

## **June 4, 2015**

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, June 4, 2015, 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. Terry Baker led the Pledge of Allegiance.

**Roll Call:** Members present were: Terry Baker, President, Russ Ryle, Vice President, David Drake, Scott Thomas, Pat Wesolowski and Sandra Hash. Don Calvert was absent. Kevin Tolloty, Planning Director, Rick Coppock, Bynum Fanyo and Associates, Town Engineer, and Darla Brown, Town Attorney, were also present.

### **Approval of the Minutes**

Terry Baker entertained a motion for approval of the minutes for the regular meeting on May 7, 2015. David Drake so moved. Pat Wesolowski seconded. Motion carried.

### **New Business**

#### **Hidden Meadow Subdivision, 5200 Block of N. Teresa Lane and the 4700-4800 Blocks of W. Hidden Meadow Drive; Petitioner: Henry's Fork, LLC, Case No. PC 2015-05**

**Kevin Tolloty, Planning Director**, explained this is a request of Henry's Fork, LLC to amend the final plat for Hidden Meadow Subdivision, Phase I. The applicant recently purchased the lots and is interested in re-platting them from smaller lots that accommodate two family homes to larger lots that accommodate single family homes.

**Steve Smith, Smith Brehob and Associates, Inc.**, represents Henry's Fork, LLC ("Henry's Fork"). His office has been involved with the project since 2007 which started as a paired home project. Although approved in 2007 the project was platted in 2008 as an over 55 neighborhood. The covenants were recorded in 2008. In 2009, the covenants were changed to remove the over 55 stipulation. The first and second units were sold in 2010, the third in 2012 and the fourth was sold in 2014. The land went back to the bank and was purchased by Henry's Fork this year. Originally, there were 30 lots in the subdivision and four have been sold which leaves 26 lots zoned for duplexes. Henry's Fork wants to reduce the lots to 16 single family homes because the previous project did not succeed and sold four units in seven years. Houses adjacent to the project are single family. Single family units will generate less people and less traffic because there will be 16 homes with families instead of 26. The lots are larger and meet the minimum lot size requirements.

**David Drake** explained as part of a subdivision and plat approval the Plan Commission does not control the architecture of the buildings. The lot size can be changed as well as building single family homes instead of duplexes. The petitioner can build what they want as long as it meets the minimum square footage requirements. The issue seems to be people living in the subdivision want the homes to look the same as theirs. The Town does not control the layout, footprint, style, brick or siding. Mr. Smith agreed and said the only thing at issue is whether there will be 26 or 16 single family lots. Mr. Drake said it seems better to have single family residences than what could potentially be duplex rentals. Mr. Smith explained of 30 lots four were developed with two duplexes. Mr. Drake stated when

they're approving a plat all they're approving are the lots. The Plan Commission has no control over the architecture of the buildings or the design. Mr. Tolloty agreed. There is nothing in the zoning ordinance that applies to design or architecture. It controls lot layout, width, depth or overall size. This is for a plat amendment and almost all infrastructure is in place. Mr. Drake stated if a plat meets certain criteria, which this would because it is fewer lots than what it started out has, the Plan Commission has to approve it. If the Plan Commission doesn't approve it they have to justify the same in findings under the statute and explain why they are not approving it. The architecture of the building is not one of those choices for denying a plat. It is unfortunate that sometimes things don't build out or turn out the way they want but that is not government's role. They don't have any action they can take in regards to that. Mr. Smith advised they did meet with Kevin early on to go over the ordinance and requirements. The plat before the Plan Commission is designed to meet those criteria.

**Russ Ryle** asked if the covenants were changed in 2009. Mr. Smith answered yes. Mr. Ryle asked if the first lot was sold in 2010. Mr. Smith answered yes. Mr. Ryle said, therefore, the current owners of the four duplex units knew they had lost the 55 and over protection when they purchased the property. Mr. Smith answered yes. Ms. Hash asked if 26 lots would accommodate 52 houses. Mr. Smith replied 26 lots accommodates 26 units or 13 buildings. They're amending the plat to go from 26 units to 16 units.

