



**CEDAR LAKE PLAN COMMISSION SPECIAL WORK SESSION MINUTES
CEDAR LAKE TOWN HALL, 7408 CONSTITUTION AVENUE, CEDAR LAKE, INDIANA
NOVEMBER 3, 2021 at 6:00 pm**

CALL TO ORDER:

Mr. Jerry Wilkening called the Plan Commission Special Work Session to order at 6:04 pm, on Wednesday, November, 3, 2021, with its members attending on-site.

ROLL CALL:

Members Present: Robert Carnahan; Richard Sharpe; Chuck Becker; Heather Dessauer; John Kiepora, Vice-President; Jerry Wilkening, President. A quorum was attained. **Also present:** Don Oliphant, Town Engineer; David Austgen, Town Attorney; Rick Eberly, Town Manager; and Ashley Abernathy, Recording Secretary. **Absent:** John Foreman; Jill Murr, Planning Director.

Zoning Ordinance Work Session:

Mr. Wilkening asked Mr. Eberly which Chapter of the Zoning Ordinance they would be starting with for review. Mr. Eberly responded with the last Special Work Session, they had stopped with Chapter 19 and going to start Chapter 20, 21, and 22 before going back to Chapter 6.7 Legacy Lots Description and Chapter 15 Signage.

Mr. Wilkening asked Mr. Eberly if he would like to start with Chapter 6.7 Legacy Lots. Mr. Eberly responded if that was the pleasure of the Commissioners or if they would like to start with Chapter 20 Definitions. Mr. Wilkening agreed to start with Chapter 20 Definitions and asked Mr. Eberly if there was anything that needs changing in this chapter.

Mr. Eberly stated from the beginning he has expressed concerns with how front yards are addressed and he thinks the Zoning Ordinance needs to be more definitive about what is a front yard. There is language in the Ordinance that give the Plan Commission the authority to determine what the front yard is on any given lot. The Ordinance states on a corner lot the narrower frontage is the front yard, unless otherwise designated by the Plan Commission or a person designated by the Plan Commission to determine where the front yard is.

Mr. Wilkening asked if an example of this would be the Starcevic property. Mr. Eberly responded in the affirmative and if the verbiage in the Ordinance was followed, he would not have been addressed off of 142nd, and would have instead by addressed off of Greenleaf. Ms. Dessauer asked if that would also give them the authority to designate 142nd Avenue as the front yard. Mr. Eberly responded in the affirmative.

Mr. Eberly stated this works well moving forward with subdivisions being platted with the Plan Commission in the future. They can determine on a corner lot if they are going to allow one address or

not. The address would determine the front yard for the lot in question. If a lot happens to be deep enough to have a front yard on either frontage, allow the developer or engineer assign an address to the lot that makes sense. As well, whoever applies for the Building Permit can choose which frontage will be used for a front yard. Mr. Eberly used the Dust property as an example, with both frontage on Colfax and 133rd being treated as the front yard.

Mr. Wilkening asked Mr. Eberly if Mr. Dust would have come to the Plan Commission and the discussion of his property would have happened at the Plan Commission to determine the front yard and the Petitioner would not have gone to the BZA. Mr. Eberly responded, in his humble opinion, if front yards were treated correctly then the Petitioner would not have had to get a variance to put an accessory structure in his front yard because it would have been his side yard.

Mr. Wilkening asked who would have determined the front yard. Mr. Carnahan asked if it would be the Plan Commission through the definition. Mr. Eberly responded in the affirmative it can be done with the definitions. Discussion ensued at length about clarifying the definition of the front yard and having the Plan Commission determine the front yard through the definition.

Mr. Wilkening asked what would make this language bullet proof. Mr. Austgen commented he did not know. Mr. Eberly commented on the same and he did not think they were going to make it bullet proof. Typically, the direction the house is facing and is addressed, that should be the front yard.

Mr. Wilkening asked, regarding the Legacy Lots, if they should come to the Plan Commission for a concept. Mr. Austgen stated they could, but if they figure out and make the rule for a front yard, it will work for a majority of the lots.

Mr. Wilkening asked Mr. Eberly if they needed to give direction on what the language will be to determine the front yard. Mr. Eberly discussed in Chapter 20, Page 30, Yard, Front is defined as “a yard extending across the full width of the lot unoccupied other than by steps, walks, terraces, driveways, lamp posts, and other similar structures, the depth of which is the least distance between the front lot line and the front line of the building”. They would have to review what setback talks about, as well as Lot Line, Front. Which is similar to what was mentioned earlier, the narrower of the two frontages becomes the front unless the Plan Commission or their designated representative determines otherwise. Mr. Austgen commented the designated representative was contemplated to be the Building Commissioner. Further discussion ensued about front yard definitions, what a front yard is, and various variances that have been requested due to multiple front yards.

Mr. Eberly discussed Chapter 20, Page 16 Lot Line, Frontage is “the front of a lot shall be the boundary of a lot along a public street; for a corner lot, the Plan Commission may select either street as the front lot line”. The Plan Commission has the language in the Zoning Ordinance to designate the front yard moving forward. The concern is are the lots that Mr. Wilkening mentioned, but as Mr. Austgen stated if they try to legislate for the exception, it would take a long time. Mr. Austgen commented they are trying to make the rules for the Legacy Lots and development.

Mr. Wilkening asked if it could be an agenda item without a petitioner. Mr. Austgen responded there is due process, and the owner of the property has a right to be seen and heard at the proceedings for their property. Mr. Carnahan stated he thinks they are trying to find a way to have a definition in the Ordinance so they do not have to have all the petitioners.

Ms. Dessauer asked for clarification since the definitions already exist in the ordinance. Mr. Eberly explained there are other areas in the Zoning Ordinance where it gets ambiguous what a front yard is. In the definitions, they have what they need to say going forward is a front yard. They would need to look at the three definitions and marry them. In the simplest form, a front yard is what Mr. Kiepura stated. Which is where the house is facing and addressed, that is the front yard.

Mr. Wilkening stated there will always be exceptions, for example a lakefront home, where the house faces the lake and the driveway comes into the back, but it's addressed on a street, for example 139th Avenue. Discussion occurred if a front door was needed to have a front yard and other items mentioned in the definition, such as lights and lamps.

Mr. Wilkening discussed if a front yard is designated to a piece of property and they come for a variance for something, they could have created the hardship by designating the front yard. Mr. Eberly agreed that could happen. Mr. Wilkening stated at that point they cannot allow a variance then. Mr. Eberly responded they can change the designation because they have the authority to change the designation of the front yard at the Plan Commission. Mr. Austgen added the Plan Commission has the exclusive jurisdiction over plats.

Mr. Eberly commented if there was a question on where the front yard is, the owner would be directed to come to the Plan Commission to determine what the front yard is. Mr. Wilkening discussed if further down the road an individual comes to the Plan Commission wanting to change their front yard due to the front yard being designated, it would be a hardship they created. Ms. Dessauer mentioned at that point, would they not come for a variance. Discussion ensued about if a petitioner attempts to change their front yard multiple times, and after the use is established, the owners are subject to Town Ordinances for change.

Ms. Dessauer asked how this will be kept track of, and if the front yard will be recorded. Mr. Austgen responded it will be recorded in the subdivision plat and it will be in the recordation. Ms. Dessauer asked if this could change over time. Mr. Austgen responded in the affirmative, that plat of vacation occurs all the time and discussed these vacations fall under Title 36 for the Plan Commission and there is a public meeting component as well.

Mr. Eberly noted that for Chapter 20, Page 8 for Conditional Use and Conditional Use Permit, there is a statute IC 36-7-4-918.2 which talks about items that BZA has approval over. Since the special exception language will be being removed, Conditional Use should be removed as well. Mr. Austgen commented there would be no Conditional Use in the Zoning Ordinance. Mr. Eberly commented he is proposing removing this definition.

Mr. Wilkening asked what the new verbiage would be. Mr. Eberly responded it would be a Use Variance or Variance of Use. There would be no more Special Exceptions, Special Uses, or Conditional Uses. It had been discussed eliminating Special Exceptions from the Zoning Ordinances. Mr. Wilkening discussed that anyone who appears in front of the BZA and asks for a variance, whatever is approved is approved. There is nothing special about the variance. Mr. Eberly stated it would become a Use Variance, not a Special Exception or Special Use.

Mr. Wilkening asked if this would eliminate enforcement. Mr. Austgen and Mr. Eberly responded in the negative. Mr. Eberly elaborated what it does with Use Variances and Developmental Variances there are

statutory criteria the Petitioner has to meet in order to convince the BZA to allow the request. Special Exceptions the community can adopt its own criteria of what needs to be met. Typically, Special Exceptions are easier to meet than the statutory criteria.

