

## **August 4, 2016**

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, August 4, 2016, 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; Brian Mobley, Vice President; Don Calvert, Pat Wesolowski, and Sandra Hash. David Drake and Kevin Farris were late. Kevin Tolloty, Planning Director, and Rick Coppock, Bynum Fanyo and Associates, Town Engineer, were also present.

### **Approval of the Minutes**

Terry Baker entertained a motion for approval of the minutes for the regular meeting on July 7, 2016. Pat Wesolowski so moved. Brian Mobley seconded. Motion carried.

### **Monthly Conflict of Interest Statement**

**Don Calvert** has a conflict of interest because he lives in Springs Valley which is adjacent to Centennial Drive.

### **Old Business**

**Waiver from Subdivision Requirements for Centennial Park Located North of Centennial Drive; Petitioner: Gilbert Mordoh, on behalf of Development Group Network, Inc.; Case No. PC 2016-14**

**Jason McCauley, Attorney for Development Group Network, Inc.,** explained they were met with silence in an attempt to discuss potential development plans and recording the final plat for Highland Park Drive with the property owner to the south. While they don't have any agreement with respect to the 50' easement at the end of Centennial Drive there is interest from Mr. Crider (to the south) in contracting with someone to develop homes in the near future. The idea of construction on the south end of Centennial Park leading to the likelihood of development in Highland Park seems to be more possible at this time. They are requesting a conditional approval. At the July meeting, Mr. Drake expressed a willingness for a conditional approval of one access point with a certain number of lots for construction. The increased economic and motivational effects Mr. Crider will feel to the south will encourage him to record the final plat for Highland Park Drive and then they will have their second access point. He provided a diagram of the lots they can develop and construct to Mr. Tolloty. If the Plan Commission gives conditional approval for 40 lots on the south side of the development that are subject to the condition then they can be developed and built out with one access point. The remaining lots cannot be constructed until the second access point is achieved. It appears they're closer with Mr. Crider in that he's showing interest in developing and using the same builder. If they have the same builder who is familiar with the territory then he thinks it may be easy to motivate him to record his plat and move forward. He met with a few members of the public including Don Francis who told him increasing traffic through Woodgate and into Union Valley was a nuisance. He doesn't disagree some pain will be felt with 40 houses or 10 houses which

wouldn't require a waiver. He is requesting conditional approval for development of the southern portion with one access point so they can encourage the development of Highland Park Drive. The development of 40 more houses will force the opening of the access point to the stoplight at Centennial Park and State Road 46. This was always intended and is what the Plan Commission believed was the case when Centennial Park was originally approved. In the long run it will relieve a lot of traffic pressure and safety issues for Woodgate, Centennial Park and adjacent properties. The right thing to do is go from 10 to 40 lots and give them an opportunity to exercise economic pressure on the developer to the south and find out if they can arrive at a solution that helps his clients and relieves pressure from Woodgate and the surrounding neighborhoods. They would develop lots 72 and 71 on the southeast corner of Phase I and that's where Highland Park Drive would extend to in the event Mr. Crider records his plat. Once the plat is recorded they would have their second access point. The remaining lots to the north of Phase I and six lots to the east would fulfill the requirements and a waiver would not be necessary. Based on the conditional approval they're requesting to develop the first 40 lots on the southern edge and until there is a second access point the remaining lots would not be developed. If Beacon Homes is in negotiation with Mr. Crider it is a great thing

and they can move next door to get him to record his final plat and continue on toward Centennial Drive.

**Pat Wesolowski** asked how long it takes to develop 40 homes. Mr. Mordoh answered at Beacon's rate probably two years or less. Mr. Wesolowski asked what the impact of 40 homes is on traffic. Mr. McCauley answered they don't have an exact number but it is four times more than ten houses. Four times the amount over two to three years is worth the period of pain so that everybody can share in the level of enjoyment of relieving traffic, using the stoplight on State Road 46 and a much safer exit from the neighborhood. Mr. Mordoh commented he would also like two access points as it was their original intent to go out at the light. Mr. Wesolowski asked if there was emergency access. Mr. McCauley replied they looked at a 20' strip of land that runs along the western property line of Highland Park Estates into Lot 1 of Centennial Park for emergency vehicle access but because of the terrain it is not feasible. He thinks there may be a code provision change because it currently says there must be two access points for emergency vehicles only. His client feels they don't want to develop a property that is not safe and they want two access points.