**Michael Bengtson** previously provided a letter to the Plan Commission. They finished the last pair patio home. His letter was framed to let them know the sign is still there. Protective covenants say the homes cannot be rented. New owners told them it is not their intent to use brick veneers. Some of the homes will get brick veneer to the bottom of the windows. They're against vinyl siding. The new developers have stated they don't think duplexes would sell. This was developed in 2007 and in 2008 the market went in the dumpster. There are no units available to speculate if they can sell and there is no stock like these in Ellettsville. The covenants state everything has to be brick, have a concrete drive and other things. His speculation is as valid as the developers. With the market coming back he thinks they could sell duplexes. The number of lots being reduced will also reduce tax dollars. They were looking forward to a quiet neighborhood. Mr. Smith is correct in stating the portion of the protective covenants for 55 or older has been removed which is unfortunate. He hopes the Plan Commission will vote against the subdivision. It betrays those who have purchased in this area and will not be the neighborhood they expected. He realizes not everyone is sympathetic to this. They are here to stay, they like Ellettsville and they will be permanent residents. He is asking the Plan Commission to vote against this.

**Larry Bentley** is the second owner who bought in the subdivision. They bought with the understanding it would be a quiet senior community and now it could be wide open. As the Plan Commission mentioned they have no governance over the architecture of the buildings. Is there anyone in local government who has any say over the architecture of the homes? Mr. Baker answered no. He has no objection to some single family homes being put in their corner on Hidden Meadow Lane and Teresa Lane but he would like to see it continued to be developed as duplex homes. It would be much better for their property values if it was left as duplexes.

**Bev Rohrer** lives on Teresa Lane. The new development will be coming through her neighborhood to get to Hidden Meadow. What is the square footage of the houses that will

be put up? This tells her what kind of homes will be built and what will happen to their homes as far as price. Mr. Tolloty advised they don't have a square footage but the minimum is 950 square feet. Ms. Rohrer remarked that is not good enough and the value of their homes will go down and that isn't right. Her backyard has a hill that comes down and she is concerned about erosion. Will they be responsible for the erosion and the mud? She's not an engineer but does know with common sense there is only 20 feet in the backyard. She is against a 900 square foot home. When she bought her home, it was to be a retirement home. It's a quiet neighborhood. They pay a little bit of money each year to keep their homes and lots. There are rules. Are they going to have rules? If not, it's another negative. She owns her home and only has so much of an income. She can't have people coming in and fixing what they ruin in her backyard.

**Jane Bengtson** explained it bothers her that they're talking about their homes as duplexes. When she thinks about a duplex, it is not what she and her husband finished out for \$185,000. It is one level, wheelchair accessible, for retirement, two car garage, cement and all brick. They didn't buy a duplex where someone can come in and rent it. What they built is high-end. It isn't a cheap duplex. The attorney has made it seem like they're going to be the duplexes at the end of the street because Ellettsville really isn't all that classy compared to Bloomington. She doesn't believe this is true and thinks there are a lot of beautiful homes in Ellettsville. She calls them a paired patio home and they're not junky. The age limit was removed because the prior developer wanted to sell them faster. There are so many other conditions in the covenant that they feel are not going to be met. If there are single family homes it won't be possible for the things in the covenants to be done. She hates they're making it sound like they live in dumpy duplexes. They moved from 4,300 square feet to 1,700 square feet and it's not dumpy.

