

DEARBORN COUNTY PLAN COMMISSION MINUTES

Monday, March 26, 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.

Eric Lang

Mark Lehmann

John Hawley

Michael Lynch

Bill Ullrich

Mark McCormack – Planning Director

Andrew Baudendistel – Attorney

Members absent:

Jim Thatcher

B. ACTION ON MINUTES--NONE

Mr. Beiersdorfer moved to approve the January 22nd minutes as written. The motion was seconded by Mr. Lehmann. All in favor none opposed. Mr. Ullrich abstained from voting, because he was not on the board or in attendance at the January meeting.

Mr. Beiersdorfer moved to approve the February 26 minutes as written. The motion was seconded by Mr. Lehmann. All in favor, none opposed. Mr. Ullrich abstained from voting, because he was not on the board or in attendance at the January meeting.

C. OLD BUSINESS —NONE

E. NEW BUSINESS

- | | | |
|------------------|------------------------------------------------------------------|--------------------------------------------|
| 1. Request: | Zone Map Amendment from an Agricultural (A) to a Residential (R) | |
| Applicant/Owner: | Maxwell Development, Inc. | |
| Site Location: | Raiders Ridge Drive, <i>near General Drive and Steele Road</i> | |
| Legal: | Sec. 29, T7, R1, Map #01-29 | |
| Township: | Logan | Size: Approx. 11.02 Acres of Parent Parcel |

Mark McCormack presented the staff report. The property is primarily used for agricultural purposes. The request involves an 11.02-acre portion of a 36 plus acre parcel. The site is located west of a residential zoned district (a previously-proposed condominium development); to the northwest is Harley Springs Subdivision.

The area of the site that has steeper slopes is intended to remain agricultural. The submitted concept plan lots match in size or are slightly larger than those (tracts) adjacent in the Morgan's Ridge Subdivision.

Pursuant to Article 5, Section 520 of the Dearborn County Zoning Ordinance, a traditional concept plan was not submitted—but something very close was, including utility information. The maximum build-out of the originally-approved rezone for the property was for 182 residential units in 2006. The Subdivision Primary Plat was significantly changed and was subsequently approved by the Plan Commission in 2009 for 87 buildable units. The current projected build-out of this Subdivision is 69 buildable lots / units—which is well below both of the aforementioned unit numbers and is well within the limits noted in the letters from the utilities and service providers that the County staff received from 2006-2018.

The board should note that rezone applications submitted without a concept development plan should be reviewed from the “maximum allowable use” scenario. Staff is recommending that the Board tie a number of building units to this request (via written commitments), since a formal concept plan was not submitted. Should the Applicants wish to raise the number of allowable units from what the Board might determine at this particular meeting, then the Applicants would have to come back in and be heard before the Board.

During the Comprehensive Plan Update process (currently underway), the Plan Commission staff identified the aforementioned parcel as being primarily used for Agricultural purposes. The proposed development site is bordered (immediately) to the north, south, and west by Agricultural Uses. The areas to the east are either High-Density Residential Uses—or are being converted to High-Density Residential Uses, as part of the Morgan's Ridge Subdivision.

The original 2006 traffic study for the Morgan's Ridge Subdivision was performed using a 200-unit scenario. Between the current development and projected build-out, there will be 81 total dwelling units created with the addition of the Applicants' proposed request.

The proposed conceptual plan appears to be in-line with all of the dimensional standards set forth in Article 25, Table 25.1 of the Zoning Ordinance for residential zoning.

Some areas of the site have 20% slope—but none of these areas appear to be impacted by this rezone request. There are no areas affected by or containing a 100-year or 500-year floodplain. Mt. Pleasant Road is a Category II Collector road with approximately 19.5 feet of pavement width in this area. Sanitary Sewer will be serviced by St. Leon. The Technical Review Committee reviewed the request on February 20th, 2018 and had no significant concerns. The Applicants stated that the 11 lots proposed will be used for single family dwellings. The County Engineer provided a statement via email and did not see an issue with a new access to Raiders Ridge Drive—

which is actually oversized, in terms of the width of the road, etc. There is existing right-of-way at Calvary Crossing Lane for some future development.

