

February 6, 2014

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, February 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 6:00 p.m. Don Calvert led the Pledge of Allegiance.

Roll Call: Members present were: Terry Baker, President; Russ Ryle, Vice President; Don Calvert, Dan Swafford, Pat Wesolowski and Sandra Hash. David Drake was absent. Connie Griffin, Director of Planning, and Darla Brown, Town Attorney, were also present.

Approval of the Minutes – October 3, 2013

Terry Baker entertained a motion for approval of the minutes for the regular meeting on October 3, 2013. Dan Swafford so moved. Russ Ryle seconded. Motion carried.

Election of Officers

Dan Swafford nominated Terry Baker as President. Pat Wesolowski seconded. Motion carried.

Pat Wesolowski nominated Russ Ryle as Vice President. Dan Swafford seconded. Motion carried.

Russ Ryle nominated Sandra Hash as Secretary. Terry Baker seconded. Motion carried.

Old Business

Revision to Code 152 Land Usage, Residential

Connie Griffin, Director of Planning, explained the Town Council approved the ordinance in December. It has been returned to the Plan Commission for comments. Ms. Brown added the Town Council passed the ordinance with amendments on December 23, 2013.

Russ Ryle said the Town is currently dealing with chickens and they will be dealing with rabbits. Ms. Brown remarked although this is under §152 it is not in this version of the ordinance and is a separate issue. Mr. Ryle asked if this ordinance does not deal with chickens. Ms. Brown replied no, §152 does not deal with chickens.

Connie Griffin is proposing two amendments she would like to provide to Town Council. §152.184 discusses visibility at intersections and site triangles. The original code is 20 feet and the definition has 15 feet. She wants to make them both 20 feet. §152.056(4) reads as follows: *“Every person, partnership or corporation owning, occupying or controlling land located in the Town, without regard to its level of development, shall eradicate all “regulated vegetation” thereon.”*

§152.056(5) states “. . . all ‘regulated vegetation’ regardless of the degree of development . . .” Some subdivisions have wooded areas outlining a border. She suggests an exclusion stating *“regardless of the degree of development and excludes natural wooded areas.”* For natural wooded areas she wants to use the following definition: *“Natural wooded areas are complex eco systems in which trees are a dominant life form interacting with animals and other plants in a delicate bounce. Natural wooded areas are comprised of native deciduous forests, coniferous forests and hardwood coniferous forests.”* She wouldn’t expect people to go in and clean out a wooded area of regulation vegetation. Ms. Brown asked if her proposal is to put natural wooded areas in the definition section and a phrase under §152.056(4) and (5) that says *“excluding natural wooded areas.”* Ms. Griffin replied that was correct.

Russ Ryle asked if this applied to both completed and land up for development. If he has land just zoned for development, but by itself is a natural wooded area when it comes into Town, does this mean he has to clean it

up? Ms. Griffin replied no. She is thinking of subdivisions that are at different stages where some lots are vacant. She does want the developers to keep it at 9" with maybe three or four cuts in the summer. They would not have to deal with any natural wooded areas already there which are being used as a buffer zone, natural landscaping or green space. Mr. Ryle is concerned with where undeveloped land ends in a natural wooded area and a developed subdivision begins. Ellettsville is surrounded by undeveloped property. For example, he has an 80 acre field that is now a field of forest that has been brought into the Town and nine months later comes through with a development plan. After the nine month period and once it is accepted into the Town does he have to immediately do something with the land to manage it until he has an approved plan? Ms. Griffin replied no, not at all. When it has been made a subdivision she would expect everything on those lots that have been clear cut to be maintained. Mr. Ryle explained right behind his house they went through an eight year period where they piecemealed developing Mustang Drive. If he reads the ordinance the way it is intended they would not have had to clean up anything off that undeveloped land for eight years. Ms. Hash doesn't think that is correct. Where the grass is mowed and it is clear they would have to continue to do so. Around the back edge where it is wooded they wouldn't have to bother that. Mr. Swafford added once they start it they have to maintain it. Mr. Ryle asked if he has a 30 acre development and does two lots this year and two lots next year would he only have to manage two lots the first year. Mr. Swafford replied yes and that is typical everywhere. They would have to come to the Plan Commission for approval and before they start building they would have to return for a final plat. Ms. Hash added once it is platted they have to start maintaining it. For example, when Smithville did a huge annexation they built their warehouse on a small portion and are still using it for pastures and there are some natural woods. Smithville hasn't had to do anything with their wooded area and they wouldn't want them to. Mr. Swafford stated it's simple. If they start working on it they have to keep it up.

