

## **November 3, 2011**

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, November 3, 2011, in the Fire Department Training and Conference Room located at 5080 West State Road 46. Phillip Smith called the meeting to order at 6:00 p.m. Ron Wayt led the Pledge of Allegiance.

**Roll Call:** Members present were: Phillip Smith, President; Don Calvert, Dan Swafford, Ron Wayt and Sandra Hash, Secretary. Connie Griffin, Director of Planning, and Rick Coppock, Bynum Fanyo, Town Engineer, were also present.

### **Approval of the Minutes – October 6, 2011**

Phillip Smith entertained a motion for approval of the October 6, 2011 minutes. Dan Swafford so moved. Ron Wayt seconded. Motion carried.

### **New Business**

**Pre-Annexation Meeting with Richard's Small Engine, 8273 West State Road 46, Ellettsville, IN. Petitioners Richard and Jennifer Gieselman. Kevin Potter, Engineer.**

**Connie Griffin, Director of Planning** – This is an annexation that will come before the Plan Commission in December. Richard Gieselman will introduce himself and discuss his business. This is a two lot annexation. Richard's Small Engine is located west of Ellettsville on 8273 West State Road 46. The other lot is located at 8201 West State Road 46. These properties consist of 13.91 acres and meet the contiguous requirements by state law.

**Richard Gieselman, Richard's Small Engines** – The logical question is why does he want to be in Ellettsville. The main reason is it is a logical step. The development is going to be in the Town of Ellettsville. The county is rural and his property is located on the edge of Town. For his future and going forward, and the business climate being more for a Town than a county, this is a logical pursuit. They are planning on making a few changes. They're going to add a small parking lot, fence around the customers' products for security and build a dock. The future of his business will look about the same. Regardless of whether or not they're annexed, they will be paving the lot and planting more trees. Going forward they want to add a parking lot for employees. They need a gravel lot for more space to do rougher work such as unloading stuff and setting crates down.

### **Town of Ellettsville Municipal Code – Chickens**

**Connie Griffin, Director of Planning** – There are several people that are interested in chickens. This was visited about one year ago and wasn't resolved. A copy of the Bloomington code pertaining to fowl was provided to the Commission members. The City of Bloomington code limits the number of hens to five, no roosters and there is a \$25 permit fee. They are required to contact adjacent property owners to find out if they have a problem with that use. Perhaps there should be a requirement on the size of the coops. Also required is a statement signed that the person has not had any convictions for animal cruelty. The code will be revised to reflect the needs of Ellettsville. A draft of the code will be provided at the next meeting. A public hearing notice as well as a press release will be put in the paper. An email from Richard Crider who lives on Matthews Drive was received. Mr. Crider owns about 1 ½ acres and wants fresh eggs. A copy of Mr. Crider's letter requesting the Plan Commission's support of the code was provided to members.

### **Privilege of the Floor – Non Agenda Items**

**Bill Schneider** – Has been a resident of Autumn Ridge for 4 ½ years. He has two questions concerning communications between the Town and the community. The first question pertains to 1 ½ years ago when the Assembly of God decided to build and the tree line on the north end of the property was to remain there. He was assured by Dan Swafford, Frank Nierzwicki and the Town Council that the tree line was a priority that

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would not be disturbed. On or about September 21, 2011, he was notified by a resident of Autumn Ridge that the tree line got buried two to three feet around approximately 20 to 30 trees. This will kill the trees. On or about September 21, 2011, he called Rick Coppock and Dan Swafford. Bynum Fanyo designed the plat. He asked Mr. Coppock if this was in the plat and he stated they didn't have any grade in that area. Then, he called Dan Swafford and he came to the property on the same day. Mr. Swafford looked at it and said he would talk to Tom Bowlen and see about getting the dirt removed. Mr. Coppock agreed there was no reason the dirt couldn't be removed because he couldn't understand why it was put there to begin with. On September 27, 2011, nothing had changed. He called Pastor Doug Carter of the First Assembly of God and asked him his opinion concerning the tree line of the northern edge of the property. Pastor Carter told him it was one of his priorities to keep the tree line in tact when they started the development. The Pastor also said he would talk to people to find out what happened as far as the trees being buried. Nothing has changed. Several days ago he called Rick Coppock and asked what was happening with the buried trees. Mr. Coppock told him they had met at the site three weeks prior and looked at the grade. They decided it was done, they couldn't fix it and that was it. They were assured 1 ½ years ago and on September 21, 2011, that it was not the intent to kill those trees. Now, three weeks ago, they decided not to fix it because the trees are going to die anyway. Why didn't the Town tell the homeowners they had decided to let the tree line disappear? Phillip Smith stated this is the first he had heard of it.

