

## December 4, 2014

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, November 6, 2014, in the Fire Department Training and Conference Room located at 5080 West State Road 46. Terry Baker called the meeting to order at 6:02 p.m. Don Calvert led the Pledge of Allegiance.

**Roll Call:** Members present were: Terry Baker, President, Russ Ryle, Vice President, David Drake, Dan Swafford, Don Calvert and Pat Wesolowski. Sandra Hash was absent. Denise Line, Acting Director of Planning, Darla Brown, Town Attorney, and Rick Coppock, Bynum Fanyo and Associates, Town Engineer, were also present.

### Approval of the Minutes – November 6, 2014

Terry Baker entertained a motion for approval of the minutes for the regular meeting on November 6, 2014. David Drake so moved. Pat Wesolowski seconded. Motion carried.

### New Business

#### Jerry and Norma Abbitt Subdivision, Starnes Road

**Denise Line, Acting Director of Planning**, explained all requirements for the subdivision have been met. The Abbitts are subdividing their farm home site into two plus acre lots so their nephew can have his share of an inheritance. The nephew's name, Daniel Hale, is already on the deed and no money is involved. This is zoned Residential 1.

Terry Baker entertained a motion to approve the Jerry and Norma Abbitt Subdivision on Starnes Road. David Drake made a motion to approve the Jerry and Norma Abbitt Subdivision on Starnes Road. Russ Ryle seconded. Roll Call Vote: Terry Baker – yes; Russ Ryle – yes; David Drake – yes; Dan Swafford – yes; Don Calvert – yes; and Pat Wesolowski – yes. Motion carried 6-0.

#### **St. John's Church ("St. John's) Annexation, 4607 W. State Road 46, Bloomington. Owner: Roman Catholic Archdiocese of Indianapolis Properties, Inc.**

**David Drake** explained the only thing the Plan Commission will do in an annexation is recommend a zoning classification. The Town Council will annex the property.

**Denise Line, Acting Director of Planning**, explained St. John's is bringing two parcels into the Town for a total of 39.05 acres. The annexation areas have a contiguous boundary of 22.3%. The property is zoned Commercial 1 in Monroe County and it will remain the same in Ellettsville. All requirements for annexation have been met. Town departments have reviewed the proposed annexation and gave their approval. There are no code enforcement concerns or issues with the property. The cost of additional Town services are minimal. The church gets its water from Ellettsville and is on the Eastern Richland Sewer Corporation sewer line. There will be no negative impact to adjacent property owners. The Archdiocese has owned the property since 1996. It will benefit the Town of Ellettsville by increasing the Town's boundary and growing its community, increase the ability of the Town to attract grant funding because of increasing its boundaries, connect a community separated by a jurisdictional line and because it is a private drive, the Town will not be responsible for its upkeep.

**Phil Tapp, parishioner of St. John's**, stated the staff report explained what they are asking for at this meeting. They are part of the community in Ellettsville and the annexation would formally solidify it.

**David Drake** confirmed churches are tax exempt and the Town won't receive property tax from the annexation. Ms. Brown advised that was correct. Mr. Drake asked what the zoning is the Town is recommending. Ms. Line replied it's remaining a C-1.

**Pat Wesolowski** asked why St. John's is annexing. Mr. Tapp answered they're already a part of the community and they get water from the Town of Ellettsville. Although they're tax exempt they aren't bringing in any improvements for the Town to take over. One benefit to the church would be police protection. Mr. Swafford asked the name of the properties contiguous to St. John's. Mr. Coppock answered they are CVS, Jiffy Treat, Hoosier Eye Doctor and the former Swifty Gas Station.

**Nancy Banister, resident of Westbrook Downs**, asked if Westbrook Downs is at risk of being forced to be annexed by Ellettsville. Mr. Drake replied the Town could annex Westbrook Downs at this time if they wanted to without St. John's annexation. The Town attempted to do so about 15 years ago and decided not to go forward with it. Ms. Banister asked if the annexation would make it easier. Mr. Drake answered no.