Connie Griffin explained the items removed from this code by the Town Council had to do with aesthetics, something deemed a civil issue or it evoked higher standards in keeping an area clean. Some of the standards she proposed were a little stringent. In an October 2013, Town Council meeting there were concerns with over governing. This is why the natural landscaping regulations were stricken and parking restrictions were changed. Ms. Brown added the imminent danger was deleted for some of the reasons mentioned by Ms. Griffin. The private swimming pool regulations were deleted because Indiana statutes are adopted by reference and cover what was proposed in the ordinance. Ms. Hash added the trash dumpsters and outside storage was removed. Ms. Griffin said these things did not hurt the enforcement efforts. Ms. Hash said what the Plan Commission had passed and sent to the Town Council did have a lot of detail but is more mainstream now. The part about auto repair was also removed. What is the next step if they agree with the Town Council's recommendation? Ms. Brown suggested if they are satisfied with the changes by the Town Council and want to send it back with Ms. Griffin's amendments there needs to be a motion to that effect. If the Plan Commission disapproves of the Town Council's changes it can be stated in a motion and it would have to go back to Town Council and they would have to re-affirm their previous passage of the ordinance. In other words, if the Plan Commission wasn't happy with the Town Council's suggestions they can make a motion to that effect in which case it goes back to them and if they reaffirm what they passed on December 23, 2013, and then it passes or the ordinance is enacted in that form. If the Plan Commission is satisfied with the proposed amendments they can send it back to Town Council for approval.

Terry Baker entertained a motion to send it back to the Town Council with Connie's amendments. Dan Swafford made a motion to send it back to the Town Council with Connie's amendments. Russ Ryle seconded.

Darla Brown confirmed they are approving the Town Council's amendments with the minor revisions Ms. Griffin suggested. Mr. Ryle answered yes.

Roll Call Vote: Terry Baker – yes; Russ Ryle – yes; Don Calvert – yes; Dan Swafford – yes; Pat Wesolowski – yes and Sandra Hash - yes. Motion carried 6-0.

During the roll call vote, Ms. Brown noted it is helpful to do an ordinance this way because they can see how things fit in with each other. But, as they found out it is also rather cumbersome. In the future they will break it down into smaller chunks and look at each chunk separately because it builds and is hard to track.

New Business

Chapter 96

Connie Griffin, Director of Planning, doesn't want too much of a discussion because she hasn't done the public hearing notice as this will be discussed in March. It is posted on the web site. This is the section on chickens. She wants them to look over it and be ready to discuss the setback information and accessory structure heights. Ms. Hash asked how this differs from the one that will be on the final reading at the Town Council meeting on February 10, 2014. Ms. Brown answered it is not. Her suggestion would be the Town Council table it until the Plan Commission has had a chance to look at the ramifications from a planning and zoning perspective. Her purpose in doing it this way was to streamline it. The Town Council will decide how many chickens there will be and where they will be in the Town. She thinks it is in the Plan Commission's prevue to decide specifically within what zones the chickens will be allowed, setbacks, coops and how they want the structures to look. She suggests if the Plan Commission members have any suggestions for how this code should look for §152 purposes let her know and they can incorporate it so the ordinance is ready for everyone to review at the next Plan Commission meeting. Then it can go to the next Town Council meeting. Ms. Hash asked if there will be animals in §§96 and 152. Ms. Brown replied that is correct. Ms. Hash asked if this section will be redone to be §152. Ms. Brown answered part of it. Sections 6, 7, 8 and 10 are within the Plan Commission's prevue. Whether or not they are allowed at all and there are hens or roosters is within the Town Council's prevue. Ms. Hash asked if the Plan Commission doesn't work on this until March and the Town Council is to table it on February 10, 2014, should it be put back on the Town Council agenda after the March Plan Commission meeting. Ms. Brown replied yes.