**Dan Swafford** – At the time Mr. Schneider had called him, he and Rick Coppock did go up there and it was his opinion, although he is no professional, that the trees were already dead. Mr. Schneider asked when that was. Mr. Swafford replied when Mr. Schneider had called the second time, he called and was assured the grading would be taken away. When he went up there six trees were already dead. It could be argued whether or not they're all going to be dead but he's seen it enough times and knows they're going to die. At that time, they were onsite with the developer and they have promised when spring comes, and if the trees come out of it, they will do something with them at that time. If, in fact, they're dead, they've promised to plant eight extra trees in the spring. If in spring they start to bud and they're obviously not dead the developer will do everything they can do to keep them alive. Mr. Schneider stated the trees weren't dead until they got buried. Mr. Schneider asked Mr. Swafford if the developer wanted to cut them down then. Mr. Swafford stated when they met with the developer he did not want to cut them down. The developer thinks the trees will come out of it.

**Bill Schneider** – Had a conversation with Rob Abell, owner of Abell Nursery, regarding the trees. According to Mr. Abell, as long as those trees are not buried into the winter they can recover because that upper crust above the original grade has not started to decay. It will decay as soon as it gets cold. The trees have a very good chance of surviving. This all got delayed multiple weeks while the trees are laying buried in the ground which was not intended. Why did they have to put fill in an uphill position? The clump of trees that had to be taken out were removed months ago. According to Rob Abell, it's not too late to unbury them. This would certainly cost less than cutting down the old trees when they are dead and replacing them with new trees which will take 20 to 30 years to mature.

**Dan Swafford** – Asked Rick Coppock if he remembered why the fill was added. Mr. Coppock stated he didn't remember. Phillip Smith asked if the trees are on church property. Mr. Schneider stated yes. They're not saying it's the church's right to cover the trees. However, voluntarily on the part of the developer and Town, they told them 1 ½ years ago that nothing would be done with the tree line.

**Bill Schneider** – He found out that Bearcos is threatening to sue the Town over the bond being taken to finish the sidewalks. He understands there was a meeting with Bearcos on November 2, 2011. This all affects Autumn Ridge. Mr. Swafford stated he received Mr. Schneider's message this date and hadn't had a chance to call him back. There was not a meeting on November 2, 2011 with Bearcos. Mr. Schneider stated two years ago he received a copy of a letter Rick Coppock had sent the Planning Department on things that needed to be done at Autumn Ridge. Most things have been done. As a community, they are asking before the Town releases any bond money back to Bearcos to please let Indiana Department of Environmental Management ("IDEM")

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inspect the properties and get their opinion on drainage and erosion. He received a letter from the Town Attorney on November 2, 2011, stating, in her opinion, these are now homeowner association problems. They do not have a homeowner association. Bearcos Construction, as long as they own one lot, controls the funds. They send Bearcos \$100 a month and have no control over the money. Phillip Smith stated he thinks the Town has worked real well with the homeowners of Autumn Ridge in getting things straightened out. It is his understanding that this bond is to be used for trees and sidewalks. This is the reason why the Town called the bond and cashed it in so they could finish the grading around the sidewalks and get it seeded before winter. The way he understands it from the Town Attorney they cannot use the money for anything else. Even if IDEM comes in and says it's an erosion problem that money can't be used for it. It's up to the homeowners to go after the contractor. Mr. Schneider commented this is what the Town Attorney stated in the letter to him. Once the developer turns it over who is responsible for the problems IDEM may find. Mr. Swafford requested Rick Coppock explain this to everyone.

**Rick Coppock, Bynum Fanyo, Town Engineer** – The bond money is for public improvements to a developed property which is platted and will become property of the Town. It includes everything within the right-of-way. Also, it is for uncompleted public improvements, waterlines if they're not completed, sewer lines, sidewalks, pavement and street trees. Generally, the subdivisions come in and they try to complete as much of the development as they can so that those public improvements don't have to be bonded and it's ready for occupancy. IDEM comes in and looks at construction activities. Their jurisdiction is over the construction activities. There are still undeveloped properties which would still be subject to IDEM's review. Also, there are parts of public ways that aren't finally platted. There are parts of streets that haven't had a final plat because when you're doing this type of condominium project you build the unit and then the property is platted around the unit. This is because it's common area in between them. IDEM would still have jurisdiction over anything that is actually under construction. The responsibility for the undeveloped lots would be to the property owner which is currently Bearcos Development. The Town would have jurisdiction over the undeveloped lots through the erosion control ordinance and can require they bring those lots into compliance or face a fine. The Town has done this with the developer on several occasions. Bill Schneider said they're asking IDEM to look at it one more time to protect the Town and homeowners. Mr. Coppock stated the bond money can't be used for the erosion control. IDEM and the Town have control over the undeveloped lots. The only mechanism to make changes is through fines or penalties.

