we will go on the 27th to the county auditor and the department of local government and file paper work.

**Sandra Hash-** Who's preparing the impact study?

**Frank Nierzwicki-** We will conduct the impact study in house.

**Sandra Hash-** Who will assist you with that?

**Frank Nierzwicki-** It will be the three of us. We would be happy to have a couple of other people assist us on this project.

**Sandra Hash-** Do you have a formula?

**Frank Nierzwicki-** We have a cook book on how to follow the steps. We will have to have the assessed value of all of the parcels. We have a lot of this information that we compiled last year. We have approximately 114 parcels. Any delays in the process will require us to wait until after July 1, 2008.

**Sandra Hash-** We have met and we both agree that this will go for a final reading and adoption with the Town Council. We've also discussed variances. Do you have any changes or do you want to go over any of the processes? So, immediately after the council approves this you will have a BZA meeting and waive the fees, as well as a Plan Commission meeting. Any questions?

**Carl Thurman-** I have a tentative agreement on purchasing a property downtown, but now there is a delay with the zoning changes. Before I purchase the real estate, I want to be clear on what I can do with the building, especially when I want to sell the property in the future, and how these changes will affect me now and in the future.

**Frank Nierzwicki-** We will schedule a meeting with you to discuss the variances on this property.

**Dan Swafford-** Is the current property you are looking at currently zoned correct?

**Carl Thurman-** Yes, if it were to be left alone as it is, it would be a beautiful thing. The zoning change will affect the whole deal.

**Dan Swafford-** I missed the meetings and the work sessions, but I thought we had come to an agreement, and I didn't know they had to file a variance. I thought we were going to leave the C3 alone at this location.

**Frank Nierzwicki-** We would have a grandfather clause.

**Dan Swafford-** As long as it stays a gas station, no matter how many owners it stays C3, which was my understanding, which makes a lot of sense to me.

**Frank Nierzwicki-** I'll go through a variance again, it allows different uses above what it is zoned for the plan. The variance is negotiated between the applicant and staff to present to the BZA board. The issue is the types of uses. It isn't the person we are concerned about it is actually the property itself and I have a lot of confidence that Carl's business will be an added value to the downtown, but what we don't know is, if the zoning remains a C3, Carl could sell it in the future, thinking it will be the same type of operation and that may or may not happen. We are trying to protect the town by having conditions set on that property with a variance.

**Carl Thurman-** That is hard for me to do, because I'm not the owner of the property. It isn't a closed deal yet, I want to close the deal, but until I'm assured I can run an up-scale collision repair shop I can't purchase the property.

**Frank Nierzwicki-** I understand, and I've been trying to work to get this done as quickly as possible. We should have a decision by the 8<sup>th</sup> of May.

**Sandra Hash-** But you can't make any guarantees?

**Frank Nierzwicki-** I can't guarantee what the decision will be.

**Don Calvert-** You want a guarantee that if and when you decide to sell the property you want to be able to sell it as a C3.

**Carl Thurman-** Yes, exactly.

**Frank Nierzwicki-** This is a transitional period between Carl and the current owner. What we plan to do with rezoning the property is it would be a C2 with a variance. Carl would be able to do more than a typical C2 with the property. So,

my job is to work with Carl and work out that arrangement in between.

**Don Calvert-** My question is, once he decides to sell, can he sell it as an automotive restoration business?

**Frank Nierzwicki-** He can with a variance. He can sell the business with the stipulations of the variance. The stipulations stay with the property.

**Carl Thurman-** But if I lose the C3 zoning I have diminished value, it hurts my investment.

**Don Calvert-** Didn't you say you want to sell the business as another body shop?

**Carl Thurman-** That's what I would like to do.

**Terry Baker-** The value should not change, because you can still keep the body shop there. If the variance ended when you go out, then the bottom would fall out of the price. But, the variance will stay with the property, so when you sell it, someone else will do the same, with the same stipulations.

