

WABASH COUNTY PLAN COMMISSION

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WABASH COUNTY PLAN COMMISSION **BOARD MEETING MINUTES**

November 2, 2017

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

Board Members: Curt Campbell, Randy Curless, Scott Givens, Patty Godfroy, Doug Rice, Christian Rosen, David Schuler, Cheri Slee, Joe Vogel, Attorney Larry Thrush, Plan Director Mike Howard, Secretary Libby Cook

Present: Curt Campbell, Randy Curless, Scott Givens, Patty Godfroy, Doug Rice, Cheri Slee, Joe Vogel, Larry Thrush, Mike Howard, Libby Cook, Barrie Bunnell, Teresa Bunnell, Chris Lochner, Deanna Unger, Sean Unger, Donna Wendt

Board Chairman, Scott Givens opened the November 2nd, 2017 meeting of the Wabash Co. Plan Commission at 7:00 pm. Mr. Givens asked for a motion to approve the minutes of the October 5th meeting. Joe Vogel made the motion to approve the minutes, this was seconded by Doug Rice. The minutes were approved as written. The first item on the agenda is Legacy Ridge Estates.

Mike Howard: After all the discussion and information that has been presented to the Board over recent months we need to move forward and make a decision on the property split of lot 2 of Legacy Ridge Estates. In reviewing the paperwork I believe there are several things that could cause problems down the road for both the Unger's and the Farlow's. I don't feel that as a Board we can overlook some of these items: a change in the primary use of the lot; no mortgage release on record for lot 2; covenants state that a plan must be submitted and approved by the subdivision developer if he is not available then it goes to a vote of the landowners within the subdivision; there is no documentation of the conversations between Mr. Unger, Mr. Farlow, and Mr. Sposeep stating that there was an agreement between the three of them for this split in lot 2; covenants cover this area for erosion control, areas at or below 740 feet slope elevation nothing can be done with it; allowing lots to be split does this give voting rights to the purchaser, no provisions are made in the covenants to settle a tie vote; a re-plat would have to be approved by the Plan Commission Board, this was earlier denied. I feel that as a Plan Commission Board we

would be negligent not to have Mr. Thrush pursue a determination of the court regarding the split.

Sean Unger addressed the Board. He informed the Board that he has sold the Built Rite cabin that is on the property and it will be moved soon. Mr. Unger continued to explain his reasoning for wanting to keep the parcel of land in Legacy Ridge Estates that he purchased from Mr. Brad Farlow. Mr. Unger sited concerns that he has as far as the future use of the property. As he owns adjoining property, he would like to know that the property he purchased in Legacy Ridge would be returned to its natural state and no one would be permitted to build any structures on it. Mr. Unger stated that he had a verbal agreement for the purchase of the parcel from two of the three property owners, he did not provide written documentation of the agreement and no such documentation has been recorded in the Recorders Office.

Barrie Bunnell a surveyor with Bunnell Surveying spoke along with Mr. Unger on the split of the property. Mr. Bunnell provided the Board with information as to how property splits are being handled in surrounding counties. He spoke of counties that have a committee to review property splits to be sure they are being done correctly. We need consistency by this Board and we need rules. We have to be able to advise clients, the advice may be that we can't do this because of the rules. My advice to Sean was that here is a copy of the covenants and restrictions for Legacy Ridge, there are some things you need to look at, but I think this lot can be split. It happens all the time, we don't redesign a subdivision when somebody wants to split something. We split the .41 acres to Farlow 10, 12 years ago and we didn't re-subdivide it, nobody does that.

Mr. Thrush, that is not quite the same thing as selling it to another party. Changing boundary lines between two owners, that happens frequently, splitting a lot in a platted subdivision and selling it to somebody else.

Barrie Bunnell, it happens all the time. To adjoining property owners it happens all the time.

Mr. Thrush, to adjoining property owners?

Barrie Bunnell: Sean is an adjoining property owner.

Patty Godfroy: Not in the subdivision.

Deanna Unger: This section you are talking about is right beside Sean's drive.

Mr. Howard informed Mr. Bunnell that when I look at a platted town like Urbana I look at that differently than a platted subdivision, what I call a rural county subdivision. When you come to me and say we want to split a lot in Urbana between the lot owners, go ahead, there are no covenants for Urbana. When I look at a platted subdivision with declarations and covenants I look at that different.