Mr. Austgen discussed the jurisdiction of the BZA allows for appeals. An appeal has not appeared before the Town of Cedar Lake yet. However, Mr. Austgen expressed his opinion that an individual will be coming for an appeal from an administrative decision. When the Plan Commission views language about appeals or administrative appeal this is why, it is in the state statutes and it cannot be eliminated.

Mr. Eberly highlighted in Chapter 20, Page 14, Home Occupation they had discussed adding language, which has been included in the packet provided to the Plan Commission. Mr. Wilkening asked Mr. Eberly if the part added for the Home Occupation was underlined. Mr. Eberly responded in the affirmative and it was bolded, underlined, and italicized. Mr. Wilkening inquired if this language was being eliminated. Mr. Eberly responded it was language that was being added. Anything proposed to be eliminated has strikethroughs.

Mr. Eberly highlighted in Chapter 20, Page 29, Use, Special and Chapter 20, Page 26 Special Exception were eliminated.

Mr. Wilkening asked if any of the Commissioners had any questions about any of the content gone over thus far.

Mr. Oliphant asked Mr. Eberly if he was wanting to delete the items that are in the Floodplain Management Regulations Ordinance. Mr. Eberly stated he was concerned about having the definition in 2 places, in case it was changed in one location and not the other location. Mr. Oliphant commented that reviewing some of the terms, the names are the same but the definitions are different. Mr. Eberly asked if they were better in the Zoning Ordinance. Mr. Oliphant responded in the negative, he thinks they are better in the Floodplain Management Regulations Ordinance. Mr. Eberly discussed having the same terms in multiple places with different definitions.

Mr. Eberly stated he had nothing further for Chapter 20 Definitions and asked the Commissioners if they had any further comments. Mr. Wilkening responded in the negative and asked Mr. Eberly if the next discussion would be Chapter 21 Amendments. Mr. Eberly responded in the affirmative.

Mr. Eberly discussed in Chapter 21 Amendments the first proposed change is in Section C, Form of Application. The language for requiring applications to be turned in by the first of the month was crossed out for informal review. They are putting together a schedule that makes sense in order to help prepare Petitioners to come in front of the Plan Commission. The first day of the month is not part of that schedule.

Mr. Wilkening asked Mr. Eberly if they had that schedule. Mr. Eberly responded the 3rd Thursday of the month is set up for Police, Fire, Ms. Murr, Mr. Kubiak, and himself to meet with perspective developers in advance of the first Work Session. They also have a standard staff meeting on the 1st Tuesday of the month to provide flexibility to invite a developer into that, as well. Mr. Eberly used an example of Ms. Murr and himself meeting with Diamond Peak on an upcoming proposal of theirs.

Mr. Wilkening asked Mr. Eberly if for Section C, Item 3 Plat of Survey was being added in. Mr. Eberly responded in the affirmative and highlighted below that addition, a portion was crossed out to bring to the Plan Commission attention for discussion. Mr. Eberly asked if this is something they still want to do,

and this is if a Zone Map change is defeated, they cannot come back for a year. Mr. Austgen expressed he would like for the Plan Commission to keep it this way, but it is a policy call.

Ms. Dessauer asked when a Zone Map change is seen in front of the Plan Commission. Mr. Eberly responded any rezoning request. It was discussed leaving this portion in and Mr. Eberly commented he would remove the strikethrough.

Mr. Austgen commented the second word of the paragraph below the strikethrough needed changed from proposes to proposals.

Mr. Eberly commented he had no further changes in Chapter 21 and no proposed changes for Chapter 22.

Mr. Austgen asked if they would consider changing the work study to review in Chapter 21, Section D Procedure and in Chapter 21, Section F changing "be guided by the advice of its" to "review the certification of the".

Mr. Austgen inquired if there was any other location that any action of the Plan Commission is by a majority of the quorum. Mr. Eberly responded in the Plan Commission Rules & Regulations. Mr. Austgen commented he just wanted to stress that it takes 4 Plan Commission members to approve anything.

Mr. Wilkening asked Mr. Eberly with Chapter 6.7 Legacy Lot Overlay District if these have already been updated. Mr. Eberly responded in the affirmative and stated he tried to track the bulk standards that are in other Zoning Districts.

Mr. Wilkening asked with the minimum side yard of 5 feet, is it understood that there can be no condensing unit there and will there need to be added detail with this. Mr. Eberly stated he believes the 5 feet is the foundation, and that is how it is defined in the Definitions. It is measured to the foundation of the building. This does not include eaves, gutters, fireplace, and the like. It is not a setback to those points.

Mr. Wilkening asked if there can be some language to make it be a 5-foot clear to foundation setback. Mr. Eberly asked if that is what the Plan Commission would like to do, as there are lots that are as narrow as 30 feet. In Section B, Item 2 addresses lots that are existing 30 by 80-foot lots that have houses on them. Mr. Eberly discussed this is trying to allow the Legacy Lot owners the ability to improve their lots, but that safety needs to be a consideration as well.

Mr. Becker asked if the side yard on the vacant Legacy Lots could be changed. Mr. Eberly responded they could if the Commissioners wanted. On a vacant lot they need at least a 50-foot-wide lot and it is proposed to go as low as 30-foot-wide on an occupied lot because they already exist. In a subdivision, if a lot is vacant and only 30 by 80 feet, the lot would not be buildable.

Ms. Dessauer asked if it was added that the setback had to be 5-foot on one side and 8-foot on the other. Mr. Wilkening agreed with Ms. Dessauer. Mr. Eberly stated what could be done in this case is make a minimum 5-foot setback on any given side and no less than 13 feet cumulatively in side yard setback. Discussion ensued about the variations of setbacks that could occur as long as there is a cumulative setback of at least 13 feet.

Mr. Oliphant asked if they want to have the cumulative 13 feet, do they want to specify HVAC and generators be located in the bigger side yard? Discussion ensued about having language specifying the bigger side yard having the HVAC and generator.

Mr. Wilkening discussed the developmental standards that Mr. Oliphant lists as waivers in his letter for an individual wanting to redo their property. If the owner does not want to put a sidewalk in, the owner would be offered the ability to contribute to the Sidewalk Master Plan. It was discussed this was not the time to discuss the Sidewalk Ordinance.

Mr. Wilkening asked Mr. Eberly about Item 3 under Section B of the Legacy Lots Chapter. Mr. Eberly stated what this section is trying to do is allow people to put additions onto their properties without platting them within the Legacy Lots. Mr. Austgen asked if this is consistent with the combination of lots so they still meet the requirements. Mr. Eberly responded in the affirmative.

Mr. Oliphant asked what the actual definition of a Legacy Lot is. Ms. Dessauer asked if Section A of Chapter 6.7 defines what a Legacy Lot is. Mr. Eberly commented not really, but Mr. Austgen is correct in the Non-Conforming in Chapter 17 it discusses minimum lot size that can be built on, on a pre-existing lot. It is typically 50-foot-wide, and 5,000 square feet. Mr. Eberly stated the addition of Recorded Lots less than minimum area from Chapter 17 Non-Conforming Uses, Structures, and Lots, Section H, Item 4 addresses this. Mr. Austgen commented this matches the existing Ordinance. Discussion ensued on where a definition of a legacy lot could be found and the definition can be found in Chapter 6.7, Section B, Items 1 and 2.

Mr. Oliphant asked if an existing structure on a Legacy Lot that is 30 by 50 feet, they cannot rebuild on that lot without a variance. Mr. Eberly stated if a primary building on a lot, that is not a lot of record is demolished with the intent to rebuild it on the lot, the lot must first become a lot of record and meet the bulk standards in Sections B.1. Discussion ensued about demolishing and rebuilding a primary structure on a lot that is smaller than 50 feet wide and the attempt to allow for the rebuilding on the Legacy Lot. Discussion also ensued on using the bulk standards for B.1 and B.2 to rebuild on a Legacy Lot.

Mr. Kiepora mentioned if a house built on a Legacy Lot that is 30 feet or 40 feet wide is taken down, what they would want to say is they can rebuild the house to the B.2 Standards. Mr. Eberly commented on B.1 or B.2. Mr. Kiepora stated B.1 would not work because the lot would be smaller than the allotted size. Mr. Oliphant asked if the lot width for B.1 could be changed to 30 feet so both B.1 and B.2 would match. Mr. Kiepora responded he likes how B.1 and B.2 are set up; he just believes to rebuild the Standard B.2 would need to be the one referred to.

Mr. Austgen advised part of the minimum is an effort to provide quality minimums to area, size, and notwithstanding the conditions in the old, platted subdivisions in the community. This way they are not encouraging undersized lot redevelopment, while also setting a bar where it is the Town is not preventing it. It was agreed if that was the case B.1 and B.2 are written correctly. Discussion ensued about how this ordinance would affect the pie shaped lots.