**Carl Thurman-** If my business fails and closes, then I have a business that I would much rather sell as a C3 than a C2 with a variance.

**Frank Nierzwicki-** As this is redeveloped; the land could have an increased value.

**Carl Thurman-** I think the types of businesses you want to attract to the downtown have to be taken into consideration, because it is a flood plain.

**Frank Nierzwicki-** That's why we are looking at having trails and green spaces downtown. The one thing from a business perspective is that we have businesses come in one at a time, and then they go out one at a time. The idea of someone developing this area at the same time, so there would be more than one place to shop, that's what we are looking at with the rezone.

**Carl Thurman-** But the type of the businesses you are trying to attract, I'm not trying to discredit those types of businesses, would be in a flood plain. A C3 zoning complements that area for industrial use, done tastefully. An industrial business could recover more quickly from flood damages.

**Frank Nierzwicki-** We don't want industrial uses back in the downtown area, which is what we are trying to get away from. The Turning Point Church is one example, it isn't an easy process but they worked with the DNR and the bottom floor is out of the floodplain. Some things can be done.

**Carl Thurman-** But to do that you have to demolish a 100 year old building to build something on the parcel we are talking about, it has historic value. I don't want to take away from your plan; I just don't want to lose the C3 classification. I have to move forward with my business growing and I would like it to be in downtown Ellettsville.

**Sandra Hash-** We thank you for your thoughts, and hopefully the variance will work for both concerned parties. No vote will happen tonight. So, you will meet with Frank to understand the variances. I talked with David Drake, who served on the commission for over one year. I asked him about the rezoning, and he said he didn't believe we were ever going to down zone existing businesses. His thought and understanding was that we were going to leave C3's, as C3's, and not accept out the one's on the fringe, such as the Anderson's, but leave them and let them retain C3 zoning, but to bring up the residential classification.

**Frank Nierzwicki-** I'll have to talk with David. We aren't trying to hurt businesses, but increase values with redevelopment. I'll have Connie set up a meeting with David.

**Darlyne Sowder-** I own a home and a business in the redevelopment area. What I would like to ask, since I thought you could never change zoning that we have, if you can come in now and change the zoning, what guarantee do we

have that if you gave someone a variance, that you wouldn't come in and change that? We get a new planner and he wants to change them again, what guarantee do you have?

**Frank Buczolic**- In actuality you have no guarantee. Cases across the U.S., even at the covenant level, concerning land use or land non-use, there is no guarantee with a court challenge that it can't be changed.

**Frank Nierzwicki**- We can't guarantee it, it would be difficult to change, this has taken a year, and nothing can be rushed through.

**Darlyne Sowder**- I have also talked with David Drake about this situation and he told me the same thing that he told Sandy. He told me that we had never agreed to do this in the Redevelopment Commission, and he never voted to do this.

**Sandra Hash**- On the timeline there isn't an adoption of the zoning change, where does that come in or when did that occur?

**Frank Nierzwicki**- This is a redevelopment issue, approved on May 12, 2007.

**Russ Ryle**- One general comment; it seems to me with the stroke of a pen they can take value from the property owner without paying them for it. The property in question, this property is the oldest historic property in the redevelopment area. He discussed the property's history as an automotive type business. Can't you modify the plans to leave this property a C3? We've modified and exempted one business already and took it out of the redevelopment area, some other issues have been addressed, and the C2 has been tweaked a bit. If the business gets on the historic register, then you will have to deal with some federal requirements. We have a gentleman willing to develop and grow in the redevelopment area; I would be saddened if Carl can't proceed with his purchase. We need to use what we have in front of us first. You have a business man willing to go into business, and I'm puzzled why we are fighting a planning document, and at times I think they outlive their usefulness.

**Phillip Smith**- One of the reasons we came up with this variance is so it can be kept the way it is, it can stay a body shop for the end of times. We can't guarantee. We aren't trying to put anyone out of business or create hardships on anybody; we are trying to do what is best for Ellettsville. I agree with the C2, because a C3 is to open. We could have a porn shop down there.

