

## August 2, 2018

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, August 2, 2018, at Town Hall located at 1150 W. Guy McCown Drive. Terry Baker called the meeting to order at 6:00 p.m. David Drake led the Pledge of Allegiance.

**Roll Call:** Members present were: Terry Baker, President; David Drake, Vice President; Don Calvert, Zach Michael, Brian Miller, Pat Wesolowski and Sandra Hash. Kevin Tolloty, Planning Director; and Darla Brown, Town Attorney, were also present.

### Approval of the Minutes

Moved to Old Business.

### Monthly Conflict of Interest

#### Old Business

**Petition to Vacate a Portion of the Plat and Associated Covenants, 4354 N. Centennial Drive; Petitioner: Steven Emery, on behalf of Centennial Park, LLC; Case No. PC2017-25**

**Kevin Tolloty, Planning Director**, explained the Petitioner is requesting to vacate a portion of the plat and covenants for Lot 15 at Highland Park Estates. In order to vacate a portion of the plat and covenants, certain findings are required. To find for the plat vacation, there are three requirements that must be met and be in the affirmative. To vacate the covenants, one of three criteria must be met.

**Darla Brown, Town Attorney**, advised at the last Plan Commission meeting it was agreed new evidence would not be heard at this meeting. A document containing an email exchange between Mr. Emery and Mr. Carmin was included in the packet but was not previously provided at Plan Commission meetings. The email is considered new evidence. The Plan Commission can either strike the emails from the record and not consider them or if the emails are to be considered, then either the audience or parties should be given an opportunity to comment on the evidence. Mr. Baker doesn't think they need to consider the email exchanges between the parties because they heard a lot of it in the Plan Commission meetings.

**Darla Brown** requested a motion to strike Steve Emery's May 17, 2018, email and Mike Carmin's May 22, 2018, email from the record. David Drake so moved. Pat Wesolowski seconded. Roll call vote: Terry Baker – yes; Don Calvert – abstained; David Drake – yes; Brian Miller – yes; Zach Michael – yes; Pat Wesolowski – yes; and Sandra Hash – yes. Motion carried, with one abstention.

**Terry Baker** announced there would be no public comment and they would continue with the finding of facts.

**David Drake** thinks the Plan Commission needs to take the steps necessary to make the connection with Centennial Drive as it will serve an important public need. Good planning

has connections and that's the best. Another road on the eastside of the subdivision would be long and meandering. This is the best connection for those subdivisions. The proposed route is straight forward, the road is wide and the houses are not close to the street. This will alleviate some of the traffic that comes through Spring Valley from Woodgate Subdivision and tries to turn left with no stop light. As a Plan Commission, their best option is to make the connection.

**Sandra Hash** commented she voted in favor of the annexation because she thought it was best for the public to have another access out of the surrounding subdivisions including this one. It's beyond her understanding why there would be a 50' strip of land that is not being utilized for a road and is undevelopable. She wants to proceed as it was presented to the Plan Commission in the beginning.

**Pat Wesolowski** stated a safety factor is involved for traffic turning onto State Road 46 without a stoplight. He has driven it many times in the last month and agrees with Mr. Drake and Ms. Hash.

Terry Baker entertained motions as to whether or not they're going to approve the vacation of the plat and covenants as to Lot 15. David Drake made a motion to vacate the plat of Centennial Park as related to Lot 15. Pat Wesolowski seconded. Roll call vote: Terry Baker – yes; Don Calvert – abstained; David Drake – yes; Brian Miller – yes; Zach Michael – yes; Pat Wesolowski – yes; and Sandra Hash – yes. Motion carried, with one abstention.

David Drake made a motion to vacate the covenants in Highland Park Estates as they related to Highland Park Estates, Lot 15. Pat Wesolowski seconded. Roll call vote: Terry Baker – yes; Don Calvert – abstained; David Drake – yes; Brian Miller – yes; Zach Michael – yes; Pat Wesolowski – yes; and Sandra Hash – yes. Motion carried, with one abstention.

**David Drake** explained in addition to the staff report in regards to this issue the Findings of fact would be as follows:

1. Centennial Park LLC is the owner of Lot 15 in Highland Park Estates which Lot 15 is located on the northeast quadrant of the Cul-de-sac at the north end of Centennial Drive.
2. Lot 15 in Highland Park Estates has been annexed by and is under the jurisdiction of the Town of Ellettsville, Indiana.
3. On or about May 25, 2017, Centennial Park LLC granted to the Town of Ellettsville an Easement for Public Right-Of-Way over and across the westernmost 50 feet of Lot 15 which Grant was recorded June 7, 2017 as instrument #2017007701 in the office of the recorder of Monroe County, Indiana.
4. Centennial Park Subdivision is under development and at least forty (40) lots will be developed as single family homes. The only point of access to these 40 lots is Ribbon Lane connecting to Woodgate Subdivision and permitting egress to SR 46 only via Lost Man's Lane and Union Valley Road or via Deer Park Drive.
5. Centennial Park Subdivision was originally approved for 78 lots in 2007 based on the genuinely held assumption and belief that the fifty (50) foot strip of land located immediately west of and adjacent to Lot 15 in Highland Park Estates connecting Centennial Drive to the south property line of the proposed Centennial Park Subdivision was, in fact, a 50 foot right of way to be used for the purpose of providing a street connection between the proposed Centennial Park Subdivision and Centennial Drive.

