

## October 2, 2008

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, October 2, 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; Dan Swafford, Don Calvert, Phillip Smith, and Frank Buczovich. Frank Nierzwicki, Director of Planning Services, Micah Austin and Connie Griffin were present. Willis Ziese was absent.

### Approval of the Minutes

**Sandra Hash-** entertained a motion to approve the minutes from September 4, 2008. Dan Swafford made a motion to approve the minutes, Phillip Smith seconded the motion. All in favor motion carried.

**Sandra Hash-** Willis Ziese has resigned from the Plan Commission. Sandra read his letter of resignation. Willis resigned because he felt a conflict of interest existed. His letter stated that having the contracted Town Engineer (Rick Coppock) from Bynum Fanyo, Bloomington, representing the Development Group Network Inc/Centennial Park was a conflict of interest.

### Old Business

#### Request for rezoning at 4210 West SR 46- Matt Cascio Petitioner

**Frank Nierzwicki-** Matt Cascio was not present, nor did he request anyone to speak on his behalf. Matt Cascio has not met or talked with the Planning Department to discuss the rezoning request or the questions concerning the rezone. Several inconsistencies exist that need to be researched. Connie Griffin worked on this today as well as Sandra Hash.

**Connie Griffin-**Sandra Hash provided a zoning ordinance dated August 11, 2003, which stated three parcels were zoned R-3 and three other parcels were zoned C-3.

County Plat #8 – 00700590-00 C-3

County Plat #146 – 007-29380-00 R-3

County Plat #31 – 007-00790-00 C-3

County Plat #147 – 007-29380-02 R-3

County Plat #91 – 007-29380-01 C-3

County Plat #148 – 007-29380-03 R-3

A few minutes prior to the Plan Commission meeting Sandra provided new updated information. The information that Sandra compiled makes her believe that the parcels in question for rezone are the parcels located along SR 46, where as the parcels that I thought may be in question are located more in the interior of Cedar Bluff Gardens.

**Frank Nierzwicki-** I believe more research is needed to determine the correct zoning. I suggest we table the Cascio request to zone until more research and clarification can be obtained.

### New Business

#### Request to have a 40 foot tower erected at 5858 West SR 46, David Keister petitioner-

**Frank Nierzwicki-** I made a mistake in the zoning at 5858 West SR 46. I gave the real estate broker the wrong zone. I stated it was a C-3 zone and it is an R-1 zone. We are finding a number of parcels along SR 46 in question, and additional research will be needed to confirm the correct zones.

We have the option to approve the antenna based on the assumption that the zoning change to C-3 would be approved.

The Planning Department will work with you on this issue and we apologize for the mistake and will make all efforts to confirm the correct zoning. We will work with the Town Engineer and try to eliminate this issue from happening in the future.

They've been trying to do this for a couple of months, and they are trying to do some closing to move the process along. My interpretation on this, if you feel the tower is going to be fine and that the operation of the business is fine, but you have an issue with the zoning, you could approve tonight, pending zoning change, that this operation would be acceptable at this location. We've had a variance, and have had a public hearing on this. If this will help?

**Dave Keister-** He stated that he realizes we are trying to accommodate them. He was surprised that it took so much to get a 40' tower approved. It took about a month and a half to get in front of the BZA. Our office in Spencer was flooded and we need to move. I understood the zoning commercially was fine; the thing we had to do was get the 40' tower antenna, which we did. We met with Frank and have gone over the other issues, and if we can't get approval we are going to have to, I think we've been very patient. I was told we could come tonight and put this to rest. I'm asking that we can do this, because we need to move forward. He expressed his disappointment and said he had paid his fees, and patiently waited to go before the BZA and was upset at the fact it isn't ready to be passed this evening.

**Dan Swafford-** When this went in front of the BZA they did not know it was an R-1.

**Frank Nierzwicki-** It went as a C-3.

**Dan Swafford-** I'm afraid we are going to get in trouble. They didn't even know the correct zoning.

**Frank Nierzwicki-** The proper zoning on this, I mentioned options that you could pursue, and it is up to you as to how you want to handle this. One option- We would have to have a public notice to have a hearing on this we have to have 10 days notice, and contact four adjacent property owners. You could wait a month and do this on November 6 or call a special meeting, given the needed time for a public notice. Or you could tonight, do a conditional approval depending on zoning. I don't know if we are going to be able to do that from what I'm hearing. Would a special meeting in two weeks work?