**Delores Robbins** and her husband were the first owners in Hidden Meadow. They bought it under different circumstances than now. She's concerned that they're going to lose a lot of their property with the type of houses that will be built. The parcels should have patio homes because this is what they were sold and told they would be. It was a retirement community. They bought this home because they got 4' wide halls and doors. Allan Dick designed these after a property in Indianapolis. These homes were to be for the elderly. Ms. Robbins read the following letter: *"These parcels of ground should have patio homes built on them due to the fact they would follow the flow of the two duplexes that are already there. These should be built of the same design, style and material as the two duplexes [patio homes] that are already in place on these two streets. The reason being they will not take away from the value that is already built. If you desire for single built homes it will be better for those homes to be built east of Teresa Lane. These homes would not have the impact on the patio homes and it would give a choice to potential buyers of all ages since that's what's been changed. Due to the complexity of the fact they had nothing to do with the previous owner's situation in this straight they are now in and this is not fair. When they purchased the patio home it was because of the style and the fact it was to be a senior citizens community. Yards were to be kept, snow was to be removed and gutters would be cleaned. They were to pay fees so this could be done and there was to be an elected committee. They wanted to keep the area nice. They realize this is a far cry from what they started out with and hope they find it in their heart to compromise with them on a now difficult situation that is none of their fault. We believe that patio homes would sell because they have personally shown their patio home many times due to the fact that there were none completed. That was not their fault. Allen didn't have the money, didn't want to do them or decided to quit, she doesn't know why. They would welcome the patio homes in*

*this specific area. This way they would still have value in their homes. Their taxes have raised and they know why. It is because they have two new schools in the area. They're ready to support Ellettsville in that area but she is not ready to support what they want to do now. That's wrong."*

**Dick Jackson** has lived on Teresa Lane for two years. Compared to where he came from on Reeves Road this is a safe haven because it is quiet. He has been through this before with arguing unsuccessfully against a development on Reeves Road in the old Town Hall. His argument before was about getting a lot of riffraff in. Where he lives now is nice and quiet. He is 80 years old so quiet means a lot to him. He also has an embankment behind his house. He understands they want to build all single family homes. If this is true, he wants the Plan Commission to hold their feet to the fire and make sure that's what it is. He wants them to stay away from building Section 8 housing in this project as they did on Mustang Drive.

**Joe Solus** lives on Teresa Lane. When they turn into Union Valley Farms, there is a hill with traffic. He is wondering if they build the other subdivision with all the additional houses is there only going to be one entrance that comes in from Union Valley Road. If the existing entrance bottles up are they going to consider another entrance to get in and out of the Teresa Lane area?

**Steve Emery, member of Henry's Fork, LLC**, thinks it sounds as if some of the folks were misled by the original developer. The fact is, the 55 and older age restriction was removed before any of these units were sold. The amendment to the covenants was recorded on August 1, 2009. The minimum building size required by the covenants is 1,200 square feet. They anticipate to leave it as the minimum floor area. They're working with a builder who will build homes from 1,500 to 2,500 square feet. The homes in Union Valley Farms have a different design but they are similar as far as market target. There will be concrete driveways and two car garages as stated in the covenants. As for erosion, there is a large berm on the north edge of the property which will prevent any runoff. They and their builder will be bound to comply with all drainage and erosion control requirements during construction. They're going from 26 potential dwelling units to 16. There will be 18 to 20 lots remaining to the east that they're not addressing and haven't been platted. Those lots will also be reduced in the overall number. By the time this project is done they will have fewer dwelling units on this 20 acre parcel than originally proposed by the prior developer. There is a second entrance to the east out of the Union Valley Farms development so there will be two ways in and out of the Hidden Meadows subdivision but the one entrance into Union alley Farms from Union Valley Road will not change. He understands there are expectations but reality comes into play and, unfortunately, the prior developer went belly-up and those things are off. The covenants and restrictions allow the developer, as long as they own 75% to change them. There is nothing in the covenants and restrictions requiring paired patio homes to be built. They did meet with the neighbors and tried to explain where they were coming from on the project. They are not downplaying Ellettsville. They love Ellettsville and they're happy to be here. They want to build a development that everybody in the community can and will be proud of. They did have builders provide estimates on building paired patio homes. The cost to build combined with the cost of the infrastructure can't be done with a reasonable profit. They would have to sell for \$210,000 to \$220,000 per side and there isn't a market at this time. Union Valley Farms, the adjoining neighborhood, is a lovely neighborhood and well kept. The majority of the homes in Union Valley Farms are vinyl. They intend to have at