Mr. Oliphant asked Mr. Eberly about the GIS exercise if they identified the amount of lots below a lot wide of 50 feet. Mr. Eberly responded he did not remember the number but Mr. Oliphant had identified all the Legacy Lots between 30 to 50-foot-wide and there were an extensive amount of them. Mr. Wilkening

asked what the number was. Mr. Oliphant stated he did not remember the exact number off the top of his head, but it was a couple hundred lots.

Ms. Dessauer asked what would happen the individual who would purchase a lot that is too small. Mr. Austgen responded they would need to apply for a variance. Mr. Eberly stated currently they are forced into a variance. The Legacy Lots portion is liberalizing the Ordinance and giving property greater opportunity to redevelop the property.

Mr. Wilkening asked Mr. Eberly in Chapter 17 Legal Non-Conforming, Section H, Item 2 even if there are two owners, the two pieces of property still need to be combined to build across both lots and requested this be reviewed some more.

Mr. Austgen asked Mr. Eberly about the adoption language in Chapter 22, Section A, the Indiana Codes cited there are not correct. Mr. Eberly asked Mr. Austgen if he could provide those in order for them to be corrected. Mr. Austgen responded in the affirmative and that both of the codes on this page are incorrect.

Mr. Austgen also noted in Section B to make certain that Zoning Ordinance 496 is referenced as Zoning Ordinance 278 was replaced by Ordinance 496. Mr. Eberly asked if the language included in the document does not include that. Mr. Austgen advised he would like for Zoning Ordinance 496 to be specifically recognized and Ordinance 278 was repealed. In Section D, change the language to "The Zoning Ordinance will take affect upon adoption by the Town Council".

Mr. Austgen advised for Section A to remove the first portion and replace it with "Municipal Corporation is duly organized under laws of the State of Indiana".

Mr. Austgen asked Mr. Eberly how close they were to completing the Zoning Ordinance updates. Mr. Eberly responded he thinks they will need two more work sessions. Ms. Dessauer inquired if there could be another meeting scheduled under a different date to get this completed. Mr. Wilkening asked if there were any days available to schedule an additional meeting. Mr. Eberly stated they could try to schedule a meeting on a day of the week that had no meetings and asked if the Commissioners would like for him to send out an email about a potential additional meeting to be scheduled. The Commissioners responded in the affirmative.

ADJOURNMENT:

Mr. Wilkening adjourned the meeting at 7:05 pm.

TOWN OF CEDAR LAKE PLAN COMMISSION

Jerry Wilkening, President

John Kiepura, Vice-President

Richard Sharpe, Member

John Foreman, Member

Robert Carnahan, Member

Heather Dessauer, Member

Chuck Becker, Member

ATTEST:

Ashley Abernathy, Recording Secretary

The Minutes of the Cedar Lake Plan Commission Special Work Session are transcribed pursuant to IC 5-14-15-4(b) which states:

(b) As the meeting progresses, the following memoranda shall be kept:

(1) The date, time, and place of the meeting.

(2) The members of the governing body recorded as either present or absent.

(3) The general substance of all matters proposed, discussed, or decided.

(4) A record of all votes taken by individual members if there is a roll call.

(5) Any additional information required under section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication.

Cedar Lake Plan Commission: November 3, 2021 Minutes of the Special Work Session November 3, 2021



**CEDAR LAKE PLAN COMMISSION SPECIAL PUBLIC MEETING MINUTES
CEDAR LAKE TOWN HALL, 7408 CONSTITUTION AVENUE, CEDAR LAKE, INDIANA
NOVEMBER 3, 2021 at 7:00 pm**

CALL TO ORDER:

Mr. Jerry Wilkening called the Plan Commission Special Public Meeting AND Work Session to order at 7:06 pm, on Wednesday, November, 3, 2021, with its members attending on-site. The Pledge of Allegiance was recited by all.

ROLL CALL:

Members Present: Robert Carnahan; Richard Sharpe; Chuck Becker; Heather Dessauer; John Kiepora, Vice-President; Jerry Wilkening, President. A quorum was attained. **Also present:** Don Oliphant, Town Engineer; David Austgen, Town Attorney; Rick Eberly, Town Manager; and Ashley Abernathy, Recording Secretary. **Absent:** John Foreman; Jill Murr, Planning Director.

1. Brown – 14917 Morse Street – Preliminary Plat – One (1) Lot Subdivision

Petitioner: Ryan Brown

Vicinity: 14719 Morse Street, Cedar Lake, IN 46303

Mr. Wilkening advised that the first order of business for the Plan Commission Special Public Meeting was for the Preliminary Plat of a One (1) Lot Subdivision by Petitioner Mr. Ryan Brown in the vicinity of 14179 Morse Street.

Mr. Wilkening advised the Commissioners that the Quit-Claim deed had not made the electronic version of the agenda, due to the Quit-Claim deed of the 50 by 50 parcel being approved at the Town Council meeting the night prior. Mr. Wilkening asked the Commissioners if they had any questions regarding this item. None was had.

Mr. Wilkening asked Mr. Eberly why “Exhibit A” in their packet was highlighted. Mr. Eberly responded he believed that was Mr. Stuart Allen’s response to Mr. Oliphant’s question on why there were multiple setbacks shown on the side of the Plat of Survey.

Mr. Wilkening asked Mr. Oliphant if he had the review letter for this item. Mr. Oliphant stated their previous letter from October 12, 2021, was still included in the Plan Commission’s packet and he had asked Mr. Allen to prepare a Plat of Survey reflecting the 50 by 50 parcel being Quit-Claimed Deed back to the Petitioner. He received that on Friday. They are still recommending the initial engineering waivers and just clarifying the setbacks of the plat.

Mr. Brown asked Mr. Oliphant if he only needed the 8-foot minimum side yard setback for both the north and the south of the property. Mr. Oliphant responded it depends on how they view the line, is it the 8-

Plan Commission Special Public Meeting
November 3, 2021

foot setback or is it the 20% aggregate. Mr. Eberly discusses this goes with what Ms. Dessauer mentioned during the Special Work Session, there is a total side yard set back of not less than 20% of the lot width. One side has to be 8 feet, so the other side would have to be a large amount.

Mr. Brown stated the way he interprets it, if he were to put a barn up and it was encroaching the side yard on one side, it could not on the other side. Mr. Oliphant discussed if it was the 20%, what is shown on the Plat currently is 43 feet on the widest part of the lot. If the one side yard was 8 feet, the other side would have to be about 72 feet.

Mr. Eberly advised Mr. Brown these setbacks do not impact an accessory structure. These setbacks are for the primary structure.

Mr. Wilkening asked Mr. Oliphant if he had any further concerns. Mr. Oliphant responded in the negative depending on if the Quit-Claim Deed goes through.

Mr. Wilkening asked Mr. Austgen if the Quit-Claim Deed was ready. Mr. Austgen advised everything was in order.

Mr. Wilkening asked Mr. Eberly if there were any further comments. Mr. Eberly responded in the negative.

Mr. Wilkening asked Mr. Austgen if there were any contingencies on this item. Mr. Austgen responded recordation of the Quit-Claim Deed before the plat. Mr. Oliphant stated the approval of waiver as well.

Mr. Wilkening asked Mr. Oliphant about what the waivers were. Mr. Oliphant responded the waivers are for stormwater retention, public Right of Way, park dedication, tree placement, and sidewalk.

Mr. Wilkening entertained a motion for this item. A motion was made by Ms. Dessauer and seconded by Mr. Sharpe to approve the Preliminary Plat for a One (1) Lot Subdivision pending the recordation of the Quit-Claim Deed and including the following waivers from Mr. Oliphant's October 12, 2021 letter: "We recommend that the following engineering waivers be considered: a. Stormwater Detention. b. Widening and improvements to the public roadway frontages. c. Park Dedication d. Tree Placement Requirements e. Fronting Sidewalk Requirements". The motion passed unanimously via roll call vote:

Mr. Carnahan – Aye

Mr. Sharpe – Aye

Ms. Dessauer – Aye

Mr. Becker – Aye

Mr. Kiepura – Aye

Mr. Wilkening – Aye

ADJOURNMENT:

Mr. Wilkening adjourned the meeting at 7:16 pm.

Plan Commission Special Public Meeting
November 3, 2021

TOWN OF CEDAR LAKE PLAN COMMISSION

Jerry Wilkening, President

John Kiepura, Vice-President

Richard Sharpe, Member

John Foreman, Member

Robert Carnahan, Member

Heather Dessauer, Member

Chuck Becker, Member

ATTEST:

Ashley Abernathy, Recording Secretary

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(5) Any additional information required under section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication.

