

## *WABASH COUNTY PLAN COMMISSION*

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## **WABASH COUNTY PLAN COMMISSION** **BOARD MEETING MINUTES**

**August 3, 2017**

**Wabash County Plan Commission Board  
Wabash County Court House  
Wabash IN 46992**

**Present: Curt Campbell, Randy Curless, Scott Givens, Patty Godfroy, Cheri Slee, Joe Vogel, Attorney Larry Thrush, Plan Director Mike Howard, Secretary Libby Cook**

**Guests: See attached sign in sheet**

Mr. Scott Givens, President of the Wabash County Plan Commission Board called the meeting to order at 7:00 p.m. Mr. Givens asked for a motion to approve the minutes of the July 6, 2017 meeting. Joe Vogel made the motion to approve the minutes as written, this was seconded by Randy Curless, the motion carried.

Mr. Givens: The first item on the agenda is the Legacy Ridge Estates Subdivision and Unger Mountain LLC re-plat and Special Exception in Noble Township.

Mr. Doug Lehman introduced himself as the attorney representing Shawn and Natalie Unger, owners of Unger Mountain, LLC. Also here representing the Ungers are Mr. Mark Guenin and Ms. Emily Guenin-Hodson. Mr. Lehman stated that there are two issues this evening before the Plan Commission in regard to our case: 1. The petition for a re-plat of the Legacy Ridge Estates Subdivision. 2. A recommendation from the Plan Commission Board to the Board of Zoning Appeals for a favorable recommendation regarding the application for a Special Exception for the climbing wall (Unger Mountain). I will provide some background information on how we got here, discuss specifically what we are asking as far as the re-plat, what it is, why it is, and how they can do it. Mark will present more information on what Unger Mountain is and why you should permit it.

Mr. Thrush: Are you not pursuing vacation of the covenants?

Mr. Lehman: That is part of the re-platting, to do the re-platting we are asking to vacate the current plat that includes vacating the covenants and restrictions and approving the re-plat.

The Unger's live adjacent to Legacy Ridge Estates Subdivision. Sean Unger talked with Barrie Bunnell, a local surveyor, who did the surveying and did not say anything to him about needing any kind of special permit or approval to purchase a portion of one of the lots in Legacy Ridge Subdivision, he also expressed that selling between neighbors is not an uncommon thing to do. Sean Unger approached Mr. & Mrs. Brad Farlow about purchasing a portion of their property within the subdivision, this portion is down the hill from the homes in Legacy Ridge, there is a considerable amount of woods between the portion that Sean and Natalie purchased and the subdivision proper. The Farlow's at one time had purchased a piece of property off of the piece of property that is now owned by the Wendt's, they didn't ask for any approval, so already there had been a change in the way the subdivision looked. The Farlow's agreed to the request. Sean also talked with Mr. Greg Metz who handled the purchase transaction, nothing was said in that process about needing further approvals. Sean Unger had also talked with Mr. Michael Sposeep (at that time Mr. & Mrs. Sposeep were the owners of Lot 1 within the subdivision). Sean told Mr. Sposeep what he was interested in doing, asking if he could buy a portion of Sposeep's property that is also located at the bottom of the hill adjacent to what he had purchased from the Farlow's. At that time the Sposeep's were not interested in selling any of their property. Unfortunately Sean did not talk to his father-in-law, Mark Guenin or myself before starting out to build the climbing wall. We were not approached until Sean was advised by the Building Commissioner that there were a number of problems with what he had done. It is our belief that the split from the Farlow's property to Sean and Natalie was in no way a violation of the subdivision, any of its covenants, or anything with regard to the county subdivision requirements. There is no covenant in the Legacy Ridge covenants that states that you cannot sell off a portion of your lot. The split didn't violate the County Ordinance regarding subdivision. This was the first split, it left both parcels after the split with more than the minimum area required, I believe the county requires 1 acre and the health department requires 1.5 acres. After the split Unger's ended up with 1.55 acres and have combined it with a portion of their original property for a total area of 1.715 acres, again in excess of the minimum the County Ordinance requires for a residential structure.