**Russ Ryle**- We need another zone, where we address adult business and businesses that could be injurious to residents. We don't need to penalize current business people because of existing zoning with restrictions.

**Frank Nierzwicki**- I'm not against having a downtown overlay, it will take a lot of time no matter what we do, and we will always have people that like some zones, and not others.

**Russ Ryle**- We need to fine tune what we have and control businesses that you don't want to have next door.

**Frank Nierzwicki**- The variance is the means of working with these issues.

**Sandra Hash**- When the planning department originally presented this, the current owner was grandfathered for as long as they owned the property they could maintain the business. We compromised with the Anderson's and the next compromise is the variance, it is a viable way to deal with the situation, since the BZA may or may not approve of the variance. As long as the shop remains a body shop it can be sold over and over, but once it is changed from a body shop then they would have to work within the requirements of the C2 zoning. The C2 zone has a wide variety of uses, so for now I think this is a good compromise now that I understand this a little better. Frank will put in the variance that the property owner will be able to sell it over and over as long as it follows the conditions of the variance.

**Terry Baker**- If we start fine tuning the ordinance, we could get to the point that he can't have a business like that in that area, because he uses chemicals and things. So, if you eliminate and make it so tight, it will be a nightmare. It will hurt them more, than if we do it with a variance.

**Don Calvert-** A question to Carl Thurman, if this does not stay a C3, are you not interested in purchasing the property.

**Carl Thurman-** That is exactly correct.

**Evelyn Ryle-** One of the things that didn't help the process is the lack of understanding of what is an overlay? And what can and be done with an overlay? A lot of the explanations were more couched in bureaucratic terms even at work sessions, and for the everyday person, is lost to them, and I think that needs to be addressed. I myself do not understand the limits of a variance or an overlay, and amendments in the heritage district or historic districts, what you can and can't be proposed. In the long run, it would have helped, no matter how time intensive it would have been, to forestall other problems that have been brought up. I also think it would have been useful at the beginning of this process to contact owners of the property to notify these people, they don't read or buy every paper and to explain it in simple language.

**Frank Nierzwicki-** Discussed the need for a community development planner. This person would help with a number of items, such as education. We are trying to do the best we can.

**Frank Buczolic-** It took months to come up with this, and we may have not gotten to the hard part yet. Determining the parameters of the district may have been the easy part, compared to what we have left to work on.

**Don Calvert-** One of the major goals with the redevelopment handout was to draw business and create jobs in the downtown area. Time is money, and we've got someone in front of us right now that wants to invest in the community, and we are making it difficult on them, the plan is making it difficult. Any plan has to be modified or adjusted and it has to be a living document. Again, I can't believe the patience that Carl has shown. I don't think we need to discourage someone of this caliber with the document.

**Sandra Hash-** This has been a difficult issue; I wish we had an easy solution. This was a discussion, and hopefully things are a bit clearer. Both concerned parties need to meet with Frank to develop a better understanding before the final vote. We've all expressed our opinions for the night and we can move on to the next item.

### **Storm water functions – Planning Department- discussion**

**Frank Nierzwicki-** In the packet you have a memo from Rick Coppock.

**Rick Coppock-** We met and discussed some of the budgeted items in the storm water utilities, and some of the requirements we have to work on in the storm water requirements. Public education and outreach are two requirements by the storm water Rule 13. We haven't addressed these two components very well, so we need to get to these items to make more of an effort of getting these implemented. We thought Connie Griffin would be good to implement the public education and outreach and could handle complaints and the initial inspections on the complaints. The budget has grown since we have more homes because of annexation, and we are bringing in more money. Jim Ragle needs a new street sweeper, which will help keep dirt and debris out of the storm drains. We looked at this item and other budget concerns. That is why I prepared the memo. We weren't sure of how much money the street sweeper would cost, and how much money would be left or short. It depends on how the sweeper will be funded. We also have new homes coming in. It still is in reason that the extra money could assist the planning department funding by assisting in the storm water utility duties. One thing we will do with the public is to make presentations to the Town Council and Planning Commission and bring them up to speed. Members of the council have changed, and it wouldn't be a bad idea to review Rule 13 again and get everyone up to date.

