

**LOWELL PLAN COMMISSION MEETING
AUGUST 8, 2013**

President Kelley called the meeting to order at 7:30 P.M. The Pledge of Allegiance was recited. Recording Secretary Gena Knapp called the roll. Members answering the roll call were Richard Kelley, James Konradi, Eli Carras, Craig Earley, Robert Philpot, Don Parker, and Matt Felder. Also present were Town Attorney Jack Kramer, Planning Consultant Jim Mandon, Building Official Tom Trulley, and six interested citizens.

APPROVAL OF MINUTES

Mr. Konradi made a motion to approve the July 11, 2013 regular meeting minutes, and the July 11, 2013 executive session minutes, seconded by Mr. Parker and carried by voice vote.

OLD BUSINESS

None.

PUBLIC HEARING

PC #13-014 – Meadows of Cedar Creek – Vacation of Lots 32-45 – Mr. Mandon stated there is a typo on the agenda, it should state lots 33-45. Lot 32 is not in question. The ad and the petition are correct; it is just a typo on the agenda.

Roy Mason, 4607 W. 173rd Ave., stated he had some pictures of the lots in question and proceeded to pass them out to the Commission. Mr. Mason introduced himself as the developer of the Meadows of Cedar Creek. He stated he had gone to Indianapolis with his engineer to speak to the Department of Natural Resources to discuss moving the flood fringe. The first print you see is the print that we took to the DNR. We were told it would require a flow study and possibly a dam. We decided to extend our lots along McConnell Ditch instead. He stated we took out five lots, which you can see on the map, and we made the lots along the ditch one hundred feet deeper so that they would allow for a house to be built. The second print does show that there is enough room to build a house. Mr. Mason stated we presented this print to the Town, which was approved and signed by the Council and recorded at Lake County. We are willing to work with the Town to resolve the issue, but it is not right for you to just take the lots away from us. If it comes to that, we will retain counsel and take the Town to court.

Mr. Mandon stated he wished that the sub-divider had contacted the Town earlier so everyone could have discussed the matter before the meeting. Mr. Mason stated he had called the Town lawyer. Mr. Kramer stated that Mr. Mason had contacted him and said that he would forward some information to him, but this is the first information he has seen. Mr. Mason stated no one had gotten back to us. Mr. Kramer stated he did call back. John Mason, Roy Mason's son, stated that Mr. Kramer did call back. Mr. Mandon asked if Mr. Mason was indicating that the property was re-subdivided some date after

the original sub-dividing took place. Mr. Mason stated no, and that he was just not sure if he would be able to move the flood fringe, so he took it downstate before he developed it and they told him he would have to basically jump through hoops, so he did this instead. Mr. Mandon stated he was not sure if this would take care of the issue or not. Mr. Kelley stated the problem we have is that FEMA says that it is in a flood plain. Mr. Mason stated they said that a few years ago, but when it was being developed the state did not say anything about it. Mr. Mandon stated the FEMA map indicates that this is a flood way, not a floodway fringe area and the majority of these lots are still in it. Even if there were some way of elevating the structures, FEMA and DNR are not going to permit building the structures in a floodway. A floodway is where, during a flood event, there is moving water, and a floodway fringe is where water is stored during a flood event. If you are in a floodway fringe area and you can elevate the structure to a sufficient height to protect them from flooding, then FEMA and DNR will permit you to build them. They will not permit you to build if it is a floodway where moving water is now being blocked by structures.