Mr. Larry Thrush: Doug you do recognize that one split of less than 20 acres in a 5 year period has never been applied to a platted subdivision.

Mr. Lehman: Okay. But again, a split had been permitted once before in this particular situation in this subdivision for less than .41 acres. It is our belief that the split is not a violation of any particular ordinance or any of the covenants or restrictions with regard to Legacy Ridge. In Indiana Code there are two ways to do a re-plat. One way, you can do a re-plat if there is a consent or agreement between the other property owners. We thought we had an agreement, we discussed a possible agreement. I was not present at the May 4<sup>th</sup> meeting. It is our understanding now that the Wendt's do not agree.

The second way you can do a re-plat is State Law permits that you can do a re-plat without the consent of everybody if you file a petition to do so. We have filed the petition to do so. The petition needs to describe the property which it did. We have submitted a proposed re-plat showing what it would look like. The petition needs to give the names and addresses of the other property owners which it did as of the time it was filed. The petition can request that the various covenants and restrictions be vacated, which we did. We provided a proposed re-plat prepared by

John Stephens. We provided an amended set of covenants and restrictions that would apply just to Sean and Natalie Unger's property, in that we indicated that it would not change the covenants and restrictions as to the rest of Legacy Ridge. If at any time the climbing wall is no longer being used, the former covenants and restrictions from the original platting would once again come back into play with regard to the property that Sean and Natalie own after the re-plat. The Plan Commission has to determine: 1. whether or not the platted area has changed so as to defeat the original purpose of the plat, 2. whether or not it is in the public interest to vacate the all or part of the plat, and 3. whether or not the value of the part not being changed or not owned by the petitioners whether or not that part of the plat is being diminished in value. Your next issue is the issue of the Special Exception which I understand you usually deal with after the you deal with the issue of whether you pass the application for the re-plat.

Mr. Mark Guenin then took the floor and presented the Board members, the Plan Director and the Plan Commission Attorney with a booklet containing information pertaining to the purchase of the ground and the climbing wall. Mr. Guenin stated that he believes there is some confusion of what the facts are. Mr. Guenin shared photos highlighting the location of the climbing wall and the surrounding area and from the top of the wall which is 55 feet tall. The Farlow's when they sold this property to Sean and Natalie recognized that there would be a climbing wall at the bottom of the hill, through the mature trees. There was previously a transfer of .41 acres from Mark Hauptert to the Farlow's within the subdivision 9 years ago, it was recorded and it just happened, nothing came before this Board. If you look at this you see that it (the tower) is an isolated area, you do not see the subdivision.

Mr. Curt Campbell: I personally have gone out to the site and could not see anything.

Mr. Guenin: Mr. Campbell, have I overestimated the height of the hill behind the climbing wall?

Mr. Campbell: I didn't make it all the way up the hill.

Mr. Guenin continued, explaining the Legacy Ridge Estates provisions in the covenants, there is nothing in here that prevents transfer of property. There is one in here that is land use, it does state that no lot should be used for any purpose other than residential purposes. One of the things we are asking for is in our covenants that they can use this for charging. When we look at this document it does not define what residential purpose is.

No building can be built, except for residential homes, with an attached garage for up to 4 vehicles. A roofed structure with a 4 12 pitch.

What was the reasonable expectation of the people who bought these lots?

Mr. Guenin advised that Mr. Sposeep had used his mailing address at his home for his business. Mr. Sposeep did not build a building at his property in the subdivision. This is a violation of the covenants. This climbing tower is not a violation of the covenants.

From our standpoint the two things we are being criticized for are:

1. Transfer that had not gone through the commission, it was unintentional. It was a transfer based on the belief of the Farlows that since Mr. Fisher had already made a transfer of .41 acres to the Farlows within the subdivision.
2. We are doing this as a commercial venture in this area There has already been a commercial use of this area by the Sposeep's. They did not build a building but were using their home. By this organizations definition this is not a building because it does not have sides and a roof, and is not used to house.