Five letters were sent to adjoining property owners; four were delivered and one was left (but there was not an authorized recipient).

Questions from the Board:

Mr. Lehmann stated that he recalled years ago when the original rezone request came before the Board the property to the southwest was potentially landlocked at that time.

Mr. McCormack noted that the adjoining parcel to the southwest now has a right-of-way connection to a private street (Calvary Crossing).

There were no further questions for Mr. McCormack.

Randy Maxwell, representing the Applicants: The Applicants are completely fine with the discussed commitment to 11 building lots / units on the 11-acre rezone area. The request is pretty self-explanatory. They want to extend the current county road into a cul-de-sac.

Mr. Lehmann: Does the submitted concept plan not have 13 lots?

Mr. Maxwell: That is correct. There are two lots that will remain in the Agricultural Zoning District. This proposal would result in 13 units on 36 acres—of which 11 (units) are requested to be within the rezoned district. The larger lots are already under contract to sell and those folks wanted to keep their Agricultural zoning.

There were no further questions for the Applicant.

Sandra Weisgerber: We own the adjoining parcel to the southwest that was originally landlocked. When the original development occurred in 2009, we didn't have access and the developer did everything he could to not let us have access—but the board said that access had to be provided. We do currently have access to the private road. The developer wanted to take those access parcels off the market and make it one lot instead of 4 to keep us from having access. One of the gentlemen on the board at that time made a comment about Bright being a mess because the roads had one way in and one way out and that that was a potential hazard for emergency management. What we see happening to the North is the same situation. The board member had said he would like to see the property to the north be developed responsibly, and I do not believe it is being developed responsibly because we have no access. I would like to see a road that could go in one way and come out another so that the property is not blocked, to have Steele road connectivity, and to see the new road provide access.

Mr. Maxwell: From my knowledge we have never done anything to prohibit access to anyone. Mr. Ralph Thompson was the board member that was mentioned from 2009. Cavalry Crossing is a low trafficked private drive because it was cost prohibitive to construct it as a county road. In 2009, when Ms. Weisgerber asked if she could have access for her property, Mr. Thompson made a motion and the access ended up getting platted as a right-of-way so that Ms. Weisgerber's property could be allowed access for one home site. We are not doing anything to hurt the Weisgerbers with the current project / property, but admit we are also not helping in anyway and are developing the property as we see appropriate.

Mr. Lang: How long is the proposed cul-de-sac?

Mr. Maxwell: 700 or 800 feet.

Cindy Harding, daughter of Mike and Sandra Weisgerber: One of the concerns is that when this property is developed, the potential for an access to Steele Road is being lost. Based on previous development decisions, it seems that when this parcel became available it only makes sense to consider an access route out to the north. Access to Lutz Road is not feasible and is very dangerous, as it is a narrow gravel lane. The general concern is that there is no access to the North, and there should be some kind of consideration for some of the properties on Lutz Road.

There were no questions for Ms. Harding.

Mr. McCormack: The rezone request is part of a multi-stage process for a subdivision. I understand the concerns being brought up this evening but the main question / issue before the board is if the rezone (use and intensity) is appropriate or not for the area. The next stage of the development process would involve a submittal for a primary plat—at which time access issues can be discussed in more detail. If primary plat approval is given, then the project proceeds with an improvement plan or construction plan submittal—providing much more detail. This is a rezone process, so the street configuration details come into focus and get addressed in the next two steps of the development process.

Mr. Lehmann: Concerning the two large-acre lots with (potential) residential zoning in the front, would it be simple from Plan Commission staff standpoint if those entire tracts were left as agricultural zoned.

Mr. McCormack: It could be beneficial to have some uniform geometry for those tracts, but it doesn't have to be configured exactly this way for the Applicants to achieve what they want to achieve.

There were no further questions for Mr. McCormack.

Ms. Weisgerber: Will we get notification of future stages in this development?

Kraus: Yes, you will.

There were no further questions.

Mr. Lang motioned to close public discussion, Mr. Hawley seconded. All in favor, none opposed motion carries.