Mr. Kelley asked what recourse Mr. Mason has. Mr. Mandon stated if he can convince the DNR and FEMA that those lots are buildable and those lines are in error, as far as the location is concerned, then he can get those maps revised, we can look at the maps, and then decide if there is enough buildable property on the lots if those maps are in fact in error and can be corrected by some field work. Then we can take a look to see if there is enough buildable property on those lots and if there is, they can be built on them. Mr. Mason stated we went downstate with my engineer and spoke to DNR about a year ago, and they agreed that his lane was right according to one of their maps, but they still had a problem with it and wanted the study done. Mr. Mandon stated the only way for them to change their maps is for you to have the study done in order to support the request with documentation, and until that happens, these lots are in a floodway and they cannot be built on right now. Mr. Mason stated while we are having this problem, we do not plan on selling those lots. He stated he did not plan on selling something that someone cannot build on. Mr. Mason stated he is not ready for this right now, but he can be if the Town pushes it. Mr. Kelley stated the only way we can assure that the lots are not sold is to vacate them. Mr. Mason stated that is the assurance that he got that he could sell them when he got them recorded. He stated the Town is at fault as much as he is and asked to split the difference to get it fixed.

Mr. Parker asked if the first page was what was taken in to the Town for approval originally. Mr. Mason stated he was pretty sure that the changes were done first, but he could be wrong. The second one reflects what the approval was received on. Mr. Parker stated he is concerned about a statute regarding flood insurance as far as how it impacts the Town. Mr. Mandon stated if the Town knowingly permits people to build structures on a floodway, then FEMA and DNR will eventually audit you, and that will not look favorably on the Town. If it is a major issue with several lots, then you run the risk of being suspended from the program. Mr. Parker asked if all of that was spelled out in the letter. Mr. Mandon stated that it was. Mr. Mason stated he did not plan on selling these lots or consider selling them while this is going on. Mr. Mandon stated regardless of what was sent to FEMA, they can always come back and say we do not agree with you.

He stated he did not have any issue with the Plan Commission recommending to vacate the parcels and that a final plat be drafted that would show this as balanced property and not developable lots, and then if the developer can produce documentation sufficient to convince FEMA and DNR that these maps are wrong and these lines are not in the right place and most of the lot or enough of the lot is not in a floodway so that structures can be built, you can re-subdivide at a future date. The evidence and maps indicate right now that these lots are not buildable. Mr. Kramer stated he was just going to suggest that. He stated that it seems to him that there is minimal harm in vacating the lots because it protects the Town for the various reasons we have talked about, and if and when it is possible to have FEMA acknowledge that the lines are not proper it can always be re-subdivided. In light of Mr. Mason's statement that he has no intention of selling the lots, there is not much harm in vacating the lots. Mr. Mason asked about the money spent. Mr. Kramer stated the Town would be vacating the lots. Mr. Mason stated he has already paid for these lots to be sellable, and now they will not be. Mr. Kramer stated you just said that you would not try to sell them. Mr. Mason asked not now but in the future when they are subdivided, who will pay for that. Mr. Earley stated, in his opinion, if all of this goes down like we hope, when you have to come in and re-subdivide it, you should not be charged for that second subdivision. Mr. Parker asked if you vacate the lots, could the existing plat of survey be used to re-subdivide. Mr. Mandon stated no, it would have to go through the process again. Mr. Mason stated there would be engineer work done too, which is quite a bit of money. Mr. Konradi asked if this could be cleared up in thirty days. Mr. Mason stated he would need about six months.

Mr. Parker asked when Mr. Mason went and talked to the State. Mr. Mason stated it was about a year ago now. Mr. Parker asked what the letter from 2005 had stated. Mr. Mason stated it said that we were building in a floodway, but that is when we moved the lots, which has nothing to do with me. Mr. Parker stated there was a letter from DNR that said you could not build there, but then you moved the lots. He asked if Mr. Mason now have a letter from DNR that states he can build on them. Mr. Mason stated no, but he is not in the floodway anymore, he is one hundred feet off of it. Mr. Parker stated it is our understanding from FEMA and the latest map that these are still in the floodway. Mr. Mason stated our engineer went off of one of their maps, and they agreed to the problem here, but they want me to pay to have the study done which is about \$25,000 to \$30,000. Mr. Philpot stated whether it is vacated or not, you will still have to, at a future date, spend this \$30,000. Your objection is the cost, but either way you will have to pay to fix the issue at some point in time. Mr. Mason stated if he has to pay the \$30,000 then he will pay it. Mr. Philpot stated so the objection is the cost of re-subdividing, not the \$30,000. Mr. Mason stated he did not like \$30,000, but he did not want \$8,000 on top of it to make these lots sellable. Mr. Philpot stated that would have to be done anyway. Mr. Mason asked why because he has already had the engineering done and the Town has been paid already for the lots. Mr. Philpot stated the lots that were engineered are in the floodway. Mr. Mason stated not according to my engineer. Mr. Mandon stated according to the FEMA map they are. Mr. Philpot stated you have to convince FEMA that you can build here. Mr. Mason stated by doing the study, but in the mean time, if you leave the lots as they are we can get an answer one way or the other. You can take my lots if you want, but when you get to this part of the subdivision, these are my lots.

