

April 4, 2013

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, April 4, 2013, in the Fire Department Training and Conference Room located at 5080 West State Road 46. Terry Baker called the meeting to order at 6:00 p.m. Don Calvert led the Pledge of Allegiance.

**Roll Call:** Members present were: Terry Baker, President; Russ Ryle, Vice President; Dan Swafford and Don Calvert. Sandra Hash, Phillip Smith and Phillip Rogers were absent. Connie Griffin, Director of Planning, Rick Coppock, Bynum Fanyo & Associates, Town Engineer, and Darla Brown, Town Attorney, were also present.

**Approval of the Minutes** –March 7, 2013 were tabled until May 2, 2013.

## Old Business

### Rules of Procedure Area Plan Commission Town of Ellettsville, Indiana, Amendment to January 6, 2011 Resolution

**Connie Griffin, Director of Planning**, explained she will review those areas still in discussion as follows:

Section 2.5(i), *Discussion of Agenda Items*: When a vote of the Plan Commission does not result in an official action of the Plan Commission, the petition shall be automatically re-docketed and heard at the next regularly scheduled meeting of the Plan Commission.

Section 2.7, *Quorum and Official Vote*: Four (4) members, out of seven (7) Plan Commission members, constitutes a quorum and majority vote. Official actions, those meetings requiring public hearings, of the Plan Commission are not official unless authorized at a regular or properly scheduled meeting by a majority vote. Table 1 lists Official Actions of the Plan Commission Requiring Public Hearings in Indiana.

**Table 1. Official Actions of the Plan Commission Requiring Public Hearings in Indiana**

<b>Indiana Code Section</b>	<b>Official Action</b>
IC 36-7-4-205, 507, 508	Comprehensive Plan
IC 36-7-4-602	Adoption of initial zoning ordinances or replacement zoning ordinances
IC 36-7-4-604	Certifying proposals to the legislative body
IC 36-7-4-607, 608	Zoning Ordinances Modification to or termination of plan commitments
IC 36-7-4-1311, 1326	Impact fees
IC 36-7-4-1404	Development plans for zoning districts
IC 36-7-4-1511	Modifications to Planned Unit Development (PUD) district ordinances

Section 2.8(d): A member of the Plan Commission who has a conflict of interest, see conflict of interest definition below [S]ection 2.8, in any petition presented, shall: disqualify himself or herself insofar as the particular petition is concerned; shall not participate as a member of the Plan Commission during the hearing of the petition; and [shall] not participate as a member in the Plan Commission's decision in such petition.

In this section, the words, "shall leave the room" were removed. Terry Baker commented he thinks when there's a conflict of interest they need to leave the room. This way they cannot influence the voting of the members. He realizes they may have something at stake in the area being discussed. However, at the same token, as a member of the Plan Commission they could exert undue influence on the other members just by facial expressions even if they do not say anything.

**Don Calvert** disagrees with Mr. Baker's comments. If there is a problem that affects him and he can attend as a citizen and voice his opinion, then he is being punished because he's a member of the Plan Commission. He trusts the judgment and integrity of the Plan Commission members to not allow him to try to influence them or vice versa. Any Plan Commission member, as a citizen, should be able to go to the back of the room and hear what is being discussed. Mr. Swafford agrees with Mr. Calvert. As an elected official, if he

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has a conflict of interest with any item on the agenda he still needs to know what's going on for Town Council. He doesn't think they should have to leave the room when there's a conflict of interest.

**Russ Ryle** noted all of the meetings are videotaped and can be reviewed later. Being out of the room does not negate anyone from being fully informed. He agrees with both comments. This is a small town and it's next to impossible not to know somebody directly impacted by every action that comes before them. Mr. Swafford added he serves on several boards and he has never had a policy where they have to leave the room. He believes this is taking their rights away. They have every right to hear what's going on at the time it happens.