Cedar Lake Plan Commission: November 3, 2021 Minutes of the Special Public Meeting



CEDAR LAKE PLAN COMMISSION WORK SESSION MINUTES
CEDAR LAKE TOWN HALL, 7408 CONSTITUTION AVENUE, CEDAR LAKE, INDIANA
NOVEMBER 3, 2021 at 7:00 pm

CALL TO ORDER:

Mr. Jerry Wilkening called the Plan Commission Work Session immediately following the Special Public Meeting to order at 7:17 pm, on Wednesday, November, 3, 2021, with its members attending on-site.

ROLL CALL:

Members Present: Robert Carnahan; Richard Sharpe; Chuck Becker; Heather Dessauer; John Kiepora, Vice-President; Jerry Wilkening, President. A quorum was attained. **Also present:** Don Oliphant, Town Engineer; David Austgen, Town Attorney; Rick Eberly, Town Manager; and Ashley Abernathy, Recording Secretary. **Absent:** John Foreman; and Jill Murr, Planning Director.

1. Beacon Pointe – Units 6, 7, & 8 – Preliminary Plat

Petitioner: Beacon Pointe of Cedar Lake LLC

Vicinity: 13800 Parrish Avenue, Cedar Lake, IN 46303

Mr. Wilkening state the first order of business for the Work Session was for Petitioner Beacon Pointe of Cedar Lake LLC for a Preliminary Plat for Beacon Point Units 6, 7, and 8.

Mr. Jack Slager, Schilling Development, apologized for not being at the meeting 2 weeks ago and that Mr. Jack Huls had been present to represent them and they had advertised for the Public Hearing. Mr. Slager believes the Public Hearing portion was open, but did not know if it was closed. He did not know if they were deferred or continued and he knows there are some questions regarding the Park Dedication and was hoping to get that cleaned up.

Mr. Slager discussed that Units 6, 7, and 8 are the remaining section in the center of Beacon Pointe West. The units are all single-family lots and they are requesting Preliminary Plat for the three sections. This will provide the continuation of Beacon Pointe Lane to King Drive and out to the new stop light at 133rd Avenue. The park land is centrally located in the middle of the project. Part of the park land has been platted with the Olthof Development, the remaining piece of the park will be platted with either Unit 7 or 8.

Mr. Slager provided a copy of their calculations to Mr. Eberly, which was distributed to the Plan Commission. They used the Town Ordinance calculations for Park Dedication based on populations, percentages, and it comes to a requested dedication of 4.42 acres. Their preference is to give a portion of land and a portion of money to do improvements to the land. They have approximately 2-acres of useable land, which will be dedicated as the park. They have calculated an additional \$60,500 they want to spend

on improvements. They are going to offer to install a sidewalk from the end of Utopia around the lots, along the park land and out to King Drive. They are going to provide a sidewalk from King Drive over to Freedom Way to provide connectivity. Mr. Slager discussed other various improvements they were providing to the area, as well.

Mr. Wilkening stated they had discussed sidewalks, the value, and some calculations, and asked Mr. Oliphant if he had received the document that was given to the Commissioners. Mr. Oliphant responded he had received it that afternoon. Mr. Wilkening asked Mr. Oliphant his thoughts on the numbers presented. Mr. Oliphant stated as long the lengths are listed, he believes the unit costs are reasonable. Mr. Slager stated the numbers on the document were provided by Mr. Huls. Discussion ensued about the various costs of the sidewalk and the railings for the sidewalk.

Mr. Wilkening asked if the 2.42 acres is not buildable. Mr. Oliphant explained the 2.42 acres is their Fee in Lieu of. Mr. Wilkening clarified he was asking about the 2.42 acres being valued at \$25,000 per acre and if houses could be built on the 2.42 acres. Mr. Oliphant advised this was what they were providing in form of dedication. Mr. Austgen commented on the same and it is hypothetical land that was determined with the formula from the Ordinance for required dedication. Discussion ensued about the amount of park land dedication required and what is actually being provided by the Petitioner.

Mr. Wilkening discussed the two formulas included in the Ordinance which reflects two different extremes. Mr. Oliphant responded what Mr. Wilkening is discussing is the cost evaluation of the land and there is only one formula in the Ordinance for Park Dedication and discussed the formula for Park Dedication. Discussion was had that the second formula is used if the parcel is too small for a Park Dedication to be included and that it has been used with other developments.

Mr. Slager stated the other option would be great if they did not want to include the park. However, they do want to include a park, especially with it being a family neighborhood, and they want to develop the park as well. Ms. Dessauer asked what the park would look like. Mr. Slager responded currently it would be flat, grass. Mr. Wilkening asked if it was completely flat, no inclusion of a retention pond or detention pond. Mr. Slager responded in the negative and that along the edge of it there is a channel, but that has not been included.

Mr. Carnahan stated with the \$60,500 being dedicated it can be improved upon and potentially included benches and other similar items. Further discussion ensued about the two formulas and which one would be applicable and the valuation of the land.

Mr. Austgen asked what has been done in the Town for dedication prior to this. Mr. Slager responded in his past two developments in the Town there had been extensive discussions about valuation of land with Lakeside being determined at \$20,000 per acre and the original Beacon Point was \$20,000 per acre as well. Both amounts were determined based on what the Petitioner had paid for the land. Due to paying \$25,000 per acre for the land for the final phases of Beacon Pointe West, that was the number they utilized. Mr. Slager mentioned addressed at the bottom of the packet provided to the Commissioners is the additional revenue provided to the Parks Department for each permit through the Park Impact Fee. Mr. Eberly advised there had been an increase to the Park Impact Fee. Further discussion ensued about the two different formulas included in the Town Ordinances.

Ms. Dessauer asked the Commissioners who was opposed to the proposed Park Dedication and why. Mr. Kiepura responded he was not against accepting this. His argument is no one could tell them how they determined this process and asked where the \$450 per lot comes from. Mr. Slager explained the second formula of if there is not enough land to dedicate a park and how the \$450 per lot came from.

Ms. Dessauer asked the Petitioner if they were doing a Fee in Lieu of Park, how much money would be given to the town. Mr. Slager responded \$76,000. Ms. Dessauer stated what the Petitioner is proposing 2-acres of park land and \$60,500 and asked what the potential problem was. The Petitioner could just give them the \$76,000, instead they are doing a park which is needed in Town. Discussion ensued about the park land and the improvement that would be done with it. Discussion also ensued about if no park land is given the number used is \$450 per lot to determine the dedication to the Town and how to determine the value of the acre.

Mr. Wilkening asked the Petitioner who would be taking care of the park. Mr. Slager responded they have a HOA for the development and the HOA will have crews out to maintain entrances and the berms along Parrish. They would be willing to have the HOA maintain the park if that would be the preference of the Town.

Mr. Eberly asked the Petitioner if the HOA was going to mow it, is it still a public park. Mr. Slager responded if this is going to be the case, would it be better if it is deeded and owned by the HOA or would it be better to deed it to the Town. Mr. Austgen recommended the park be owned by the HOA. Mr. Slager stated he is fine with that if it is the preference of the Town.

Mr. Eberly asked if the park would still be publicly accessible if it is owned by the HOA. Mr. Austgen stated it can be if it is included as part of the approval. Mr. Slager advised it was something they would want to be clear on because when they have completed the development and if the homeowners want to put up a sign to restrict the park to Beacon Pointe residents only. Mr. Eberly stated he thinks the Town is looking for publicly dedicated park land. Discussion ensued about who would need to own the park, the Town or the HOA.

Mr. Oliphant asked if the Town could own the park and just have the HOA mow it. Mr. Slager stated that was what he was talking about. Mr. Kiepura commented the same. Mr. Austgen stated it could be done. Mr. Eberly responded it just needed a contract. Mr. Slager stated he would prefer that as well if the Town owned it and the HOA maintained it.

Mr. Becker asked the Petitioner where they were going to place the parkway trees. Mr. Wilkening advised the Petitioner there had been a discussion earlier on the placement of trees in yards on the house side of the sidewalk, not in between the road and the sidewalk. Discussion occurred that the builders are putting one tree in the front yard and one tree in the back yard and the trees are not being placed between the sidewalk and road.

Mr. Wilkening asked Mr. Austgen if he would need to draft the contract for the Town owning the park and the HOA mowing it. Mr. Austgen responded in the affirmative and advised the contract would need to be done following an approval. Mr. Slager advised the Commissioners they would be back in at the Public Meeting requesting approval for Preliminary Plat for the units discussed and they would still need to come in for Final Plat approval.

Mr. Wilkening asked Mr. Oliphant if the railing needed to be there. Mr. Oliphant responded he does feel that it needs to be there. Mr. Slager stated most of the sidewalk would be done with Units 6 and 7, so everything will be done by the time they get to Unit 8. Discussion ensued about what type of railing would need to be there and the Hanover school railing was used as an example.