Mr. Lehmann: We have some work to do on the findings of facts. As an example: Will the proposal result in responsible growth and development? The Applicant says the proposal will follow the growth pattern of existing development and existing infrastructure, but failed to note the topography of the section set to remain agriculture. In another instance I'm looking for findings for if the proposal is consistent with the Comprehensive Plan, because of the lot sizes to the east, etc.

Mr. Lang: There are answers provided but they are minimal in detail. In this case, I believe it is it is a straightforward progression from what is already there. I agree that topography is a limiting factor.

Mr. Hoog: If the 11 acres are rezoned to residential, would a farmer want to come in and do anything with 11 acres in a residential area? Probably not. The most desirable use for the property is likely residential.

There were no further comments.

Mr. Kraus: I recommend that if we set the maximum number of building units at 11 that we clarify that there be 13 total, with two being in the Agricultural Zoning District.

Mr. Lehmann: I think to keep it simple and if there are no major issues with staff then set the maximum at 13.

Mr. Lang motioned to forward the zone change to the commissioners with a favorable recommendation based on requiring written commitments from the developer involving: 1) There shall only be eleven (11) new single-family building sites on the affected rezone area for the proposed extension of the Morgan's Ridge Subdivision; and 2) there shall be only thirteen (13) single-family building sites on the entire 36.945 parent parcel. Mr. Ullrich seconded. All in favor none opposed. Motion carries.

2. Request:	Vacate a portion (2 lots total) of Phases 1 and 3 of the Park Place Estates Subdivision
Owner/ Applicant:	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. McCormack presented the staff report. Two lots, encompassing 19.93 acres, are requested to be vacated from the Park Place Estates Subdivision. The parcels are designated as residential, low density, large residential lots. The subject site is zoned Agricultural; however, a majority of Park Place Estates is zoned residential. Lot 71 abuts the houses on Boardwalk Drive, a privately-maintained street. There is some noticeable topography that definitely limits development potential in this area.

The Applicant is requesting to vacate lots 3 and 71. Phase I of the subdivision included lots 1-8. Lots 1-3 are zoned Agricultural. Phase III of the subdivision includes lots 70-78 and is zoned Residential (and replats of lots 4-8 of what was originally platted). On the replat of Phase III, item number 23 of the covenants and restrictions acknowledges that *lot 71 is not an independently eligible for a site location improvement permit and must be sold to an adjoining property owner*. The tract appears to be designated as such because it does not have road frontage. From staff's conversations with the developers, when lot 71 was created, the owner of lot 3 purchased the lot as additional acreage and didn't have any concerns about it being a building lot (as he was apparently only looking for additional acreage).

A proposed plan for what the replat will a proposed re-plat would look like has not been submitted yet, but the Applicant would like to vacate the lots from the subdivision because of the stipulation in the covenants prohibiting lot 71 from being a building lot, and because there is a covenant that also allows only one residence per lot. The owners do not use Boardwalk Drive for any purpose and wish to reconfigure their lot to create a more desirable building lot.

Staff cannot rule out that the approval of this request might allow for one additional building lot to be created than that which was originally approved in the subdivision. (It depends on whether some of the empty lots in the subdivision are ever built on or reconfigured.)

The alternative to this particular approach to a vacation would be to have all the owners of the subdivision phase / plat sign off on the proposed amendments of the covenants. The proposal would require a new legal description of the affected property, because lots 3 and 71 would no longer work as an adequate, accurate description. The Applicant has submitted a preliminary / concept survey. The vacation plat would not be completed or submitted until the vacation request has been reviewed and decided upon.

11 letters were mailed to adjoining property owners; 3 were delivered, and 8 were noted to be in transit because an authorized representative was not available. Staff received one phone call, with no comments.

The vacation procedure is set forth in Article 2, Section 280 of the Dearborn Co. Subdivision Ordinance. There would have to be some changes made once the submitted proposal is brought up to certified survey standards.

Mr. Kraus: To be clear, we are addressing vacating these two lots, where they will no longer be called lot 3 and 71 of Park Place Estates. They would become a piece of land just like anywhere else in the County with a legal description?

Mr. McCormack: Correct.

