

**LOWELL PLAN COMMISSION MEETING
FEBRUARY 19, 2013**

President Kelley called the meeting to order at 6:30 P.M. The Pledge of Allegiance was recited. Recording Secretary Gena Knapp called the roll. Members answering the roll call were Richard Kelley, Eli Carras, Craig Earley, Robert Philpot, Don Parker, and Matt Felder. James Konradi was absent. Also present were Planning Consultant Jim Mandon, Attorney Jack Kramer, Building Official Tom Trulley, and six citizens.

APPROVAL OF MINUTES

Mr. Parker made a motion to approve the January 17, 2013 regular meeting minutes, seconded by Mr. Philpot and carried by voice vote.

OLD BUSINESS

None.

PUBLIC HEARING:

Petitioner: PC#13-001 Carlson Farms 101 W. Oakley Ave.
Request: Zone Change back to Agricultural
Purpose: To use as agricultural land

Randy Carlson, 960 Doe Path Crown Point, IN, stated he would like to change the zoning on this piece of property from Industrial back to Agricultural. He stated originally the property was leased to Globe Industries, which was then taken over by Rieter Automotive who used the property as Industrial. The current owners are not interested in leasing the property for their use, so we are asking that it be switched back to Agricultural land so that we can incorporate it back in to our farm. Mr. Kelley asked how much additional farmland they already have. Mr. Carlson stated around 680 acres and this parcel is almost 2 acres. Mr. Carras asked if we give approval, can you then only use this land for agricultural. Mr. Carlson stated that was correct. Mr. Kelley opened the public portion of the meeting. With no one to speak for or against Mr. Carlson's petition, Mr. Kelly closed the public hearing. Mr. Parker made a motion to forward a favorable recommendation to the Town Council to revert this piece of property back to Agricultural as requested by Mr. Carlson, seconded by Mr. Earley and carried by voice vote.

Petitioner: PC#13-002 Town of Lowell proposed Zoning Ordinance

Mr. Mandon stated at the last meeting we went through in detail all of the changes that we would like to make to the Zoning Ordinance that was originally created by Ball State. Tonight we are just asking the public to comment on the Ordinance and if anyone has any changes they would like to see, now would be the time to take those changes. Mr. Parker asked if we made the change available to the public before this meeting so that they could review the changes. Mr. Trulley stated it was available, and it was advertised that the

public could come in and see the changes. Mr. Kelley opened the public portion of the meeting. With no one to speak for or against the Zoning Ordinance, Mr. Kelley closed the public hearing. Mr. Parker made a motion to send a favorable recommendation to the Town Council to approve the Zoning Ordinances, seconded by Mr. Carras and carried by voice vote.

NEW BUSINESS

Jim Mandon to discuss dedicated road easement East of Speedway across from the Lowell High School – Mr. Mandon pulled up a map of the northeast corner of State Road 2 and Holtz Road on to the projection screen. He stated the Town has been approached by the property owner just east of Speedway about developing the site and putting in a restaurant. Mr. Mandon stated we do not want to allow multiple curb cuts on Route 2 in order to get to these sites. We would like to see public access roadways and shared curb cuts with the potential to go deeper in to the site. We are aware that there are some public access rights in this particular location. The medical facility is proposing to install both halves of a roadway that will be as deep as their property. What will happen from that point on will be discussed when development occurs on the joining properties. The staff is recommending on this particular property for the facility that comes in first to put in the entire roadway to the north limits of his property. From that point on, others will extend the roadway access, which will be turned to the west at some point in the future and have an access on the other side at the high school. In the future, we would like to see access roads that cross Holtz Road to the high school and not offset “T” intersections. This way, if the traffic warrants it, you can control that intersection with a signal. Mr. Mandon stated the staff is proposing to not have multiple curb cuts along the frontage, but to take every opportunity to install those roadway access locations. The Town should not have to pay for the roadway because it will be used for the benefit of accessing the private property. We do have a site plan that has been proposed to us, and this is the way we propose to provide them access.