Mr. Carnahan stated the Petitioner had asked in the beginning was the item deferred or was tonight a continuation of the public hearing. Ms. Abernathy advised the Commissioner it was deferred at their last public meeting. Mr. Carnahan asked if the public hearing is continued. Ms. Abernathy advised the Commissioners held the public hearing and closed it prior to the deferral at the last meeting.

Mr. Wilkening asked if the Commissioners had any other comment for the Petitioner. None was had.

2. Electric Power Solutions LLC – Concept Plan

Owner: John & Darlene Boersma

Petitioner: Electric Power Solutions LLC

Vicinity: 12828 Wicker Avenue, Cedar Lake, IN 46303

Mr. Wilkening advised the next order of business was for a Concept Plan from Petitioner Electric Power Solutions LLC. Mr. Wilkening asked if this was for the property that was rezoned on the west side of US 41. Mr. Jeff Wiers, Electric Power Solutions LLC, and Mr. Ryan Marovich, DVG Team, were present as the Petitioners for this item. Mr. Wiers responded in the affirmative.

Mr. Wilkening asked Mr. Marovich if this item is going to need BZA approval for parking. Mr. Marovich responded they are on the agenda for the next BZA meeting and they are requesting 6 variances. Parking in front setback, two principal buildings, multiple tenants in each building, monument signage in front yard, signage to exceed, and the natural buffer in the rear yard to remain to buffer the proposed pond from the residents to the south of the lot.

Mr. Wilkening asked Mr. Oliphant if that is a south to north floodplain. Mr. Oliphant responded there is mostly a drainage issue. Mr. Wilkening asked the Petitioner if they are aware of the drainage issue. Mr. Marovich responded in the affirmative and he has communicated with Mr. Oliphant. He was sent the tributary exhibit area from Mr. Oliphant. He was able to use that in his analysis for the plans. Mr. Marovich explained the drainage and flow of the tributary on the concept drawing.

Mr. Wilkening asked what the size of the proposed pond is going to be. Mr. Marovich responded it would be about a quarter of an acre. Mr. Wilkening asked about the depth of the pond. Mr. Marovich responded not necessarily; it will have a basin with an open grate stone for water quality purposes. The flow through will allow for the pond to handle the drainage of the lot and it would also account for offsite flow.

Mr. Wilkening asked Mr. Eberly if he had any comments on this item. Mr. Eberly responded he has not had a chance to talk with Mr. Marovich or Mr. Oliphant about the drainage.

Mr. Wilkening asked how much higher would the property need to be raised. Mr. Weirs responded the land is naturally sloped from the east to the west and discussed the location of the pond and due to the slope of the property it would not need to be changed a whole lot because it naturally goes back to the pond. Mr. Marovich added the height point on the parcel is where the buildings are proposed. There had been a challenge where the offsite flow comes through a ditch exists. The ditch prohibits raising or

lowering the land too much as the pipe work needs to go to the pond. The pond will be lower for the natural flow from east to west.

Mr. Carnahan asked what is to the north of the property and what is to the south. Mr. Marovich responded to the north is Illiana Storage and to the south is the Antique store. Mr. Weirs stated they had identical property length with Illiana to the north and there is a resale shop and two residential homes to the south.

Mr. Wilkening asked if the Commissioners had any questions for the Petitioner. Ms. Dessauer asked what other businesses were going into the building. Mr. Weirs responded currently they are just building out for other contractor spaces. Which is why they went for a zoning to allow for multiple tenants. Mr. Weirs discussed the proposed buildings and why they are looking for the amount of parking space they are.

Mr. Wilkening asked Mr. Austgen about the zoning change and the multiple businesses being proposed. Mr. Austgen stated it might need a different change. Mr. Eberly advised that whatever businesses are allowed in the B3 Zoning Ordinance would be allowed in the property. If it is something more than what is allowed, it could need a rezoning or a Use Variance request in the future.

Mr. Wilkening commented his point had been the original presentation from the Petitioner was based on B3 so the Petitioner could conduct his business there versus what the Petitioner is currently presenting. Ms. Dessauer asked if the area had needed to be B3. Mr. Eberly responded for the Petitioner's business he needed B3. Mr. Wilkening commented on the same and it is now a multiple use property. Mr. Austgen advised what the Town typically does is require PUD zoning for when multiple uses occur.

Mr. Weirs stated this has occurred in conversations with Mr. Eberly and Ms. Murr, and they were open about what their plan was. Mr. Wilkening expressed he wished they had discussed this during the rezoning.

Mr. Kiepura stated he had been under the impression the Petitioner wanted the rezone for their own business use, but he is not opposed to multiple uses. Mr. Weirs stated the primary function is to hold their building.

Mr. Austgen commented the previously provided information at the Plan Commission meetings did not include this discussion of multiple tenants. Mr. Eberly stated he had not been at those meetings. However, the Petitioner has meet with himself and Ms. Murr, the Concept Plan being presented was discussed. They had advised the Petitioner, if they are going to rezone to B3, the Petitioner needs to find businesses that fit the B1, B2, and B3 Zoning Ordinances. If the Petitioner was ultimately going to do multiple buildings and multiple tenants, the Petitioner would need to go in front of the BZA. Discussion occurred on this should have been a PUD and the property had not been the proper size to qualify for a PUD.

Mr. Wilkening discussed his concerns with the different tenants that could be present on the property and the potential traffic that could occur with the different businesses. Mr. Weirs responded they have no intention of a publicly used place and one of the reasons they are going for a variance is for the amount of parking. They want more than the minimum of the requirements in the Ordinance. There will be minimal traffic and it will not add significant traffic to Wicker Avenue. Mr. Wilkening asked if there was not going to be any retail space in there. Mr. Weirs responded in the negative. They have no intention of having retail space. Mr. Carnahan mentioned the no retail space could be added as part of the BZA agreement. Discussion ensued about the Petitioner's intention for the property and the Plan Commission expressing their desire for the Petitioner to take their concerns into consideration.

Mr. Wilkening asked if there were any other comments for this item. Mr. Oliphant stated they are just starting to get into reviewing the plan. He does have concerns about the parking lot short circuits the drainage of the area. He is concerned it could cause some problems in the future.

Mr. Austgen asked if this was part of the water shed issue they have had in the area. Mr. Oliphant responded in the negative, this is a different area. This area is upstream of Wicker Meadows, goes through Illiana and turns right away from the problem area. Discussion ensued on the water shed of this area and where it goes to.

Mr. Weirs stated the water would go through the pond, so it would create some detention. Mr. Oliphant commented this does not compare to the drainage of the area and turning the flow of the water could cause issues, but this is not the major problem. The main concern is the free flow path and they are trying to turn the flow of the water.

Mr. Wilkening discussed the removing the dumpster in the back and leaving that area available for something else. Mr. Wiers stated that theoretically they would have space in between the buildings for a dumpster.

Mr. Oliphant asked the Petitioner for the max number of tenants he is thinking of. Mr. Weirs responded not more than 3 per building, and potentially only 2 per building.

Mr. Wilkening asked if there were any more comments from the Plan Commission. None was had.

3. HB & HUGT LLC – Concept Plan

Owner: Krzysztof Bies

Petitioner: HB & HGT LLC

Vicinity: 13132 Morse Street, Cedar Lake, IN 46303

Mr. Wilkening stated the next order of business was for a Concept Plan by Petitioner HB & HGT LLC in the vicinity of 13132 Morse Street. No Petitioner was present for this item.

Mr. Eberly commented this property has been seen before by a different Petitioner and advised since no Petitioner was present to move to the next agenda item. Mr. Wilkening commented this had been the property with 7 acres. Mr. Kiepora stated this was the property there is difficulty getting a road to build on.

Mr. Wilkening asked what is the hang up on getting a road to this property, was it the existing gravel drive. Mr. Oliphant stated the property does not have public frontage. Mr. Eberly commented on the same and they would need to gain access through Mr. Marty Zaborski.

Mr. Oliphant commented utilities would be an issue as well. Mr. Wilkening asked if the utilities would have to come off of 131st and Morse. Mr. Oliphant advised this would be the likely scenario.

Mr. Austgen asked if this was advertised for a public hearing for a Preliminary Plat in 2 weeks. Mr. Eberly responded not as far as he is aware of, since it is a Concept Plan and they would need to come for a Preliminary Plat first.

Mr. Wilkening asked if there are any homes on the property. Mr. Oliphant illustrated where the property is located on the Lake County GIS. Mr. Wilkening stated the public frontage due to houses being on 131st. Mr. Oliphant stated there is no Public Right of Way that comes to the property. Discussion ensued about

potential property owners interested in the property, and the issues of getting a road and utilities to the property poses a problem.