Sean is independent, self-reliant, he didn't want to take advantage, he didn't come to me because I don't deal with this type of law. When he did come to me it was up and running. I looked at it and told him that if Metz was handling the sale and Bunnell was doing the survey and they told him it was okay it probably was okay. This is something that he is committed to doing. We want to be good neighbor's, we want to make sure that we are not doing anything to damage the property values. Between the last time we were here, within a couple of days of the listing of the property the Sposeep's property got exactly what they were asking for, which was the highest price gain for any property sold in the last two years from any of the records there. There were no conditions or contingencies on the sale to state I am going to give you less money if the tower does not come down or if the tower is still up. They paid the full price with the tower standing. Everybody accepted as such.

We are asking the Commission to allow the re-plat and the use of the climbing tower. Or simply accept it out of the subdivision and put the conditions on it, the tower would not exceed 52 feet in height, lighting, hours of operations.

We are willing to allow this Commission to put these conditions on it if they will allow the tower to remain.

Mr. Lehman, in summarizing called on Sean Unger to explain a bit about the wall. Sean gave information telling he would schedule groups of 4 – 8.

Mr. Patrick Hess, (attorney representing Mike and Donna Wendt who are property owners within the Legacy Ridge Estates) asked that if others will be speaking that they introduce themselves and give their address. Mr. Sean Unger complied with the introduction request.

Mr. Lehman continued his summary stating case law in the state of Indiana, in his opinion there are 4 options:

1. Vacate the plat, re-plat, cutout lot 4 (Sean and Natalie lot) and accept it out of the covenants and restrictions, basically it is not a part of Legacy Ridge
2. Vacate the plat, re-plat it, accepting lot 4 out so that it is not a part of the subdivision, imposing on lot 4 certain restrictions because of the concerns that you have with regard to it, we would contend that the restrictions we included as an amendment to the covenant and conditions as part of our application, these are the restrictions that we had agreed to previously.
3. Vacate, re-plat – making lot 4 a new lot within the subdivision, relieving them of some of the original covenants and restrictions in the old covenants and imposing new covenants we listed with our applications.

4. Deny all of that, we tend to say that if you deny the re-plat entirely that does not mean that Unger's would have to re-convey the property to the Farlow's nor does it necessarily mean that the wall would have to come down as we believe that is a decision for the Board of Zoning Appeals as opposed to the Plan Commission.

We would respectfully ask that you do one of the first three options. We would be very content if you would re-plat and make us a part of the subdivision with our own set of the restrictions and covenants allowing us to do that which we are wanting to do and that is to have this recreational climbing wall. Mr. Lehman concluded his presentation with handouts for the Board members.

Mr. Givens thanked Mr. Lehman and Mr. Guenin and then called on Mr. Patrick Hess.