Mr. Bunnell, I agree I think the platted subdivision like Legacy Ridge Estates having the covenants and restrictions it was a milestone with this subdivision for this Board. If you wanted to talk to Doug Lehman and find out what the intent of some of these things are, now when you

are talking about intended it gets to be a little gray area, I like black and white. We have very specific instructions here, the problem is we don't have a subdivision association that would have, could have, should have, determined whether or not to make this split. So now we are coming back to you guys.

Mr. Howard, Wabash County is working toward having a Parcel Review Committee that would be made up of people from several offices who would be involved in something like this to help insure that problems like this don't happen. Once the draft of the updated Wabash County Ordinance is approved this committee will be put into place, along with the updated Subdivision Ordinance.

Discussion continued on the splitting of lots within a platted subdivision.

Mr. Howard, we have spent four or five months on this, we have got to move on and make a decision.

Mr. Unger, I agree that we have to move on, but two times we have been delayed, is that standard practice. Does Mr. Thrush make the final decision here?

Mr. Howard, I don't think he makes the final decision, we have asked him for information for us to make a decision.

Mr. Thrush, Mr. Bunnell can you give us an example of a split, you say that a part of a lot is split all the time and sold to somebody outside of the subdivision.

Mr. Bunnell, I am not really sure. Combining tracts happens more often. Mr. Bunnell then gave an example of a large job that he did for Pike Lumber in Akron.

Mr. Rice, everytime we have looked at a subdivision, it has been put together for the benefit of the landowners within that subdivision. If anything changes in that subdivision the owners within that subdivision vote on and agree and determine how that happens. In this situation it was a transfer of land out of the subdivision to someone who wasn't in the subdivision. It seems like more work should have been done to make sure that all owners in the subdivision were aware of what was happening and approving it. I don't know that it was done to the extent that it should have been, but that is hindsight and you can't change the past.

Mr. Unger: The other splits weren't voted on.

Mr. Rice, the other splits were within the existing owners of the subdivision.

Mr. Unger, and that goes back to what we are talking about.

Mr. Rice, there is a line we keep crossing, we keep exiting the owners of the subdivision and adding in an outside person which was yourself. I think we need to keep that separate in our discussion.

Mr. Bunnell, I see what you mean about that, say it is a voting member of the Association, if there was one. I haven't been here for the last 4 -5 months. As far as a voting member of the Association, the way I understand it he went and talked to 2/3 majority of the voting members of the association and got verbal confirmation, unfortunately we know how verbal communication goes.

Mr. Unger, I didn't talk to you Mrs. Wendt because I talked to Mr. Metz and he said I didn't have to. I talked to your husband in January and he said he didn't want to be involved. I talked to Fisher and tried to get him on his side. I talked to Sposeep in 2015.

Mr. Bunnell, I think you will find in that we do things in life and maybe we are not necessarily following all the protocol but I think Sean was trying to in going and talking to the neighbors. In a perfect world there would have been an association and they should have voted, either we do want it or we don't and then this wouldn't be in front of you today. Mr. Bunnell continued explaining how splits are handled in other counties.

Mr. Thrush reminded all present that "we are bound by what our Commissioners have passed as our Ordinances".

Randy Curless, if all three voting members of the subdivision were in agreement that they don't care if this sells, then I wouldn't have a problem with it. Is there a chance that all three would agree that it could stay the way it is.

Mr. Givens, in my mind it has already changed hands a year ago.

Mr. Lochner, the counter viewpoint of the other property owners. Sean is speaking to exactly what our concern is, there would be a 4th lot and could bring anything, anybody could bring anything to that. We are just trying to protect what we have purchased, what I did all of my research before I purchased my property was what was recorded and what was a signed agreement, there were none. We would like to have it in tact, the county ordinance was not followed. We are not coming at this as anti-someone wants to buy a piece of property we are trying to follow your laws and that was not done in this case. The concern of the county of taking something to a court, ultimately that is where we are at. It is unfortunate you guys are in a bad situation.

Mrs. Wendt, Mr. Thrush would you contact our attorney, Pat Hess to let him know what has happened this evening. He didn't think he would need to be here tonight.

Mr. Vogel, I remember working on the covenants of Legacy Ridge Estates, when we talked and I don't think it got put in there that it was three lots, three houses. Doug Lehman drew up the covenants. There should have been something in there that if something was out of order as far as sales the landowners should have been notified and could have taken care of it through their covenants.