Mr. Carras asked if the property was privately owned where we are proposing the roadway. Mr. Mandon stated the way we understand it is that the people just to the north may own the property, but there is a public access easement that is already identified which runs up to Spring Run subdivision. This property may be privately owned, but there is an overlaying public easement access. Mr. Felder asked if we have an okay from the State to utilize this. Mr. Mandon stated the State prefers a limitation on access points as well. Mr. Parker stated there currently is a curb cut there. Mr. Trulley stated there is a temporary road cut. We have had two meetings with INDOT and they are in favor of this road coming out for all of these lots. Mr. Philpot asked how far the access road is from the intersection at Holtz and Route 2. Mr. Mandon stated he did not know for sure. Mr. Philpot stated if it were too close, the signals that were mentioned would not work. Mr. Mandon stated it would be a limited number of traffic counts that come through. A discussion followed on how you could set up the signals to change timing so people do not get stuck on Holtz Road at a red light.

Mr. Parker asked if you could do a buy-back with the roadway when the next parcel is developed. Mr. Mandon stated that is not possible on a public access easement. If the Town were to put in a roadway, there is no way to re-coup costs back to the Town. You can do that on sewer and water, but not a roadway. Mr. Earley asked how it would work when the parcels to the east develop because there will be no access to the property that is being developed now. A discussion followed on where the future road cuts would be and how they would tie in with the rest of the parcels. Mr. Parker asked if whoever builds to the east would be responsible for paying back any of the money for the roadway that was put in by the first developer. Mr. Mandon stated no. Mr. Trulley asked if there could be an agreement privately between the developers. Mr. Kramer stated privately there could be an agreement made. Mr. Earley stated it seems unfair for one person to put in a roadway that will potentially benefit future developments. Mr. Mandon stated there is no mechanism to get that done. Mr. Felder asked if we could make a mechanism for that. Mr. Kramer stated we cannot, but State legislature can. Mr. Trulley stated when the sewer in Spring Run was made; there was a recapture agreement with the Town. He asked if we could do something that like. Mr. Kramer stated there is no mechanism in place to make a recapture agreement on a public roadway like there is for utilities. A discussion followed on why we should be asking these developers to provide these roadways.

Mr. Felder asked how the potential developer has received this. Mr. Mandon stated they do not want to put the roadway in. Mr. Felder asked what they have to come in front of the Plan Commission for. Mr. Mandon stated nothing. Mr. Felder asked how long the public access easement has been there. Mr. Trulley stated since 1976. Mr. Mandon stated when there is shared access or easements involved; it will come to the Plan Commission. We wanted you to be aware of what the staff is asking of this developer. Mr. Kelley asked if Mr. Mandon thought he would go along with it. Eric Opperman, 4721 Evans Ave., Valparaiso, IN, came forward stating that he is the property owner of the parcel being discussed. He stated it is unfair that we be required to bare the burden of installing a road that everyone will be getting the benefit from with no way to re-coup costs. He stated he is more than willing to pay his fair share, but this is excessive. Mr. Felder asked if there was an estimate for that. Mr. Opperman stated he spoke with his engineer and he believed it would be about \$120,000 - \$180,000. Mr. Mandon stated the property owners to the north and northwest would be responsible for taking the roadway west to Holtz Road. Mr. Kelley asked if that would be done immediately. Mr. Mandon stated no, it would be sometime in the future. This goes both ways because these parcels that will be developed in the future will have to do the same thing. Mr. Earley stated he understood where Mr. Opperman was coming from and if there is some other way to do this, we would like to. Mr. Opperman stated he appreciated the Town's position on not wanting curb cuts on Route 2. Mr. Parker stated we, the Town, cannot do anything to recapture, but you may be able to do something privately. Mr. Kramer stated he does not want to be in the position of giving advice to someone other than this Commission.

Mr. Opperman stated he does not own the road privately so he cannot recapture. Mr. Felder asked who the owner of the easement is. Mr. Trulley stated Mr. Novak owns the property, but the easement was set within that property. If Mr. Opperman could buy that

