

September 1, 2011

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, September 1, 2011, in the Fire Department Training and Conference Room located at 5080 West State Road 46. Phillip Smith called the meeting to order at 6:02 p.m. Don Calvert led the Pledge of Allegiance.

Roll Call: Members present were: Phillip Smith, President; Don Calvert; Phillip Rogers, Dan Swafford and Sandra Hash, Secretary. Ron Wayt was absent. Connie Griffin, Director of Planning, was also present.

Phillip Smith – Welcomed back Terry Baker who has agreed to take Clayton Sullivan's place. He can only observe and will not be able to vote until he is appointed by the Town Council President at the September 12, 2011 meeting.

Approval of the Minutes – August 4, 2011

Phillip Smith entertained a motion for approval of the August 4, 2011 minutes. Dan Swafford so moved. Don Calvert seconded. Roll Call Vote: Phillip Smith – yes; Don Calvert – yes; Phillip Rogers – yes; Dan Swafford – yes; and Sandra Hash - yes. Motion carried 5-0.

Old Business

Landscape Ordinance Discussion – Rain Gardens and Natural Habitat Areas

Connie Griffin, Director of Planning – This is a continuance of a discussion that has been going on for a couple of months. Robert Lowers is interested in developing a natural habitat. Mr. Lowers spoke at the last Plan Commission meeting. This is a new code for consideration. Unfortunately, the Planning Department is still receiving complaints as to the condition of the property on Main Street. The Town Council did uphold the nine inch ruling on the grass code be enforced. The Town Council stated since the Planning Department has a part-time enforcement officer the code is to be enforced. The problem with having grass that is very tall in this particular situation is that it is classified as a public nuisance and it could be a potential fire hazard. There have been comments about property values being affected as well as a haven for unwanted animals, e.g., skunks, possums and raccoons. At this time, there is not a consensus with the Plan Commission as there are some mixed opinions of this particular code. They have discussed some size restrictions on the natural habitat area as well as enclosing it with landscape timbers to contain the area. She is requesting that the Plan Commissioners discuss how they would like the Planning Department to proceed with this particular case and the code revision.

Dan Swafford – Asked how many code violations there are. Ms. Griffin replied the only code violation is exceeding the nine inch vegetation height. That is also the nature of the complaints received by the Planning Department. Phillip Smith asked if any citations had been given. Ms. Griffin replied not in the last several months because she and Mr. Lowers were working together to come up with an agreement. Ms. Griffin has a natural habitat in her back yard. Her habitat is different and they can all be different. This could open up a lot of design factors and elements. There are safety issues as well as going against Town Code, Hazards to Health, because of the habitat being for mosquitoes and other critters as well as a public nuisance. These could also be listed among the code violations if the Plan Commission wants to proceed in that direction. She has not wanted to do this because she and Mr. Lowers have a good working relationship. Mr. Swafford asked if there has been any thought on size restriction according to how big the property is and only a certain percentage could be allowed as a natural habitat. Ms. Griffin responded that has been discussed. Mr. Swafford asked the size of the lot. Mr. Lowers stated his lot is approximately a quarter acre. The size of the habitat is actually rather small compared to the size of the property. The property has road frontage on Temperance and Main Streets. It's a pie shape lot. The Temperance side is really wide and the Main Street side is narrow. The properties to the left and right were the original homesteads which has very small property lines that wouldn't pass today's code. The building on the west side is actually on the property of Main Street. Along the road where all of the rip rap is that is actually a state highway. He doesn't complain about the tall Johnson grass, the thistle, the Queen Anne's Lace and the other things growing in there because it actually assists what he is trying to do. He wants to work with the Planning Director and the Plan Commission about something that can be established. He would be the first to say it started about eight years ago and it was just the failure of a lawnmower. His

