**FRANKLIN COUNTY AREA PLAN COMMISSION**

**MEMORANDUM & MINUTES**

**September 11, 2019 @ 7:00 PM**

**COMMISSIONERS/COUNCIL PUBLIC MEETING ROOM 203**

**THOSE PRESENT:** Area Plan Commission Members: Robert Braun, Glenn Bailey, Ruthie Mannix, Ed Derickson and Chris Ernstes. Also, present; Tammy Davis, Commission Attorney, Cindy Orschell, Executive Director Melissa M. Orschell, part-time administrative assistant. Absent: Town of Cedar Grove Appt. and Mary Rodenhuis

Robert Braun opened the meeting with the Pledge of Allegiance at 7:00pm

Roll Call performed.

**MINUTES Of July 10, 2019-** Ruthie Mannix asked that the minutes be paragraphed for better clarification. MOTION- Glenn Bailey moved to accept, 2nd Ruthie Mannix.

**RZ-2-19-21237 for BAM Investments LLC** at 1201 Main St. in Brookville, IN 47012 to change the present zoning designation from Residential 1 to Residential 3 in Section 7 of Brookville Township located on Reservoir Rd. containing approximately 12 acres.

Robert – do you want to address that?

Brian Bauman – I guess what we’re looking at is every community around us has some sort of condo for sale or built for the residents except for Brookville. We want to try and better the community. So that is why we need the rezoning change.

Bob – any questions? Would this require an additional infrastructure?

Brain Bauman – we’ve got electric and water on site and high-speed intranet through ETC. I talked to Dave at the Health Dept. he believes our perc’s are good enough to design a system that will word for each lot. So, each lot would have its individual septic to service that individual building. The first lot would be probably only big enough for a 2 unit and the 2nd lot would be big enough maybe for a 3 or 4. They said our perc’s were good enough for a septic that was designed for that.

Bob Braun – because of the acreage would that comply with the 2 sites per residence?

Brian Bauman – when we got this approved for the 9-lot subdivision, each lot had to have 2 sites per lot. So, each lot would have 2 sites.

Bob Braun – and is the lot for each unit?

Brian Bauman – yes. So basically, it would be the 12 acres would be rezoned. We have that surveyed off into 9 lots available tracs that each have electric and water service and have been perked for 2 sites on each lot.

Ruthie Mannix – the photo you have and rendering is that a 4 unit?

Brian Bauman – that would be 4 unit, roughly 1400sq ft. per unit. 2-bedroom, 2 baths with a 2-car garage.

Ruthie Mannix – for the units?

Brian Bauman – for 1 building is 4 units.

Ruthie Mannix – on 1 acre?

Brian Bauman – most of them are 1.2 to 1.3 acres.

Ruthie Mannix – so those 4 units would share a septic system?

Brian Bauman – yes. Designed by the State. There will be a 2-tank system for sure, the first tank and then your doze tank and then the footage on you leach field would be determined by that.

Bob Braun – so there will be 1 septic unit for the 4 units.

Brian Bauman – no, we have 1 septic system for 1 building.

Bob Braun – so that would be for 8 bedrooms total plus they count a family room in to so that would be calculated into the size of the septic?

Brian Bauman – whatever they would require yes. So, for some reason the soil wouldn’t be good enough for a for building like that 1st lot isn’t it would have to be a 2 or it could be a 3 we could have only 1 in the middle.

Bob Braun – so there may be more than 1 septic unit?

Brian Bauman – no, 1 septic per building. That’s a 4 which is our goal. But let’s say the septic will only handle a 3 unit in that 1 building then it would a 3-unit building or a 2-unit building. But it would not be bigger that a 4. So, a 2 to 4 depending on what the soils will allow. So, lot 1 would not allow for 4. Lot 2 could possibly allow for a 4.

Glenn Bailey – will there will space from building to building?

Brian Bauman – yes, your building will sit on the lots with the setbacks. And then the condo association would be in charge of taking care of the 1 septic and the 1 roof.

Ruthie Mannix – how wide are these lots?

Brian Bauman – about 150’. So, the plan might need tweaked a little bit based on our setbacks.

Ed Derickson – how close are these buildings to be set to the front of the golf course?

Brian Bauman - the septic sites would have to be in between them so that our sites are met. So, on the plot plan each one has a circle to show the soil analysts where they were taken.

Ed Derickson – so each garage unit the driveway would be facing back toward the backside.

Brian Bauman – yes.

Ed Derickson – when you have driveways coming in, is that going to interfere with the septic sites?

Brian Bauman – we might have to come in and go across or do a horse shoe. Cause we are going to have maintain our septic sites.