**Brian Mobley** asked if he spoke to Mr. Crider and did not receive a response. Mr. McCauley explained he spoke with Mr. Crider's counsel who indicated they had discussions with other contractors to build-out. This gave him no hope of negotiations between their clients about purchasing the property. The fact he mentioned Beacon Builders gave them hope the possibility exists because to build Mr. Crider has to record his plat. Mr. Mobley asked if there is not another access for emergency vehicles at this time. Mr. McCauley answered that is correct. Mr. Mobley spoke with Fire Chief Mike Cornman and his requirements are it has to be wide enough to support the biggest and heaviest fire truck. Mr. McCauley discussed another option of a loop road access with Mr. Tolloty but it

is not for this development. Since the last meeting they've exhausted their options. Mr. Mobley mentioned Mr. Tolloty stated in his recommendation that the Town has no jurisdiction over the land to the east, west and south. Mr. Mordoh advised if they don't develop this it won't go through to Centennial Drive. The roads are straight and clean for emergency vehicles.

The following expressed concerns as outlined below:

**Wendy Poppy, President of Woodgate Homeowners Association**

- Increase in traffic.
- No guarantee a second access will develop in the near future.
- Difficulty of travel for cul-de-sac residents in Phase I.

**Debra Hackman, lives at the end of Centennial Drive**

- No easement exists.
- Mr. Crider does not want to work with the developers.
- No guarantee of a second access.
- Safety of present and future residents.

**Don Francis, an attorney who lives on the property to the east of Mr. Mordoh's property**

- Will cause a public nuisance with subsequent legal issues.
- More pressure on the stoplight at CVS.
- Safety of the community.

**Dave Walton, lives in Woodgate**

- Value of homes during construction phase.
- Condition of streets during construction.

**Dave Hudson, lives in Woodgate**

- Increase in traffic.
- Safety of the community.

**Marlene Stokes, lives in Woodgate**

- Safety of emergency vehicles.

**Steve Olivas, lives on North Shadow Wood Drive**

- Traffic.
- Safety of children.

**Greg Wisniewski, lives on North Shadow Wood Drive**

- Safety of children.
- Increase in traffic.

**Pat Wesolowski** asked if it is correct they can build 10 homes without a waiver. Mr. Tolloty answered yes. Mr. Wesolowski asked how many times they can do this. Mr. Tolloty replied the Town Code does not address this. Mr. Wesolowski asked if it is platted for 40 lots. Mr. Tolloty replied it is platted for 78 lots. Mr. Wesolowski asked if that defers from 10 houses at a time because they wanted a lot more. Mr. Tolloty answered it was a half-way point to get something built. Mr. McCauley concurred. They tried to pick

the most influential lots on the property to get Highland Drive platted and developed. They're asking for a conditional approval based on the fact they thought had final approval and a plat ready to be developed. They're trying to concede and still keep pressure on the property owner to the south so they create a larger tax base to take care of the traffic issues that everyone has addressed. Mr. Wesolowski is concerned about the traffic coming onto State Road 46 with 40 lots. The second concern is the Plan Commission denies the 40 lots but he can build 10 homes and they don't know how many times he can build 10 homes. Mr. Tolloty thinks when the Town Code addresses subdivisions over 10 lots it is talking about the preliminary plat that has 78 lots on it which is why they need a waiver. They can get a final plat for 10 lots. Anything beyond 10 lots would have to have preliminary approval.

**David Drake** agrees good planning requires connectivity between subdivisions and main streets and that new subdivisions to have two entrances. He differs in that he doesn't know if they've ever required two entrances be present at the beginning. Union Valley Farms and Muirfield subdivisions outside of Town limits still have one entrance and Shelburne subdivision had one entrance for a long time. They are requiring too much by necessitating two entrances be present at the outset. Overall, when looking at the percentage of impact on Woodgate based on the overall size it is not nearly as great. Woodgate created more of a traffic situation overall than this smaller development will do. Cutting it in half is a good compromise. Woodgate has four entrances and before the last several phases were built the only two entrances were off of Union Valley and Woodgate. Overall, 40 additional lots to an already gigantic subdivision is not going to create the terrible impact people think it will. He doesn't think they have ever required two entrances to be open at the time the subdivision was developed. They have five stub streets on this plat that someday will connect to something and this has been done with other subdivisions. They still have leverage over those connections eventually being made because they have another 38 lots to develop that they may not approve if they don't make another connection somewhere. So, they're allowing them to develop at a reasonable manner which is a good compromise and they still have leverage over getting those connections marked on the plat by withholding the other lots at this time.