Don Calvert asked in §96.02(C)(11) if homeowners' association regulations trump Town code. Ms. Brown replied if there are homeowners' association bylaws that are more restrictive than the Town code then yes people need to follow those regulations. When people buy their property in a suburb they take their property subject to those homeowner's association bylaws. Frequently, if not always, the bylaws are recorded in the Recorder's Office and anyone can look them up. She suggests to homeowners if they take a home subject to certain restrictions with regard to animals they have to follow those even though the code may be more expansive. Ms. Hash asked about covenants and restrictions. Her addition is older and she's an original property owner. Title searches aren't done like they use to be and people do not get all of this information. People who have moved in the last decade would have to take the incentive to look up the covenants and restrictions at the Recorder's Office. How do they know? Would they have to sue their neighbor? Ms. Brown answered if people take their home subject to certain covenants and restrictions it is their responsibility to find out what those are. The deed will state the buyer is taking it subject to certain covenants or restrictions that are on file with the Recorder's Office and they will be bound by them. Ms. Griffin noted most covenants and restrictions for properties in Town do prohibit livestock. Mr. Wesolowski asked what happens if the Town wouldn't allow chickens but a homeowner's association decides to permit them. Ms. Brown answered the Town code would prevail because it was in existence before the homeowner's association made its rule.

Don Calvert has a problem with this. Things change. The Plan Commission could really get locked into something if they're not careful. The Town is trying to liberalize and let people have chickens but someone could find a neighborhood that in 1960 had stipulations there would be no chickens. Therefore, 50 to 60 years later the Town tries to change things and can't then dumps it on the people they're supposed to be serving to struggle and fight for themselves. Mr. Ryle stated there is a line beyond which government can't go and beyond where it's interpersonal. He thinks this is crossing that line. Ms. Hash noted when the Plan Commission approves a subdivision, the final plat has the covenants and restrictions. The plats Ms. Griffin has are those that have been done in the Planning Department. Otherwise, she would have to go to the courthouse where it has been recorded. Ms. Brown added frequently on the plat map in the corner, in tiny print, it will mention there are bylaws that apply. Those are recorded at or about the same time as the plat. Ms. Hash noticed there's a sign stating "eggs for sale" in her addition. The people who have them have a decent coop but have put up construction fencing and

there's no grass. It's a pretty big area in their yard. To do chickens properly, you have to rotate the tractor pen all over the yard. She hates to see the Town get into it but it is new urban living.

Dan Swafford asked if there are any other Towns that can give examples of having coops. Have you looked into any other Towns for any descriptions? Are they overkilling it? Ms. Griffin replied the Town is under. Ms. Hash thinks it will lead to more problems. If people start doing this the Town will have to amend its code because it will get out of hand. She read an article about someone who had chickens and a beautiful home. He loved his chickens but couldn't handle the waste so he got rid of them.