Mr. Lehmann: The vacation has to come first?

Mr. McCormack: If the request is approved the Applicant can move forward with a permit proposal for a new dwelling unit that would be wholly or in part on what is currently referenced / shown as lot 71.

Mr. Lehmann: Before they can build on lot 71, they would have to be released of the covenants and restrictions?

Mr. McCormack: If the lots are vacated, they will be officially taken out of the subdivision and the covenants and restrictions would be meaningless, and staff would have to make note of the official decision in our files.

Mr. Lehmann: The reason the covenant was put on was because of topography?

Mr. McCormack: As it was explained to me, the reason was because of the lack of road frontage.

Mr. Lang: Is the reason that a replat is not happening is to shed HOA ties?

Mr. McCormack: There are no HOA ties. The covenants cannot be addressed unless the lot is vacated out or all owners in Phase 3 are in agreement with the proposed amendments.

Mr. Lang: Are we circumventing a process that we should be going through? I'm assuming that there are other people that would otherwise have to get notified who are not getting notified.

Mr. McCormack: The Applicants have an option to request a vacation; another option would be to replat. Staff noticed all of the adjoining property owners as well as the owners in Phases 1 and 3 of the Subdivision.

Mr. Lang: With a replat you're not shedding HOA concerns.

Mr. McCormack: In this case, if the replat route were pursued, they would need it signed by all property owners of phase III for lot 71.

Mr. Lehmann: How comparable is this if a large tract of land were receiving federal tax dollars so that no one can develop it, and in the future, someone has to go through years and years of processes to undo these restrictions. Is there a similar process to undo these restrictions?

Mr. Ullrich: I can't see any impact on the adjoining properties, and just because it's an easy route I don't see why they wouldn't be able to take it.

Mr. Lang: There are supposed to be some restrictions, but I think it's too far enough removed that two stand-alone lots probably don't result in much change. It sounds like we can do this, but maybe the motion should have some language in it that is similar to the covenant. We want to make sure that there's not a way that one can develop this property into two lots and hurt anyone.

Mr. Lehmann: Considering lots 72, 73, and maybe 74, or 70-74 if a house is moved closer to the property line to the north, I don't know how happy I would be as one of these lot owners knowing that lot 71 was to be a non-building lot when I made the purchase of my property. It would be hard enough to understand that a barn could be built there; I wouldn't be happy but would also understand it's not a primary structure.

Mr. Steve Cahill, Owner of Abercrombie & Associates, Inc., representing Mr. Madden (property owner): Through this process we have been working with the property owner to add a new building lot. Per the covenants, we're looking for an appropriate course of action to have another building lot for his mother in-law. This seemed to be the easiest course of action, and we've worked with staff on which way to head to replat the two lots with lot 3 being part of the bigger phase of the subdivision. Having said that, this is step one with a plan to develop an additional building lot near 71—that is proposed to include a portion of lot 3, including a panhandle, to give the new lot frontage as a legal buildable lot. The deed mentions in the description that lot 71 is subject to all easement covenants and restrictions as shown on the plat. My initial thought is there are no further covenants. When phase III was developed they were mirrored, and the only thing that's restrictive to us that we couldn't agree to is that it's a non-buildable lot. The plan following this vacation is to bring a plat to be reviewed too.

Mr. Lang: Do you have an idea of where the new house lot will be, in terms of its location relative to the current configuration of lot 71?

Mr. Cahill: The plan is to get a half acre or $\frac{3}{4}$ acre from lot 3 (to add to lot 71). The new home would be near the lot line, we plan to study the topography of that area and come up with a grading plan to see what we can get to work out there.

Mr. Lehmann: On your phase III drawing, there looks like there are lines by the center of the line that is the ravines?

Mr. Cahill: Yes. The ravine through lot 71 would probably not be considered waters of the US, but the creek through lot 3 is more substantial.

Joseph Madden, owner of the lot with his wife: We went this route with the request at the advice of Planning & Zoning staff and discussed this matter in detail with the developer. My mother in-law is in bad health and keeping her close to us is our only real reason we are requesting this. We will keep this house close to our house and will do some grading work. The house will be of similar construction type to the area and will not be that visible from the road from where it will sit. We are not trying to put a neighborhood back there but are doing what we were advised as the best way to achieve our goal.

