

## February 7, 2019

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, February 7, 2019, at Town Hall located at 1150 W. Guy McCown Drive. 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; David Drake, Vice President; Don Calvert, Sandra Hash, Brian Miller, Dan Swafford and Pat Wesolowski. Kevin Tolloty, Planning Director; Denise Line, Secretary; 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 November 1, 2018, and the Executive Session on January 3, 2019. David Drake so moved. Brian Miller seconded. Motion carried.

### Election of Officers

David Drake made a motion to nominate Terry Baker for President. Pat Wesolowski seconded. Roll call vote: Terry Baker – abstained; David Drake – yes; Don Calvert – yes; Sandra Hash – yes; Brian Miller – yes; Dan Swafford; and Pat Wesolowski – yes. Motion carried 6 -0, with one abstention.

Terry Baker made a motion to nominate David Drake for Vice President. Dan Swafford seconded. Roll call vote: Terry Baker – yes; David Drake – yes; Don Calvert – yes; Sandra Hash – yes; Brian Miller – yes; Dan Swafford – yes; and Pat Wesolowski – yes. Motion carried.

Sandra Hash made a motion to nominate Denise Line for Secretary. David Drake seconded. Roll call vote: Terry Baker – yes; David Drake – yes; Don Calvert – yes; Sandra Hash – yes; Brian Miller – yes; Dan Swafford – yes; and Pat Wesolowski – yes. Motion carried.

### Monthly Conflict of Interest Statement

**Terry Baker** advised New Business would be heard before Old Business

### New Business

**Final Plat Amendment of the Meadowlands Subdivision, Section 5 located at 811 N. Daisy Drive (0.94 Acres); Petitioner: Beacon Builders, LLC; Case No. PC2019-02**

**Kevin Tolloty, Planning Director**, explained the petition is a final plat amendment of Lot 90 in Meadowlands. The amended plat will create two building lots for single family homes. The lots meet all zoning requirements and have been reviewed by the Town Engineer. Staff recommends approval of the plat. The property is not mapped in a floodplain.

**Patrick Jacobs** lives at 785 North Daisy Drive, two lots from the subject property and has 1.5' of water in his crawl space from today's rain event. He doesn't object to building on the lots but is concerned about water drainage. Ms. Hash spoke of the flooding in the Meadowlands Subdivision. She does not mind subdividing the lot but because of flooding it isn't fair to a future homeowner. There was a discussion over photographs that reflect flooding, location of houses, a tributary and culvert. Mr. Wesolowski asked if the creek flooded continuously or only during large rain events. Mr. Jacobs answered it is not continuous. Water flows from the Overbrook subdivision and his neighbors' down spouts flow water onto his property causing water to back up. His concern is with water coming off the hill as it floods on two lots. Ms. Hash thinks there is a reason the two remaining lots have not been built-out. Mr. Baker asked if Mr. Coppock will look at what affect the elevation will have on the adjoining lots. Mr. Tolloty explained the plans show additional inlets will be added in the intersection. Today's rain event was a flash flood so there was no where for the water to go. Inlets will allow the water to drain quicker and alleviate some of the problems. Mr. Coppock has looked at the elevations. Mr. Baker doesn't want to approve something that will cause harm to others. Mr. Wesolowski asked if the elevation of the lot is raised, will there will be concern for the lots next to it. Mr. Tolloty answered the house will be elevated, not the entire lot. Ms. Hash asked Mr. Tolloty if he had looked at the

original plat for the Meadowlands and if they were buildable lots on the plat. Mr. Tolloty replied yes, it's a buildable lot and a house could be built on it at this time.

**Bill Evans, H. Gibson Surveying**, prepared the plat and design for the proposed lots. Their investigation revealed a low spot in the road. They learned from the Town of Ellettsville that inlets will be added to capture some of the water. His company has designed an inlet for which the builder was going to pay to have installed. Upon review of the photographs, it appears there may be other issues contributing to the flooding other than the layout of the lots. The lots are low and they will build a minimum of 2' above the road. An option is to build a pad. The proposed houses to be built will be at least 1' higher than the house across the street. The other option is a crawl space with flood openings. Pads need to be built 2' above the road and they should avoid a crawl space. However, it will depend on what the soil scientist advises they need to do. The existing swale will be made larger, deeper and rerouted to the east. The Indiana Department of Natural Resources has not determined that the property is in a floodplain or flood zone. They will make a commitment that the finished floor will be a minimum of 2' above the road and the finished grade will be a minimum of 1' above the road. Mr. Wesolowski asked if the lot will be filled in for the house. Mr. Evans explained it will start to slope about 10' from the house. Mr. Swafford asked the average size of the lots. Mr. Tolloty answered on Meadowlands Drive many of the lots were .3 acres. A couple of the lots are larger but a large easement runs behind the property. Ms. Hash explained the Town worked with Charlie Wright in the past to add drainage across from the road. It is a flood prone area and a tributary runs behind the entire street. Not every lot is suitable to build on. Mr. Wesolowski asked if the lot can be built on at this time. Mr. Tolloty answered yes. Mr. Jacobs is getting water in his crawl space because water drains onto his place from all of his neighbors. Moving the flow of water will push it closer to his backyard. His concern is more water in his home.