The rest were sold to pay the bank, these would now be my pay. Mr. Philpot stated we would all like to see this get taken care of and that you eventually are able to sell the lots. The Town has a liability issue here which we are trying to cover. Mr. Mason stated they have given me the right to build on these lots, so they do have a liability there as well. Mr. Philpot asked if we waive this redevelopment fee and you come back later free of charge, do you still have an objection to vacating the lots. Mr. Mason asked if the engineering fees would be paid for as well. Mr. Philpot stated you will have to pay for that whether the lots are vacated or not, from my understanding.

John Mason, 4607 W. 173rd Ave., stated the Town has some sort of legal obligation. You signed and approved these maps. He stated he knew the Town would like to clear themselves, but you cannot do that. If it comes to that, then we will get legal council because we are not going to just lie down. This is a little more involved so you guys cannot say that you want to vacate these lots just to protect yourself. Mr. Kelley stated it is to protect us, but it is also to protect other innocent people. John Mason stated no one has sold any of those lots. You do not have to issue permits for those lots. Mr. Mandon stated the issue with that is once the lot ownership is transferred and the permit is applied for, we would be punishing an innocent party by not allowing him to build on a lot that he just bought. John Mason stated we have not sold these lots and we are not planning on selling these lots. Mr. Kelley stated we are not impeaching your integrity; we are just making sure that it does not happen. John Mason stated he understood, but the Town has been okay with this for a year now, but now you are trying to clear it up. You have some legality to this too. You are at just as much fault as anyone else and you are trying to get out of it, but it is not going to work that way. Mr. Parker stated that is not the case with most of us up here. He stated he lived in the subdivision and when him and other neighbors were notified of the flood issue, they went to the Town. Mr. Parker stated this is one of the reasons he ran for Council so that this matter could get straightened out. FEMA has said there is an issue. If they are saying there is an issue, then maybe the engineering was done wrong. The Town needs to do something to limit its liability and risk. John Mason stated this needs to be put on hold until we get counsel because we need to be properly represented. Mr. Parker stated we could start the process because it will not happen over night and you can get counsel. That was the purposed of the letter that was sent out. We can have discussions any time because this is not going to happen tomorrow. Mr. Mason asked if the Town was opposed to spending half of the expense. Mr. Kramer stated legally, this body could not vote to approve what you are asking. That has to come from the Council.

Mr. Mason stated the State is at fault somewhat too because after this flood that they had about four years ago, there was a meeting at the Lake County Fairgrounds and we went down there and talked to the DNR. They were rezoning everything and we brought the print down and showed them and they had no problems with it. Since then we have shown the State our prints about three times and they have had no problems, but after the flood, they have an issue. John Mason stated when we went downstate; they did not know that the Town of Lowell had approved these plans. That is something else we will have to address. Mr. Kelley stated he did not see any choice but to vacate these lots and have another plat made showing that these lots are vacated. You are more than entitled to

seek legal counsel and pursue it from there and hopefully the floodway can be removed. John Mason stated we are not looking to get it removed from anything, just to fix the issue and get the survey done. Mr. Kramer stated he could not give legal advice, but it would seem whether the lots are vacated or not and you seek legal counsel or not, the FEMA issue needs to be resolved. He stated in his view, whomever the final arbiter of this is and however that arbiter wishes to lay blame, that final arbiter, a court, will not allow lots that are in a floodway to remain as sellable lots. John Mason stated he understood that, but there are other issues as well. Our engineer's company has been bought out so these issues go a little deeper. We do need to get the study done, but how it gets done is a different story.

