

June 11, 2020

The Ellettsville, Indiana, Plan Commission met in regular session on Thursday, June 11 2020, at Town Hall located at 1150 W. Guy McCown Drive. Sandy Hash called the meeting to order at 6:00 p.m. Sandra Hash led the Pledge of Allegiance.

Roll Call: Members participating were: Sandy Hash, President; Don Calvert; David Drake; Pamela Samples; Dan Swafford and Pat Wesolowski. Terry Baker was absent. Kevin Tolloty, Planning Director, Denise Line, Secretary, and Darla Brown, Town Attorney; were also present.

Approval of the Minutes

Sandra Hash entertained a motion to table the minutes for the regular meeting on March 5, 2020. David Drake so moved for approval and Pat Wesolowski seconded the motion. Roll call vote: Sandra Hash – yes; David Drake – yes; David Drake – yes; Pamela Samples – yes; Dan Swafford – yes; and Pat Wesolowski – yes; and Don Calvert – yes. Motion carried.

Monthly Conflict of Interest Statement

Don Calvert has a conflict of interest with the TDML, LLC petition.

Old Business

New Business

Voluntary Annexation of 4760 N. Loudon Road, Bloomington (14.67 Acres); Petitioner: Regina Burns; Case No. PC 20-06

Kevin Tolloty, Planning Director, explained this is a 100% voluntary annexation of a property consisting of 14.67 acres. The Petitioner, at some point in the future, would like to subdivide the property for family members. Recommendation for zoning is Residential 1 (“R-1”). Staff recommends a favorable recommendation to Town Council with R-1 zoning.

Pat Wesolowski agrees with the annexation. If they build a road for the additional houses, is the Town responsible for the road? Mr. Tolloty answered no.

Sandra Hash entertained a motion. David Drake made a motion to forward Case PC 20-06, the voluntary Burns annexation, to the Town Council with a favorable recommendation and with a zoning of R-1. Pat Wesolowski seconded. Roll call vote: Sandra Hash – yes; David Drake – yes; David Drake – yes; Pamela Samples – yes; Dan Swafford – yes; Pat Wesolowski – yes; and Don Calvert – yes. Motion carried.

Petition for Phase IV of the Centennial Park Subdivision (.62 Acres) and Waiver from Subdivision Regulations; Petitioner: TDML, LLC; Case No. PC 20-07

Kevin Tolloty, Planning Director, explained this petition is for approval of the preliminary and final plats of a single lot subdivision. The petitioner will have a cash bond or letter of credit for improvements to the right-of-way. The property is zoned R-1 and meets minimal lot requirements. Petitioner is requesting a waiver from subdivision regulations to reduce the right-of-way from 60’ to 50’ so it will match up with both sides of the property. Staff recommends approval of the waiver. There are four criteria to consider for granting the waiver: (1) It will not be detrimental to the health, safety and public welfare or injurious to other property; (2) The conditions upon which the waiver is based is on the uniqueness of the property for which the waiver is sought; (3) Due to the peculiar surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from mere inconvenience. Financial hardship does not constitute grounds for a waiver; and (4) It shall comply substantially with the provisions of the Comprehensive Plan.

David Drake asked if the plat is not a discretionary matter if it meets the requirements of the subdivision ordinance, the Plan Commission has to approve the plat. Ms. Brown answered correct. Mr. Drake summarized the only issue with some discretion is the waiver. Does it meet all the provisions of the subdivision ordinance? Mr. Tolloty answered yes, it does meet the subdivision requirements.

Steve Emery, Attorney representing Petitioner TDML, LLC, introduced Tracee Lutes, principal of TDML, LLC. Petition is for a single lot plat. Right-of-ways to the south and north of the property are 50’. It would be a hardship to have a 60’ right-of-way.