Ruthie Mannix – so if understand this correctly, 1 of your septic fields would be between the building and the road? The driveways would cross over the leach field?

Brian Bauman - yes, we would have to go around. We have to maintain our septic’s.

Ruthie Mannix – as I remember this is a private lane, you already got a variance back in 2014 to add more lots from 5 to 9? Technically 8 cause lot 1 would have its own frontage off of reservoir.

Brian Bauman – yes.

Ed Derickson – how many lineal feet of leach line will you need for these?

Brian Bauman – they didn’t know. They said it would have to be sent to the State for them to design. So, they said we would be working with the State health dept. and that might come back where we got to go from 9 lots to 7 or 6 lots to widen them out to get what we need to do.

Ruthie Mannix – will these be rental units?

Brian Bauman – no. Condos for sale.

Ruthie Mannix – so you plan on some sort of home owners association?

Brian Bauman – yes will a home owners association take care of the roads, buildings. They will have HOA dues.

Ruthie Mannix – I am a little uncomfortable with having 9 lots an average of 3 to make having 27 home owners on a private lane which is 5 times as many as the code really allows.

Brian Bauman – a good example is the Wewe rentals in town. He has 20 or 24 and that’s a private lane he is maintaining.

Bob Braun – what will the road be like?

Brian Bauman – it will be paved.

Bob Braun – and if the annex goes through with Brookville will this be part of this annex?

Brian Bauman – I’ve not seen a map. The golf course gave me a letter that they are in favor for development around the golf course.

Ruthie Mannix – have you spoken with the local health department?

Brian Bauman – yes, he said our soils are good enough to handle up to 4 units for some of them. Some of them might be only be 2 units.

Bob Braun – did you do the soil tests?

Brian Bauman – yes.

Bob Braun – on all the lots?

Brian Bauman – yes and is on record with the health dept.

Ruthie Mannix – I have a question of Cindy. What’s the difference in this and a subdivision? It seems like a subdivision to me. If you are talking about 27 units and a private drive. It feels like a subdivision to me.

Cindy Orschell – yes it could but he is already granted that variance for having more than 5 homes on that drive. The appeals board has granted and approved for him to have more than those 5 homes on that private drive. What he is wanting to do now though is because that property is zoned residential 1. That doesn’t permit more than 2 family. That’s why he is applying for the rezone so they can have this. He is correct in stating that the State of Indiana because of him having all those units on there they are going to be the ones to approve the septic. That’s not going to be locally. Another thing to you will have to do with having 4 there, that will have to be filed with the State of Indiana to. Because he has more than 3 units there.

Ruthie Mannix – who assures the private drive is assessible for fire… fire trucks and all those sorts of things?

Cindy Orschell – that would be up to the HOA (Home Owners Association) to do that. Because there is nothing in the ordinance that specifies how that road has to be built and maintained. We had something in the ordinance when the ordinance was first proposed. They took that out because there was no really no way to enforce it because they were allowed to have 5 homes on a private lane. There was nothing that stated how they had to maintain or who had to do it.

Ruthie Mannix – it seems to me like its opening up a big can of worms to have that many homeowners on what’s a private lane.

Cindy Orschell – he could have filed under a unit development but that isn’t something he wanted to do. He wanted to go for the rezone. I think that was because he already had all those separate lots.

Brian Bauman – yes, we already had it in separate lots. We already had our septic’s. We already had everything we need. We can do the condos. We can do 1 ½ lots if we need to if we need more width. We can make it lot 2 and half a lot 3 go with this condo. And lot 3 and half of lot 2 go with that condo. Once we get with the State and they say you need this much more on your septic or you need this much room in between buildings we can move to their guidelines. I am sure the cul-de-sac is going to be the size that a firetruck can turn around.

Bob Braun – so it is approved for 5 homes?

Brian Bauman – we are approved for 9 lots.

Cindy Orschell – keep in mind he’s already granted a variance for having those 9 lots on that private drive.

Chris Ernstes – do we know what section in the zoning code that variance was granted on? Was it on what defines a subdivision?

Cindy Orschell – no. he was varying from having 5 lots on a private drive. He asked for 9 and was granted that.

Chris Ernstes – now the definition in our code for a subdivision does that supersede then the definition of a subdivision in the code. The definition of a subdivision in our code is 6 or more homesites on any one private lane.

Cindy Orschell – yes. But you also have that 5 homes on a private drive. He chose to present the case to the board of zoning appeals and that is when they granted the variance. So right now, it looks like a subdivision but the board of zoning appeals granted a variance for him to do this.

Chris Ernstes – so where is it in the code that says the 5, do you know where that is?