**Brian Mobley** mentioned Town code states there must be two access points in/out. This is a necessity for the protection of the community. The Comprehensive Plan states safety is the number one priority. One access for traffic is not safe for children or people walking. He would rather have two entrances for the safety of the community. Mr. Drake is not convinced the Town Code says the entrances have to be open at the time the subdivision is developed. They have never required this because the Town Code doesn't address this and only states it has to have two entrances.

**John Stone** said Union Valley Farms does have stubs but still has only one exit onto Union Valley which can handle the traffic. If in two years they're under contract for a second entrance for Centennial Drive it would be a good reason to waive this but they don't have this. If it is a good policy he doesn't know why it would be waived in this case where 40 homes would let out onto a minor street in an already busy subdivision.

Terry Baker entertained a motion for this case. David Drake made a motion to approve PC 2016-14 for Centennial Park as amended to 40 lots. Kevin Farris seconded. Roll Call Vote: Terry Baker – yes; Don Calvert – abstained; David Drake – yes; Kevin Farris – yes;

Brian Mobley – no; Pat Wesolowski – no; and Sandra Hash - no. Motion failed, 3-3 with one abstention.

Pat Wesolowski made a motion to deny the waiver for PC 2016-14. Brian Mobley seconded. Roll Call Vote: Terry Baker – no; Don Calvert – abstained; David Drake – no; Kevin Farris – no; Brian Mobley – yes; Pat Wesolowski – yes; and Sandra Hash - yes. Motion failed, 3-3 with one abstention.

**Terry Baker** advised this matter is tabled until the next meeting.

**Jason McCauley** asked since this is their public hearing is there something that can be modified on the 40 lot plan that would change their mind. Mr. Mobley advised the holdup is waiting on Mr. Crider to make a decision. Mr. McCauley cannot discuss this directly with Mr. Crider because he is represented by counsel. There are other possibilities for access points but they're longer roads. The focus is on that road because they have seen Mr. Crider's development plan and it is ready to go. Mr. Baker asked if there is a possibility of another location for the exit. Mr. Drake asked if 78 lots would be enough to justify building a longer road that comes out somewhere else. Mr. Mordoh answered he loses his buyer at that point. No one else has had to have both access points ready and it is obvious both access points will be there. Mr. McCauley added it's all about timing. The market is right for Beacon Builders to come in as the property has been marketable for a while. Mr. Wesolowski asked if all 78 homes are built would he put in the road in. Mr. Mordoh doesn't know the feasibility. When they received initial approval they all knew it was going to come out south of Highland Drive. No one else has had to have two access points prior to him. Mr. McCauley added they're requesting a waiver of the second access point. Ms. Hash mentioned 10 houses are not enough to do the infrastructure.

## **New Business**

### **Ordinance Updates; Case No. PC 2016-17**

#### **a. Vehicle Access to Subdivisions**

**Kevin Tolloty, Planning Director**, explained there has been a request to amend the second access point to include all vehicular traffic instead of emergency vehicles in §§152.127 and 153.074. If there are over a certain number of units perhaps there should be a second way in and out.

**David Drake** thinks it is good for the Town to require more than one entrance and at what point do they do that? Requiring it in every circumstance immediately is not what they've ever done before and too constraining. If they're going to do this it needs to have a provision for two access points provided on the plat. If two or more access points are not included in the initial construction then that requires a waiver. They would be making a mistake by requiring every development with more than ten units to have two entrances. That's not a very big development. Mr. Tolloty noted any new subdivision is going to

come through Plan Commission for preliminary approval at which point they could ask for a waiver. He doesn't know if two access points would have to be built at the time of construction. Mr. Drake thinks they need to be clearer in their regulations. It would be a mistake to require two entrances be open for ten units. There are a lot of cul-de-sacs that have more than 10 dwelling units. Ten units are not enough to require two access points in every circumstance. Mr. Tolloty thinks access points should connect to a right-of-way.

**Pat Wesolowski** thinks there should be specific reasons for what they do. It is safer to have two access points. Ms. Hash stated when they approved Union Valley it had undeveloped land all around it. There wasn't a lot of opposition to it and it wasn't going out onto a minor road. Mr. Tolloty recognizes that some subdivisions do work well with one entrance. He prefers they ask for a waiver instead of something sneaking in with one entrance that cuts through three subdivisions. Mr. Baker added if no other subdivision ties into it then it's okay. If a subdivision builds behind another and ties into it then they've got a lot of people with a problem. Mr. Tolloty noted a lot of their subdivisions are going to border the county and they don't have any control over what happens. Ms. Hash added this is what happened to Springs Valley. They were a dead-end with only one entrance. Mr. Drake commented Woodgate was a gigantic mess for the Springs Valley people. The Plan Commission goes off of the number of platted lots and not the number of built lots.