6. In 2010, after the original approval of Centennial Park subdivision for 78 lots, the Monroe Circuit Court held that the aforementioned 50 strip of land could not be used as a street connection.
7. Access to SR 46 via Lost Man's Lane and Union Valley Road or Deer Park Drive by the future residents of Centennial Park and the present residents of Woodgate Subdivision and Spring Valley Subdivision can be dangerous and is not as convenient or as safe as access to SR 46 via the signalized intersection of Centennial Drive and SR 46.
8. There is no guarantee that the proposed connection in future phases of Highland Park Estates to Centennial Park via the proposed Hull Drive and on to Centennial Drive will ever be made.
9. The requirements of IC 36-7-4-711(f)(1) have been satisfied as follows:
  - a. The 2010 court order determining that the fifty (50) foot strip of land located west of and immediately adjacent to Lot 15 in Highland Park Estates was NOT an Ingress and Egress Easement as originally believed is a change in the condition of the platted area that defeats the original purpose of the plat of Highland Park Estates.
  - b. The annexation of Lot 15 by the Town of Ellettsville is a changed condition that defeats the original purpose of the plat of Highland Park Estates because it is no longer in the jurisdiction of Monroe County and the interests of the Town of Ellettsville are different than that of Monroe County.
  - c. The inability to create a street extension within Highland Park Estates generally and specifically across the westernmost fifty (50) feet of Lot 15 as determined by
  - d. the most recent February, 2018 court decision defeats the original purpose of the Plat of Highland Park Estates.
10. The requirements of IC 36-7-4-711(f)(2) have been satisfied as follows:
  - a. The Town of Ellettsville Police and Fire Departments have indicated that the proposed road connection across Lot 15 in Highland Park Estates connecting Centennial Drive to Centennial Park Subdivision will enhance public safety by providing quicker and more direct access to the homes to be built in Centennial Park and thus vacation of the Plat as to Lot 15 to allow such access is in the public interest.
  - b. Access by the residents of the homes to be built in Centennial Park to the signalized intersection at Centennial Drive and SR 46 will enhance public safety by allowing access to SR 46 at a traffic signal as opposed to the dangerous unsignalized access point at Deer Park Drive and therefore vacation of the Plat as to Lot 15 to allow such access is in the public interest.
  - c. Access by the residents of the homes to be built in Centennial Park to the signalized intersection at Centennial Drive and SR 46 will enhance public safety by reducing traffic congestion on Union Valley Road and its intersection with SR 46 and therefore vacation of the Plat as to Lot 15 to allow such access is in the public interest.

- d. Ambulance and school bus service will be safer and more efficient if the proposed road connection across Lot 15 in Highland Park Estates connecting Centennial Drive to Centennial Park Subdivision will enhance public safety by providing quicker and more direct access to the homes to be built in Centennial Park and thus vacation of the Plat as to Lot 15 to allow such access is in the public interest.

11. The requirements of IC 36-7-4-711(f)(3) have been satisfied as follows:

- a. Steady increases in value of homes in other nearby older subdivisions that have occurred since new development of subdivisions with street connections to the older subdivisions demonstrates that street connections do not diminish property values demonstrates that vacation of the plat of Highland Park Estates will not diminish the value of that part of the land in the plat of Highland Park Estates not owned by the petitioner.
- b. Because Lot 15 has been zoned for use as single family residential by the Town of Ellettsville, vacation of the plat of Highland Park Estates will not diminish the value of that part of the land in the plat of Highland Park Estates not owned by the petitioner.

12. The requirements of IC 36-7-4-714(2) have been satisfied as follows:

- a. Because the February, 2018, court decision prohibiting the construction of a roadway across the westernmost fifty (50) feet of Lot 15 in Highland Park Estates is based on the covenants and restrictions of Highland Park Estates, vacation of the recorded covenants of Highland Park Estates is needed to secure for the public convenience of access between Centennial Drive and Centennial Park Subdivision, and safety from fire and other danger as found in paragraph 10 above, which findings are incorporated herein.
- b. Because the February, 2018, court decision prohibiting the construction of a roadway across the westernmost fifty (50) feet of Lot 15 in Highland Park Estates is based on the covenants and restrictions of Highland Park Estates, vacation of the recorded covenants of Highland Park Estates is needed to lessen of avoid congestion in the public ways as found in paragraph 10 above, which findings are incorporated herein.