Mr. Wilkening advised the only reason he discussed this item is due to having multiple different Concept Plans for this item and he would like to see the area developed. Mr. Oliphant advised the Town owns the parcel directly to the east of the property. They could extend 130th Place through and that would gain access to their property.

Mr. Wilkening advised if the Petitioner comes back, it would be another Work Session item.

4. Black River Bells, LLC – Concept Plan

Owner: ARDT III, LLC

Petitioner: Black River Bells, LLC

Vicinity: 11109 West 133rd Avenue

Mr. Wilkening stated the next order of business was for a Concept Plan by Petitioner Black River Bells, LLC in the vicinity of 11109 West 133rd Avenue. Mr. Wilkening stated the Concept Plan being presented is for a new quick-serve restaurant, Taco Bell, with drive through on parcel that currently is a paved parking lot.

Mr. Wilkening asked Mr. Eberly if he had any comments for this item. Mr. Eberly responded he did not and he would defer to Mr. Oliphant for his comments. Mr. Oliphant stated they have the engineering plans, they are about 60% through it, and plan to get a letter out this week. The parcel is approximately an acre and is part of the existing body shop.

Mr. Wilkening stated his only concern is the east side of the property seems to be a shortcut and storage area for Amazon Prime Trucks during the holiday season. Mr. Oliphant stated that is one concern, another is this is not a legal lot of record. They would need to go through the platting process. Discussion ensued the Petitioner would need to purchase the property and ingress and egress information would need to be determined.

Mr. Oliphant discussed there would need to be at least one variance and he is unsure of what has been communicated with them about the parking in the side yard setback.

Mr. Tim Krause, Black River Bells, LLC, stated he was present for this item and with him was Mr. Jeremy Wagner, Excel Engineering, and he can discuss any variance and underground storage.

Mr. Wilkening asked if there was any seating inside of the building. Mr. Krause responded in the affirmative. Mr. Wilkening asked if that was going to be the 28 seats. Mr. Krause responded in the affirmative. Mr. Carnahan asked for the Petitioner to explain their plan.

Mr. Krause stated due to indoor eating declining over the past few years, they are planning on building a 28-seat, Go Mobile building. Where individuals can order ahead from their application and there will be two drive through lanes for the building.

Mr. Wagner stated for stormwater they are doing a decorated basin and underground basin. They are doing some sheeting for grading and for the drive though is sheeting to the east and west by curb cuts into the basins.

Mr. Wilkening asked if they had any architectural renderings for what this would look like. Mr. Oliphant responded the Petitioner does and he is not sure if it is in the Commissioner's packets. It was then

discussed that the plans did not make it in the Plan Commission packets, but had been submitted for engineering and Mr. Oliphant would provide copies to the Plan Commission members.

Mr. Wilkening requested for Mr. Oliphant to have one of the traffic engineers to review this item due to its proximity to the stoplight at U.S. 41 and 133rd Avenue. Mr. Oliphant commented they would review it and stated another thing missing with this is they would require sidewalk because of a connecting sidewalk at CVS. Mr. Wilkening commented it seemed like everything would need to be shifted east to accommodate the sidewalk. Mr. Oliphant commented they could get it in there and discussed the rendering included in the packet is an older drawing and the differences made.

Mr. Austgen asked if there was cross access needed between the CVS and Taco Bell. Mr. Oliphant responded there should not need to be a reason for cross access between the two properties. Mr. Austgen asked if it should not be considered for traffic control and safety integrity, some form of connectivity between these lots. Mr. Wilkening stated he does not disagree with Mr. Austgen and discussed the back entrance by off of 133rd. Discussion ensued about the access road off of 133rd Avenue and needing to review the Master Plan for the U.S. 41 Corridor.

Mr. Wagner commented they had been in contact with Indiana Department of Transportation (INDOT) and they advised the Petitioner they would restrict their access to right-in, right-out. Mr. Wilkening advised they had been talking about the Master Plan for the U.S. 41 Corridor. Mr. Oliphant commented INDOT would be controlling that project anyways. There had been a discussion about the ingress egress access through the body shop and they should get some information with the platting information. Discussion ensued about the area and the ingress egress area needs to be discussed.

Mr. Wilkening asked the Petitioners if this was going to look like the Wendy's in St. John. Mr. Krause stated they would do a brick façade and make sure it represents their company as best they can. They will make sure to get the Plan Commission the new elevations. Mr. Oliphant advised the Commissioners it looks like it will be nicer than the new Taco Bell building in Crown Point.

Ms. Dessauer stated she did not think it was the building that is the problem, more of the access at this point. Mr. Wilkening talked about the back drive being used for deliveries off of U.S. 41 would not work. Mr. Krause asked if he was talking about their food deliveries. Mr. Wilkening responded in the affirmative. Mr. Krause advised the Commissioners is they can dictate that their deliveries can come during the night and he can make sure that happens if it is the pleasure of the Plan Commission. Further discussion ensued about the ingress and egress lane off of 133rd Avenue by the body shop.

Ms. Dessauer asked the Petitioners if their plan was to do some form of an ingress egress agreement with the body shop. Mr. Krause stated he did not know about that but he could talk with his attorney. Further discussion ensued about traffic in and out of the area and having a right out on 133rd Avenue as well.

Mr. Wilkening asked the Commissioners if they had any further comments for this item. Ms. Dessauer asked about the two arrows that are the drive through, if those are both drive through lanes. Mr. Krause responded that was correct, one is for if an individual has not ordered ahead and the other one is for the order ahead. Ms. Dessauer asked if there needed to be a bypass area. Mr. Krause stated he agrees with Ms. Dessauer but the good thing is with the mobile lane you text that you have arrived and you are waved through, so this lane moves very quickly. Mr. Wilkening asked how they receive their food in the outside

lane then. Mr. Krause it's like the McDonald's 2 lane system. Discussion ensued about the drive through and how it would operate for the business.

Mr. Wilkening asked what kind of volumes do they typically run and what would they do for stacking. Mr. Krause responded as they push their consumers to the mobile ordering the stacking would become less of a problem and they have the space for 5 stacking right now and a queue around the building. Mr. Wilkening expressed his concern for traffic potentially being backed out onto U.S. 41. Mr. Krause discussed how they could work to reduce this and make this a non-existent problem going forward with the use of mobile ordering.

Mr. Wilkening asked the Commissioners if they had anything else for this item. There were no further comments.

5. Resolution No. 2012-02 – Plan Commission Rules & Regulations

Mr. Wilkening advised the next order of business was for the Plan Commission Rules & Regulations. Mr. Wilkening commented on the concerns of the Rules & Regulations presented to the BZA and asked Mr. Eberly what changes were proposed for the Plan Commission.

Mr. Eberly stated he set up the Rules & Regulations to be the same for both bodies. At the Plan Commission level, there was no issue with the Rules & Regulations as presented. At the BZA there has been some concerns with making the Petitioner responsible for going to Lake County Auditor's office. He expressed to the Commissioners whatever decisions they make, make it the same for both bodies.

Mr. Wilkening stated he understands what Mr. Eberly is saying, but each board has their own set of circumstances. For the Plan Commission everything is pretty straight forward with the information provided to them. Mr. Wilkening discussed one of the issues at the BZA was allowing the Petitioner to take their own pictures and expressed concern over the pictures not being biased. Mr. Wilkening expressed how he is not certain how they can make everything the same for both boards.

Mr. Carnahan stated he thinks it can be the same for both. He expressed the Town should continue doing the work for the Petitioners. If a Petitioner comes in and they do not fill something out right and don't address every resident, he sees a flaw in putting the work on the Petitioner. Mr. Wilkening stated he does not discount someone reviewing documents that are dropped off. He is just not sure on staff going to Lake County Government Center. Discussion ensued at length about having the Petitioner take on more responsibility and how to ensure the proper individuals had been notified. Discussion also ensued about the process the Petitioner would need to do.

Mr. Eberly stated he thinks the hardest part for the Petitioner is coming in front of either the Plan Commission or the BZA and convincing them to approve their petition. Mr. Wilkening discussed it has been talked about that a Petitioner is asking them to break the Ordinances to grant a petition.

Mr. Wilkening asked Mr. Eberly if all the necessary items are checked before a Petitioner goes in front of either board. Mr. Eberly responded in the affirmative. Mr. Wilkening stated if it is all checked and the Town gives the Petitioner a step-by-step checklist, he does not see a problem with putting more of the responsibility on the Petitioner.

