

LOWELL PLAN COMMISSION MEETING MINUTES
MAY 10, 2012
7:00 PM

President Kelley called the meeting to order at 7:00 PM. The Pledge of Allegiance was recited. Roll call was taken. Members answering the roll call were Edgar Corns, Donald Parker, Bob Philpot, Richard Kelley, James Konradi, and Eli Carras. Absent was Matt Felder. Also present were Attorney R. Lawrence Steele, Plan Commission Advisor James Mandon, Building Official Tom Trulley and Recording Secretary Christine Marbach.

Approval of Consent Agenda:

- a) President Kelley asked for a motion to approve the April 12, 2012 meeting minutes. Mr. Philpot made a motion to approve the meeting minutes, seconded by Mr. Corns and carried by voice vote.
- b) **Claims or expenditures – None.**
- c) **Staff Reports or Comments – None.**

Public Hearings:

Petitioner: PC# 12-002, Town of Lowell, 501 E. Main St., Lowell, IN 46356

Request: adopt a replacement Zoning Ordinance

Purpose: re-write current ordinance

James Mandon explained the new Zoning Ordinance, which was adopted last year, had some areas that they feel is too restrictive. There is not a zoning map to match the new code and they need to create a zoning map at the same time as making the changes in the text. The text in the current zoning ordinance is in proprietary software that is not word or some type of word or publisher that everyone has on their computers and is readily available. They have the option of either re-typing the new code with the changes in a Word document or buy the software, which would cost about \$700.00, make the changes and keep that available and updated so changes to the code could be made. The current code requires almost everyone who is re-developing a commercial lot to come in to the BZA for multiple variances. The code really is written for large vacant property. Mr. Mandon suggested the Plan Commission send a recommendation to the Town Council to go back to the original ordinance and map. When the changes are made to the new ordinance, they will have the new map and ordinance come before the Plan Commission again. While looking at the new map, they will address the need for certain zone changes in areas around town such as the zone change that was needed on Nichols St to change the zone from business to residential. Mr. Parker asked what the recommendation to the Town Council would be. Mr. Mandon stated the recommendation would be to rescind the current zoning ordinance and return to and adopt the previous zoning ordinance and map. Mr. Parker wanted to know what would be done with a property zoned commercial, used as residential and the property owner wants to sell. Mr. Mandon explained what they were trying to do was avoid non-conforming uses and a non-conforming use is something that does not comply with the current zoning, like a house on a commercial piece of property and every time they want to put money into the property, they have to

get a variance to do it. He further stated they would look into the different zoning in town and with the property owner's permission make changes to the zoning to the fit that use. The Plan Commission would make those changes and the property owners would not have to pay a petition fee. President Kelley asked how long would it take to make a decision on the software. Mr. Trulley stated they were already in the process of doing the zoning map; they have gotten the tiles from the County for the GIS and are working with Commonwealth Engineers to make the layers for the map. He further stated Ball State has given the town a disc but cannot do any changes and the town would have to buy their own software. Mr. Philpot asked if there was an estimate as to how much time it would take to type the zoning code by hand. Mr. Mandon estimated it would probably take a week if someone just keeps working on it. Mr. Philpot stated there is software out there for less than \$100 where you could read the text and it would type it out for you. Mr. Mandon stated re-typing it by hand would be in a format devoid of color and wouldn't have charts, but it would be much easier to codify and much cheaper to codify because it's not multi-colored. Mr. Philpot asked for someone in the office to make a recommendation of which way to go, either hand type the zoning ordinance or buy a program to be able to make changes.

President Kelley **opened the public hearing.** There was no one present to speak for of against the petitioner. President Kelley **closed the public hearing.**

Mr. Parker asked if this would be one motion or two. Attorney Steele explained how the motion should be made. Mr. Parker made a motion to forward a recommendation to the Town Council that the present Zoning Ordinance be repealed and replaced with the prior Zoning Ordinance that previously was in effect, seconded by Mr. Philpot and carried by voice vote.

Old Business:

None

New Business:

None

Announcements:

Mr. Corns asked why he was the only one on his block that has a sidewalk. He wanted to know if he was bound by law to maintain this sidewalk or could he take it out. Mr. Mandon stated based on the town code it could not be taken out because it was part of the town infrastructure. A discussion as to when sidewalks are placed followed. Mr. Parker asked why the church did not have to put in sidewalks. Mr. Trulley stated the part they are building does have a sidewalk to the street and when they put in the other addition, he suggests they put in the sidewalks. Mr. Philpot wanted to have bond money held for empty lots with no sidewalks. Mr. Mandon explained the bond money is held for water, sewer, streets, curbs and water mains, which are the improvements the sub divider puts in. The sidewalk is not covered by a subdivision bond. The builder of the homes is responsible for making sure the sidewalks are in and post a bond if they are not in.