13. All of the Planning Director's Staff Reports with regard to Petition PC2017-25 are hereby incorporated into these Findings of Fact.

Darla Brown suggested a motion to adopt the Findings of Fact with the added paragraph 13 which states "That all of the Planning Director's Staff Reports with regard to PC2017-25 are incorporated herein to the Findings of Fact. David Drake so moved. Pat Wesolowski seconded. Roll call vote: Terry Baker – yes; Don Calvert – abstained; David Drake – yes; Brian Miller – yes; Zach Michael – yes; Pat Wesolowski – yes; and Sandra Hash – yes. Motion carried, with one abstention.

Terry Baker entertained a motion for approval of the minutes for the regular meeting on July 12, 2018. David Drake so moved. Pat Wesolowski seconded. Motion carried.

### **Comprehensive Plan**

Moved to New Business.

## **New Business**

### **Request to Amend Final Plats of Seven Lots (2.25 Acres) for Edgewood Heights, Section 3 and Edgewood Village Homes, 7200 Block of W. Mustang Drive; Petitioner: Double Clark, LLC; Case No. PC2018-12**

**Kevin Tolloty, Planning Director**, explained this request is for two separate plat amendments that are grouped together because they're in the same cul-de-sac. Total area to be amended is 2.25 acres. The plats realign several lot lines, adjust easements and removes one lot that is not buildable. Staff recommends approval of each of the plats. Mr. Drake asked if they will be single family homes. Mr. Tolloty answered yes, they're approximately 1,500 to 1,600 ft<sup>2</sup> single family homes. Ms. Hash asked if the lots will have the 55+ restrictions.

**Bob Double, Double Clark, LLC**, advised the 55+ restriction was removed from the covenants in December 2017. The restriction only applied to the Edgewood Village subdivision and was not a provision for Edgewood Heights. Mr. Wesolowski asked if Mr. Double rescinded the 55+ restriction. Mr. Double submitted a proposal to the current lot owners. A meeting was held on December 27, 2018, to vote on removing the restriction as covenants require a two-thirds majority of the lot owners. Mr. Wesolowski recalled the Plan Commission designating those lots as 55+. How can that requirement be removed without the Plan Commission? Mr. Tolloty answered it was originally approved as a Planned Urban Development ("PUD") but wasn't documented correctly. The 55+ requirement was shown in the covenants but was not part of the PUD. Mr. Drake doesn't think the small amount of single family homes will affect the traffic issue. Ms. Hash thought the intent of 55+ was so it would coincide with the Area 10 Agency on Aging. When approval was sought for paired patio homes the 55+ requirement was dropped. Mr. Double noted the covenants actually stated 50+. Mr. Wesolowski asked if the fence installed by prior owners was still intact. Mr. Double answered the fencing had been removed. Mr. Tolloty explained there was talk of putting in an easement for the fence. The problem was the plat was never recorded so the easement never took effect. Mr. Double noted when they notified property owners on Reeves Road advising they were taking down the fence they offered to move the fence to the property line so they could keep it. Mr. Calvert stated years ago drainage was an issue with those lots. Mr. Double explained this is why they requested the amendment to create a drainage easement to go around the cul-de-sac then to the retention pond on Lot 41. They thought of connecting into the storm sewer but the Town Engineer didn't think it would work. Their intentions are to put a drain to go between Lots 25 and 26 then wrap around the cul-de-sac and empty into the retention pond. Currently, there is no drainage easement. One of the changes is to add a drainage easement and move the utility easement between Lots 25 and 26. Instead of splitting it, it will be ten feet into Lot 25 and five feet into Lot 26. The water main sits eight feet to the west of the property line. The amendment will bring the water main into the utility easement. Mr. Wesolowski asked if the drainage easement will be in front yards. Mr. Double answered yes. Their intention is to lay drain pipe and fill the natural ditch so driveways can be built over them. There would be an underground 12" to 15" pipe to handle the water because there isn't much grade. Ms. Hash asked where the retention pond is located. Mr. Double answered Lot 41. On the north lots, the drainage easement goes through the middle of Lot 41 which means a house could not be built on it. They're moving the drainage easement to the actual drain between Lots 41A and 42A and Lot 43 is being removed. The drainage easement will be on the property line and that is where the storm sewer and new drainage pipe will exit into the retention pond.