Mr. Eberly commented Mr. Austgen is always asked if all the legals are in order and asked Mr. Austgen about the review process for him. Mr. Austgen responded he knows how to review these files efficiently,

and he can tell by the files given to him who adjacent property owners are, if the green and white mailing cards were sent in time, and by the proofs for the newspapers that the legals are in order. Mr. Eberly advised the Commissioners the Petitioner needs to have all of the items necessary to the Town 5 days before in advance of the meeting, in order for Ms. Murr to review all these items.

Mr. Kiepura asked how many times a month does Ms. Murr or the designated staff go to the Government Center. Mr. Eberly responded he thinks they do it just once due to a deadline for applying. Mr. Kiepura stated she would take all the Petitioners at the same time. Mr. Eberly responded in the affirmative. Mr. Kiepura asked how long she would be at the Government Center. Mr. Eberly responded it depends on how busy the Auditor's office is and gave a potential break down of the time spent going to Lake County Government Center. Mr. Kiepura discussed having each individual go to the Auditor's office versus just one staff member once a month and he thinks having the staff member go is better due to knowing what is needed. The rest of what the Petitioner would need to do for the mailings and ads, he does not see why the Petitioner cannot do that. Further discussion ensued about giving more responsibilities to the Petitioner versus leaving it to a Town staff member.

Mr. Austgen asked if the Petitioner is charged a fee for an application to the BZA. Mr. Eberly responded in the affirmative. Mr. Austgen commented the fee is a fee to the Town for the privilege of filling out the application and presenting it and asked who pays for the certified mailings and newspaper publishing. Mr. Eberly responded the Town pays for it initially before sending a bill to the Petitioner. Discussion ensued about the cost of applying for and sending out the legal notifications to appear in front of the Plan Commission or the BZA. Further discussion was had about putting more responsibility on the Petitioner to make to help make the Petitioner more serious and staying consistent for both sets of Rules and Regulations.

Mr. Wilkening stated he did not want the staff just telling the Petitioner just fill something out and come back with the fee. Mr. Eberly commented that would not happen either way. Whether a Town staff member continues to go get the list or not, Ms. Murr will still go through the process of explaining to the Petitioner what they need to do.

Mr. Wilkening asked if the goal is for saving time, putting a bit more onus on the Petitioner, and if this was the only goal. Mr. Eberly responded where putting more onus on the Petitioner, that is correct. To put more responsibility on the Petitioner and take less staff time to get through the process. Mr. Eberly discussed that at the Plan Commission level, they deal with subdivision developers and this process is nothing huge for them. Discussion ensued about the benefit of having more responsibility put onto the Petitioner and what items could be given to the Petitioner and what should remain with staff.

6. Fee In Lieu of Sidewalk Ordinance

Mr. Wilkening advised the next order of business was for the Fee in Lieu of Sidewalk Ordinance. Mr. Wilkening asked Mr. Eberly if there was information from another municipality where they do an 80% fee and asked if it goes into a sidewalk fund. Mr. Eberly responded in the affirmative. Mr. Wilkening asked if it would be legal to do this then. Mr. Eberly advised asking Mr. Austgen about if it would be legal. He thinks the way Mr. Austgen has set up the Fee in Lieu of Sidewalk Ordinance accomplishes what the Plan Commissioners wanted to accomplish. It allows the money to be put into a fund, from which the Town can spend the money on sidewalks and trails anywhere in town.

Mr. Wilkening asked Mr. Austgen didn't he have reservations about this. Mr. Austgen responded in the affirmative and discussed the different fees to be implemented. That it was mentioned tonight by a Petitioner about the fees.

Mr. Wilkening stated if it is a new development, it is a no brainer to have sidewalks put in, it is with the Legacy Lots where it becomes harder. He thinks some consideration need to be taken when dealing with these older pieces of property. The incentive to offer a 20% discount on a sidewalk, he thinks the Fee in Lieu of Sidewalk should only exist on the Legacy Lots.

Mr. Eberly stated he thinks Mr. Austgen put this in the ordinance, but the key is the fee in lieu of has to be voluntary. It has to be something the Petitioner offers. Mr. Wilkening stated it is offered as an option. Mr. Eberly agreed and it is at the Petitioner's request and they are doing so with the knowledge they will need to pay a fee in lieu of the sidewalk. Discussion ensued about a Petitioner standing at the podium asking to not put in a sidewalk and being advised there is an option to not have one.

Mr. Eberly discussed when the Fee in Lieu of Sidewalk was first discussed it was to do one of three things. The first is to grant an outright waiver, where it made no sense for a sidewalk. The second is to present a fee in lieu of the sidewalk. The third option is to put in a sidewalk. The Plan Commission wanted the flexibility to do one of those three things and ultimately the decision is with the Plan Commissioner.

Mr. Wilkening stated he thinks there needs to be two options and not three. Mr. Eberly asked if Mr. Wilkening is talking about removing the first option all together. Mr. Wilkening responded he is thinking that is the way to go, unless they put together a footpath master plan.

Mr. Austgen stated this creates the question of what constitutes qualification for a total waiver, so it is uniformly and objectively applied universally. Discussion ensued about what would qualify as a total waiver or removing a total waiver, including what the criteria would be for a total waiver and a statute existing for impact fees.

Mr. Wilkening asked Mr. Eberly regarding the plan from the other municipality, what would they do. Mr. Eberly responded that what he saw in their ordinance they only had two options, and no option for a total waiver and stressed it is the Plan Commissions decision if the Petitioner has to put a sidewalk in. If the Commissioners want to offer another option, it has to occur with the full consent of the Petitioner. Mr. Eberly further stated he thinks the Petitioner has to sign a waiver at the other municipality for the fee in lieu of.

Mr. Kiepura stated he feels that everyone should put in a sidewalk with no exceptions. If a subdivision is being put in and they are given an option, the developer could state they would do the fee in lieu of instead of putting in a sidewalk. Ms. Dessauer commented this isn't for a development. Mr. Kiepura commented that is what he is getting to and discussed the difference between making a developer put it in versus a Legacy Lot owner asking to not put in a sidewalk.

Mr. Wilkening asked Mr. Kiepura if he was talking about policing putting in a sidewalk in the Plan Commission. Mr. Kiepura responded in the affirmative. Discussion ensued about what the Plan Commission controls in the meeting.

Mr. Oliphant commented the way the Ordinance gets done is by staff, especially if the Planning Director offers it. It gives the ability to control it at the application level. Discussion ensued this is not applying to new development, only to the older One (1) Lot subdivision.

Mr. Kiepura mentioned a few years ago it was discussed wanting to have sidewalks put in is because when the State looks at giving the Town funds to put sidewalks in, they see they are doing it now and gives the Town a point in the positive since sidewalks are already in. Further discussion ensued about what the funds from the Fee in Lieu of Sidewalk Ordinance are to allow individuals to do and needing to be consistent across the board with every Petitioner.

Mr. Austgen advised the Plan Commission they are moving backwards in their discussions and what is already existing in the Town Ordinances for them to do for the sidewalk. Ms. Dessauer commented they have spent a considerable length of time on this and they are no closer to a solution now than they were in the past. Mr. Austgen commented the resolution is in the existing Ordinance and the conclusion to the debate is the draft of the proposed Ordinance and every time they discuss how close they are to the line and that they don't want to go over it for legal recompense. Mr. Kiepura asked if this is because they are asking for money in lieu of sidewalk. Mr. Austgen rendered his legal advice which is if noncompliance occurs or an agreement is not reached the property value is diminished. Discussion ensued about requiring sidewalks from the start and the waiver that currently occurs, with an example of typical One (1) Lot Subdivision waivers that is granted.

Ms. Dessauer stated the evolution of Cedar Lake cannot be compared to another municipality. She thinks the Plan Commission Rules & Regulations have to evolve with the Town.

Mr. Eberly commented the Petitioner is not even currently asking for the waiver. Mr. Wilkening stated this is something that may have been discussed, for Mr. Oliphant's waivers listed. Perhaps the waivers should not be listed on the letters anymore. Mr. Oliphant stated the waivers are so common, he is cutting out a step in a way. He can make the comment of items required and the Petitioner would come and request a waiver. He is getting to the same end point. Mr. Austgen commented this should not be a responsibility of Mr. Oliphant. The waivers should be applied for at the application stage.

Mr. Wilkening suggested maybe a list of the typical waivers should be presented to the Petitioner to inform them of what is required when they start their application process. Discussion ensued about typical waivers given to One (1) Lot Subdivision and potentially adding the waivers requested as a checkbox on the checklist.

Mr. Eberly commented Mr. Oliphant is helping the Petitioner out because the Petitioner does not know to ask for them. Mr. Wilkening stated he understood and he thinks it is a missed opportunity. Discussion ensued about the waiver for trees and why waive they waive trees on the One (1) Lot Subdivisions and potentially reviewing the waivers.

