

November 2, 2017

The Ellettsville, Indiana Plan Commission met in regular session on Thursday, November 2, 2017, at Town Hall located at 1150 W. Guy McCown Drive. Terry Baker called the meeting to order at 6:00 p.m. Kevin Farris led the Pledge of Allegiance.

Roll Call: Members present were: Terry Baker, President; David Drake, Vice President; Don Calvert, Kevin Farris, Brian Miller, Pat Wesolowski and Sandra Hash. Kevin Tolloty, Planning Director; Darla Brown, Town Attorney; and Rick Coppock, Bynum Fanyo and Associates, Town Engineer, were also present.

Approval of the Minutes

Terry Baker entertained a motion for approval of the minutes for the Executive Session on October 18, 2017, and regular meeting on October 5, 2017. Kevin Farris so moved. David Drake seconded. Motion carried.

Monthly Conflict of Interest

Approval of 2018 Meeting Dates

David Drake made a motion to approve the 2018 proposed meeting dates. Pat Wesolowski seconded. Motion carried.

Old Business

Voluntary Annexation of 5255 N. Union Valley Road (6.25 Acres); Petitioner: Robert Burckes; Case No. PC 2017-18

Kevin Tolloty, Planning Director, explained this annexation was continued from the last meeting. It is a 100% voluntary annexation and is proposed to be split zoned Commercial 1 ("C-1") and Agricultural 1 ("A-1"). The proportion for the zoning has changed since the last meeting pursuant to a request from the Petitioner. At the last meeting, an additional driveway was discussed. The property abuts David Allen Court. The Petitioner could have requested a driveway permit anytime in the past and can in the future whether it is in Town or not. There is a not a way to limit the driveway because it is a public road. It would be difficult to not allow driveway access in an annexation ordinance. The Petitioner said he has no interest in putting in a driveway.

David Drake asked if there could be a condition of not allowing a driveway for any type of commercial activity. It is a commercial activity exiting onto a residential street. Mr. Tolloty doesn't know how it could be enforced through an annexation ordinance. Ms. Brown thinks annexation is getting mixed with development plans. Mr. Burckes could access the road at this time if he wanted to regardless of whether or not he's annexed into the Town. As discussed at a previous meeting, under some circumstances in an involuntary annexation there is an agreement that the municipality can enter into with the remonstrators. She can't find any support for the argument that in a voluntary annexation you can impose conditions on development. If the Petitioner wanted to access it for development purposes and had to make significant changes it would require him to return to the Plan Commission. Mr. Davis

would hate to see a situation wherein a business drive would be allowed to exit onto a residential street. He is not pleased with changing the location of the zoning with commercial abutting a residential area. Ms. Brown stated the way to control it is to grant the annexation but don't allow that particular zoning. Mr. Baker preferred the original zoning. Ms. Hash asked what uses are allowed in a C-1. Mr. Tolloty replied small retail, restaurants, services and things of that nature. Mr. Wesolowski asked why the Petitioner wanted to change the zoning. Mr. Tolloty answered he wanted to have a few more uses for one of the commercial structures. One is zoned commercial and the other is zoned agricultural. Ms. Brown advised they have authority under the annexation statutes to determine the zoning. Ms. Hash asked if they could annex it zoned A-1 with residential instead of commercial. Mr. Tolloty answered if the zoning is not beneficial for the Petitioner he could pull the annexation application.