**David Ridge, 7200 W. Reeves Road**, explained when Mr. Fish purchased the property there were two meetings and it was part of the Area 10 Agency on Aging. It was to be a retirement community for 50+. Duplexes were built and families with children have lived there over the years and the 50+ requirement was never enforced. When Mr. Fish purchased it there was an agreement that he would build a fence on a 10' easement for city utilities. Mr. Fish told everyone they could have the property because if there was a problem, Ellettsville Utilities will come in on them instead of his property owners. He never received a letter about lowering the age requirement but did receive a letter about removal of the fence. He has a pool so he has to have a fence around it. He is concerned about drainage and improper erosion control. It was to be a retirement community through the Area 10 Agency on Aging. He spoke with Rick Coppock whom said the lots at the end of the development were to be a park because Mr. Fish was unable to build there due to drainage. The Planning Director told him what Mr. Fish wanted to do was undocumented so the current developer can do what he wants. Mr. Ridge disagreed with this. There was a discussion and photos presented on drainage. He doesn't want the water to back up onto his property or the ditch to fill up with mud. Ms. Hash asked the lot number Mr. Ridge referred to as having a drainage ditch. Mr. Double answered Lots 25 and 26. The whole purpose of the drainage easement is to address the drainage issue referred to by Mr. Ridge. Mr. Ridge is upset with the previous builder because he was told by Ellettsville that he could not build on those lots. Mr. Wesolowski asked the lot Mr. Ridge's house backs up to. Mr. Tolloty answered Lots 26 and 27. Mr. Wesolowski asked if he now gets water on his yard. Mr. Ridge answered no. Drainage from the neighbor to the east of him and two to three houses up from him all goes to a swale toward the ditch. Mr. Tolloty referred to the meeting ten years prior. That was something the Town was involved in. The way it was written, however, was put on an HOA agreement and at that point the Town was not involved and that is why he did not receive notice of the recent changes to the development. Adjacent properties are only notified for public meetings and not the HOA. Mr. Ridge disagreed in that he spoke to Mr. Coppock whom confirmed the prior requirements of not building on the end lots, park land, etc. Mr. Tolloty advised the plat he referred to was drawn up but never recorded. Mr. Ridge reiterated he does not want the ditch backed up and cause water to drain his basement or they're all going to have real problems. Mr. Wesolowski asked Mr. Tolloty if he had spoken with Mr. Coppock, the Town Engineer. Mr. Tolloty answered he's looked at the amended plat and is aware of everything.

**David Drake** suggested tabling the request until such time Mr. Coppock can be present. Mr. Tolloty thinks Mr. Coppock has already looked at this because everyone met several months ago. Mr. Double explained one of the purposes for the amendment of the cul-de-sac is to establish a drainage easement. Currently, there is not a drainage easement on the low-lying area of the southside lots. Plan Commission members agreed to table the matter until Mr. Coppock can be present. Ms. Hash asked if lot lines, other than for easements, are not being changed. Mr. Tolloty answered yes, the lots can be built on except for Lot 43 being eliminated and Lot 42 will be expanded. All other lots remain the same.

Terry Baker entertained a motion. Pat Wesolowski made a motion to table case PC2018-12, Edgewood Heights and Edgewood Village until the next meeting and they can meet with the Town Engineer. David Drake seconded.

The motion was interrupted to change the next meeting to September 13, 2018, as it conflicts with the Monroe County Fall Festival.

Roll call vote on the aforementioned motion: Terry Baker – yes; Don Calvert – yes; David Drake – yes; Brian Miller – yes; Zach Michael – yes; Pat Wesolowski – yes; and Sandra Hash – yes. Motion carried.

Terry Baker entertained a motion to change the meeting to September 13, 2018, instead of September 20, 2018. Pat Wesolowski so moved. David Drake seconded. Motion carried.

### **Comprehensive Plan**

**Kevin Tolloty, Planning Director**, provided everyone with a copy of the Comprehensive Plan. He requested approval so it can be considered at Town Council for final approval. Some of the photos and formatting may be changed.

David Drake made a motion to approve the Comprehensive Plan and forward it to the Town Council. Brian Miller seconded. Motion carried.

### **Planning Department Update**

**Kevin Tolloty, Planning Director**, advised the case tabled at this meeting and an annexation will be heard at the September 13, 2018, meeting.

### **Privilege of the Floor**

### **Adjournment**

Terry Baker entertained a motion to adjourn. Pat Wesolowski so moved. Don Calvert seconded. Motion carried. Terry Baker adjourned the meeting at 7:09 p.m.

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Terry Baker, President

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David Drake, Vice President

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Don Calvert

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Zach Michael

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Brian Miller

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Pat Wesolowski

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Sandra Hash, IAMC, MMC