Cindy Orschell – it’s on page 104 and its section 80.08.08d private lanes. And it says multiple homes allow up to 5 homes are allowed on a single private lane. Those that are more than these limits can either apply for a variance or a apply to be a subdivision under section 11.

Justin Boggs – the variance he was granted. Was it for a multi family residence or just for more houses being added to the property?

Brian Bauman – it was for 9 lots on a private drive.

Chris Ernstes – Tammy from a legal standpoint of your view of this, is it exactly strictly 9 homes?

Tammy Davis – it’s kind of hard to answer your question, he was granted based on his plat of 9 building tracts so the plat presented would have been 9 tracts. So, you assume 9 homes. There will be 9 buildings or less. So, you still have the same number of buildings even though you have multiple units.

Ed Derickson – the one thing I agree with, in order to sell these, you have to have a decent road and you got to have a turn around and it has to be approved. When does that approval come? Who’s going to approve the road for this?

Brian Bauman – the contractor who we hire to do it and the condo association.

Ed Derickson – are you intending to widen that road?

Brian Bauman – the gravel base we have in right now is probably not wide enough for what we want to do. So that road probably will be your 24’ wide paved road.

Bob Braun – so would there be a problem to meet the requirements for the road that a subdivision would require?

Brian Bauman – I never read what those are.

Ruthie Mannix – if you got 27 units, I feel specs is needed for a road for that many units.

Bob Braun – would you agree to the terms of a healthy road as in the subdivision code?

Brian Bauman – I’m not saying we wouldn’t. Why are we worried about the road? It is the people’s road that buy the units inside the HOA (Home Owners Association). It is there responsibility to take care of it. It is the people’s road inside the HOA. The Commissioners are not going to be the ones to repair it.

Ed Derickson – well as an example in a subdivision residential street shall be a surface to a minimum width of 36’. It stipulates within the subdivision the width of the streets.

Brian Bauman – to start yes. But 10yrs down the road when it starts to crumble and it needs resurfaced there’s nobody to come back to and say that road is bad and you got to resurface it. Nobody can tell them the POA (Property Owner’s Association) to resurface it. They can let it crumble into gravel if they want to. I guess that is what I am trying to say is, there is restrictions on when you put it in but there’s no restrictions on maintenance of it because it’s a private road.

Bob Braun – but what I’m detecting is some resistance to the road issue and it’s in your best interest to put in a good road if you agree to do that it may lessen that resistance.

Brian Bauman – yes, I understand and I’m trying to say yes were going to put in a good road but I don’t know what those rules are. So, I guess I’m saying if those guidelines are within 6-10” of compacted gravel with 3” of asphalt with a 1” of top on it. Yeah, the 20’-24’ wide if that’s what those guidelines are that’s kind of what the road is total so we would be agreeable to a stipulation in there that it be built at what 36’ wide would be.

Glenn Bailey – Cindy, could I just for clarification, right now it’s R1 and they want to go to R3. If we go from R1 to R3 what are we really including?

Cindy Orschell – your permitting him to have that multi-family housing as compared to just having single or 2 family.

Glenn Bailey – I assume if we vote on this to change it. Can we put anything in there about what the road needs to be? Cause what I hearing him say and I understand completely, once it’s done homeowners can gripe about their builders after the face when things go wrong. All I’m saying is could it stipulate that the road need to meet somebody authority of the proper road for what is being done here?

Tammy Davis – so you guys are just making a recommendation to the commissioners. You could send your recommendation with what your suggesting. So, if that’s how this board feels then I would just suggest with your recommendation send on that to the commissioners and that’s for them to decide.

Cindy Orschell- Bob, I did need to let the record show that he does have his proof of publication. And on his adjoining property owners he had 2 of them that he hand delivered to Brook Hill Golf Course and Landon Eckerle.

MOTION Glenn Bailey – I move that we make a favorable recommendation to move from R1 to R3 and send to the commissioners the notion that we would like to make sure that the road is up to standards for the private drive. If they approve it, they would say it stipulate that has to be met. SECOND Ed Derickson. MC with Ruthie Mannix opposed.

