

DEARBORN COUNTY PLAN COMMISSION MINUTES

Monday, May 21, 2018

7:00 pm

Andrew Baudendistel’s reading of the Voluntary Title VI Public Involvement Survey – As a recipient of federal funds, and in support of Dearborn County’s efforts to ensure nondiscrimination and equal access to all citizens, the County gathers statistical data regarding participants in county activities. Therefore, we have provided a Voluntary Title VI public Involvement Survey at this meeting. You are not required to complete this survey. However, the form is anonymous and will be used solely for the purpose of monitoring our compliance with Title VI and ADA.

A. ROLL CALL –

Members present:

Russell Beiersdorfer

Jake Hoog

Dennis Kraus, Jr.

Mark Lehmann

John Hawley

Michael Lynch

Bill Ullrich

Jim Thatcher

Mark McCormack – Planning Director

Andrew Baudendistel – Attorney

Members absent: Eric Lang

B. ACTION ON MINUTES—

Mr. Ullrich motion to approve the meeting minutes from March 26, 2018. Mr. Lehmann seconded. All in favor. None opposed. Motion carried.

C. OLD BUSINESS —NONE

1. Request:

Owner/ Applicant:	Joseph & Katie Madden / Steve Cahill, Abercrombie & Associates, Inc.
Site Location:	Lot 3 and Lot 71, <i>Einsel Road near Boardwalk Drive</i>
Legal:	Section 35, T7, R1, Map #01-35
Township:	Harrison Size: 19.93 Acres (Total)
Zoning:	Agricultural (A) & Residential (R)

Mr. Cahill, with Abercrombie and Associates (a representative for the property owner), addressed the board in reference to the request. He reiterated that the request is to vacate the lots 3 and 71 of the subdivision in order to reconfigure them into two (total) buildable tracts. He wanted to remind the board that the note on the record

plat states that Lot 71 is not be independently eligible as a buildable lot and must be sold to an adjoining lot. He believes that the word independently is the most important part of that statement.

Mr. Hoog asked if the property owners (the Maddens) spoke to the adjoining property owner (Mr. Moorwessel) who had raised some objections previously through an attorney.

Mr. Madden stated that he spoke with the adjoining property owner (Mr. Moorwessel). The neighbor stated that he wanted to sell his house, potentially in the near future, and did not want another house placed close to his house. Mr. Madden didn't want to press the issue with the neighboring property owner.

Mr. Baudendistel addressed the board and stated that he spoke with the Madden's attorney, Mr. Donivine, regarding the State law for replats or vacations of subdivisions. The State law basically states that covenants and restrictions cannot be extinguished by means of a replat or vacation. He read the State Code and other Judicial Reviews from other cases in Indiana. Mr. Baudendistel noted that restrictive covenants cannot be simply dissolved. He believes whether or not the language is ambiguous it is not up to the plan commission but it is up to a judge to determine if the statement for Lot 71 is ambiguous or no longer applicable.

Mr. Lehmann asked if the vote would be to approve or deny the request or a recommendation to the County Commissioners.

Mr. McCormack stated that the board's decision would be to either approve or deny, as this request does not involve a County road right-of-way. The county commissioners would not be involved with this proposal.

Mr. Baudendistel stated that even if the board were to approve a vacation plat of the subdivision, old cases state that the covenants and restriction still could not be removed from the original lot(s).

Mr. Madden stated that the Indiana Code allows for this to be a local decision to the board, under the 900 series. He feels that the plat would follow IC-36-7-4-714 and believes that it spells it out that a local body, not necessarily a judge, can make that decision.

Mr. McCormack stated that the Board of Zoning Appeals is a different board than the Plan Commission (in reference to the 900 series of the Indiana Code). He stated that he believes that the only item that is potentially up for debate / consideration for this case is subsection number one, with respect to IC 36-7-4-714. He believes that the board members need to base their decision on the IC 36-7-4-714, Subsection number one.

Mr. Lehmann made a motion to deny the request to vacate Lots 3 and 71 from the subdivision based on Indiana Code 36-7-4-714 Subsection #1 (the only potentially applicable subsection), noting that: 1) the proposed vacation request does not warrant a need for redevelopment improvements; 2) there are other avenues that the Applicant can pursue; and 3) the denial is also based on Mr. Baudendistel's testimony for case law related to the applicable Indiana Code(s) that the request does not allow the covenants and restrictions to be eliminated (merely) by means of the vacation of lots from a subdivision. Mr. Thatcher seconded. All in favor. None opposed. Motion carried.