**Bill Schneider** - When the \$12,000 is gone the Town won't be able to access Bearcos' money. It's not just the IDEM situation. There's an original plat that has not been graded. This is the plat that was approved six to seven years ago. Phillip Smith asked where he was talking about. Mr. Schneider stated there are erosion problems that still exist from two years ago when IDEM looked at it and Mr. Coppock completed the report. There is a two page letter in 2008 from Mr. Coppock to the Plan Commission regarding these things. Not all of those things have been completed. There is erosion under rip rap between the Lewis' house and his neighbor. Mr. Coppock made a comment that it wasn't all completed property. The developer never obtained a permit to excavate the lot that is termed the "pit". He made a terrible mess. Thanks to the Town it has slowed and he has done a better job with the erosion problem. However, Bearcos destroyed the plat when he did this. They had a special meeting to adjust the plat based upon a spec piece of property he built and turned it so Mr. Underwood could buy the property. The Town asked Mr. Walls to do the right thing and connect the two drains buried in the hill to the new drain they installed before the new plat revision is approved. Bearcos changed the plat without permission or a permit. Phillip Smith stated the Town cannot use the money and has to return it according to the Town Attorney. Mr. Schneider stated he has the same impression and is trying to save the Town a potential problem down the road. It has been recommended by the Town Attorney that they get their own counsel. There is still a problem at Autumn Ridge. They appreciate all the help the Town has given them. Once all the money is gone and they find things exist that were done against the plat, it's going to come back on the Town.

**Dan Swafford** – Asked Mr. Schneider if Mr. Abell had seen the trees. Mr. Schneider stated not those specific trees. They're talking about trees that get buried in two to three feet of dirt. Mr. Swafford stated if Mr. Abell would see the trees he would agree with what he had previously stated. He knows Mr. Schneider has a couple of trees to be replaced by Abell Nursery. If Mr. Schneider can get Mr. Abell to look at the last 6 or 7 trees while he is up there he would agree with what Mr. Swafford said. There's really no point in messing with them right now. Mr. Schneider stated he has a problem with paying Mr. Abell to give an estimate because they have no control of their own funds. Mr. Swafford stated he thought maybe Mr. Schneider was friends with him and could get him to look at the trees. Mr. Schneider asked if Mr. Abell thinks, after looking at the trees, they can probably still be saved then what will happen. Mr. Swafford stated he will try to do something for them if they can be saved. Mr. Schneider stated a month ago when they decided to leave the trees buried if they had said something to them as a community this process could have been started four weeks ago. Ron Wayt asked if the trees were on the church's property. Mr. Schneider replied they are on the church's property. Mr. Wayt asked Connie Griffin how the Town or Autumn Ridge can have any jurisdiction over the trees. They're going to be entering the church property in order to have the inspections done by Abell Nursery and the Town would have to do the same thing. This is between the church and the neighborhood. Mr. Schneider answered yes it would be. Mr. Wayt commented they need to be very careful with going on other people's property and having an inspection done without their permission. They need to work with the church to resolve this matter. They're the ones that are in control of the building. The Town and Plan Commissioners have no jurisdiction over it. Mr. Schneider stated 1 ½ years ago when the Town and church told them they were going to leave the trees it didn't mean anything. Voluntarily, on September 27, 2011, Doug Carter told him they were going to leave the trees. Mr. Wayt told Mr. Schneider to get permission for Abell Nursery to inspect the trees. Mr. Schneider asked how someone communicates with Pastor Carter. Mr. Wayt replied he needs to go to the First Assembly of God Church.