**Kevin Farris** asked Rick Coppock what infrastructure, excluding sidewalks, cost per 10 or 100 feet. Mr. Coppock answered they looked at 620' of road, storm drains and 6' to 8' of cut on the Highland portion of Crider's property and it would cost approximately \$100,000. Cost also depends on the grade. Mr. Drake noted there is a cul-de-sac in Woodgate that has 21 lots partially done and only has one entrance. Mr. Coppock explained when Union Valley Farms was approved the two access requirement didn't exist. The two access requirement came about in 2002/2003. It is a requirement of Town Code to stub out to adjacent properties where it is logical. When Centennial Park was designed in 2007/2008 Crider was already approved by the county in 2005/2006. Mr. Farris agrees with Mr. Drake in that someone cannot be mandated to put in two roads from the beginning for 10 properties. He doesn't think it is feasible and will turn away developers. Mr. Baker thinks instead of requiring them to put in the roads have them show they have the property and the right-of-way to do so. Mr. Drake commented most of the time they're not going to own the land next door which may develop with a different developer. They wouldn't have any development if they required developers to have the right-of-way to build the road especially in a landlocked spot. Mr. Coppock suggested Mr. Tolloty research requirements of the county and other communities. Mr. Tolloty asked how he is to proceed. Mr. Baker answered emergency vehicles needs to be removed from the Town Code. Mr. Tolloty suggested increasing the number of homes requiring two access points. Mr. Drake thinks it needs to make clear that whatever the number is they have to be built when the development is started or they have to be planned to be built. He interprets the code as it has to be designed for two access points and not that there has to be two present. Mr. Wesolowski asked if the number is increased does it become more of a safety problem.

Mr. Drake countered there are cul-de-sacs with over 20 homes. Mr. Calvert thinks that is different because it is inside of an addition. Planning today is to not have a grid system because it slows people down. Cul-de-sacs feed off of the entrances. Mr. Drake explained if Town Code is saying they can't have more than 10 houses because it is a safety issue to only have one way in/out, it doesn't make any difference whether it's a cul-de-sac or not. There is still only one way in/out. Mr. Tolloty advised any development over five acres requires two access points.

**Russ Ryle** suggests looking at whether it's an entrance on a neighborhood street, a primary road or secondary primary road. It would be one thing to permit a reasonable amount of development with one entrance/exit providing it is on a primary or secondary thoroughfare. It is another thing to say you can develop a large number of lots running traffic through someone else's neighborhood. Ms. Hash said training classes for planning say the new thing is to promote interlocking neighborhoods which is what Centennial Park is. This encourages people who live in Centennial and want to go to IGA to go through Woodgate rather than going out onto State Road 46. Mr. Ryle stated they're in a new era and they're not planning for what Ellettsville use to be but for it will be when the rest of Jack's Defeat Creek floodplain is built out. They're going to have a very dense community. Ellettsville was a rural community up to 20 years ago. Today they have an urban and dense community. It puts a different light on planning for traffic and stormwater. Current rules are fine for a rural community. Town rules are not adequate for an urban community. Mr. Farris disagrees and thinks it is the same as the last 20 years. Ms. Hash thinks although Ellettsville is still small, it's 100% bigger than 20 years ago.

#### **b. Plan Commission Membership**

**Kevin Tolloty, Planning Director**, explained the Ellettsville zoning ordinance does not match state code. He is amending it to reference state code so there are not any conflicts. Ms. Hash likes the idea so they aren't in conflict with Indiana code. All members concurred.

#### **c. Apartments as a Special Exception**

**Kevin Tolloty, Planning Director**, explained apartments are now a permitted use in C-3 and R-3 zones. There is concern for apartments being a permitted use under C-3. He looked at multi-family complexes over 10 units that go through the Board of Zoning Appeals ("BZA") for a special exception instead of being permitted by right. This would allow them to have more restrictions other than what's currently required under zoning. Mr. Calvert asked why they would go to the BZA. Mr. Tolloty answered the BZA has additional criteria

with what can be approved/denied. Ms. Hash's concern with going to the BZA is they may not request additional requirements.