Mr. Lehmann: How long have you owned the lots?

Mr. Madden: We purchased in November of 2015.

Mr. Lehmann: You didn't build the existing house?

Mr. Madden: No, the previous owners listed the house and moved to Florida.

Mr. Lehmann: So, you have been looking at this about a year?

Mr. Madden: No, we've been looking at this since we initially purchased the property.

No further questions.

Helmut Kientz, owner of 24689 Park Estates: I don't have any problems with what Mr. Madden is doing but do have a problem with the clarity. If I were to request this I would think that I would need to have a drawing, a concept, to show what needs to be done. I still don't understand what vacating a lot means. We've been there 15 years and knew the original owners of the house, and when we moved in people started moving in cars, trailers, RVs, that were prohibited by the covenants and restrictions. We contacted the police and said they can't control it. Covenants are not enforceable; I got to be called Mayor of Park Place Estates because I went around and told people about what was going on. When I saw the sign go up, I had concern because I could remember when just recently Mr. Madden brought back some heavy equipment. I'm not worried about the mother-in-law home; it's the lack of clarity around the situation. I don't think anyone around here that knows what the Madden's are doing.

Mr. Beiersdorfer moved to close public discussion, Mr. Hawley seconded. All in favor, none opposed. Motion carries.

Andrew Baudendistel, County Attorney: Pursuant to 36-7-4-711(e) shall give every owner of the plat a chance to comment on the petition but allows the plan commission to determine how that process should work. Also 36-7-4-714 discusses the process of lifting a covenant also and explains the criteria that the plan commission must consider when making such decision. The latter statute is a bit more concerning to me because it deals specifically with removing a covenant. I recommend tabling the decision and sending out regular mailing to all property owners in the phase, to cover ourselves and make sure everyone is aware of the proposal.

Mr. Madden: Can we vacate as proposed but leave all other covenants in place?

Mr. Kraus: It makes it look like were just vacating a covenant, and I have no idea if we are pursuing in the correct legal manner.

Mr. Hoog: On number 23 of the covenants, lot 71 is "not independently eligible for a site improvement permit and must be transferred to an adjoining property owner." Would that run with the new property owners?

Mr. McCormack: Correct, it would run with the land.

Mr. Beiersdorfer motioned to table the request until next meeting so notice can be sent per the County Attorney's suggestions as first class regular mail to all property owners in that phase. Mr. Hawley seconded. All in favor, none opposed, motion carries.

F. ADMINISTRATIVE—

The West Harrison interlocal agreement was signed as drafted by the Town Council and is ready to be signed by plan commission if there is no further discussion. Per the discussion of the last meeting, if the agreement stayed as is and no changes were made on the Town's end, then the County Plan Commission had agreed that it would sign the agreement. The board signed the agreement except for Mr. Thatcher, who had been absent at the previous meeting.

Mr. McCormack will be meeting with Jason Sullivan, the Director of Emergency Management, after the commissioners meeting to discuss the public safety element of the comprehensive plan, and is attempting to reach the sheriff's office, per a recommendation, specifically with Dave Lusby, to include whatever elements that staff can for public safety.

There is one case scheduled to be on the April agenda.

There is an amendment in the works to give the Technical Review Committee more authority on transportation management issues, but it was not advertised on the agenda so there will be no action on it. The staff distributed information for the next meeting.

Mr. McCormack notes that in Article 5 of the Zoning Ordinance, there is nothing that sets minimum expectations for applications / cases where a concept development plan is not submitted—so some Applicants are not submitting concept plans to avoid additional requirements. Recent applicants have argued that they should not have to notify anyone for a rezone except adjoining property owners. Staff would like to clarify who should be notified to be more in line with what we are seeing throughout the state and would also like to establish clear, minimum expectations for applications / cases involving zone map amendments (a.k.a. rezones).

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

Meeting adjourned at 10:05 p.m.

Dennis Kraus, Jr., President

Mark McCormack, Secretary
Planning Director