Mr. Kelley asked if there were any further questions or comments. With no one else to speak for or against the petitioner, Mr. Kelley closed the public hearing. Mr. Konradi made a motion stating, "Mr. Chairman, the facts and the evidence show that the Plan Commission was not made aware that lots 33 through 45 in the Meadows of Cedar Creek Subdivision are within the designated floodway. Because of this, the lots are unbuildable and the platted lots may jeopardize the Town's ability to obtain flood insurance. For these and other reasons stated, it is in the public interest of the Town of Lowell to vacate the platted lots 33 through 45 in the Meadows of Cedar Creek Subdivision." The motion was seconded by Mr. Philpot and carried by roll call vote. Mr. Parker made a motion to forward a recommendation to the Town Council to have the Town engineer create a plat of survey consistent with the motion that just carried, seconded by Mr. Carras and carried by roll call vote.

NEW BUSINESS

Review the Findings of Fact for PC #13-010 – Town of Lowell – Adoption of the Town of Lowell Annexation Plan – Mr. Parker made a motion to approve the Findings of Fact for PC #13-010, seconded by Mr. Earley and carried by roll call vote.

Review the Findings of Fact for PC #13-011 – Townes of Lowell – Amend Ordinance #2003-07 – Preliminary Plan Approval to construct forty new townhomes and rezoning – Mr. Parker made a motion to approve the Findings of Fact for PC #13-011, seconded by Mr. Earley and carried by roll call vote.

Don Parker – Discussion of Thoroughfare Plan – Mr. Parker stated before he discusses a thoroughfare plan, he would like to talk about the Meadows of Cedar Creek. He stated he has seen the proposed subdivision plat that was submitted to the Plan Commission. Mr. Trulley stated it is the second page that was approved. Mr. Parker stated neither of them shows the pond so if it is something different, we need to know by the next meeting. Mr. Trulley stated the one that was approved did not show the pond, but the as built that they submitted at the end, had the pond in it. Mr. Parker stated it is also his understanding that when the Town releases the bond, they accept the subdivision as is. Discussion followed of when the pond was placed in the subdivision. Mr. Trulley stated it was prior to the final approval and release of the bond because we have records of the DNR inspecting it.

Mr. Parker stated in the past we have talked about some things we need to do for the Town's master plan and we are about to the point where we need to talk about doing a thoroughfare plan. He stated he has also had some conversations with Mr. Mandon and the Town has already contracted with a company to look at if it is feasible to put some bike and running paths through the Town, which, at some point, will be included in the thoroughfare plan. It is really significant for future development because you want to provide the developers with information on where roads need to be and then you want the developers to pay for these roads. Mr. Mandon stated this helps to guide the Town's choices in terms of capital improvements related to street improvements, and it also puts in to place what the Town expects the road system to look like when it is completed. The roadway system is never really completed, but this will show elements of it that will be installed by the developers in that area. It will be clear at that point in terms of what the responsibilities are for properly providing access to that subdivision. Mr. Kelley asked if that would include bicycles. Mr. Mandon stated it would. The Town has to come up with an overall plan of what they want the developers and sub-dividers to do; otherwise it will not be consistent. You need a good understanding of how the system works right now, what kind of traffic uses the system, and how it can be improved by tying some of the loose ends together in some sort of organized fashion. This will create a minimal amount of arterial and secondary roads in terms of their locations, and you do not have to have redundancy because of the fact that roadways were not installed initially capable of handling enough traffic in the future. He stated it is similar to what you would do for the water and sewer plant. A thoroughfare plan looks at the existing system, how the roads are used now, looks for deficiencies, and looks for congestion and a way to alleviate it. When a private investor wants to develop in that area, and benefit from those improvements, they would have to pay their fare share to upgrade them to handle the additional traffic produced.