Robert Burckes explained the reason for the initial request is to primarily allow him to continue with the current use of the property. A landscaping company rents space in the rear building which is a permitted use under agricultural zoning. The building near David Allen Court is for his own personal use and he doesn't expect it to change. He would like to sell the property in the near future and having the building zoned limited commercial would make it more attractive to potential buyers. The house has good potential to be a bed and breakfast which is also permitted in limited commercial and is also the reason for keeping it commercial. Mr. Drake advised the Plan Commission's concern is they don't know what will happen later and they have a responsibility to the people living in adjacent properties. Mr. Burckes stated the back building is limited commercial and he has the ability to request a driveway because the property is adjacent to David Allen Court. However, it is not his intent. Mr. Drake stated regardless of how it becomes zoned, the current uses are grandfathered. Mr. Drake asked his thoughts on making a building C-1 and not an entire strip of land. Mr. Burckes answered it wouldn't be a tremendous help. Mr. Drake does not want to see the proposed C-1 portion of the property turn into a big commercial development. He preferred the first zoning proposal. Would this change his decision on proceeding with the annexation? Mr. Burckes replied no, he would still go forward. Mr. Drake suggested the Petitioner could request it be rezoned to a PUD after the property is annexed. After further discussion, Mr. Burckes agreed to proceed with the original zoning request.

Sarah Hacker's property runs along the Petitioner's property. Her biggest concern is with current zoning. She has a lot of problems with traffic. A long, narrow driveway runs next to her property. He rents to a large landscaping company that runs seven big trailers in and out of the property. She would like to see control over a wood bridge that crosses a culvert because of the noise. She has complained with no results. Last week the landscaping company purchased another trailer. She doesn't want to see more business on the property. With all of the traffic on Union Valley, the landscaping vehicles feed onto it about the same time as school buses. She wants zoning to limit what businesses can be on the property. Mr. Drake asked if she understands no matter what the Plan Commission decides, the Petitioner can continue to operate the existing business. Ms. Hacker asked if it can ever be changed. Mr. Drake answered no, because it is grandfathered in and no matter what the zoning becomes it won't change his ability to operate as he is currently at that location. They are reducing the commercial zoning on the property. Ms. Hacker asked about disturbing the peace and noise violations. Mr. Drake advised she would have to talk to an attorney. The Town has an ordinance prohibiting loud noise from 11:00 p.m. to 6:00 a.m.

Terry Baker entertained a motion. David Drake made a motion to recommend to the Town Council their approval for the voluntary annexation of 5255 N. Union Valley Road with the stipulation that it pertains to the zoning as originally proposed in the application and at the October 5, 2017, Plan Commission meeting. Pat Wesolowski seconded. Roll call vote: Terry Baker – yes; David Drake – yes; Don Calvert – yes; Kevin Farris – yes; Brian Miller – yes; Pat Wesolowski – yes and Sandra Hash – yes. Motion carried.

Comprehensive Plan

Kevin Tolloty, Planning Director, has nothing new to report. The Development Plan was approved by Town Council. There may be a full draft available in December. He intends to have a final vote on it in February 2018.

New Business

Primary Approval of the Preliminary Plat of 35 Lots for Greenbrier Meadows, Phase V, Subdivision (21.4 Acres) Located on S. Deer Run; Petitioner: Moehn Investments, LLC; Case No. PC 2017-21

Kevin Tolloty, Planning Director, explained this a request for primary approval of a preliminary plat for 35 lots. The property is zoned Residential 3 (“R-3”) but all lots are proposed to be single family homes. The technical review was in September and everything looked good. Staff recommends approval. There was a discussion regarding ingress/egress on Deer Run and R-3 zoning.

Terry Baker entertained a motion on Case No. PC 2017-21, Moehn Investments, LLC. David Drake made a motion to give primary approval to the preliminary plat for Greenbrier Meadows, Phase 5. Pat Wesolowski seconded. Roll call vote: Terry Baker – yes; David Drake – yes; Don Calvert – yes; Kevin Farris – yes; Brian Miller – yes; Pat Wesolowski – yes; and Sandra Hash – yes. Motion carried.