**Max Stinson** – It's his understanding that the disputed pit lot was excavated contrary to the approved plat of the subdivision. If that's the case, the developer should have been asked to put it back to it's original condition. This would have satisfied most of the problems they're having with the drainage problem because it was not an approved excavation of the subdivision. They keep hearing rumors of lots being diverted at the top of the hill for the benefit of the church parking lot or play ground and want to know if it's true. Has anything been changed to the original approved plat of the subdivision? Phillip Smith replied no. Dan Swafford also replied not that he was aware. Mr. Stinson said there was talk of the existing empty buildings that have been erected and approval to re-arrange those buildings in some way. Mr. Smith asked if he was talking about the two homes. Mr. Stinson replied yes. Mr. Smith said nothing has been approved that they know of. Mr. Stinson said this came before the Plan Commission when the church was requesting permission for their development when they were talking about the road going up. There was talk about those lots being made available to the church. Mr. Swafford said he remembered that a couple years ago where the church was interested in looking at the lots but they changed their mind. Mr. Stinson confirmed there were no changes to the original plat. Rick Coppock replied in order to change the plat they would have to notify all of the adjacent property owners and it would have to come back before the Plan Commission. The adjacent property owners would get notice there was going to a change to the PUD approval.

**Russ Ryle** – Thanked the Plan Commission for all of the work they've put in on several issues, the Planning staff for their fine reports and the Plan Commission backing the Planning staff. He hopes the Town Council will support the Planning staff report. The large issue that brought over 80 people to the last Town Council meeting is a record. This brought a different face of Ellettsville to the meeting. There were a lot of people who had never been to a Town meeting. They bring a different point of view, attitude and different set of needs to what the Plan Commission should be doing with the master plan. Among that group were a lot of people who aren't from Ellettsville. They thought Ellettsville was the great jurisdiction of last resort to host enterprises to make people a lot of money but can provide problems to the adjacent property owners. We're a great place for them to come in, not in their community, but in ours. This is the

challenge the Town of Ellettsville is going to face between now and 2037. We are going to become, potentially, not the Town that is envisioned when looking at the seal but, in the name of the almighty dollar, a Town that hosts things other towns legislatively and from a planning standpoint won't allow. The challenge is, is this really going to fulfill the needs and the vision of Ellettsville and the needs of its citizens today and in the future. Meaning, the Town being lax in planning with what we permit versus other towns. Dan Swafford asked if he meant the comprehensive plan. Mr. Ryle said the Town needs to toughen the comprehensive plan. Mr. Swafford said he agreed. Mr. Ryle stated 2037 is coming up and at that point what will Ellettsville be known for. What will be its character? It will be a quaint little town with a lot of things in it that everybody else didn't want. It's not going to be Mayberry anymore. The Plan Commission has a big challenge ahead of it. Mr. Swafford said he's correct and the Town is going through growing pains. It will continue and he thinks the Planning staff and its department is going to be the number one department around. They really need to focus on the future. Mr. Ryle stated two of the other three members of the Town Council are active police officers. They are familiar with rules, regulations and code. He will be curious to see if they support a project that has five Town Code violations and two state violations. If they vote for something that has five code violations against it, the underlying problem is how did they get to this point. They got to that point because the Plan Commission didn't enforce. These violations came about within the last 36 months. Mr. Wayt stated he thinks a lot of it is because they have not had the staff to do so. With changes happening and the Town Council putting money toward the planning department that has to do the enforcement, they as Plan Commissioners have made several changes to the code. They're working toward it and there are some big cases that have derailed the Planning Department from doing what they really need to concentrate on. That is to beef up the codes. They have been pulled from one direction to another. Once some of the bigger cases get resolved then they can concentrate on what they need to do to make Ellettsville better. Mr. Ryle stated Ellettsville is going to go through a growing process but they really need to focus on what they are really trying to be as a Town. Not that they stray from the four principals but how they are defined in the 21<sup>st</sup> century. This definition is changing as society changes. Then the problem is how does the Town keep the codes updated and in agreement with what they're trying to accomplish for the Town.