**Russ Ryle** explained the BZA is designed to review decisions of the Plan Commission in the context of the Town code and other requirements. It is suggested the BZA becomes an

authority on what is allowed/not allowed. He would be very nervous not having a ruling from the Plan Commission/Town Council before the BZA looked at any case. He doesn't see the BZA as being an easy way for the Plan Commission or Town Council not to put in adequate regulations and setup the basic guidelines for any issue. They ought to have something in zoning stating where and what they can have. Then the BZA can deal with it from a code exception standpoint. It is not the BZA's position to set policy. Mr. Tolloty explained the BZA would not be doing this. Special exceptions are fully under the BZA. It will have additional guidelines. The BZA can't enforce any other guideline unless the zoning ordinance is rewritten. This is quicker, gives an extra view and still requires development plan review. The Plan Commission makes sure it meets their requirements. As a special exception they would have additional requirements the BZA would hear. It can't be approved by the Plan Commission first because there would be an approved set of plans coming to the BZA and they would be stuck with either accepting them the way they are or forcing someone to redraw them which would be expensive. This way before a full set of plans are drawn all of the requirements are in place to go on the plans to come before Plan Commission. Mr. Ryle asked what they would approve if there isn't a set of plans. Mr. Tolloty replied they don't have to have a full set of plans but could show sketches and be held to that. Mr. Ryle said the BZA shouldn't make a decision on that basis. It is a Plan Commission function. Mr. Tolloty thinks it is a BZA function to determine whether a use, especially if it is a special exception, actually works in the location for which it is being presented. This is not a Plan Commission function. The BZA looks at whether plans meet Town Code and not if they make sense. Mr. Ryle thinks they need to look at the Town Code and make sure they can only start to think about putting anything in an appropriate zone. If it is in the appropriate zone the Plan Commission determines if their proposal is appropriate. Mr. Tolloty explained in short of turning the zoning map into something with 75 different zones, they're going to have things that don't necessarily belong beside each other. The Plan Commission sets zoning but there are going to be some instances where there are things that, although they're zoned in the same category or abutting zones, may not belong together and this is where the BZA comes in. This is something the Plan Commission has no authority over. Mr. Ryle stated when the master plan is updated it needs to include a high density zone. Mr. Tolloty said they have a multi-family high density zone. Mr. Baker asked where he would put it at. Mr. Ryle didn't realize C-3 could have apartments.

**Kevin Tolloty** advised R-3 zoning allows multi-family and is a permitted use. This discussion applies to C-3 zones. It could be removed entirely and made a non-permitted use at which point it would have to go for a use variance through the BZA. Mr. Ryle asked if there are any other types of operations that may come into Ellettsville other than apartments that are not permitted without BZA approval. Mr. Baker answered they're a non-permitted use. Mr. Ryle asked if this would make apartments a non-permitted use. Mr. Tolloty replied not permitted by right. It would have to meet a higher threshold. If the apartments were removed from C-3 the only way it could be approved would be through a use variance. After continued discussion on this topic Mr. Ryle requested a summary of how similar communities operate with apartments and the BZA. Mr. Wesolowski agreed.

**Kevin Tolloty** explained accessory structures are defined in two different places in zoning. The Floodplain Ordinance states Accessory Structures may not be used for human habitation but the first definition does not state this. He is requesting they both state accessory structures may not be used for human habitation and pool houses and cabanas will be removed.



**Sandra Hash** advised the Findings of Fact for Litten Apartments needs approved.

**Pat Wesolowski** made a motion to accept the Findings of Fact for PC 2016-09 for Litten Apartments. David Drake seconded. Roll Call Vote: Terry Baker – yes; Don Calvert – yes; Kevin Farris – yes; Brian Mobley – yes; Pat Wesolowski – yes; David Drake – yes; and Sandra Hash - yes. Motion carried.

### **Planning Department Update**

**Kevin Tolloty, Planning Director**, advised there will be a Nitty Gritty Workshop in Bloomington for Plan Commission or BZA members. They will discuss various Plan Commission and BZA topics. Last year the cost was \$85 and the Town will pay the fee.

**Kevin Tolloty** is requesting to change the October Plan Commission meeting date because he will be out of Town at a Planning Conference on October 6, 2016. After a discussion, it was decided to change the Plan Commission meeting to October 13, 2016.

### **Adjournment**

Terry Baker entertained a motion to adjourn. Kevin Farris so moved. Pat Wesolowski seconded. Terry Baker adjourned the meeting at 8:06 p.m.

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Terry Baker, President

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Brian Mobley, Vice President

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Sandra C. Hash, Secretary

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Don Calvert

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Pat Wesolowski

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Kevin Farris

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David Drake