Mr. Wilkening stated he thinks Mr. Oliphant's report don't need to say the waivers. Mr. Oliphant asked about changing from 5 waivers to 5 comments and the Petitioner would need to request the waivers then. Mr. Eberly stated it will get to the same point, and it has just evolved this way as stated by Ms. Dessauer.

Mr. Wilkening asked if there were any further comments from the Commissioners. There were no more comments.

Update Items:

1. Subdivision Control Ordinance

Mr. Wilkening stated the next order of business was for the update items and the Subdivision Control Ordinance has been discussed.

2. Starcevic – Preliminary Plat – One (1) Lot Subdivision deferred to November 17, 2021

Mr. Wilkening stated the next order of Update Items was for the Preliminary Plat of Starcevic. Mr. Oliphant asked if there was anything new for the Starcevic property. Mr. Eberly responded nothing new was received and Mr. Starcevic showed up at approximately at 5 PM. Mr. Eberly stated he advised Mr. Starcevic he did not to be at the meeting tonight due to not presenting anything new. Mr. Wilkening stated he thought he would have some consideration of changes to the proposed building. Ms. Abernathy advised the Commissioners Mr. Starcevic stated he had new plans he would be presenting at the next BZA meeting and has submitted the plans to Ms. Murr.

3. Wahlberg – 7315 Lake Shore Drive – Rezone

Mr. Wilkening advised the next order of Update Items was for the Wahlberg Rezone and discussed the Wahlberg residence was waiting to see if they could use a Use, Variance for a bank loan instead of a rezone. Ms. Dessauer asked if they would appear in front of the Plan Commission again or go to the BZA. Mr. Eberly stated from what he has heard, they did talk to the bank and the bank has said the Use, Variance does the same as a rezone. Ms. Dessauer asked if they would need to come back to the Plan Commission. Mr. Eberly responded they would go in front of the BZA.

4. Cedar View – Preliminary Plat - Two (2) Lot Subdivision & Site Plan

Mr. Wilkening stated the next order of Update Items was for the Preliminary Plat for Cedar View. Mr. Eberly advised there was nothing new for this item. Mr. Oliphant commented it was his understanding they were going submit something new soon, they were waiting for some issues to be addressed first.

5. Letters of Credit:

- a. Beacon Pointe – Unit 4 – Performance LOC expires December 11, 2021**
- b. Summer Winds – Unit 2 – Performance LOC expires December 20, 2021**
- c. Summer Winds – Unit 3 – Performance LOC expires December 23, 2021**

Mr. Wilkening advised the next order of Update Items is for the Letter of Credits. Mr. Oliphant stated he thinks all three will be extended. They all require some element of paving and time is running out to pave. Mr. Wilkening asked if the pull date is 7 days before the due date. Mr. Oliphant commented the pull date would not have to be determined the December 1 Work Session.

PUBLIC COMMENT:

Mr. Wilkening opened the meeting for public comment at this time.

Ms. Brenda Roberts stated she was the owner and manager of Reunity Development LLC at 14908 Morse Street, Cedar Lake, IN 46303. She has been authorized by her attorney, Mr. Randy Wyllie, Weiser & Wyllie LLP, to deliver copies of some documents to the Plan Commission. This is regarding her property and they

have some questions they would like to have answers to. She is requesting the Plan Commissions guidance and does not know what to say to her perspective buyers. Two buyers have broken contracts because of the information they have received from Cedar Lake.

Ms. Roberts asked Mr. Austgen if he would need a copy. Mr. Austgen stated if it is from her attorney, he should have a copy. Ms. Roberts commented he should have it as he was her attorney for the application and the attorney for Cedar Lake.

Ms. Roberts advised the Plan Commission in the letter there are some questions that they need to have answered. She had voluntarily annexed her property into Cedar Lake in 2008. It was recorded and she has provided a copy of the annexation Ordinance. She suggested to the Plan Commission to review the letter and the Ordinance and they would talk about their thoughts at a different meeting.

Ms. Roberts pointed out in the Ordinance that water, sewer, and all the amenities of Cedar Lake were offered to her for her voluntary annexation and recorded in June 2008 at Lake County Government Center. She has had two very important buyers who vacated their contract because things were being asked of them that they could not financially do, especially water towers. She is not here to debate that; she just wants to know what they are going to do. She asked the Commissioners to review this and they would discuss this further at a later date.

Mr. Roberts stated in 2008 no one on the Plan Commission was present except for Mr. Carnahan and Mr. Austgen. She was happy to annex in and she is finding all sorts of problems and losing perspective buyers. A couple of the questions she knows from the last perspective buyer because their attorney wrote her attorney. The last buyer's attorney advised her attorney the comments from the Plan Commission is why they wanted to break their contract. She knows there is a plan eventually for a well on Morse Street but according to the buyer's attorney, someone told them they should get out of the contract and wait.

Mr. Wilkening stated he recalls a conversation of a community well in part. He knows the cost for that was quite considerable to the developer. Ms. Roberts stated Cedar Lake according to her voluntary annexation was supposed to provide those items to her, not her provide water and sewer to the Town. Ms. Roberts discussed she is not sure if some kind of compromise would need to occur and that for 10.5-acres they were requiring two different towers, one for fire hydrants and one for water.

Ms. Roberts asked when the Plan Commission would like to discuss this and if they would like it at the next Plan Commission meeting. Mr. Wilkening responded it should probably be discussed at the next Plan Commission Work Session and perhaps Mr. Austgen would have some review or recommendations. The next Plan Commission Work Session would be in a month. Ms. Roberts asked if there was any way to do it earlier. Mr. Wilkening suggested making this an Update Item on the next Plan Commission meeting.

Mr. Austgen stated he has talked with Ms. Roberts' attorney. Mr. Wilkening asked if Mr. Austgen would like to speak on this item now. Mr. Austgen responded in the negative.

Ms. Roberts clarified they would put it as an Update Item in two weeks. Mr. Wilkening responded in the affirmative. Ms. Roberts commented Mr. Wyllie could potentially be at the next meeting. Mr. Wilkening asked Mr. Austgen if this should be an agenda item. Mr. Austgen responded that was a decision for the Plan Commission. Discussion ensued about having this item as an Agenda Item, an Update Item, or occur during Public Comment again.

Ms. Roberts commented she just needs some advice to give her perspective buyers. Mr. Austgen advised she could tell them if they can come to the Town, get the Subdivision Control Ordinance, visit with Town staff and examine procedures for whatever it is they are proposing. Ms. Roberts responded Mr. Austgen should talk with Attorney Wyllie about this. Mr. Austgen commented that he has. Ms. Roberts stated Attorney Wyllie says Mr. Austgen has not communicated with him. Mr. Austgen replied he would provide copies of the letters sent to Attorney Wyllie.

Ms. Roberts stated she does not want any bad feelings, she just wants to sell her property and commented for the Plan Commission to read the Ordinance. Mr. Austgen advised all the documents were not included and he would provide them more data and information. Ms. Roberts stated she had stacks of them at home and asked which documents Mr. Austgen would like. Mr. Austgen commented he had all the documents. Ms. Roberts commented he should.

Ms. Roberts stated the Fiscal Plan was also signed, and she did not include it but she could. Mr. Wilkening stated he trusted Mr. Austgen would provide them all the necessary documents.

Ms. Roberts stated she would see them on November 17, and asked if she was going to be an agenda item. Mr. Wilkening asked the Commissioners if this should be on the agenda or not on the agenda. Mr. Becker discussed he did not think it needed to be on the agenda, it should be Public Comment or an Update Item. Ms. Roberts expressed it would be nice if they knew where they would appear on the meeting. Mr. Wilkening advised it would not be an agenda item but it would be an Update Item. Mr. Eberly commented the Update Items appear right before Public Comment and it would not occur any sooner on the agenda regardless of being an Update Item or Public Comment.

ADJOURNMENT:

Mr. Wilkening adjourned the meeting at 9:51 pm.

TOWN OF CEDAR LAKE PLAN COMMISSION

Jerry Wilkening, President

John Kiepura, Vice-President

Richard Sharpe, Member

John Foreman, Member

Robert Carnahan, Member

Heather Dessauer, Member

Chuck Becker, Member

ATTEST:

Ashley Abernathy, Recording Secretary

The Minutes of the Cedar Lake Plan Commission Special Public Meeting are transcribed pursuant to IC 5-14-15-4(b) which states:

(b) As the meeting progresses, the following memoranda shall be kept:

(1) The date, time, and place of the meeting.

(2) The members of the governing body recorded as either present or absent.

(3) The general substance of all matters proposed, discussed, or decided.

(4) A record of all votes taken by individual members if there is a roll call.

(5) Any additional information required under section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication.

Cedar Lake Plan Commission: November 3, 2021 Minutes of the Regular Work Session November 3, 2021