**Ron Wayt** - Thinks there really needs to be an economic development commission for the Town of Ellettsville. There's a major employer, Smithville Telephone, who wants to bring in great technology and other businesses wants to come in. The Town Council and Plan Commission needs to work with the existing businesses to find out what could bring more into the community. I-69 is coming and the Town needs to be prepared for this. Mr. Swafford stated he agrees and the Town needs its redevelopment commission back. Sandra Hash commented when you form a block for redevelopment, it takes the tax rate in that area and freezes it. Any new taxes in that area go for improvements in the redevelopment area. Right now the Town is struggling to provide its public services. She does think there's room for redevelopment but not right now. The Town needs to get stabilized and be able to maintain its current status before they look at redevelopment. Mr. Wayt stated an economic commission would be different from the redevelopment commission. Russ Ryle stated they need the functionality but not the budget. If nothing else, on the budgetary side of it they approve a redevelopment commission and the redevelopment commission authorizes the money to go back to the Town of Ellettsville. Ms. Hash stated the redevelopment commission captures the tax rate to use for redevelopment which is a benefit for the Town, but if they're already struggling to provide the basic services with all the tax restructuring the Town just needs a period of time to get stabilized. Mr. Ryle stated part of the redevelopment is supporting what they have which means they're going to give some of it back for certain specific projects that normally come out of the street and general fund budgets. Mr. Swafford asked if it would be part of the redevelopment to bring in new development. Mr. Ryle replied that is correct. Mr. Wayt commented it would increase the tax base. We need more businesses. There is only so much the home owner can bear. Mr. Ryle stated as far back as 1980 he can find readings that say a town cannot survive on residential taxes. You need commercial and to some extent clean industry. The controversial industry on the near North side would bring in a nice chunk of tax

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base. The issue there is not only money. Is it appropriate in a flood plane, probably not? Developing a redevelopment commission and making the west side a commercial industrial zone, could keep Ellettsville economically viable until 2037. We are going to have to do something to put some money in the coffer. Sandy and I have discussed if new growth really brings additional dollars to your town. With the tax caps and the rate just because you have new people and new industry doesn't necessarily mean you have increased the gross dollars the town has to spend. In fact if you are not careful you can increase the burden of what you need to do without increasing the budget you have to do it with.

**Bill Schneider** – asked Mr. Wayt if he had a contact with the Assembly of God Church. Mr. Wayt replied he did and he would be glad to contact them for Mr. Schneider. Mr. Schneider went on to say, they changed the plat. They graded not according to the plat. That's a Town issue. Why can't bringing the nursery man out be a Town issue? Phillip Smith asked Rick Coppock if it is changing the plat. Mr. Coppock stated it's not a plat; it's a development plan that's approved. It changed the grading as shown on the plan. The Town can send representatives to look at construction activities as long as it's under construction. Mr. Smith asked if they couldn't just state it's a place they're storing dirt to use some place else. Mr. Coppock responded their plan met the current zoning for the area that was an allowable use. It wasn't as if they were within a PUD development plan where they had to adhere to certain things. It was represented they wouldn't bother the trees. This could cause that to be not true but there is no real requirement that they not bother the trees. There's no Town ordinance that requires them to have a landscaping buffer between them and the residential units. Mr. Smith asked if they could cut down the trees and there's nothing the Town could do about it. Mr. Coppock stated he doesn't know of any landscape buffering requirements at the time they were approved. There are some distance requirements. Mr. Swafford asked if the tree line was on the original plat. Mr. Coppock replied the tree line was there. They didn't show grading up to the trees. Mr. Swafford asked if the original plan showed existing trees. Mr. Coppock answered yes. Mr. Swafford asked if the final grade had been checked and if they're not finished. Mr. Coppock stated that's correct they're not finished. The grade was checked at the center where the building goes. Mr. Swafford asked what if they are just storing the dirt. Mr. Coppock responded that you do not level out dirt just to store it. Mr. Swafford asked Mr. Coppock if he recalled the reason the dirt was moved there. Mr. Coppock stated he doesn't recall the reason. Mr. Smith asked who the contractors are. Mr. Coppock stated it was Mick Cowden and Kenny Underwood. Mr. Smith said he will talk to both of them. Mr. Wayt asked if the trees are shown in the development plan and they wanted to cut them down would they not have to come before the Plan Commission for an amendment. Mr. Coppock stated no because it's their development plan. It's not a PUD that would have specific guidelines that are to be followed. They need to conform to the approved plan but there could be slight variations. The Town could take them to court or issue a stop work order that would have to be approved by the Town Council. The job has pretty much been stopped right now anyway. Bill Schneider asked if he could have Mr. Able up there to look at the trees. Phillip Smith reaffirmed Mr. Schneider would need to get permission to go on to church property.

## Adjournment

Don Calvert made a motion to adjourn. Dan Swafford seconded. Phillip Smith adjourned the meeting at 7:06 p.m.

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Phillip Smith, President

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Terry Baker, Vice President

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Sandra Hash, Secretary

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Don Calvert

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Phillip Rogers

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Dan Swafford

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Ron Wayt