**Rick Coppock, Bynum Fanyo and Associates, Town Engineer**, advised there are a lot of issues with Meadowlands since it was built without any plans for drainage. The house discussed in the photographs that floods constantly was built 2' lower than it should have been and below street level. There are no inlets so they're looking at putting them in the intersection. The property to the north is to have additional detention ponds to slow the water down as the project is built-out. In normal rain events, the water can be directed to the main channel and to the flow of water. Mr. Swafford asked where the closest retention pond is located. Mr. Coppock answered two have been designed to the south and one in Overbrook. Mr. Wesolowski asked if building two houses versus one alleviates the problems. Mr. Coppock replied it won't add to the problem and they wouldn't notice any difference. Mr. Swafford asked if adding inlets has been looked at. Mr. Coppock answered it was designed and the Street Department has installed some of them. Mr. Baker asked if it is approved, do they return to the Plan Commission with the plans showing drainage. Mr. Tolloty answered it would be final plat and the Planning Department would check when the building plans are submitted. Mr. Calvert commented it needs cleaned up before anything is built. Mr. Baker stated there is a plat for one lot so they can build on it. It shouldn't be subdivided until there is a fix for the flooding. Mr. Evans countered there is no way to fix the problem other than cleaning up the downstream facilities. Mr. Baker recommended denying the petition. Mr. Drake suggested the petition be tabled allowing time for Mr. Coppock to provide a more detailed report on how they can do this and make it work. If Mr. Coppock can show what is going to happen, it isn't going to make the problem any worse and, hopefully, it will be better than he thinks. Ms. Hash disagreed. The lots should not be subdivided. Mr. Wesolowski agreed with Mr. Drake. Mr. Coppock stated there was flooding all over Town. To improve the drainage in the area, additional culverts would have to be added under both of the streets and it is not a cheap fix. Mr. Wesolowski asked if the developer could assist with what needs to be done. Mr. Evans doesn't think the developer would be willing to assist as the improvements being described would cost approximately \$70,000 to \$80,000. The developer will have to spend \$10,000 to \$15,000 to build up the lots. He doesn't have a problem with the petition being tabled.

Terry Baker entertained a motion. David Drake made a motion to table the final plat amendment for Meadowlands Subdivision, Case PC2019-02, to the next meeting. Pat Wesolowski seconded. Ms. Hash interrupted the motion stating she doesn't know what can be accomplished by the next meeting. Ms. Brown asked Mr. Evans if tabling the petition

until March gives them sufficient time for what they need to do. Mr. Evans thinks they can do their due diligence in 30 days.

Roll call vote on the aforementioned motion: Terry Baker – yes; David Drake – yes; Don Calvert – yes; Sandra Hash – no; Brian Miller – yes; Dan Swafford; and Pat Wesolowski – yes. Motion carried 6 -1.

## **Old Business**

### **Petition for Final Plat Amendment, 4723 W. State Road 46, Bloomington; Petitioner: Richland Convenience Store Partners, LLC; Case No. PC2015-07**

**Darla Brown, Town Attorney**, explained when the Supreme Court made its decision in this matter, it upheld the decision of the trial court. The trial court ordered the case be remanded back to the Plan Commission for a dismissal of PC2017-07. She requested a motion on the petition.

David Drake made a motion to dismiss Case No. PC2015-07. Dan Swafford seconded. Roll call vote: Terry Baker – yes; David Drake – yes; Don Calvert – yes; Sandra Hash – yes; Brian Miller – yes; Dan Swafford; and Pat Wesolowski – yes. Motion carried.