Mike Carmin has been in court over this property three times and they will be in court again. He reminded Ms. Hash that a couple years prior she was upset that she had been provided incorrect plat information and was misled. He doesn't care if the plat is approved but what he objects to is the right-of-way. A court injunction says there will be no road through there connecting to Centennial Drive. There will be a hearing for contempt of court. It will take a court order to reduce the right-of-way. The case is currently in the Court of Appeals.

Debra Hackman lives next door to the property and they're being deceived about what is going on. The case is currently in the Court of Appeals and there have been two prior rulings. The orders state the road is not to happen.

David Drake asked Ms. Brown if the court action was in regard to the right-of-way that ended up being determined to belong to Robert Crider, not right-of-way being made a part of the plat. Ms. Brown explained approximately two years ago the Plan Commission voted to vacate the covenants and restrictions with regard to Lot 15 in Highland Estates. There was an opportunity for an appeal and the Court of Appeals reversed Judge Hill. The covenants and restrictions with regard to Lot 15 have been vacated. Currently before the Plan Commission is the issue as to whether or not what was Lot 15 is now going to be Lot 79 in Centennial Park. If it meets the requirements of the subdivision regulations then the Plan Commission has to grant it. If they find it doesn't meet the subdivision regulations or the plat requirements then the findings have to explain why it doesn't meet the Town's requirements. The Town's requirements are set forth in §153.024 and some of them do not apply because it is one lot. Essentially, it says the plat shall contain the following information: The subdivision, the scale, boundary drawings, boundary descriptions, roads, rights-of-way, easements, permanent structures and things of that nature. The Planning Director's opinion is the proposed plat approval does meet the Town's requirements. Mr. Drake asked if they are violating a court order by approving the plat. Ms. Brown answered the court order does not apply to the Town. The Town is not involved in the litigation between Centennial Park and Highland Park Estates. Highland Park Estates had its opportunity to appeal the Plan Commission's ruling two years ago and it's done.

Mike Carmin reiterated they do not object to the plat. These people asked Judge Nardi to vacate the restraining order prohibiting a road from being put through Lot 15. The court order specifically states through that property they're enjoined from putting in a road. They asked the court to vacate that order after the Plan Commission vacated the covenants and Judge Nardi said no. The restraining order prevents them from putting in a road or dedicating any part of Lot 79 for public right-of-way purposes. His complaint is the plat is misleading if it is approved with that designation.

Steve Emery stated the Petitioner is not misleading the Plan Commission but Mr. Carmin is. The injunction applies to Centennial Park, LLC as it was the only party to the court action and subsequent injunction. Centennial Park, LLC has sold the property to TDML, LLC and did so after the Plan Commission vacated the covenants and restrictions. Those covenants and restrictions no longer apply to TDML, LLC. At a hearing in December 2019, Mr. Carmin told Judge Nardi that if Centennial Park, LLC doesn't want the covenants and restrictions to apply to them then it needs to give up title to the property which Centennial has done. TDML, LLC is not subject to the injunction being discussed by Mr. Carmin.

Jonathan Hill lives on N. Hull Drive. Looking at the site plan, for public safety and N. Hull, it's an obvious connection. For ease of access to the neighborhood and safety of children and medical care. Cul-de-sacs are converted all the time. It is the nature of change and continued growth. He is in favor of the connection in Centennial Park because there is a light there that would completely take away the danger of turning onto State Road 46 from Deer Park Drive.

Jeff Crider, member of Highland Park Estates, explained there was never to be a connection between Centennial Drive and N. Hull Drive. There will be a connection to N. Hull Drive in due time. They chose to buy there with one connection point and all of a sudden, they're going to try and run a road down Centennial Drive that has been there since the 1970s. People purchased on a cul-de-sac and it was not expected there would be a road to go through it. He does not know of any permanent cul-de-sacs that have been turned into a road. It is not common practice. The Plan Commission is setting itself up for other issues.

Pat Wesolowski asked if this matter should be voted on with pending litigation. Ms. Brown is uncertain how the Court of Appeals decision would help the Plan Commission because the parties are not the same and the issues, although similar, are not the same.