Mr. Thrush, the covenants say it will be three lots, 1, 2 and 3. This land is still subject to these covenants. Normally after the developer goes out the vote goes to the landowners.

Mr. Howard, in the minutes it states that the Board suggested that in the covenants that there would be no further splits of the lots.

Mr. Bunnell, Is it within this Board's ability to suggest that the subdivision form an association. Strongly suggest that for any subdivision in the future. It reverts back to the owners, this wouldn't have even gotten to you guys.

Mr. Thrush, I don't think they have to have an association, by majority vote they can control their subdivision. If they want to change their covenants, as long as the members vote and and have a majority.

Mr. Lochner, the re-plat wasn't applied for a year ago, how were the owners to know about the split? It wasn't done properly with what your rules are. We will enforce our covenants when we get this stuff out of the way. The deed transfer was against your law, it was done in violation of your ordinance.

Mr. Givens asked if there was anything else anyone wanted to add.

Mr. Vogel, I think we need to make a decision on what we are going to do.

Mr. Campbell, I personally don't know what to do.

Mr. Unger, If I talk to Brad Farlow and I get a 99 year lease so that I make sure if they sell the property I get something in writing that for 99 years that piece that I have a deed for, just so I can protect myself. Is there anything to that, I don't know.

Mr. Thrush, you could do that by covenant in the deed. If you convey it back to him, you could impose a deed restriction that says nothing could be built on it. What is it you are wanting to protect against?

Mr. Unger, anything happening to it.

Mr. Thrush, you could put that in there, a covenant runs with the land.

Mr. Unger, so if I sell this back to Brad Farlow for \$1.00 I can work out something with him and have a 99 year lease or something that says if he sells it off that nothing can be done with this land or no boundary line can be moved.

Mr. Thrush, the way to do it would be with a covenant in the deed.

Mr. Campbell, that sounds like a reasonable plan.

Mr. Unger, I just don't want anything to happen to it in my lifetime or my kids.

Mr. Thrush, I think you are in a position to do that.

Mr. Unger, I want to put an end to this. I don't want this to happen for the Wendt's or the Lochner's.

Mr. Thrush, there would be no lease, he is conveying this back to Farlow.

Mr. Unger, just what I bought off of Farlow with restriction.

Mr. Givens, Sean will pursue discussion with the Farlow's to get the deed and restrictions taken care of.

Mr. Thrush, it is a pretty good compromise.

Mr. Unger asked for a May 1, 2018 deadline to have the deed and restrictions taken care of, May 1 is the deadline for the removal of the climbing wall and he did not want to be working on property that was deeded to the Farlow's.

Curt Campbell, both things need to be settled by the May 1, 2018 deadline.

Mr. Givens, next on the agenda is the David Francis unsafe premise order.

Mr. Howard: Updates:

- The David Francis property, the house has been razed, the entire clean-up is not complete as of yet.
- Trail setbacks, nothing new to report, we are looking at other places and their ordinances.
- Mowing Liens, I will continue to work on that finding contractors and getting information on what they would require. One town that I have checked into is using the rates of \$100.00 for the first hour and \$1.00 per minute after that. If there is cleanup of the property that needs to be done before the company could do the mowing that time could be included in the time for assessing fees.
- Solar Farm Ordinance, do we want to limit the use of ag ground for this use?
Randy Curless, I think we should, our goal is to protect our prime farm ground. Board member, Doug Rice agreed with Mr. Curless. Discussion continued on commercial and private residential solar usage. Items discussed were: setbacks, shadow flicker, and noise levels.
- CFO Ordinance, I have been working on changes to the setbacks from structures. I would like to recommend that the minimum setback has to be met for a CFO to be built near an existing structure, no variances from that unless it is for the residential owner where the CFO is being built.

Mr. Givens called for a motion on the changes to the CFO Ordinance. Randy Curless made the motion to approve the changes to the CFO Ordinance, this was seconded by Joe Vogel. The motion carried, the changes will be made to the ordinance.

- Parcel Review Committee, I will continue to work on getting this in place.

- Nathan Ebert was sent a notice by Attorney, Larry Thrush by certified mail.
- The four properties in Urbana have received unsafe premise orders, the hearings will be in December.

Mr. Givens asked if there was any further business, then asked for a motion to adjourn the meeting. Joe Vogel made the motion to adjourn, this was seconded by Randy Curless. The meeting adjourned at 9:05 pm.

Libby Cook
Secretary, Wabash Co. Plan Commission