**Darla Brown, Town Attorney**, explained as a practical matter, the meetings are open to the public and members can be recused for whatever reason. Mr. Swafford noted it would void the quorum law. Mr. Ryle thinks they need to add a definition for conflict of interest. Ms. Brown added Indiana Code 36-7-4-223 discusses conflict of interest. She suggests stating conflict of interest is defined by Indiana Code 36-7-4-223. Mr. Swafford thinks this is needed because Plan Commission members in the past have excused themselves for no reason because they don't want to upset a friend. Is that a good reason to be excused? Ms. Brown replied there are two parts to the statute. The statute discusses direct or indirect financial interests and the member being prejudiced. The definition isn't going to cover every situation. It's going to have to be based on common sense on a case by case basis and what they feel comfortable with. There are going to be situations where reasonable people disagree. Mr. Ryle noted in those instances where there is a discomfort level they also have the option of abstaining from voting which is different from recusing yourself. Ms. Brown said this is true but she suggests if someone is abstaining because they think they can't be impartial they probably shouldn't participate in the discussion. Lawyers don't look at a conflict of interest by whether or not they're influenced by some information, it's the appearance of impropriety.

**Connie Griffin** noted the conflict of interest definition will have a reference to I.C. 36-7-4-223.

### Section 3.2: *Contacting Plan Commission Members Regarding Pending Petition Prohibited*

- a) *No member of the Advisory Plan Commission will be at liberty to discuss with the general public any pending petition. No attempts should be made to influence a Plan Commission member's action on such petition.*
- b) *Plan Commission members must report a summary of any conversations held with a petitioner or other parties having a direct financial interest in a specific petition prior to the petition[']s introduction before the Commission*
- c) *A written request for continuance as provided for by these rules shall not be construed to be a prohibited contact of a Plan Commission member.*
- d) *Elected and appointed public officials must be free to conduct their routine duties as representatives of the general public. These duties include being available to the general public to receive input on the facts of an issue and the personal opinion of a citizen or group. Such verbal or written conversations or statements must be reported at the scheduled Planning Commission meeting in which the petition is an agenda item.*
- e) *Any action or actions of a collusive nature with intent to gain favorable consideration for a specific official action or outcome on a petition item before the Planning Commission is illegal and must be reported in writing to the Town Council, President of the Planning Commission and Town's Attorney for guidance and further action.*

**Darla Brown** noted section (b) should be changed to "*an indirect or direct financial interest.*"

**Dan Swafford** doesn't like the wording in (b). If someone talks to him about something on the agenda and asks him not to say anything, he's not going to. He will listen to everyone but not give them advice. If a person is trying to lobby for something it's their right to talk to an elected official or a Plan Commission member. He thinks sections (b) and (e) should be deleted. Mr. Baker noted the section refers to those people with a direct or indirect financial interest. Ms. Brown added the intent of this section is to prevent any ex-parte conversation with any Plan Commission member. Mr. Swafford reiterated he's had conversations with everybody. People can't be stopped from coming to their elected officials and speaking to them. They elect people to be their voice and they can't take that right away. He can always exclude himself from the issue but he can still talk about it. Mr. Calvert interprets it as they can discuss something as much as they want to but if it leads to a Plan Commission member becoming directly or indirectly financially involved then they should recuse themselves. Mr. Baker commented it's open to interpretation but the

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main thing is direct or indirect financial gain. Something in writing is needed to protect against the future.

**Darla Brown** stated there's no statute that requires the Plan Commission not to have ex-parte conversations. It's the difference between the Plan Commission and the Board of Zoning Appeals ("BZA"). There's a statute on point with the BZA because they're quasi-judicial. A section of the code states *"A person may not communicate with any member of the board before the hearing with the intent to influence a member's action on a matter pending before the board."* There is no comparable statute for the Plan Commission. However, there are Plan Commissions who have incorporated a similar provision into their local rules. The intent of Section 3.2 is to mimic the BZA statute. If this passes, Plan Commission members can have no ex-parte conversations with anybody about petitions pending before the Plan Commission just like the BZA. If somebody approaches a Plan Commission member they will have to say they're sorry there's a petition pending and they can't discuss it. Section 3.2(b) is an example of the type of conversation they can't have. They can't have any conversation. If Section 3.2 is passed they're saying they can have no ex-parte conversation. Mr. Ryle asked about conversations with staff. Ms. Brown replied that's fine and that's what they're there for. Under the BZA statute the staff is supposed to provide a report so many days before the hearing. If someone wants to talk to a commission member they can say they can't talk about it but they can talk to the Planning Director. Mr. Swafford noted elected officials can't serve on the BZA. He thinks Section 3.2 needs to be left out of the Rules of Procedure. Mr. Ryle suggests the Section 3.2 needs to be tabled.