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lawnmower quit working. He was very active at the school and he was at the school almost every waking hour he wasn't working. Three weeks went by and his grass was tall. Now that Ms. Griffin has been enforcement for the last four years, they have had multiple meetings at his place. Since the complaints, they talked about some of the things they were going to allow and not to allow. But the complaints have kept coming in. Approximately a year ago he came before the Plan Commission and asked for something to be put in writing or some kind of law established. In the meantime, the lawnmower broke down and this became bickering back and forth about mowing grass and not mowing grass. He has learned a lot about what a habitat is and how it provides for good health. There are some bugs that are going to be in a habitat. The habitat is food for the birds. He has an opportunity be a part of another habitat in Town that is quite a bit different than the one at his house. It doesn't have just native plants. He does want to be all native and doesn't want to allow Johnson grass, Queen Anne's Lace and thistle to take over. However, he wants to confine it in an area and try to control it enough to where he can let it go so that he can have the glory of watching nature. When they cut grass, it's not grass. It's the same stuff. For eight years he has been digging things up trying to eradicate the things that seem to be overpowering. He is trying to plant things that will take over and not be a public nuisance. Nobody tells him what car to drive or to cut his hair. He would like to be enjoying the back yard of his house as he wants without being a nuisance to anyone else.

Phillip Smith – Mr. Lowers stated he has neighbors who are very close because of the way the property is divided. The thing to think about is what Mr. Lowers' property does to his neighbors. He is recommending a committee of Mr. Lowers, maybe one person from the Plan Commission and another person from Town to sit down and hash this out. If it can't be done then the Plan Commission will make a decision. He would rather the citizens of Ellettsville come up with a plan than the Plan Commission dictate it, if at all possible. Mr. Lowers has talked to the neighbors on each side of his property. Mr. Lowers has asked his neighbors many times if they have a problem with his habitat. The neighbors do not have any problems with his property. Sandra Hash commented sometimes when neighbors are asked it is difficult for them to express how they feel. When people choose to live in a developed area, you have to have standard rules. It was a few weeks ago, they had a gentleman come before the Plan Commission and Town Council with this very concern. He lived in a new subdivision and the lots around him were undeveloped and vegetation had grown up. He was real concerned about the Johnson grass, invasive species and fires. Unfortunately, if you choose to have a natural habitat, in Town on a developed lot is not necessarily the best place to do so. It is not like there has been a petition from several citizens asking the Town to develop a plan for natural habitats. There is one resident out of 6,000. How many changes should the Town make to accommodate the natural habitat when it is defined in the Town Code as a nuisance? Connie Griffin came up with a very elaborate plan for the Plan Commission to review on establishing a natural habitat, it had square footage requirement, it had to be registered with the Planning Office, requires a renewal process and an onsite inspection. Is that something we should prioritize as another one of her duties? Ms. Griffin is already very strapped for time. Mr. Smith commented he does not think so. This is why he would like to see a committee from the citizens come up with something. Especially people around where Mr. Lowers lives. What he wants is standards with how it should be. He has seen backyard habitats that are four foot square. Ms. Hash commented she didn't think this would be discussed if it was a manicured yard and the surroundings of the home were nice and there was a four square foot natural habitat in the backyard. When you live in a community around other people you have to meet a certain standard. Unfortunately, there are other issues on the property that are not very beautifying. She doesn't mean to insult Mr. Lowers but he has made some choices that are not real acceptable for community living. She appreciates what he wants to do. Ms. Hash asked Mr. Lowers if he owns the property. Mr. Lowers said he rents with the intent to purchase. He has every intention to buy the place. Phillip Smith asked Mr. Lowers the size of his habitat. Mr. Lowers stated he does mow the front, side and back yards. The habitat is about 50 feet long by 30 feet wide or approximately 1,500 square feet. Don Calvert stated if he's not the property owner, they're talking to the wrong person. Mr. Lowers stated he's the person who gets the complaints and is responsible for it.

Don Calvert – If he rented property to someone and they tried to make changes on it and dealt with the Plan Commission and Town to make changes to it, he would be upset because he owns it. Legally, this should end at this time because he doesn't own the property and he needs to talk to the property owner. The property owner needs to come forward with his ideas and discuss them with the Plan Commission. Connie Griffin stated Mr. Calvert is correct that the property owner is held responsible in a condition of this nature. The property owner is held responsible for a tall grass violation. Mr. Lowers asked if he is buying on contract, isn't it a different situation. Mr. Calvert said he does not think so. Ms. Hash stated the Town Code states if he is notified of a violation he has ten days to abate that nuisance. If he doesn't abate that nuisance,

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the Town mows it and puts a lien on the property which would be on the owner and not the renter. Mr. Calvert asked if the owner is aware of the situation. Mr. Lowers stated he is. Ms. Hash stated Marion Jacobs is the owner.