D. NEW BUSINESS

1. Request: Two Waivers for a Minor Subdivision
Owner: Randy Wayne
Applicant: Seig Surveying
Site Location: Stimson Road
Legal: Sec. 11 & 12, T5, R2, Map #08-11, Parcel #013.001, 007-00 & Map #08-12, Parcel #001.003
Township: Manchester
Zoning: Agricultural
Waiver #1—To create a dead-end private street exceeding 1,200 feet in length
Waiver #2—To allow access of Lyndee Lane to Stimson Road, which is less than 16 feet wide

Mr. McCormack presented the staff report and slide presentation. The board is only reviewing the waiver requests for the subdivision at this time, as a Minor Subdivision is typically approved by the Technical Review Committee (once and / all waiver requests have been addressed)—*and is a final decision unless it is appealed by an adjoining property owner to the plan commission in a subsequent hearing.* The subdivision was reviewed by the Technical Review Committee for technical issues and deficiencies on March 20th, 2018. The two waivers are for: 1) the length of a dead-end private street system and 2) to allow the proposed private drive access to a public road that is less than 16 feet in width. If both waivers are approved, the Technical Review Committee would have to give final primary approval—which would then begin the process of providing notification to the adjoining property owners (allowing them a chance to appeal the decision on technical grounds).

The waiver for the length of the dead-end private street system would be for 1,784 feet—the amount that the proposed would extend past its pre-existing, non-conforming length/ amount. The subdivision control ordinance allows for a dead-end street system length of up to 1,200 linear feet (maximum). The minor subdivision design of the proposed private road, in combination with the current length of Stimson Road, would cause the total length of the dead-end street system to be 4,317 feet.

The waiver to allow the proposed private drive access to a public road that is less than 16 feet in width would be for 3 feet. The subdivision control ordinance states that no private street can access a public road that is less than 16 feet in width or that doesn't allow for sufficient two-way travel. Stimson Road, as it currently exists, is between 12.8 to 13.1 feet wide for the paved section of road that leads up to the gravel section, according to the Applicant's current plans.

The County Engineer submitted a letter outlining his inspection of Stimson Road and referencing the Commissioners recent agreement. The letter acknowledged that the existing width of the paved portion of the County-maintained road is between 13 to 15 feet wide. The property owner has agreed with the Dearborn County Board of Commissioners to regrade and add to the gravel portion of Stimson Road. *This agreement will allow the property owner to widen the gravel portion of Stimson Road to 20 feet and lessen the grade on the hill at no cost to the County.*

Mr. McCormack noted that there were eight letters mailed to the adjoining property owners. There were seven letters that were received and there is one letter that remains in transit.

Mr. Lehmann asked about the different sections of road surface(s) of Stimson Road.

Mr. McCormack stated that the first section of Stimson Road consists of a paved surface for about 1,110 linear feet, which is publicly-maintained. The second section of Stimson Road is gravel and narrower for about 1,200 linear feet, which is publicly-maintained. As noted in the Engineer's report, the Waynes have agreed to widen this section of the road with gravel to 20 feet, to meet the County's current specs (for width) for a local road.

Mr. Lehman asked about the staff recommendation for a barrier to be placed between the pond and Lyndee Lane.

Mr. McCormack stated that since the pond is a pre-existing improvement / condition along what is currently an existing driveway, it is a recommendation to the property owner—not necessarily a required item.

Mr. Rob Seig with Seig Surveying, a representative of the property owner, addressed the board. Mr. Seig noted that Stimson Road is only about 13 feet wide in the paved section. The Waynes have permission from the County Commissioners to improve Stimson Road from the small structure up the road to the paved section. The Waynes want to change the profile and improve the width of the road. The reason why this hasn't been done yet is because Mr. Wayne is in the process of getting a culvert for that small structure to extend it, so the proper width can be there as well. Mr. Wayne has been granted approval for that middle gravel section of Stimson Road. Mr. Seig asked if the Waynes would want to improve the front / paved portion of the road, if the plan commission would be able to approve those kinds of improvements—or would this type of request need to be approved by the County Commissioners.

Mr. Kraus stated that any improvements to the public roadway would need to be approved by the County Commissioners.

Mr. Seig asked if the property owner would have to go back to the County Commissioners.