Mr. Pat Hess introduced himself as being a lawyer with Beckman Lawson Law Firm, Ft. Wayne. I am here representing Mike and Donna Wendt, (property owners of lot 3 in Legacy Ridge Estates), I have worked the Wendt's previously in their business interests over the years. Mr. Hess commended Mr. Guenin for laying out the case as to why the climbing wall is a good thing and that it is going to be ran by good people. I don't think anybody would deny that. However, there was no agreement on behalf of my client to allow this use of the property in any way, shape, or form. They came to a Plan Commission meeting without a petition, when this issue was talked about in open forum, there wasn't a time for public discussion, where opponents could present a remonstrance, they were just talking. Michael talked about it and talked about it with Mr. Rick Fisher. Mr. Wendt then called me, I am representing the Wendt's not Mr. Fisher, there is no agreement to allow this wall. This thing from start to finish is typified by putting the cart before the horse. Transactions were made without checking to see if it needed subdivision approval. Construction was started without an Improvement Location Permit. Could have caught a lot of this stuff if this had been presented to the Plan Commission office before the first shovel full of dirt was dug. That didn't happen, that is why we are here. In their masterful presentation the cart is still before the horse, they were talking about what a great use this is, what great people these are, how much of a benefit this will be to Wabash County, I don't deny any of that and neither do the Wendt's. The issue we have to deal with is the plat of Legacy Ridge Estates. There is no doubt that the part of the property that is the subject of this request belongs in the Subdivision and is a part of lot 2 owned by the Farlow's and sold to the Ungers. In 1989 the plat was recorded with a set of conditions. Those conditions are property rights my clients have by virtue of the plat. It is a property right that states that no lot shall be used for anything except residential purposes, the covenants do not define a residence. You can go to whatever source of a county ordinance and look for a definition of a residence. A court would use a common sense definition of a residence, if that fails they will go to a dictionary and find out what residential means. I think you are going to be hard pressed, a climbing wall that is not an accessory use to a residence is not a residential use. I don't care if it's a non-profit, if it's a charitable organization, it is the impact, it's the use that makes it non-residential, it is not whether they turn one dime of profit on this or not. When the Wendt's bought their lot that is what they were buying, they were buying a set of covenants that stated all these lots would be used for residential purposes. I understand that Mr. Sposeep may have used his address for his business, I have used my home address too. That doesn't have any impact on the Wendt's.

Mr. Hess continued by reviewing the items to be considered by the Board for voting on the decision to re-plat or deny the re-plat of Legacy Ridge Estates.

Mr. Curt Campbell: When did the Wendt's know the property was being purchased?

Mr. Hess, I will call my client forward to answer that.

Mr. Mike Wendt introduced himself and stated that "I did not know the transaction was going to take place, I did not know that two transactions had taken place over the last 18 months. I did not know the wall was being built.

Mr. Givens: Are there any further questions for Mr. Hess?

Mr. Hess: You can't decide on a re-plat on whether to vacate the covenants.

Sarah Lochner then introduced herself and explained that she and her husband had recently purchased Lot 1 in the Legacy Ridge Subdivision, on June 26<sup>th</sup>, 2017( which was previously owned by Michael Sposeep). We bought that property, it wasn't listed. When we purchased our property we paid below the asking price and below the appraised value of the home. I was asked why we bought the property knowing that this was here. We bought it with the belief that the Wabash Co. Plan Commission Board would correct the illegal sale of the property. We own our land and follow the rules, we believe the neighbors should be held to the same accountability.

Mr. Givens thanked Mrs. Lochner. We have had a lot of information presented to our Board tonight.

Mr. Campbell: We want to do what is legally right.

Mr. Givens asked if the Board would like to take the matter under advisement for further review of the information presented. Joe Vogel made the motion to take the matter under advisement, this was seconded by Mr. Campbell.

Mr. Guenin: Mr. Wendt didn't know that the wall had been built for 5 months. The Unger family owns the property to the south of the Wendt's, The wall could have been built there. Sam Unger (father of Sean) was ready to put the wall on his property.

Mr. Thrush: You would have to apply for a Special Exception wherever you would want to build the wall.

Mr. Guenin: There would be that but not all these other things.

Mr. Hess: Not knowing and how obscure the wall is are not the issues, the first thing is the plat issue and the restrictive covenants.

Mr. Givens: The Board has accepted the motion and second to take this matter under advisement until the next regular meeting, September 7<sup>th</sup>, 2017. Board members voted in favor of the motion.

A 5 minute break was taken.

Mr. Givens reconvened the meeting. The next item on the agenda is the Special Exception application of Steve and Deborah Conner.