Mr. Parker stated those are not etched in stone. This is just a plan that we can use and then as we get going, we can fine-tune it. Mr. Mandon stated usually there are also parts that may be missing, regardless of development. The Town Council would then look at these areas and decide if the Town needs to fill in the blanks to benefit more rapidly than wait for the development. There is always the ability to step in and improve something now and then recoup your cost from the developer. Otherwise, the plan is there, the obligations are there for the developer, and it is well understood in advance of what the development will look like. Mr. Earley stated a study would be done of the developed areas that we have now to help us decide what will happen in the undeveloped areas, but what happens when a developer comes in and our wishes are way out of line with what they want to do. He stated he understood about fine-tuning the plan, but we cannot get any developers to help us work on the stuff that is ready to go. Mr. Mandon stated we do not really dwell on residential access. We are more interested in getting people to and from those neighborhoods. When you have a subdivision with a certain density, we can find out what type of traffic they will produce. We really concentrate on arterial and secondary roads and we connect roadways so you have a smooth system of transportation. He stated after about five, ten, or fifteen years, subdivisions really become larger neighborhoods when they join together. That neighborhood has to function, not every subdivision can be an island by itself. He explained if the function of

the roadway is not being changed from what is recommended, then the roads can be changed. It just should not defeat the purpose of having that connection.

Mr. Earley asked if the first process was to study the developed areas. Mr. Mandon stated that was correct. We will then study the undeveloped areas and make assumptions about density and traffic movement. If your assumptions change, then your plan has to change. Mr. Earley stated we could conform that to our land use map, then. Mr. Mandon agreed. Mr. Philpot asked if there was a rule of thumb on how far off each side of the arterial you will analyze. Mr. Mandon stated there are rules of thumb on how far apart those roadway systems have to be. If they are too far apart, they will not function as parallel routes, but if they are too close together, then they will congest each other. Mr. Philpot stated he assumed that traffic signals would be taken in to account as well. Mr. Mandon stated that was correct. Eventual intersection improvements are also included. Discussion followed. Mr. Philpot asked if the developer would be responsible for traffic lights or street lighting. Mr. Mandon stated they could be responsible for intersections that they directly benefit from. Mr. Philpot asked if we could make developers put in "pull boxes" to string wires across the street even though it may not require it at that particular date. Mr. Mandon stated you could do that. Mr. Carras made a motion to forward a recommendation to the Town Council that Mr. Mandon start working on a thoroughfare plan to be put with the master plan, seconded by Mr. Felder and carried by roll call vote.

Mr. Parker stated he did not want to point the finger at anyone, but he did want to correct the issues with some of these subdivisions. He stated Freedom Springs subdivision has an issue with their berm, we had Providence that came in last month and said their detention pond was not built to their plans, and Spring Run has the issue with the storm sewer. We as a Planning Commission need to talk about how our bonds are released and make sure that they do not get released until everything is in place. Either we need to take steps to get these corrected, or make recommendations to the Council to get things corrected. Some issues have been addressed; they are just not getting done.

Mr. Philpot asked what was going on with the doctor's property and the extension of the water and sewer line. Mr. Trulley stated they finally got an agreement with Linda Armstrong to go through her property with the water and sewer line. She now wants \$4,000 in crop damage for a small strip of alfalfa that will not produce probably more than twelve bales at the most. Tonn and Blank was willing to pay it, but SHA said no. As far as Shopco, it is all up in the air right now. Mr. Philpot stated we waited around a long time to get this issue fixed.

ADJOURNMENT

With no further questions or comments, Mr. Philpot made a motion to adjourn the meeting at 7:51 PM, seconded by Mr. Earley and carried by voice vote.

Richard Kelley, President

Elias Carras, Secretary