Phillip Smith – In Monroe County, if you buy on contract and have it registered with the Clerk's office, the name goes on the taxes with the owner. Mr. Smith asked Connie Griffin to check on this.

Marion Jacobs – His wife's trust owns the property and he rents the property. This has long been a contention with Bob Lowers. He has been fighting with Mr. Lowers about this for about five or six years. He's not happy with what he is doing. Mr. Lowers wants to buy the property but until then it is in his wife's name and Mr. Lowers is renting it. Sandra Hash reiterated Mr. Lowers is in violation of Town Code, how long should this go on before it is acted on.

Dan Swafford – Hearing from the property owner he would like to make a motion, the Town enforce all current codes and regulations until land ownership has changed.

Marion Jacobs – A few years ago, Mr. Lowers cleaned up the area where the state owns the right-of-way. The State did not clean their part up. Mr. Jacobs asked who is going to be responsible for that. He asked the Plan Commission if they're going to harass the state to clean it up. Connie Griffin replied INDOT only comes through two to three times a year at the most. They start in Spencer and work toward Ellettsville. She does see them spray once in awhile. There are several areas along the corridor that get grown up quickly before they mow. Ms. Hash stated since the State only comes along once or twice and it is on his property, it is in his best interest to maintain it.

Robert Lowers – His yard is recognized by the Federal Bureau of Wildlife Habitat as a backyard habitat. He has paid his fees and he has met all requirements to become a backyard wildlife habitat. There are many places in Town he could drive by that have more of a nuisance than what his backyard offers. Just because he doesn't have complete ownership of the property, his agreement has given him the opportunity to move forward even though there are some differences. He does want to get the place cleaned up a lot more. If the habitat is mowed down there are a lot of things that are already in the making for somewhere down the road for the Plan Commission to say will be allowed. When the Plan Commission makes its vote, they need to consider he went through the trouble and all the labor to make sure he met the federal requirements. People can have a backyard habitat on a porch and get it certified. He is a certified federal backyard wildlife habitat.

Dan Swafford – Understands what Mr. Lowers has done and he appreciates it. Unfortunately, Mr. Lowers is not the current landowner. His name is nowhere on the deed. Until something changes, they have heard from the landowner and he does not want the backyard habitat. Mr. Lowers stated you do not have to be a property owner to get a backyard habitat certified by the Federal Wildlife, you can be a renter. Mr. Jacobs didn't say he didn't want the habitat on the property, only that he didn't like it.

Don Calvert – The Plan Commission gets caught many times in having to enforce laws regardless of how they feel about it. Right now the law is a nine inch cut. Rather or not he appreciates his work and labor it is in violation of the Town Code and law. If the code is not enforced by the Plan Commission then the next person can use this case as an example.

Steve Miller – Lives in Brown County. This issue comes up all the time. They have nature lovers who teach their kids. They have kids from school come out and find praying mantis egg cases. In Brown County, if they put a fence around it, it's a garden. If there is not a fence around it it's a yard. It was a matter of definition. It gets approved as a special exception and if it's treated as a wildflower garden and it has a public advantage, it's allowed in a reduced way.

Marion Jacobs – He hasn't told Mr. Lowers he can't have the backyard habitat. He hasn't been happy with all of it. Mr. Lowers has tenant rights. Mr. Calvert asked if there's a fine against the property does it go to the tenant or the owner. Connie Griffin replied the fine goes to the owner.

Phillip Smith – Has no problem with a backyard habitat. A backyard habitat that is 20' X 30' on a quarter acre lot is a pretty good size. The code has to be enforced. They can change the code later. He would still like to see a committee get together and rewrite the code regarding habitats. He likes the idea of a wildflower garden.

Dan Swafford – Asked if there is an appeal process. Connie Griffin responded there is the Board of Zoning Appeals for a special exception or variance.

Dan Swafford made a motion the Town enforce all codes, ordinances and regulations. Phillip Rogers seconded. Roll Call Vote: Phillip Smith – yes; Don Calvert – yes; Phillip Rogers – yes; Dan Swafford – yes and Sandra Hash - yes. Motion carried 5-0.