### **Approval of Interlocutory Appeal in *Highland Park Estates, LLC vs. Town of Ellettsville, Indiana Plan Commission***

**Darla Brown, Town Attorney**, explained at an Executive Session she asked the Plan Commission if they wanted her to file an interlocutory appeal on the trial court's denial of the Plan Commission's motion to dismiss the Highland Park Estate's petition due to the fact they had not filed the record on time. The final decision has to be made in a public meeting. The consensus of the individuals whom attended the Executive Session was that an interlocutory appeal should be filed. The motion for interlocutory appeal was filed and the court agreed to certify the trial court's order. The next step is for her to file the motion for interlocutory appeal with the Court of Appeals on/or before February 27, 2019. She requested a motion authorizing her to proceed with the interlocutory appeal in the Highland Park Estates matter.

Terry Baker entertained a motion. David Drake made a motion to approve the filing of the interlocutory appeal in the *Highland Park Estates versus Town of Ellettsville Plan Commission* case. Dan Swafford seconded. Roll call vote: Terry Baker – yes; David Drake – yes; Don Calvert – yes; Sandra Hash – yes; Brian Miller – yes; Dan Swafford; and Pat Wesolowski – yes. Motion carried.

### **Rejection of Settlement Offer in *Joseph V. DeSpirito v. Town of Ellettsville, et al.***

**Darla Brown, Town Attorney**, explained Dr. DeSpirito's attorney extended an offer to the Town to resolve this matter which basically included paying all of his attorney's fees. This was discussed with the Plan Commission and Town Council in their respective Executive Sessions. At the public meeting, the Town Council authorized her to send a letter to Dr. DeSpirito's counsel and state the Town was not going to offer to settle the matter. At this time, further discussion or action is not needed by the Plan Commission because of the action taken at the Town Council meeting. A reply has not been received from Dr. DeSpirito's counsel.

### **Text Amendments (§152.001, §152.053, §152.054, §152.057, §152.125, §152.181, §152.184, §152.190, §152.257 and §152.284)**

**Kevin Tolloty, Planning Director**, advised the text amendments were first presented to the Plan Commission at its November meeting. There have been a few changes to the fence section based on feedback from the Plan Commission. Definitions in §152.001 defines front, primary or secondary yards, interior lots and double frontage lots. Verbiage was corrected in the definition of the sight distance triangle. The following changes have been made for fencing: The finished side of a fence is to face outward; clarifies sight distance triangle terminology; permits fences to cross easements at right angles; fences are to either be connected along a property line or to be separated by a minimum of 4'; if there is not another fence it is to be either on the property line or a minimum of 2' off of it and he has been asked to change the height of a fence required for a front yard to 4'. Town Code defines where

signs and buildings are measured but not fences. Included in the text amendment is “A fence height shall be measured from the average grade of the land around the fence before any grading begins.” Diagrams are provided which show the allowable height of a fence and where it can be located on a property. There was a discussion on types, location and the requirement of permits for fences. Included in the revisions, is a section on yard sales in which references to the sign code were corrected and the violation class was amended to match the fine. The Development Plan section was clarified to say all “new” commercial and industrial developments are subject to development plan review. It now includes “Additions to any commercial or industrial development which increase the total square footage by over 100% over the existing square footage.” The easement section was adjusted to match the fence section of the code in that they are allowed in easements at a 90° angle. Visibility at Intersections clarified the reference of the sight distance triangle. The Minimum Yards (Setbacks) section specifies primary and secondary front yards. The section on General Regulations, §152.257, includes a change to clarify the sight distance triangle. Under PUD amendments is a change to allow amendments to a PUD to follow the same procedure for amending the text of the Chapter. Throughout the aforementioned sections, various typographical errors were corrected. A favorable recommendation to Town Council was requested.

Terry Baker made a motion to move it to the next step. David Drake seconded. Roll call vote: Terry Baker – yes; David Drake – yes; Don Calvert – yes; Sandra Hash – yes; Brian Miller – yes; Dan Swafford; and Pat Wesolowski – yes. Motion carried.

**Planning Department Update**

**Kevin Tolloty, Planning Director**, advised at the March meeting there will be a new plat amendment for Love Lane and a development plan for Richland Convenience Store Partners. Long term goals are working on code revisions and fixing the zoning map.

**Terry Baker** advised the next meeting will be March 7, 2019.

**Plan Commission Comments**

**Darla Brown, Town Attorney**, advised she will not be at the next Plan Commission meeting.

**Pat Wesolowski** welcomed Dan Swafford to the Plan Commission.

**Privilege of the Floor**

**Adjournment**

Terry Baker entertained a motion to adjourn. Pat Wesolowski so moved. Dan Swafford seconded. Motion carried. Terry Baker adjourned the meeting at 7:48 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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Sandra Hash

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Brian Miller

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Dan Swafford

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Pat Wesolowski

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Denise Line, Secretary