Mrs. Conner: We are applying for a Special Exception to convert a barn on our property to an Event Center. Mrs. Conner gave the Board a powerpoint presentation on the history and future plans for the "Rustic Barn at Hopewell". The Conner's own approximately 4 acres where their home and the barn are located, the barn is approximately 9,000 square feet total area. Some of the events that could be held at the Rustic Barn would be weddings and receptions, reunions, business meetings, etc. Mrs. Conner gave details of event parameters, along with a list of contacts they have made regarding insurance, construction/architecture, parking, accounting, fire code limitations.

Mr. Givens: Thanked the Conner's for bringing their proposal to the Board.

Mr. Campbell: Will there be any neighbors who might complain?

Mrs. Conner: Across the road is a family friend who owns 160 acres, the property surrounding ours is farmland which is owned by an investment company.

Mr. Howard: We would recommend only one exit and entrance to the property.

Mrs. Conner: There is already a lane going to the barn and where the parking area will be.

Mr. Givens: Do I have a motion on the Conner's Special Exception request?

Mr. Campbell: I move that we give a favorable recommendation to the Board of Zoning Appeals. This was seconded by Cheri Slee. The motion was passed by the Board.

Mr. Howard then informed Mr. & Mrs. Conner that they would need to present their request before the Board of Zoning Appeals on Tuesday, August 22, 2017 at 7:00 pm.

Mr. Givens: Next on the agenda is complaints and updates from Lagro Township.

Mr. Howard: We are working on 3 residences in the Urbana area. The Shirley Marshall property in the town of Lagro, the house has been razed and the property taken care of. Larry Thrush has filed with the courts on the properties of Kris Marshall in Servia and Ricky Newsome in Speicherville.

Mr. Givens: is there anything else?

Kristie Bone introduced herself as the Town Clerk and a resident of the town of Lagro. Mrs. Bone was speaking as a proponent of the Wabash River Trail and the work that has been done in the Town of Lagro. She presented the Board with a list of 69 signatures of Lagro area property owners and residents who are in favor of the Wabash River Trail.

Mr. Givens thanked Mrs. Bone.

Mr. Glenn Butcher then asked if there had been any progress on an ordinance pertaining to a setback distance for the trail?

Mr. Howard: How can you put setbacks from a property line, it would have to be from a structure.

Mr. Givens: Is there anyone else wanting to speak?

Sherman Gray, introduced himself and his parents, William and Lena Gray. Sherman stated that he would be representing his parents on issues regarding the Wabash River Trail. He shared that his family is not against the River Trail, the problem has been the lack of communication from the beginning. We would just like to see discussion. As far as the setback, we would like to see something that is not just outside our window.

Mr. Givens thanked Mr. Gray for his good comments.

Mr. Jim Curless, a resident and member of the Lagro Town Board expressed that the Board thought the Wabash River Trail was a great cause, and appreciated that someone was taking an interest in the town of Lagro.

Adam Stakeman introduced himself and explained to the Board that he has probably ridden 1,000 + miles on bike trail systems throughout Indiana. I do respect the property owners and their decision whether they want to turn that property over. He shared that he has never encountered any criminal activity on the trails and feels that the people who have property that joins the trail seem to take pride in the trail and help to maintain it.

Mr. Campbell asked about safety on the trail in Miami County?

Mr. Stakeman: I have found it to be very safe.

Mr. Randy Curless: How much do you think a trail might get used?

Mr. Stakeman: It is hard to say, you may see 10 -12 people at a time, then go for a stretch and not see anyone.

Mr. Campbell: How many trails are there between towns?

Mr. Stakeman: Most trails connect from one town to another, many of the trails are made up of abandoned railroad property.

Mr. Givens: The next item on our agenda is the Parcel Review Committee.

Mr. Howard: I have met with a group from various offices of the Courthouse for discussion of the committee and the responsibilities. Had good discussion. Will continue to work on.

There being no further business, Mr. Givens asked for a motion to adjourn. Mr. Vogel made the motion to adjourn, this was seconded by Mr. Campbell.

The meeting adjourned at 9:47 p.m.

Libby Cook  
Secretary, Wabash County Plan Commission Board