Connie Griffin – Confirmed her directive is to issue a code violation letter with the public nuisance, the health hazard and tall grass violations. Mr. Lowers will then have 10 days to abate the situation. If not, there are other codes where the Street Department would then come out and mow. In the meantime, however, she needs to develop a task force or a committee to come up with certain standards as requested with a consideration on size, reduced areas and possibly fencing. Phillip Smith stated Mr. Lowers has 30 days to get it before the Board of Zoning Appeals. Ms. Griffin replied the Board of Zoning Appeals is short a few members who have to be appointed at the next Town Council meeting. After Mr. Lowers receives the violation letters, he could appeal to the Board of Zoning Appeals. Sandra Hash stated she doesn't understand how Mr. Lowers could go before the Board of Zoning Appeals for a high grass violation. Ms. Griffin stated it is not really the intention of a hearing board. There is a petition fee and Mr. Lowers would incur that expense. Phillip Roger said the Board of Zoning Appeals does not handle code violations. Sandra Hash commented the Board of Zoning Appeals is for development standards. Dan Swafford added the BZA was for zoning variances. Connie Griffin said Mr. Lowers can apply for a land use variance for a Residential.

New Business

Hoosier Eye Doctor Annexation – 4719 W. SR 46, Bloomington, IN 47404-County Parcel Number: 0072287602, Tax ID Number: 530414107-004.000-011, .6190 Acres (former Hukill Grease Pit)

Connie Griffin, Director of Planning – All paperwork is in order to proceed with the voluntary annexation. Adjacent property owners have been contacted. A copy of the signed return receipts have been provided to date. She has not been contacted by the public to question the annexation. The proposed land use is for a medical office. All supervisors as well as Rick Coppock have reviewed the physical plan and it was approved. The legal description and physical plan have been provided to the Town Attorney. The petition and copies of the published hearing are contained in the file and contiguity requirements have been met.

Joseph Despirito – He cleaned up the property after seven years. Phillip Smith commented since the property has been mowed, there have been more comments on it than any other project. They had contacted both Monroe County and the Town of Ellettsville and told them if there are any questions to call him immediately and things will be rectified. He has a location in Bloomington and he specializes in pediatrics.

There is a pediatric center opening down the road. He also has adult patients. It will be a specialty pediatric clinic and a general practice location for Ellettsville.

Connie Griffin – The property is located at 4719 W. State Road 46, Bloomington, IN 47404. It is .6190 acres. Monroe County parcel number is 0072287602. Dan Swafford asked how much is changing on the original building. Ms. Griffin stated it will be a remodel.

Don Calvert – It will be nice to see something other than automotive driven business along S.R. 46. Under section 3, second paragraph it talks about required services that are already available or within close proximity. He asked what is within close proximity that they may or may not have. Ms. Griffin replied Rick Coppock commented on a water main being located on Forest Drive if there was a need for expansion. There will most likely not be a need for expansion because that lot is so small. Just what is being done with the remodel will probably be all he has room for on the lot. Mr. Calvert asked if there was a minimal fee for police. Ms. Griffin responded there was no fee for the Ellettsville Police Department.

Phillip Smith entertained a motion to approve the Hoosier Eye Doctor Annexation - 4719 W. SR 46, Bloomington, IN 47404-County Parcel Number: 0072287602, Tax ID Number: 530414107-004.000-011, .6190 Acres (former Hukill Grease Pit).

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Phillip Rogers made a motion to approve the annexation. Dan Swafford seconded. Roll Call Vote: Phillip Smith – yes; Don Calvert – yes; Phillip Rogers – yes; Dan Swafford – yes and Sandra Hash - yes. Motion carried 5-0. Connie Griffin stated the proposed annexation will proceed to Town Council for the September 26, 2011 meeting.

Richland Senior Center New Remodel and Addition Design – 800 W. Allen Street, Ellettsville, IN

Connie Griffin – This project will add an addition for a community center for residents of the senior living area to use for parties and events and possibly for training. The proposed addition will be added to the current community building. They are going to be doing a lot of updating such as ADA compliance with restrooms. The kitchen area will be more efficient as well as tables and gathering areas more convenient and organized for the residents and visitors.

Dennis Fisher, Vice President of Richland Senior Project – They started in 1974 and have five units which includes one in Stinesville. Each unit is required, by the government, to have a little center to meet. Over the years, they are running out of room. This unit was built in 1977. None of the bathrooms are handicapped accessible. Nothing in the building is handicapped accessible. Since they're doing a remodel, they are changing everything to be handicap accessible. They are adding 1,588 square feet. The new unit is facing north.