Debra Hackman opined Mr. Moore sold the property to his daughter so in reality the business entity changed. It is immoral and wrong.

Tracee Lutes, TMDL, LLC, Petitioner, explained her business is not the same as her father's business. She and her husband entered into a lease with an option to purchase agreement for the home in February/March 2019. They took over the management of the home and they have a tenant. When

the tenant moved out at the end of the year, they renovated the home and now have a new tenant. They exercised their option to purchase the home when they started renovating the home.

Steve Emery explained the litigation Mr. Carmin referenced is an attempt to hold Centennial Park and himself in contempt of court. All they've done is honor a contract with TDML, LLC. Now, TDML, LLC is before the Plan Commission asking for the plat.

David Drake confirmed they're approving a plat and a waiver that only makes sense. As complicated as the other issues are, the issues before the Plan Commission are fairly simple. Mr. Swafford asked for further explanation of the waiver. Mr. Tolloty explained there is 50' right-of-way in Centennial Park. Town Code requires 60'. Therefore, they're requesting a waiver of the 60' requirement so the 50' right-of-way will line up with the other right-of-way.

David Drake made a motion to approve the preliminary and final plat for PC 20-07, and approve the waiver request based on the findings that it is not detrimental to the public safety, health and welfare or injurious to other property. The reason being that rights-of-way on both sides of the easement are 50' so why would you want 60' in the middle. Practical difficulty also goes with the uniqueness of the property and it is potentially in compliance with the existing Comprehensive Plan and Town Code. Pat Wesolowski seconded the motion and interrupted the roll call vote.

Pat Wesolowski asked why they should grant a waiver at this time for a 50' easement when the litigation is pending. Ms. Hash answered what is before the Plan Commission is a waiver on the street width and not an easement. Ms. Brown clarified the motion is to approve the preliminary and final plat for Centennial Park, Phase IV, and approve the waiver to reduce the right-of-way from 60' to 50'. Mr. Swafford asked if the right-of-way is in litigation can the plat be approved. Ms. Brown answered yes.

A roll call vote was taken on the aforementioned motion: Sandra Hash – yes; David Drake – yes; Pamela Samples – yes; Dan Swafford – yes; Pat Wesolowski - yes; and Don Calvert – abstained. Motion carried with one abstention.

Sandra Hash has been on the Plan Commission for some time. When this property was annexed several years ago, it was presented with a 50' easement at the end of Centennial Drive. In planning standards, they looked at a map with a platted 50' strip. You naturally think that it's for a future expansion of a roadway. At that time, the Plan Commission thought it was a wonderful idea because they knew the access issues for Woodgate and Spring Valley. This was an opportunity to funnel traffic to a stoplight. It was a very big portion of the annexation approval. It was proven in court the 50' strip of land set between two properties, by itself, with no other reason for it not to be an easement. She respects the court's judgment but wanted to clarify she is not upset with any party. The facts at the time, presented to them over a decade ago, had a map with a 50' easement.

David Drake made a motion to adopt the Planning Department's findings in regard to PC 20-07 and incorporate those into their approval. Pat Wesolowski seconded the motion. Roll call vote: Sandra Hash – yes; David Drake – yes; Pamela Samples – yes; Dan Swafford – yes; Pat Wesolowski - yes; and Don Calvert – abstained. Motion carried with one abstention.

Planning Department Updates

Kevin Tolloty advised there will be a meeting on July 9, 2020. Starbucks is seeking approval to go into Cedar Bluff. The Building Department is returning to Ellettsville effective July 1, 2020.

Plan Commission Comments

Privilege of the Floor

Adjournment

Sandra Hash entertained a motion to adjourn. Dan Swafford so moved. David Drake seconded. Motion carried. Sandra Hash adjourned the meeting at 6:47 p.m.

Sandra Hash, President

Terry Baker, Vice President

Don Calvert

David Drake

Pamela Samples

Dan Swafford

Pat Wesolowski

Denise Line, Secretary