**UNFINISHED BUSINESS** discussion on section 80.12.01A and section 80.11.07E

Tammy Davis – a couple meetings ago I passed out or emailed out information regarding 80.11.07E under the remedies, penalties and fines. I typed out the current language and then it was brought to my attention that during the CIC meetings that maybe the attention that was intended was not entirely carried forward in the current code or it was open to interpretation. So, I typed out some proposed language. I don’t know where the board is at with this. I feel like it defiantly needs a revision. Just so there are no questions. If anyone has feedback, I’m happy to make more revisions to it. (see attached revision). So, the way I interrupt it is when the APC initiates’ an action against somebody for noncompliance or alleged noncompliance of a code then this will come into action. If we take someone to court and they prevail then we pay their attorney fees. However, if others were to interrupt this if you were to read it separately that would argue that we pay attorney fees when this board loses, we pay attorney fees all the time basically whether we win or lose because it references county government in general. Taken as a whole I believe the intent is there. But if you take apart a paragraph or two it can be interpreted differently. To my understanding the intent was that if the APC initiate actions against someone and the court rules against us that they are entitled to attorney fees. On the same note if we take someone to court and we prevail we don’t ask for attorney fees. I think the language in the minutes may have been along the lines they felt the taxpayers were already paying that. I want the board to think about that because typically when you take someone to court in a civil action if you prevail you would commonly ask for court costs and attorney fees to be reimbursed for having to pursue the action in the first place.

Ruthie Mannix – and have you been doing that?

Tammy Davis – in the new code I haven’t had to take somebody to court and ask for the $500 fine. Prior to we would ask for the attorney fees and the fine and court costs to be reimbursed.

Bob Braun – didn’t we waive that on the one issue we were to going to garnishing wages?

Tammy Davis – yea in that case we got a judgement and we got attorney fees, and the county was reimbursed for my attorney fees through that. But the way it reads now win or lose it can be interrupted that we pay fees. I don’t know is that if what we want to do.

Cindy Orschell – and that was under the previous ordinance to?

Tammy Davis – right yes, like I said I haven’t filed action. We haven’t got to the point of containing judgements because most people come into compliance after the action is filed. I haven’t had to seek judgment against somebody. And if I do, at this point all I can ask for is the $500 if they fall under that category. So, the $500 fine and no attorney fees reimbursed.

Bob Braun – thank you for this and I appreciate your clarification on that and if this prevails that would be following through with what the CIC wanted.

Tammy Davis – so if we want to make this change, well advertise it for a public meeting. If this is the language you want to keep on the proposed. So, if that language is acceptable to the board then we can get it advertised for the next meeting as a change.

Bob Braun – so leave it as written or go for the proposed change?

Tammy Davis – yes. We can’t act on it, but other than if you want to advertise it for the next meeting then the language would need to be established.

Chris Ernstes – are there any situations if we are initiating litigation for a violation? Is there typically a fine involved with those?

Tammy Davis – so per the code the max fine is $500 dollars and that’s a 1-time fee.

Glenn Bailey – seems like we need to make a decision whether or not we are going to put out a public notice.

Tammy Davis – yes, I guess if the board wants more time to think about it you can always table it to the next meeting. Otherwise, we would need to know what language if want to have a public hearing at the next meeting. So maybe this is simpler, is everybody ok with trying to clean up the language so that the intent is clear?

Chris Ernstes – yes.

Tammy Davis - ok, and do we add if the county prevails, they may seek reasonable attorney fees and court costs?

Ruthie Mannix – typically what are the attorney fees?

Tammy Davis – for the APC normal violation fees, the average is $500-$800. Again, every one that I have filed recently they get into compliance and we don’t go to court and my fees are nominal. And we don’t ask for those unless we go to a trial that we then would ask for them to be reimbursed. If it gets resolved before you go to court then you’re not asking for them anyway in a judgement.

MOTION Glenn Bailey – if we go to court, we should seek reasonable legal expenses and court costs.

SECOND – Ruthie Mannix.

**NEW BUSINESS** Monthly Reports

Bob Braun – can we go over the complaint report first?

Cindy Orschell – on the first one, on Cregar, we are not sure on where we stand on this one. Tammy Davis expresses a concern that we may not be able to enforce that 50’ setback with this being a nonconforming existing use. I don’t the exact date of when the business started but I know it was before 1965 and it has always been that type of operation.

Tammy Davis – I have been communicating with the commissioner’s attorney Mr. Reeves about this particular complaint and issue. We are trying figure out a resolution to it in a week or two. The Cregar’s are out of town right now. The Cregar’s should be back next week so hopefully we will be moving in the right direction in getting something worked out so there is no longer a problem.

Cindy Orschell – and then on Presley he met with Tammy. We had court set for 1:00 on Tuesday. He actually came to the Area Planning Office and got the permit issued and he is to get us registrations for the cars that are located on his property that we can determine that he is not operating his business. I think once we get those registrations in that will one that will be in compliance.