**Sandra Hash-** Rick Coppock called my office early last week and he was conducting some research. He was looking at the zoning on this property. I looked through old ordinances and minutes for a couple of days. He today, said it was R-1, because he found the preliminary plat for this subdivision.

**Frank Nierzwicki-** There is a wood working shop next to it, was that an R-1 also?

**Sandra Hash-** Yes, which is not right either.

**Frank Nierzwicki-** No. This is not the only situation we have.

**Sandra Hash-** What is allowed in a residential zone? I don't have my code booklet.

**Frank Nierzwicki-** This is a business operation.

**Terry Baker-** Would having a meeting in two weeks be alright with you, with WCLS?

**Juan Carlos (Century 21 Broker)** – I represent both buyer and seller. I listed this property about a year to 15 months ago. I checked with Planning, everything, is a C-3. The only residential component of the plat was in the back where there is a house and the other is commercial. This is the first I've heard of this zoning problem, 10 minutes before. All indications are it is a C-3. Juan expressed his disappointment for the seller and the buyer. He questioned zoning confirmation along all of SR 46.

**Sandra Hash-** On the zoning map itself it is clearly not marked C-3, so I don't know how you were informed it was C-3.

**Dan Swafford-** Did the owner tell you it was C-3?

**Frank Nierzwicki-** It was listed as C-3 and in looking back it is R-1; I've been working with Rick to also get the status of a subdivision.

**Sandra Hash-** I remember this was subdivided when the son wanted to build a home behind his dad's business.

**Frank Nierzwicki-** During this process we have found Chicago Pizza is also listed as R-1. With the package liquor store and the parcel behind that. My concern in this situation, the zoning map should be official; we should have documents backing this up with ordinances and minutes. Some of this is lacking and unclear. We also have the Cascio property as well. So, yes I did mention it was a C-3, which was a mistake at the time.

**Don Calvert-** My own personal feeling on this, these gentleman were inadvertently informed, and I personally feel we should go ahead with this based on changing this to C-3. As we look at the location on that, it all becoming C-3, and the value is a C-3. You were victimized by us, unfortunately, it was misrepresented. We should go ahead with the stipulation that it is converted to a C-3. I don't think anyone here is against this.

**Sandra Hash-** We're punishing them for our error. To make it right it will take an ordinance and a couple of readings.

**Phillip Smith-** It only takes one reading if everyone agrees, right?

**Sandra Hash-** Yes, if you have a unanimous agreement, at the Council you can pass it at one reading.

**Frank Nierzwicki-** I would like to clean up a number of these issues that we found.

**Phillip Smith-** Do we have the names of the surrounding property owners?

**Frank Nierzwicki-** Yes.

**Phillip Smith-** Why don't we go ahead, get the names of the adjacent owners, and from the publication date, we can call another Plan Commission meeting, published with the notice, and we can take care of it there.

**Sandra Hash-** And then it would have to go in front of the Town Council.

**Dan Swafford-** I think we need to do go through the right steps. How can you approve something through the BZA when they weren't informed the right way?

**Frank Nierzwicki-** The variance is correct. The tower, by code, can only be in an industrial or agricultural zone. It still needs a variance. The variance is still active because this isn't an industrial or an agricultural zone, so that is fine. The issue on this is an R-1 that should be a C-3.

**Sandra Hash-** I strongly agree we could approve the tower so they can start working on the tower.

**Radio Engineer-** This is what we are running into from an engineering stand point. There is concrete and we don't want to order the tower until we have permission to build the thing. It takes about 30 days to get the tower, and then we get into weather conditions and then we could have problems with the tower. We are pushing the envelope here or we are going to have to wait until spring.

**Frank Nierzwicki-** You could have the tower, it could be approved tonight, do not approve the business operation until it is rezoned.