Sandra Hash made a motion to approve the Richland Senior Center new remodel and addition design at 800 W. Allen Street, Ellettsville, IN. Phillip Rogers seconded. Roll Call Vote: Phillip Smith – yes; Don Calvert – yes; Phillip Rogers – yes; Dan Swafford – yes and Sandra Hash - yes. Motion carried 5-0.

Review of Development Codes: Street Lights and Vehicular/Address Signage

Connie Griffin – The Street Commissioner, Jim Ragle, has discussed the code revisions with her on a couple of occasions. She is looking at §153.110 Electric Service. In the Municipal Code, it refers to a street light policy but she has never been able to locate one. One of the thoughts conveyed by Jim Ragle was the developer shall pay for the provision of street lights which is mentioned under §153.110(c). As a Plan Commission the next development that comes through they need to make sure that they provide the street lights, that they have the sidewalks and correct buffering zones. They are going to revisit some of the older codes and update them. Mr. Ragle wants to make sure street lights are at every corner or intersection, one street light in between if over two blocks between intersections and a light at dead-ends and cul-de-sacs. The homeowners association should take over the maintenance and replacement of the street lights in the subdivision. Signage should be required for the developer to installed at their expense. For street trees he is requesting they be removed to the back of the sidewalk area because it causes a great deal of issues due to their close proximity to the street. The code revisions will be coming back to the Plan Commission in the near future, this was merely an introduction. Sandra Hash stated for years they contracted with the old PSI and they would give the Town a 10 year contract. The Town would tell them where to set the poles, they did it and they charged \$5 to \$7 a month for the usage. In addition, they also maintained it. When Duke Energy took over everything changed. Now, in order to have a pole set it is \$1,600, you don't get a contract for usage and you have to pay for everything. Duke will do the repair work but the Town has to pay. It came cost prohibitive for the Town to install those poles. Duke Energy did offer a payment plan of \$58 a month per light pole until they got the pole paid for.

Discussion of Development Letters of Credit - Connie Griffin

- Autumn Ridge Letter of Credit was issued by Monroe Bank for \$20,000. It has an expiration date of September 15, 2011.
- Deer Run Letter of Credit was issued by Bond Safeguard Insurance Company for \$15,337.50. An expiration date is not listed.
- Litton Estates Letter of Credit was issued by German American Bank Corp. for \$67,500. The expiration date is September 17, 2012.
- The Meadowlands/Overbrook Estates bond has not been updated. Two letters have been mailed to the developer from the Planning Department and the Clerk-Treasurer's office.
- Prominence Pointe Letter of Credit was issued by German American Bank Corp. for \$37,500. The expiration date is September 17, 2012.

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- Smithville Telephone Letter of Credit was issued by Westbend Mutual Insurance Company for \$750 which represents 10% of erosion control measures. An expiration date is not listed.

Phillip Smith – Drove by Autumn Ridge before the meeting and the dirt has not been touched and there is one dead tree.

Case Updates

Connie Griffin – There have been some changes with the Planned Unit Development application. She has provided the recent sequence of events and emails between the Planning Department and the Petitioner's attorney, Michael Carmin, to the Plan Commission members. The PUD application that the Plan Commissioners gave a 5-1 unfavorable recommendation has gone before the Town Council at their last meeting. The petitioner, on the day of the Town Council meeting, had revised the application and his intentions as to the conditions they placed upon themselves. Therefore, two of the parcels on either side of the salvage yard have been removed from the application. This represented a significant change that the PUD application reviewed by the Plan Commission was not the same one that they were requesting for the Town Council to review that evening. It was the Town Council's opinion that it needed to be revised or to go back to the Plan Commissioners. The thing to remember is that Planned Unit Developments are basically established for mixed uses. A standard rezone is just what it is. These things will need to be kept at the forefront of the Planned Unit Development application. A pre-design conference with Chad Stephens and his attorney, Mike Carmin, has been requested. This will be a tentative meeting agenda item for the October Plan Commission meeting.

Adjournment

Don Calvert made a motion to adjourn. Dan Swafford seconded. Phillip Smith adjourned the meeting at 7:12 p.m.

Phillip Smith, President

Clayton Sullivan, Vice President

Sandra Hash, Secretary

Don Calvert

Phillip Rogers

Dan Swafford

Ron Wayt