Development Plan Approval for Litten Apartments (68 Units), 7477 W. Raymond Run; Petitioner: Quality Realty & Development, LLC; Case No: PC 2016-09

Darla Brown, Town Attorney, explained the Honorable Elizabeth Cure, Judge of Monroe Circuit Court 1, recently entered an order on cross motions for summary judgment in this matter. An amended order was entered on October 12, 2017. As part of the order Judge Cure determined that Quality Realty was entitled to summary judgment and that the Plan Commission’s action denying approval of Quality’s development plan is set aside. As part of her order, the Judge also ordered the Plan Commission to approve Quality Realty and Development, LLC’s development plan at its next regularly scheduled meeting which is this meeting.

David Drake commented the Plan Commission met in an Executive Session at which time the Town Attorney advised she would not recommend appealing the decision for various reasons. The main reason being the Town’s ordinances aren’t specific enough to prohibit the development. He disagrees with a statement in the court’s decision that the Plan Commission did not give the developer any information or guidance as to what would be acceptable to be developed. They did do that. The guidance was they did not want three stories of apartments facing current single family residential and that they wanted to entrance to be onto State Road 46 instead of a single family residential street. Another conclusion was this was a socio-economical decision by the Plan Commission and he does not think that

was correct. He said several times they did not have the authority to deny apartments being built at that location and that they had the legal right to put apartments there but they did not want them to be tall. He doesn't like the decision but they can't ignore the advice of their attorney and open the Town up to further legal liability. He is at a loss to explain why they can't at least help locate the entrance so that it is not across from the only single-family house on that portion of the street. Were there discussions with the developer on the location of the drive? Ms. Brown answered it is her understanding the developer is willing to work with the Plan Commission on this issue. Had the Plan Commission a specific finding about the drive, it would give them a better argument to impose that condition now. The court ordered the Plan Commission to approve the development plan and did not provide any exceptions.

Terry Baker entertained a motion on development plan approval for Litten Apartments, 7477 W. Raymond Run, Petitioner is Quality Realty & Development, LLC, Case No. PC 2016-09. David Drake made a motion to take notice of the court order requiring the Plan Commission to approve the development and that it has the effective meaning it has been approved. Pat Wesolowski seconded. Roll call vote: Terry Baker – yes; David Drake – yes; Don Calvert – yes; Kevin Farris – yes; Brian Miller – yes; Pat Wesolowski – yes; and Sandra Hash – yes. Motion carried.

Sandra Hash commented they have worked with the developer in Prominence Pointe, he has always been very courteous to the Town and he made a beautiful development. She is sure this development will also be very pleasing and some of these details may be worked out because she thinks they do want to be good neighbors.

David Drake hopes they will study some of these issues and make sure they have more “teeth” in their regulations so they can actually enforce the things they wanted to in this project but weren't able to. They can make ordinances to say a lot of things but if they don't actually say it then they can't enforce it. They were misled over the years with what they thought this piece of property was going to become. But as they all know, and will continue to remember, just because they're told something doesn't mean that's what is actually going to happen. They've known for years the property was zoned C-3. He never envisioned they would end up with a big development that was going to have an exit onto the residential street. His thought was it would be some type of commercial development that would access State Road 46 and there would be a buffer between the neighborhood. Mr. Wesolowski asked if it is a different owner now. Ms. Hash answered that is correct. Mr. Wesolowski stated things change. He agrees they need to be more vigilant. From now on they need to make certain planning for residents and the Town is done properly. There is a property along State Road 46 that hasn't been developed and a lot of things could go on it.

Planning Department Update

Terry Baker announced the next meeting will be December 7, 2017. David Drake will not be at the next meeting.

Kevin Tolloty, Planning Director, mentioned there may be a rezone at the next meeting but the application has not yet been submitted. The Stewart property annexation will be presented at the December meeting. He is working on amending the grass and weed ordinance.

Privilege of the Floor

Adjournment

Terry Baker entertained a motion to adjourn. Kevin Farris so moved. Don Calvert seconded. Motion carried. Terry Baker adjourned the meeting at 6:56 p.m.

Terry Baker, President

David Drake, Vice President

Don Calvert

Kevin Farris

Brian Miller

Pat Wesolowski

Sandra Hash, IAMC, MMC