Mr. Parker stated they still need to go back and look at some of these subdivisions, what went wrong and is there anything they can do, such as contact the developers and make them do what they agreed to do even though there is not a bond in place. Mr. Mandon stated the bond does not release the developer from fulfilling their obligation; it gives you a financial instrument in case they try to fight you. Attorney Steele stated if the company is in a trust and there are no assets left in LLC, it doesn't do you any good. Mr. Parker stated there is a developer that came in and made a proposal of a subdivision where the as-built is totally different, the infrastructure is totally different and there are about thirty lots that are still empty in that subdivision. He further stated if that LLC filed for bankruptcy there are still assets there. Mr. Parker stated he wanted to do an executive session so he would not be throwing out names, but if a person has not done what he has said he would, can the Plan Commission restrict sales of these empty lots until they conform to what they originally proposed. Attorney Steele stated possibly, the threshold of the investigation is to find out who is the legal person or entity that filed for this subdivision. Mr. Mandon suggested going after the person who sold the lot not the person who is building on the lot. He further stated preventing the sale of further lots would be much more affective. Mr. Parker wanted to know what the town could do such as putting liens on the remaining lots in the subdivision to a developer that blatantly disregards town ordinances. He further stated there is a subdivision where the streets, storm sewers are installed, where not approved by the Plan Commission and are causing residents problems. Mr. Parker asked Attorney Steele how this could be discussed at an executive meeting and who would get the information. Attorney Steele stated the initial thing to do was to ask the Staff to look at the petition and what the legal name or entity was of the petitioner and if the entity was still in existence. Mr. Philpot asked if the Plan Commission could ask that if a vacant lot is sold, the obligation of the seller be transferred to the buyer. Attorney Steele stated having a bond put in place and not release it until such time as the project has been built as it's supposed to be built is the correct way to do this. Mr. Philpot asked if there were a timeline as to when these empty lots need to be sold. Mr. Mandon stated they could lien the lots if that's legally possible and that way you could get part of the money from the sale of the lot to fix construction that the sub divider did not finish. Mr. Parker stated there were some things like the infrastructure situations that the town will ultimately be responsible for. Right now there are empty lots that maybe they could put a lien on and feels they need to go after the developer for things that have happened in the past. He further stated he wanted to know how they could sit down and have a serious conversation about this developer and the problems and have the developer come in. Attorney Steele stated they would have to investigate this first and have an expert come in and back up any claims against the developer. Mr. Parker stated he had a letter from the DNR in 2004 that states the developer was not to build any more lots in that area. Attorney Steele stated they would still have to do the research on the developer and the petition first. Mr. Parker stated he knew this developer was going to file for bankruptcy, but there are current situations that need to be addressed. Mr. Trulley stated the Public Works Director Greg Shook makes sure that all the sanitary sewers, storm sewers, water lines and roads are inspected by the Public Works Department in every phase of the subdivisions according to the site plan that was approved by the Plan Commission. He further stated the particular subdivision,

which Mr. Parker is talking about, is still being worked out with DNR and FEMA. He stated the original FEMA flood maps were incorrect and the developer went by those maps, the elevations in that subdivision are wrong which causes the infrastructure to be wrong. Mr. Parker stated Mr. Trulley is partially correct, but the bottom line is the proposed plan is different than the as built. The storm sewers were supposed to run another hundred and seventy five feet. The developer put things in that were not supposed to be put in and it was not detected at the time of inspection and he wants to make sure this is not done again. He also stated he wants staff to look at other subdivisions to make sure what was proposed was done. Mr. Philpot asked if he would get a clear title on his house with all these deficiencies. Mr. Parker stated he could but not his neighbors cannot and his property and the town has to do with FEMA and the DNR and has nothing to do with the infrastructure. There are some infrastructure deficiencies that need to be addressed. He stated he would take this up with the Town Council and have Staff look at some of these subdivisions and then if they need to have an executive meeting to take care of this, they will.

Adjournment: Mr. Parker made a motion to adjourn at 7:40 PM, seconded by Mr. Corns 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.

Christine Marbach – Recording Secretary