**Sandra Hash-** And we could have this completed by 30 days.

**Dave Keister-** I've done everything, paid my money, time and effort in good faith and this isn't right.

**Juan Carlos-** They have to build and remodel in the studio, this is going to take time. Is there any way we can have any assurance he can have his business there?

**Dan Swafford-** I don't see how we can do this without approval. We are putting ourselves into a legal mess by approving this ahead of time.

**Frank Nierzwicki-** You could approve the tower, I don't think that will be a problem. The issue is going ahead and remodeling the office.

**Sandra Hash-** A remodel will require a building permit. And will the Building Department not inquire about the zoning.

**Frank Nierzwicki-** The Building Department will do the process; it can take a couple of weeks. I am looking at options to make this work. I understand we can not guarantee this will happen. It is the mechanics we have to go through.

**Juan Carlos-** Can the zoning be approved, subject to the confirmation, at the Council meeting?

**Frank Nierzwicki-** I'm asking to have this, pending final approval.

**Juan Carlos-** From the Council? Not another planning meeting? What I'm hearing is I have to come again to the same meeting and then go to council.

**Sandra Hash-** Indiana Code dictates this procedure. She explained the proper procedure; have a first reading and then take it to Town Council for approval.

**Juan Carlos-** Asked about the soonest date this can be done.

**Dan Swafford-** Why can't we do the rezoning and this approval in the same meeting?

**Frank Nierzwicki-** He explained the options. First, wait until the special meeting, they have a request before you on having a tower erected and that is legal. As the owner they could start on the remodel, as long as the business doesn't take place in that time.

**Dan Swafford-** Frank, you had better watch what you are saying, because you are insinuating they can go ahead, start and then get shot down.

**Frank Nierzwicki-** The whole issue on this is anyone can remodel any facility they want to before a zoning change has to be approved. The issue we are looking at would obviously have to be rezoned and go through special committee to do that.

**Sandra Hash-** After reviewing a calendar, taking into consideration the hearing notice publication in The Journal and the notification to adjacent property owners, a special Plan Commission meeting could be scheduled. The petitioner doesn't have to wait for the November 6<sup>th</sup> meeting.

Sandra apologized for the mistake and instructed the petitioner the rezone fee will be waived. The Planning Department will publish the hearing notice in The Journal, as well as contact adjacent owners at our expense.

**Dave Keister-** Stated he will re-evaluate the purchase based on the situation.

**Frank Nierzwicki-** If the homeowner can produce documents showing the home is located in a commercial zone; we could approve the tower this evening complete the deal. If they can't locate the any zoning documents then it will have to come before the commission for a zoning change. We could approve of the antenna tower this evening.

**Sandra Hash-** Do I have a motion.

**Frank Buczolic-**I make a motion to approve of the 40' antenna based on verification of the commercial zoning.

**Terry Baker-** I second the motion.

**Sandra Hash-** Connie took a roll call on the vote.

**Connie Griffin** roll call vote: Don Calvert- yes; Terry Baker- yes; Sandra Hash- yes; Dan Swafford- no; Phillip Smith- yes; Frank Buczolic- yes.

**Sandra Hash-** Motion carries 5-1.

**Russ Ryle-** What is a starting point for saying a given piece of property in Ellettsville has the following zoning. I'm puzzled where you are going to start giving the complete detailed records from previous years. We have some PUD issues, verbal agreements not honored, good faith, the problem is not theirs, they are due diligence. I have a question for Frank, apparently the original determination when your BZA material was set up it was commercial and on that basis you went through the BZA process. Frank, did you tell them it was commercial or did everyone assume it was commercial.

**Frank Nierzwicki-** We did some research on that from looking at the zoning issues on this.

**Russ Ryle-** Ok, what document did you rely on to proceed it was a commercial property?

**Frank Nierzwicki-** I looked at the zoning map.

**Russ Ryle-** Sandy you said on the zoning map it was residential.

**Sandy Hash-** I looked at the zoning map today, and there is no marking on those lots.

**Russ Ryle-** It is unmarked.

**Sandy Hash-** When it is unmarked it is residential, R-1. The lot beside it was C-3, Apathy's motorcycle shop.

**Russ Ryle-** If it is unmarked it is R-1.

**Sandy Hash-** It is on the legend on the map. Yes, and we adopted the map. That is another issue with the commercial zones.