least 25% to 75% brick or some kind of masonry on the front of these homes which will dress them up. They will have a different look and feel which will make them look as good as or nicer than the homes in Union Valley Farms. To the people in Union Valley Farms, there won't be anything built there that isn't as nice as what they have now. If the four residents want to continue, have an association and engage in common maintenance he will make that happen in the covenants by creating a sub-association. There will be an association for the overall neighborhood to take care of mowing the common areas including the large drainage detention basins and a couple of entry signs. The assessment will probably be \$50 a year. This is an administrative petition and there's not a lot of discretion. If they meet the minimum lot size, setbacks and the other development code requirements for the subdivision he thinks they're entitled to an approval. They've mowed the subdivision, picked up litter and they intend to keep it maintained during the development process. All of the construction traffic will enter through the east entrance which is gravel. They will sell the adjoining lots to the paired homes for the same price they're offering to the developer. Someone in the audience asked the price of the lots. Mr. Emery replied they are \$32,000 for combined lots.

**Russ Ryle** asked the market price range for the homes they will build. Mr. Emery answered it is approximately \$150,000 to \$225,000. An audience member asked if construction traffic will be entering through Andrea Drive. Mr. Emery answered it is the street going into the gravel lane from the east end of the property. That is the original preliminary layout of the overall subdivision and that entrance will stay there. Someone asked if there will be sidewalks. Mr. Emery replied yes, they are required. Someone in the audience asked if there will be any three car garages. Mr. Emery answered it is an option. Raymond Moore of Henry's Fork, LLC advised there will be basic plan offered and people can upgrade. After a discussion on square footage of the homes, Mr. Emery advised the requirement of a minimum of 1,200 square feet will remain the same in the covenants.

**John Barnes, President of Union Valley Farms**, acknowledged the comments of how beautiful Union Valley Farms is and remarked it comes at a cost. He is more than happy to see this if it is going to proceed as planned. It is a big responsibility to make sure everybody abides by the rules. He wants to make sure Union Valley Farms stays beautiful. Ms. Hash noted every addition should be so lucky to have someone who cares as much as Mr. Barnes. Mr. Emery commented they will have a homeowners association and ultimately, it will be turned over to the homeowners including those in the four paired homes. Ms. Hash stated covenants and restrictions is the agreement between the buyers of the property and the developer. The Town has no control over covenants and restrictions. If they are not enforced properly it becomes a civil matter. The Plan Commission is bound by the rules in the Town Code and as long as the lot size change fits the code then we are held to that decision. All of their comments are appreciated and she certainly understands. She wishes everyone the best. It sounds like Mr. Emery is going to work with them and there will have to be give and take on both sides.

**David Drake** commented they all understand this is a bad situation for those already living in the subdivision. It is an unfortunate situation and it sounds like they were sold a bill of goods by the previous developer but the Town has no control over this. The Town has no legal basis to deny the change to the plat. He doesn't see what good it would do even if they could legally do so which they cannot as long as they meet the requirements. Then, all they would be doing is changing it from being two homes in one building to single family. This is all they can change. It doesn't change their situation other than to have fewer

people and less traffic by making it R-1 instead of R-2. The Covenants and Restrictions are a civil issue and not something the Town can control.

**Raymond Moore, Partner, Henry's Ford, LLC**, has done several subdivisions around Monroe and Lawrence County. If people would like to drive through them some of the subdivisions are Eagle View which has 158 homes, Ashwood in Bedford and Allen Valley on Bloomfield Road.

**Terry Baker** stated the previous Letter of Credit has expired. A new Letter of Credit is needed. Mr. Emery understands and is working with a bank to provide it. When they receive the total they will provide the Letter of Credit with the plat recorded. Mr. Tolloty advised his office met with the Street Department on site to look at the asphalt and they are working on the cost. Street trees and sidewalks will be covered under the Letter of Credit.