Pat Wesolowski asked if the Town allows chickens and someone doesn't take care of them who will enforce it and how stringent will the enforcement be. They had better be ready to handle the enforcement of it or not have an ordinance. Ms. Brown replied it will depend on which section of which ordinance the individuals are violating. If the Town Council finally decides, for example, that people can only have five chickens and they have ten they will be written a citation under §96. If their violation is that they have constructed a structure that doesn't meet the setback requirements or doesn't meet whatever the Plan Commission decides the structure should be then that's a violation under §152. They will get a citation for that. It would be helpful to have the Plan Commission talk about chickens from planning and zoning at the same time the Town Council is deciding what to do about chickens under §96 so that everybody is having this discussion. Then when the ordinances are passed, they're passed simultaneously. Mr. Wesolowski asked if it is the same as having an abandoned car. If they don't pay their fine it becomes a lien on the property taxes. Ms. Hash replied they don't file liens for cars. Ms. Brown added it depends on the way the code reads. She anticipates the individuals will be given a citation. Then the way it is set up the Clerk-Treasurer is the violations bureau and if they don't pay she turns it over to Ms. Brown and she files an ordinance violation with the courts. Ms. Hash asked who issues the ordinance violation. Ms. Brown said this hasn't been decided for §96 and will have to be discussed. Mr. Ryle advised the Planning Director can only issue a citation under §96 but cannot under §152 because they only enforce planning ordinances. Ms. Brown thinks under some of the abandoned vehicles code the Planning Director does have the authority under that section. Mr. Ryle thinks by default yes but technically it is not her prevue to do that. Ms. Brown replied that's a legitimate opinion and asked for his suggestion. Mr. Ryle's suggestion is they follow the ordinance. The Town, by default, doesn't have any way to deal with it but that's a Town Council issue and not a Planning issue. Ms. Brown said it will be the decision of Town Council and the Plan Commission unless the Town wants to fund a separate ordinance enforcement person.

2014 Legislative Procedures Update – Canceling Meetings

Connie Griffin, Director of Planning, proposed an update to the 2014 Legislative Procedures for canceling meetings. The Plan Commission can still meet if they have the meeting materials and she is unable to attend. She posts the meeting materials on the website about one week before the meeting. Case files should also be ready about one week prior to the meetings. Mr. Calvert said Ms. Griffin is to be commended on the organization she brings and getting the documents to them on time. Ms. Hash stated even though the documents are on the website and they're paid a stipend for attending meetings she feels she needs the documents to look at while they're being discussed. It is extremely confusing and is an expense for a Plan Commission member to maintain a printer for printing the work they need to bring with them to make good decisions. It's nice to have something to mark on during the meetings. Mr. Calvert suggested it could be put on the overhead screen. He writes notes. Mr. Wesolowski agrees with Ms. Hash and remembers having packets years ago when he was on the Plan Commission. It would be nice to get a packet of everything they're going to talk about for that meeting. Mr. Swafford has been on the Plan Commission for eight years and doesn't want the paper. Mr. Ryle wants to be able to access archived documents. Ms. Griffin advised she does not archive the documents but does keep dated versions of the documents on her computer. Ms. Brown advised the law requires minutes and ordinances and resolutions as passed are to be kept. An electronic or paper copy needs to be saved but it is only the final version. Ms. Hash stated she keeps all the ordinances and resolutions in binders in a vault at Town Hall and on computers which are backed up to carbonite every night. At the State Board of Accounts, the only recognizable form of permanent media preservation is microfiche. Ms. Brown will check on any statute requiring that archived drafts of resolutions and ordinances be kept.

Planning Department Updates

Connie Griffin has started the Jerry and Norma Abbitt annexation of two parcels on Starnes Road behind Richard's Small Engines. One parcel is with family members and the other is the home. It is all farm land and in residential use.

Plan Commission Comments

Don Calvert thanked the Street Department for doing an incredible job on plowing streets. Mr. Baker added the Town is fortunate to have the department and they're all good guys. Mr. Ryle agreed they all are because when it got tough Utilities and the Street Department worked together.

Adjournment

Terry Baker entertained a motion to adjourn. Don Calvert made a motion to adjourn. Russ Ryle seconded. Motion carried. Terry Baker adjourned the meeting at 6:58 p.m.