Mr. Baudendistel stated that the current agreement the County Commissioners have with Mr. Wayne for improvements on Stimson Road is fairly open-ended. The board initially entered into an agreement in 2016. According to Mr. Baudendistel's recollection, the agreement was for "x" length of the road, and the County Engineer was given the authority to not have to come back to the Commissioners, unless he felt it necessary / warranted for them to review changes to the scope of work, to see if Mr. Wayne could make further improvements. In certain situations, there would be no need to go back to the Commissioners. Mr. Baudendistel isn't sure if a proposal to change the width of the gravel portion of the road and / or to widen the paved section of Stimson Road would require another agreement or an amended agreement, it's something that would require some research. The current agreement is fairly open-ended and there haven't been any issues with it to date.

Mr. McCormack stated that ultimately the specs would have to be done under the direction of the County Engineer (and the County Commissioners, if / where necessary). For the improvement plan, staff would actually need to have the Stimson Road improvements shown in such a way that they match the agreement(s) that the County would have in place with the Waynes. He notes that the improvements to Stimson Road can actually be done without them necessarily being part of the improvement plan (per se).

Mr. Seig stated that the property owner is willing to widen it all the way out to make the whole road 16 feet, which gets it to the County's minimum standard (for access to a private street).

Mr. Kraus stated that if this proposal would be acceptable to the Commissioners, then there would be no need for a second waiver.

Mr. McCormack asked about the type of surface(s) being proposed for the proposed improvements to Stimson Road, particularly in the existing paved section.

Mr. Seig stated that the property owner would like to see the County pave the County section.

Mr. McCormack acknowledged that the decision to surface Stimson Road would have to go back to the County Commissioners and / or the County Engineer.

Mr. Baudendistel stated that the plan commission could not bind the County Engineer or the County Commissioners into paving the County-maintained portion of the road.

Mr. Seig stated that the Waynes would be willing to widen the road to 16 feet to the County minimum standard and that Mr. Wayne would do the chip and seal on the width of the road all the way up.

Mr. McCormack reiterated that these improvements would need to be taken under consideration prior to Tech Review reviewing and approving an improvement plan. In that case, there would just be one waiver request.

Mr. Kraus stated for clarification for the board. Mr. Wayne is willing to widen the paved part of the road to 16 feet to eliminate the waiver for the connection of a private road to a public road that is smaller than 16 feet.

Mr. Seig stated yes that is correct.

Mr. Baudendistel stated that the waiver could be tabled to ensure that the widening of the road can be worked out with the County Engineer. If this item can't be worked out, then this particular waiver request would have to come back to the board.

Mr. Beiersdorfer made a motion to open public discussion. Mr. Ullrich seconded. All in favor. None opposed. Motion carried.

Mr. Gary Golsch, an adjoining property owner on Stimson Road, addressed the board with his concerns. His concern is for the maintenance of the Stimson Road. There is something to be said with possible other development on Stimson Road. He stated he owns 400 acres that could be developed in the future and noted that the traffic could increase in the area. He doesn't feel that any future development parties should be responsible for improvements on the roadway if this developer isn't going to have to do any improvements.

Mr. Lynch made a motion to close public discussion. Mr. Hoog seconded. All in favor. None opposed. Motion carried.

Mr. Lehmann made a motion to table the waiver request to allow the proposed private drive (Lyndee Lane) access to a public road that is less than 16 feet in width (Stimson Road)—indefinitely. Based on the testimony at this meeting, the property owner has agreed to widen all of Stimson Road to 16 feet, which if approved by the Commissioners would make this request null and void. This will need to be shown on the Improvement Plan if the improvements are approved (by the County Engineer and / or the County Commissioners). This waiver request would only be brought back before the board if the road is not widened through the construction phase of the subdivision. Seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

Mr. Lehmann discussed the waiver for the length of the dead-end street.

Mr. Ullrich made a motion to approve the Applicant's waiver request to allow a dead-end street system (a private street addition to the publicly-maintained Stimson Road dead-end street) to be lengthened by 1,784 feet. Seconded by Mr. Hoog. All in favor. None opposed. Motion carried.

E. ADMINISTRATIVE—

Mr. Kraus asked if he was able to speak about a case that was tabled previously if no decision has been officially made by the board.

Mr. Baudendistel stated that he would advise not to discuss a tabled case unless it was on the agenda and published if / where necessary.

Mr. McCormack stated that he would email the board members the Annual Report over the next couple of weeks.

Mr. McCormack stated the Comp Plan outline would also be emailed to the board members within the next couple of weeks. He noted that he expects to discuss the next steps of the Comp Plan update process and the outline / structure of the plan at the next meeting.

Mr. Beiersdorfer made a motion to adjourn the meeting. Seconded by Mr. Ullrich. All in favor. None opposed. Motion carried.

Meeting adjourned at 9:12 p.m.

Dennis Kraus, Jr., President

Mark McCormack, Secretary
Planning Director