piece of property, it would be on his property. Mr. Earley stated the best way to do this would be to work something out with the property to the east, but it is not sold yet. Mr. Parker stated we are to the point where we do not have the money to build these roads and we have to start making the developers do so. We have to look out for what is beneficial to the Town, which hopefully will be beneficial to the developers. Mr. Opperman asked who would maintain the road. Mr. Parker stated it is a public road, so the Town would. Mr. Opperman stated he could not answer Mr. Kelley's question because he was not sure if he would move forward with the plans. He stated he could hold on to that property for another ten years and not build. Mr. Earley stated when a developer comes in and wants to develop a subdivision for homes; we do not offer to put roads in for him. Mr. Kramer stated there is nothing that we can do from a Commission standpoint. Mr. Kelley stated other than not have him put the road in. Mr. Parker stated we have to stay away from curb cuts, though. Mr. Opperman stated he currently has a curb cut, but it is in the wrong place. He asked if the Town would allow him to move his curb cut to the right place until the parcels to the east start to develop and he will share the cost of putting in a road with them. Mr. Kramer stated legally you could do that. Mr. Felder asked if there was a way to post a performance bond or something like that on it. Mr. Mandon stated he would recommend against that because you need to put the roadway in when development occurs. Installing the roadway now would enhance the ability for the rest of the parcels to be developed as well. Mr. Parker stated we have to start watching what we are doing with contingencies. Mr. Kelley stated he would not put the restaurant in if he were Mr. Opperman. Mr. Opperman stated that cost is on top of the \$700,000 project itself. Mr. Mandon stated perhaps something that has the ability to create more revenue could go in there that would be able to pay for the roadway. The EDC will not use TIF funds for a restaurant. They reserve that for developments that offer higher paying jobs and more of them. Mr. Opperman stated it is only thirty jobs and one million dollars in annual sales.

Jeff Bann, DVG, will discuss a revision on the conditions placed on the 1-lot subdivision approval for the Lowell Professional Center - Jeff Bann, Project Engineer and Project Manager with DVG, stated late last year we were in front of you to receive approval for a one-lot subdivision to allow for development of a medical office building with Franciscan Alliance as tenants. One of the conditions we received on the final approval was that an easement agreement had to be met between the Spring Run subdivision and our medical center. This agreement had three different parts; one was the interconnection from Spring Run subdivision to the doctor's parcel. Eight years ago when Spring Run was developed, there were some development agreements between the two property owners that never got recorded, but in people's minds it was in existence. The items that were addressed eight years ago were utility cross access, a development of storm water detention, and interconnection between the subdivision and the doctor's parcel. We tried to resurrect that and put it in paper, but this progress has been halted by some of the legal representation by the doctor's group. They were concerned that by documenting the utility access issue, that would create a blanket easement over the 20 acre parcel that would make it difficult for the doctor's to do further development. They were also concerned about committing to the access between the two developments, and the existing condition of the storm sewer. The existing manhole dead ends and five to six

feet below ground there is a big opening with no pipe taking the water from Spring Run to a discharge area. We have spent time communicating with the Town to try and rectify this situation. The three acres that the medical center will be on is remote from the utility service, access, and drainage issues. It does, however, include the Brandywine Drive that the medical center will put in in compliance with the Town's plan to interconnect Spring Run to the doctor's property. Also, as part of the Town's plan, we will extend large sanitary sewer and water lines from Holtz Road and Route 2 east to this property. We have included the easements in our three-acre property to make it allowable for anyone to connect in to those utility lines, which are being funded by TIF funds.

Mr. Bann stated with regards to storm water, our parcel does not touch the issue. We have tried to facilitate that communication, but we could not resolve the issue. The doctor's are in agreement that they would dedicate the easements necessary to implement this plan. That would be to build the 48" storm sewer that should have been built eight years ago, extend it on to the Spring Run subdivision south where the Spring Run Lane right of way would be platted, and turn 90 degrees to follow the proposed right of way line that we know will be there for Spring Run Lane extension to turn in to Brandywine Drive. We believe that the storm sewer line should run in to an open ditch or detention pond once installed. We are here tonight to ask for a revised final approval that recognizes the attempt, but that we did not get it done and we still want to proceed with this three-acre parcel. Mr. Mandon stated it is up to the Commission if they would like to revise their approval. The utilities involved with this one lot have nothing to do with the rest of the utility and easement issues. They are complying with the amount of the overall plan that they have control of which is the public roadway. In terms of blocking anything from where you want to be, in this situation, you will not have to. There was a clear attempt to resolve these issues, but you will not be sealing anything off by approving this one lot without that condition. He stated removing this condition is unfortunate, but it does not change anything as far as what we would like to see. Another issue is whether or not the connection the Spring Run Lane can be made in the future, which it can because those are not platted lots. That portion of Spring Run will have to come before you for subdivision approval, which at that time we will recommend the continuation of the roadway.