Tammy Davis – I also let him know I think there are some lingering social media ads still lingering out there for his business and that he needed to ensure they were all off. He made a call while I was there to ensure they were all off. He was more than cooperative he actually thought his permit was done. For now, it’s pending and the court will reset if for a hearing upon my or his request if needed.

Chris Ernstes – did he have a deadline for when he needs to present the registrations?

Tammy Davis - No specific deadline was given on the registrations but I told him to get them to me very soon. If I don’t hear from him in the next couple of weeks I can follow through.

Cindy Orschell - and on Witt that one is in compliance. I was out there on the 6th and met with her on the property.

Cindy Orschell – Davis, that’s the one Tammy has been in contact with off and on. I did a site visit on the 10th and it appears to be some clean up. But it looks like there is one unlicensed vehicle there with a possible other one. That’s still an ongoing violation.

Tammy Davis – I called him this morning and left a message for him. I was in court all day. I don’t know if he has called back or not. He has never been one to not call back. So, if I do have a message, I will shoot out an email and let you know what he says. I did let him know about the 2 cars in my message.

Cindy Orschell – and then on Smith which was back in 2018, I spoke with her, she was in the office around the first of Sept. I did a site visit to. There is some substantial improvement. There are still some things that need to be taken care of. She is still trying to get into compliance.

Cindy Orschell – and then Neeley, this is one I have a concern on. It looks like there is some improvement but it doesn’t look like there has been anything recently. I know sometimes if we have Tammy send out a letter it can help moves things along.

Cindy Orschell – on MS Properties, I had a complaint that was filed back in 2017 and I had an issue with trying to notify the property owner and since then the property has been transferred. I have resent another certified letter the end of August and have not received that green card back yet. So, I don’t know if they received it or not.

Cindy Orschell – and the same thing with Miller, that one has been sent one letter and then I sent another one certified to make sure they receive it.

Ruthie Mannix – so do we think Tammy should send another letter out to Neeley?

Cindy Orschell – I can send another letter.

Ruthie Mannix – I think we should send another letter.

Cindy Orschell – okay.

Ed Derickson – on the MS Properties’ is this complaint because this property has not been cleaned up or unkept.

Cindy Orschell – the house is burnt and the debris has been left on the lot.

Ed Derickson – I am trying to figure out what the purpose of the unsafe unkept ordinance is.

Bob Braun – maybe we should ask the commissioners if that is something that they can handle.

Cindy Orschell – okay I will check into it.

Bob Braun – do have any other questions or other business to come forward?

Glenn Bailey – I went to workshop last month and one of the topics were ponds. The surveyor brought up the problems that they’ve had and what they go through. I asked Cindy what we have as far as regulations for ponds and she said we didn’t have any. I thought maybe we should see if we need one or not.

Ruthie Mannix – we do have in the conditional uses the dam needs to be 100’ form adjoining property line if it’s 3 acres or more. The State controls if it’s a dam above 20’ then a permit is needed. If smaller then no permit is needed.

Glenn Bailey – ok, I just wondered do we want to leave it like that, or just something to think about.

Cindy Orschell - also when we were talking about the conditional uses how it was stating that in plan business, local business and general business they were permitted but they were also under the conditional use. I only found 3 that needed to be looked at. I haven’t had a chance to get with Mary she has been busy. But these are the 3 that I have put together if you just want to take them and review them. If you think they need to be on the agenda for next month. (see attached)

Bob Braun – would the first one you have art interior design and music. Would that be someone teaching music lessons in the home?

Cindy Orschell – I would think so, but I don’t know if there is a definition of studio business.

Bob Braun – I think we need to study this and cover it next month.

Cindy Orschell – okay, we can put it on the agenda for next month. Another thing, I had someone call in about an existing cell tower. They are wanting to add a microwave to this. I know we had some issues with microwaves in the past. This one is going to take place down at the ground.

Bob Braun – I know in the past we were opposed to microwaves and we had prohibited that from all applications for cell towers for franklin county that have come before the board for several years. Did they ask to do that?

Cindy Orschell – this is an existing cell tower and there is nothing that needs to be followed if there is any kind of co-location. A cell tower typically when they are approved there is up to 3 to 4 co-locations on it and there is nothing, we do on that because the tower itself is already approved. But they are wanting to add microwave to this tower.

Bob Braun – so if they are asking to add something, what has been typically been approved is up to 4 co-locations on the tower and those were cell antennas not microwave antennas. So, I think microwave would exceed what we have ever approved. So, I would feel they would have to apply for a conditional use to have a microwave added to an existing cell tower.

**ADJOURNMENT – MOTION-** Ruthie Mannix – move to adjourn. Glenn Bailey – second AIF.MC. Meeting adjourned at 8:36 p.m.