Terry Baker entertained a motion for a favorable recommendation to Town Council with the zoning of C-1. David Drake made a motion for a favorable recommendation to Town Council with the zoning of C-1. Dan Swafford seconded. Roll Call Vote: Terry Baker – yes; Russ Ryle – yes; David Drake – yes; Dan Swafford – yes; Don Calvert – yes; and Pat Wesolowski – yes. Motion carried 6-0.

**Denise Line** noted the annexation will be on the agenda for the December 22, 2014, Town Council meeting.

## **Yard Sales and Garage Sales**

**Darla Brown, Town Attorney**, went through the Town Code and picked out definitions relevant to the Plan Commission's discussion about yard sales. Currently, the Town Code doesn't define yard or garage sales. The only place garage sales is mentioned in the code is in reference to signs for garage sales. The code does define outdoor storage and regulates trash dumpsters and rubbish. She researched American Publishing to find out how other communities addressed garage sales. For example, Brown County doesn't address garage sales but does address flea markets which are not to occur more often than every two months for a period of not more than seven days. She also researched communities to get an idea of who wants permits and the time limits for the permits and yard sales. The time limits for yard sales average two to four days. Most communities require the owners to remove materials immediately after the sale. The Town Code does discuss home occupations and the code prohibits the outside storage of materials and goods visible from the street or adjoining neighbors. Chapter 152 of the code defines a non-conforming use as a "*legally existing use of land or structures which does not conform with the permitted uses and provisions applicable to the zoning district in which the use is located on the date of the adoption of this chapter.*" If there is a non-conforming use that is legally existing at the time an ordinance is passed then it is considered a non-conforming use or it will be grandfathered in. The burden is on the landowner to show they have a non-conforming use at the time the ordinance was passed. That person's use of the property

was not prohibited by the code. What the courts are looking at with a non-conforming use is specifically the land or buildings. She couldn't find any cases on non-conforming uses or garage sales but thinks this is what the courts are looking at. They don't want to deprive property owners of their use. For example, if they're using the property for adult book stores or massage parlors and it was legal before the ordinance was passed then they would have the argument it is a non-conforming use and she could argue it does not apply to yard or garage sales. If someone wanted to argue they had a non-conforming use because they had a perpetual garage sale or flea market then the burden would be on that individual to show their use of the property was legal at the time the Town Council passed an ordinance regarding garage sales. She can't think of anything a perpetual garage sale would be other than a home occupation and it is not a legal use under the code because the code prohibits the outside storage of materials or goods visible from the street or adjoining neighbors.

**Pat Wesolowski** asked if Ellettsville did an ordinance would the people who have garage sales be grandfathered in. Ms. Brown would argue they have to conform to the new ordinance. The courts are concerned about somebody who puts a building on a piece of property and using it for a specific purpose. She would argue it doesn't apply to garage sales and even if it did, the burden would be on the landowner to show their use of the property conforms with the code as it stands right now. A perpetual garage sale or flea market does not. It can't be anything other than a home occupation. There are certain businesses under home occupation in the Town Code that are permitted or require a variance under the Board of Zoning Appeals ("BZA"). Unless they can show they got a variance then the use of that property does not conform to the code.

**Russ Ryle** asked if they really need additional language in the code to proceed against people who have a perpetual garage sale in a residential area. Ms. Brown replied the fine that can be levied is under \$152.360 and is \$25 for each day's offense. The other remedy is to go to court and get an injunction. She doesn't know the Town has to have an ordinance on garage sales but if it is becoming an issue they should think about it. Mr. Ryle said they don't have to get in the debate of whether or not a person can have a garage sale three times a year for four days duration. If someone puts up an ongoing business in their yard with outside storage the Town doesn't need an additional code for legal action. Ms. Brown said they may not need it but it may make things easier if garage sales are specifically addressed. If someone is running a perpetual garage sale they get an advantage over other people who run other home occupations because some of them would have to come before the BZA.