Mr. Earley stated there was some talk about the relationship with Mr. Lotton and the fact that if he does put the 48" line in, the future development of the doctor's parcel will have to give Mr. Lotton so much money and easement across the property. He asked if we have any control over that. Mr. Bann stated that discussion was never had and was never put in the easement agreement. Mr. Earley asked when the sewer line is installed, will the rest of the 20 acres tap in to it when they develop. Mr. Bann stated that was correct. Mr. Earley asked when that time comes, will Mr. Lotton have an issue and what leverage do we have. Mr. Mandon stated when you develop contiguous subdivisions; you develop them in a way so that you can have access to utilities through other properties. Mr. Earley stated he understood that, but can Mr. Lotton ask for money for a recapture. A discussion followed about the recapture agreement that was made between Mr. Lotton and the Town and that there was no discussion of a recapture for the sewer line. Mr. Parker asked if there was a need for a lift station. Mr. Mandon stated no there was not.

Mr. Kelley opened the public portion of the hearing. With no one to speak for or against the medical center, Mr. Kelley closed the public hearing. Mr. Parker made a motion to remove the condition of an agreement being developed and in place before the platting for the utility easement access and storm sewer access. A discussion followed on if there were any other conditions that needed to be removed. Mr. Earley seconded the motion as stated and it carried by voice vote.

Mr. Parker asked if the storm sewer should have been in place already. Mr. Mandon stated either they needed to continue the storm sewer all the way across and there is a cost re-coupmnt, or you provide a temporary swale on an easement. Mr. Parker stated to be sure, it was discussed that the doctors are willing to work to get an easement across that property, but who puts that drain in. Mr. Mandon stated if there is an immediate need to install it for Spring Run, then that is difficult because you are asking someone who is not going to develop their property yet to install an improvement for a neighboring piece of property. To establish the easement gives someone the right to put an improvement across. If there is an immediate need, once the easement is established, the Town could put in the improvements and re-coup their costs. Mr. Parker asked from whom. Mr. Mandon stated the developer of Spring Run. Mr. Parker asked if there was record where he was supposed to put that in. Mr. Trulley stated there were records that the doctors originally gave Mr. Lotton a conditional letter stating they would work with him. Mr. Lotton went to the County Storm Drainage Board, got approval for the drainage, which showed a drain going across the doctor's property, but when he came back to the doctor's, they would not sign off because they were widening the ditch too much. When they were going through the performance bond for Spring Run, there were two things that were not complete, but at that time the building official had recently been fired and within two months Commonwealth became our engineer. When the subdivision was inspected, no one knew what was going on. Mr. Parker stated he found it hard to believe the County or whoever did not make it mandatory that the storm sewer goes to the ditch. He stated that he had minutes where it has been said this situation is dangerous the way it exists. Mr. Parker asked if the doctors give us the easement, who will pay for the storm sewer. The research needs to be who was responsible for the storm sewer in the first place. Mr. Bann stated in past discussions with Mr. Lotton, he did not get on that property because he did not have the legal right to do so. Mr. Bann stated from what he understood, Mr. Lotton has every expectation to do the storm sewer and pay for it once he has the easement. We all need to get back in the same room and discuss what is going on and find out who is responsible for fixing the issue.

Mr. Parker stated on this plan they show an open ditch, but is that something we want. Mr. Mandon stated it could be temporary until other parcels begin to be developed. Mr. Parker stated the next time someone comes in on this 20-acre parcel; we need to receive an entire site plan. Mr. Mandon stated that was correct because if we don't, this subdivision will be developed one lot at a time and you will never get what you want. Mr. Earley stated the only other property that is extremely valuable is the frontage property. He asked if someone comes in next week and wants that piece, would they have the same options because they will be far from the subdivision as well and not have the same issues. Mr. Mandon stated in terms of the sanitary, it would require a lift

station. Mr. Earley stated we may hold up any development until these things are required, not the sanitary and lift station. We are on the verge of losing another development with Mr. Opperman, and we just gave approval to suspend some of the requirements we originally asked for in order to move this project forward. He asked if we turn around and make rules saying we are not going to do that anymore, what would happen if someone buys the next piece of frontage. Are we not going to give that person the same opportunity and make Mr. Lotton put the 48" main in? Mr. Mandon stated regardless of storm sewer or anything else, you couldn't develop the next piece of property without a lift station. That lift station has to be built in order to supply all of that property. The difference is that this site relies on no other utilities that will go through the rest of the subdivision except the lift station.

ADJOURNMENT

With no further questions or comments, Mr. Parker made a motion to adjourn the meeting at 7:37 PM, seconded by Mr. Felder and carried by voice vote.

Richard Kelley, President

Elias Carras, Secretary

Note: The above-proposed minutes are submitted for review and approval as the official minutes by the Plan Commission.

Gena Knapp – Recording Secretary