**Darla Brown** advised the legislature has made a point of distinguishing between the BZA and the Plan Commission. As it stands now, it is okay for people to lobby to members of the Plan Commission. Plan Commissions have enacted local rules that prohibit ex-parte conversations and it's just a matter of what they want to do. Mr. Swafford asked if there are elected officials on all Plan Commissions. Ms. Brown replied by statute there has to be two on the Plan Commission.

**Terry Baker** suggested if they keep Section 3.2 it needs to be re-worded to state elected officials are excluded because they have to talk to people. Mr. Ryle disagreed because he thinks it creates a two tiered membership. Ms. Brown noted the reason the legislature made a difference between the BZA and the Plan Commission is that the BZA makes final decisions whereas the Plan Commission makes some final decisions and recommendations to the Town Council. Mr. Ryle asked what size towns have adopted the "do not talk to people rule" for their Plan Commissions. Ms. Brown answered one is Columbus.

**Connie Griffin** continued with Section 3.3, *Conduct of Hearings*:

- f) *The President of the Plan Commission shall call for a motion if the item requires a vote [then] the motion shall be followed by a second to approve the item.*
- g) *The President [shall] open the floor for public comment and recognize those who wish to speak on the petition. Citizen comments are limited to a total of three (3) minutes per person or at the discretion of the Commission by majority vote. After being recognized by the President, each speaker will step up to the podium and give his name and sign the speaker's sign in sheet. A total of thirty (30) minutes of public comment will be [allowed] if necessary.*
- h) *The public may not pass or assign their public speaking time to another member of the public. To maintain orderly procedure, each side should proceed without interruption by the other side.*
- o) *All persons appearing at a public hearing shall act in an orderly and courteous manner. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges extended by the Plan Commission and shall be dealt with by the presiding officer as is deemed fair and proper. If any person present persists in [abusive, obnoxious or disrespectful behavior] following the warning, the President may order that person to be expelled from the meeting by a deputized officer.*

**Darla Brown** noted in Section 4.2, the last sentence of paragraph (i) needs to be changed to *"All property owners who touch the subject property, including those across any streets or alleys which would adjoin or are adjacent to the subject property if the streets and/or alleys were not there."*

**Connie Griffin** will provide the rules from the communities she researched for the verbiage in Section 3.2. Then the Plan Commission members can review it and discuss it at the next meeting. She thinks Section 3.2 has strong language but it prevents misinformation from being given to a petitioner or the public. It was more for transparency and to reduce lobbying.

Terry Baker entertained a motion to table the Rules of Procedure. Russ Ryle made a motion to table the Rules of Procedure. Don Calvert seconded.

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**Dan Swafford** doesn't want to see the Rules of Procedure being postponed another month because of Section 3.2. He would like to have this voted on and amended when they agree on Section 3.2. Ms. Brown needs to know if they're against ex-parte conversations. If that's the case there's no need to revise the language.

**Russ Ryle** withdrew his previous motion to table the rules of procedure.

Dan Swafford made a motion to pass the procedures for the Ellettsville Plan Commission with omitting Section 3.2 in its entirety. Don Calvert seconded. Roll Call Vote: Terry Baker – yes; Russ Ryle – no; Don Calvert – yes; Dan Swafford – yes. Motion failed for lack of the required majority vote of 4 in favor. The rule will be presented again in May.

### **New Business**

**Dan Swafford** advised I-69 is coming up for an action vote on Section 5 on April 12, 2013. If anyone has any comments they should attend the meeting. The meeting time is 1:00 p.m. in the McCloskey Room of City Hall in Bloomington.

**Dan Swafford** noted the Planning website is outdated.

### **Privilege of the Floor**

**Rick Coppock, Bynum Fanyo & Associates**, introduced a plat amendment for Lot 60 on Benjamin Street in Greenbriar Meadows where Robinson Construction has been working. Someone wants to build a sizeable home in a certain location. Next month, they are bringing a plat amendment for the subdivision. They've eliminated the original Lot 60 and made it Lot 60A and moved it further to the east. It sits on a higher point in the subdivision. They've added property to Lot 94 and acreage to Lot 60A. They eliminated Lot 61. Sewer and water is in place. This will be on the agenda for next month's meeting.

### **Adjournment**

Terry Baker entertained a motion to adjourn. Dan Swafford made a motion to adjourn. Russ Ryle seconded. Motion carried. Terry Baker adjourned the meeting at 7:01 p.m.

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Terry Baker, President

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Russ Ryle, 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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Phillip Smith

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Dan Swafford