**Terry Baker** thinks a previous section that got dropped from the code covered garage sales. He wants to put this on hold until they get this information. Ms. Brown will ask the Clerk-Treasurer for the previous code. Mr. Baker said the previous code stopped yard sales from being held on a continual basis. They also discussed doing away with permitting. The cost to process the permits would exceed the money received. One of suggestions they had is an online permit or they could come into the office and get one for no charge. This is so they can track the permits. If they don't get a permit then they're in violation. Ms. Brown asked if it is the Commission's inclination is to advise her to pull up the old ordinance, take a look at it and put it in ordinance form for the next meeting. They're inclined to require a permit at no charge. Mr. Baker said that is correct. Mr. Wesolowski thinks if they're going to get a permit then they should pay for it because it is going to take the same amount of time. Mr. Baker stated it costs more to juggle the money around than it is worth.

**Dan Swafford** thinks permits should be on the website so they can be easily accessed. Ms. Line asked if they would be on the Planning or Clerk-Treasurer's website. Mr. Swafford answered probably both. Mr. Baker said it needs to be as easy as possible. People who don't have internet access can go into the Clerk's office for a permit. Mr. Swafford commented if they decide not to charge a fee then the permit should be picked up in the Planning Department because that's who will be tracking it. Mr. Baker said it needs to be as simple as possible. All members concurred. Mr. Wesolowski asked what happens if they don't conform. Mr. Baker replied fines will be assessed. Ms. Brown added the "catch all" clause under the Town's ordinance for fines is \$25 for each day's

offense unless the code specifically assigns a fine for the other violations. Mr. Swafford stated it is going to be complaint driven. The Town will not be checking yard or garage sales to find out if they're registered. It is to protect the Town and neighbors. Ms. Brown asked if the Town Council is inclined to leave the fine at \$25 a day and each day's violation will be a separate offense. Mr. Baker replied yes. Mr. Swafford asked if the fines are capped after a certain number of days. Ms. Brown answered there is no limit under the code. If it was to go to court under an ordinance violation the judge may reduce the fine. Mr. Wesolowski asked how many days they could be fined before they went to court. Ms. Brown stated it depends. The prior Planning Director would send one, two or three letters before sending it to her. Mr. Baker advised in the old ordinance yard sales could be held twice a year for three consecutive days each. Mr. Ryle wants the name and phone number for a contact person on the permit. Should the contact person be the property owner? What do they do if the renter wants to have a sale in front of an apartment? Ms. Brown replied they probably want to direct the ordinance to the person who's actually having the sale.

**Warren Hoobyar, Code Enforcement Officer**, explained §92.02 only addresses yard sale signs. Permits are needed because you can track the number of days. The Town Marshal should be notified of yard sales due to parking issues. Whoever issues the permit should contact the Police Department. Yard sale signs are fined if they're left on the right-of-way or attached to any Town property. The code needs to address where the signs are located. Once the yard sale is over materials and display items should be removed.

Terry Baker entertained a motion to table this until the next meeting so the Town Attorney can come up with the items they requested. Russ Ryle moved to table for one meeting. David Drake seconded. Motion carried.

### **Proposed 2015 Meeting Dates**

**Denise Line, Acting Director of Planning**, advised the meetings in January and July are on the second Thursdays of the month due to Town observed holidays.

**Terry Baker** advised there being no objections, the 2015 proposed meeting dates are adopted and are as follows:

January 8, 2015

February 5, 2015

March 5, 2015

April 2, 2015

May 7, 2015

June 4, 2015

July 9, 2015

August 6, 2015

September 3, 2015

October 1, 2015

November 5, 2015

December 3, 2015

**Planning Department Updates**

**Denise Line, Acting Director of Planning**, announced a new Planning Director, Kevin Tolloty, will start on January 1, 2015.

This is Dan Swafford’s last meeting as a member of the Plan Commission. We thank him for serving on the Plan Commission and wish him well. Mr. Swafford said it has been a pleasure working the Plan Commission over the last eight years. He thanked the Engineer and the Planning Department, it has been a pleasure.

**Adjournment**

Terry Baker entertained a motion to adjourn. Dan Swafford made a motion to adjourn. Pat Wesolowski seconded. Terry Baker adjourned the meeting at 6:21 p.m.