**Russ Ryle-** When was the map originally adopted?

**Sandy Hash-** I have to look, I don't have that information.

**Frank Nierzwicki-** I don't know.

**Russ Ryle-** Was it ever adopted?

**Frank Nierzwicki-** We need to move on.

**Dan Swafford-** I would like to say, I bought a piece of property in that area and I had it surveyed. Which every buyer has to have done. We didn't go to Frank; we went to the court house. That is where we found out what the zoning was. I'm confused why the realtor didn't look up the actual zoning.

**Russ Ryle-** If the Planning office is at variance with the court house which rules.

**Plan Commission-** Court House.

**Frank Nierzwicki-** If it is in conflict you would have to look at what is in conflict. Was it recorded in error? Just because it has been passed at PC or TC doesn't mean the map is entered correctly.

**Sandy Hash-** I send the zoning to secretary of state, the state census bureau, recorded, voters registration, clerk of the circuit court, Bloomington, and Monroe County's GIS, to MC Planning Dept. to the Ellettsville Fire Station, Rick Coppock, put in the census file, I keep one for local roads and streets for taxation, and then I file them periodically, then I get it in our code update file. In the back of code booklet there are parallel references. That lists all annexations and all zoning information.

**Russ Ryle-** Then it is my understanding there is no zoning in the legal description.

**Frank Nierzwicki-** It makes a difference in the tax base if it is commercial or residential.

**Sandy Hash-** Jay Richardson wanted to build a home behind his father's shop. They subdivided the property. The

zoning is assigned at the subdivision and then it's filed with the preliminary plat and that is what I had a copy of.

**Dan Swafford-** The property owner's are the ones that subdivided it.

**Frank Nierzwicki-** We look at our zoning map and we also go to the county GIS system. We are dealing with the information we are given. Some of the information is confusing.

**Sandra Hash-** Our zoning map lists lots and lot numbers. Realtors call with an address, it is best to have the lot numbers, because the addresses are not listed, and along the highway there aren't lot numbers on the properties.

**Frank Nierzwicki-** On our zoning map you have to look closely to get the right parcel, it is easy to get the wrong one. It would be nice to go to my computer to a specific parcel and get the zoning information.

**Darlyne Sowder-** She discussed the situation 30 years ago, and how she went before the Town Council and asked if it were zoned properly for the type of business she wanted. We didn't ask for it in writing.

**Sandra Hash-** There are minutes, have you looked at the minutes?

**Darlyne Sowder-** No, I haven't looked at the minutes. I will do that when I have time. She believes the whole town has errors in its recordings. I think the town needs to recognize the errors and start acting accordingly.

**Frank Nierzwicki-** I'm trying to have documentation on items. If you had documentation we would work with you. It isn't a fault of anyone, what was done 20, 30 or 40 years ago was different than what we are doing now. We are trying to create and maintain a database on this. We are trying to be fair and equal and we are trying to streamline the process.

**Darlyne Sowder-** I was told to seek a rezoning and they knew when they told me to do it that they were going to turn me down. So, I went through that process, and all they did was collect my money.

**Don Calvert-** Who are they, do you remember who the board was then?

**Sandra Hash-** Do you remember who was on the board and the year?

**Darlyne Sowder-** There were five men were on the council, 1978. The minutes were not as detailed then.

**Dan Swafford-** Did they tell you to close.

**Darlyne Sowder-** They grandfathered me in, I could keep operating, but I couldn't sell my business as it is.

**Frank Nierzwicki-** This has caused us to look more closely at the zones especially along SR 46.

**Phillip Smith-** I make a motion that we adjourn.

**Terry Baker-** Second.

**Sandra Hash-** All in favor say aye.

**None**

## **Adjournment**

**Sandra Hash** entertained a motion to adjourn. Phillip Smith made a motion to adjourn, seconded by Terry Baker. All in favor motioned carried. Meeting adjourned at 9:08 P.M. Next meeting will be November 6, 2008.