**Sandra Hash-** I'm sure there needs to be some public education, thank you for the information.

## **Planning Staff Comments**

### **New Office Space**

**Frank Nierzwicki-** We are now open in our new office, and have an open house scheduled for April 11 from 11:30 to 1:30. He discussed handicap parking and the doorbell to be installed.

### **I-69 Community Planning Grant (Status Report)**

**Frank Nierzwicki-** We have a letter from INDOT, which awarded the Town of Ellettsville \$50,000. We have a number of things we would like to do with this, such as have the Administrative Assistant full-time through the end of the year, at least. I've talked to Sandy about having some budget lines set up to move some money around. With approval from Town Council I would like to have a part-time position, a community development planner to help us with a number of items. He discussed the job descriptions of both the administrative assistant and the community development planner. He would like the administrative assistant position to be an exempt employee, he explained that this would allow more flexible work hours, and he is the only staff member that is currently exempt.

**Sandra Hash-** Made some changes to the job descriptions, strike the word ability to hire, and I have an opinion on the exempt employee status, but I will talk with you separately about that. On the draft for the community development planner, I don't envision this person conducting inspections or assisting with enforcement, my point is keeping the tasks to the best utilization of the part-time position.

**Phill Smith-** Do you need action on this? I've found with my weekly meetings with the Planning Department is that two people can't get all this work done. I would like to make a recommendation, as a planning commission, to make the administrative assistant position full-time and suggest that we hire a part-time planner. Frank Buczulich seconded. Motion carried.

**Dan Swafford-** And this is a grant funded position , right?

**Frank Nierzwicki-** Yes.

**Dan Swafford-** And if we lose the grant, we lose the position.

**Sandra Hash-** Have you figured a pay scale for this?

**Frank Nierzwicki-** Not yet.

### **Rental Ordinance Study Committee**

**Connie Griffin-** The Journal ran a short article requesting members to sit on the advisory board. We now have 5 members of the committee. We hope to get started in June.

### **Sign Enforcement**

**Connie Griffin-** We now have a calendar with enforcement dates. Sign enforcement is going well; we are working with several people on constructing new signs. We have mailed 28 letters and or phone calls, 20 are compliant and we are working with the other code violations.

**Frank Nierzwicki-** Update on Micah Austin, he is leaving to go to Henderson, KY, but he will be back in the fall.

### **Privilege of the Floor**

**Bruce Frey-** Autumn Ridge Condos, speaking for them, we want some assistance. He read a petition about the development area. The petition discussed damage to the asphalt area and potentially an inadequate pavement. The town of Ellettsville will take the responsibility to care for these roads once the development is finished. We request the developer make the repairs and the Town engineer inspect the site. A performance bond was discussed and the date that the bond will end, May 2, 2008. He presented photos of the area and the road damage.

**Rick Coppock-** He discussed the base course and how it is a more permeable surface in the beginning, and that this is a common practice. Once the development is finished a final pavement is applied. The area will have to be cleaned and cleared before repaired. I'll go up with Jim Ragle and look at the area. We'll review the bond as well.

**Sandra Hash-** We have a short window on the bond, so we'll have to move on this rather quickly.

**Dan Swafford-** Who is the developer?

**Rick Coppock-** Jason Walls.

**Sandra Hash-** Are there any other comments?

**Micah Austin-** Discussed the new planning website: [www.ellettsvilleplanning.org](http://www.ellettsvilleplanning.org).

**Adjournment**

Sandra Hash entertained a motion to adjourn. Terry Baker made a motion to adjourn, seconded by Dan Swafford. All in favor motioned carried. Meeting adjourned at 8:30 p.m. Next meeting will be May 1, 2008.