Terry Baker entertained a motion to approve the plat amendment for Hidden Meadow subdivision, Phase 1, conditioned upon a Letter of Credit for outstanding items, the amount later to be determined but to cover including, but not limited to, sidewalks, street trees, street lights and asphalt top coat. David Drake made a motion to approve the plat amendment for Hidden Meadow subdivision, Phase 1, conditioned upon a Letter of Credit for outstanding items, the amount later to be determined but to cover including, but not limited to, sidewalks, street trees, street lights and asphalt top coat. Scott Thomas seconded. Roll Call Vote: Terry Baker – yes; Russ Ryle – yes; Don Calvert – yes; David Drake – yes; Scott Thomas – yes; Pat Wesolowski – yes and Sandra Hash - yes. Motion carried 7-0.

## **Planning Department Updates**

**Kevin Tolloty, Planning Director**, commented the Comprehensive Plan Steering Committee is almost completed. The first meeting will be in July.

There is a Nitty Gritty Plan Commissions and Boards of Zoning Appeals workshop on Thursday, July 16, 2015, in Indianapolis. If any Plan Commission member would like to attend the cost is \$85 and would be paid for by the Planning Department.

## **Privilege of the Floor – Non Agenda Items**

**Darla Brown, Town Attorney**, explained the Plan Commission is required to make written findings on plats and they're proposed as follows:

1. Before the Plan Commission may grant approval for a development plan, the Plan Commission shall determine if the plat application and plat comply with the standards of the Town's subdivision control ordinance. (I.C. 36-7-4-707)
2. Chapter 153 of the Ellettsville Town Code sets forth the subdivision regulations. The regulations regarding primary plat approval are set forth in subsections 153.020 through 153.023.
3. Section 153.024 states a preliminary plat shall contain the following information: A copy of the Town of Ellettsville zoning ordinance is attached hereto and incorporated herein as Exhibit A.
4. Petitioner, Henry's Fork, LLC, applied to amend the final plat for Hidden Meadow, Phase 1. A copy of the proposed plat is attached hereto and incorporated herein as Exhibit B.
5. Findings and conclusion: The application was assigned Docket No. PC2015-05 and was scheduled for public hearing on June 4, 2015. Public notice of the time, place, and subject matter as subject to the hearing was duly published.
6. The following Board Members attended and participated in the hearing: Terry Baker, Russ Ryle, Sandra Hash, David Drake, Scott Thomas and Pat Wesolowski.

7. Town of Ellettsville Planning Director Kevin Tolloty presented his Staff Report on the application to amend final plat. A copy of the staff report is attached hereto and incorporated herein as Exhibit C.
8. The Board accepts this fact of following information:
  - A. The proposed plat amendment would affect only the unbuilt lots on the platted portion. She incorporated information from the Staff Report.
9. Individuals who presented testimony in opposition to the proposed plat amendment included Michael Bengtson, Larry Bentley, Beverly Rohrer, Jane Bengtson, Delores Robbins, Dick Jackson, Joe Solus and John Barnes. The individuals who presented testimony in opposition to the plat amendment presented concerns regarding traffic congestion, erosion control, reduced property values, architecture and the size of the homes to be built.
10. The individuals who presented testimony in opposition to the proposed plat amendment presented no evidence as to why the proposed plat amendment failed to meet the Town's standards for approval.
11. Based upon the above findings the Plan Commission concludes and finds that the Petitioner's application meets all the requirements as set forth by the Town of Ellettsville zoning ordinance. The proposed plat amendment is hereby granted upon the Petitioner posting a Letter of Credit in an amount to be approved by the Planning Director.
12. The Planning Department Staff Report dated May 27, 2015, shall be adopted as part of the Findings of Fact so found and concluded by the Ellettsville Plan Commission on this 4<sup>th</sup> day of June, 2015.

David Drake made a motion to approve the Findings as proposed. Russ Ryle seconded. Motion carried.

## **Adjournment**

Terry Baker entertained a motion to adjourn. David Drake made a motion to adjourn. Russ Ryle seconded. Terry Baker adjourned the meeting at 7:08 p.m.

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Terry Baker, President

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Russ Ryle, Vice President

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Sandra C. Hash, Secretary

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Don Calvert

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David Drake

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Scott Thomas

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Pat Wesolowski