

LOWELL PLAN COMMISSION MEETING

September 13th, 2018

President Will Farrellbegg called the meeting to order at 7:18pm. The Pledge of Allegiance was recited and a moment of silence was held. Recording Secretary Dianna Cade called the roll. Members answering the roll call were, Chris Salatas, Will Farrellbegg, Edgar Corns, Jim Konradi, Eric Newell and Ryan Thiele. Matt Felder was absent. Also present were, Town Attorney Nicole Bennett, Town Engineer Craig Hendrix from SEH and Town Manager Jeff Sherdian

APPROVAL OF MINUTES

Mr. Corns made a motion to approve the August 2nd, 2018 work session minutes and August 9th, 2018 regular meeting minutes, seconded by Mr. Thiele and carried with a voice vote of all ayes.

PUBLIC HEARING:

PC 18-018 An application to vacate part of the subdivision plats and applicable restrictive covenants as to the lots owned by the petitioners in Village Green Subdivision Phase 2 Unit 1, located within the town boundaries of Lowell IN, has been jointly filed by Divi Development Inc., Greg & Kimberly Arnold, and Richard A. Zunica, as Trustee of the Richard A. Zunica Trust. The petitioners request to vacate part of the original subdivision plat for Village Green Phase 2 Unit 1 recorded with the Office of the Lake County Recorder as Doc. #2006-008768, and vacate part of the resubdivided plat recorded as Doc. #2016-073259, as to only the petitioners' respective lots located at: the "Common Area" at Village Glenn Dr., Lowell IN, Parcel #45-19-22-254-006.000-038; Lot 56A at 535 Shannon Dr., Lowell IN, Parcel #45-19-22-254-025.000-038, and; Lot 57A at 545 Shannon Dr., Lowell IN, Parcel #45-19-22-254-024.000-038. The petitioners also request to vacate the restrictive covenants of Village Green Subdivision Phase 2 Unit 1 recorded with the Office of the Lake County Recorder as Doc. #2007-031229; #2007-040913 re-recorded as #2011-056073; #2008-081579 re-recorded as #2009-012705; and #2010-015455, as to the petitioners' lots, only.

Mr. Zunica handed a map of the subdivision to the Commission members and explained that the yellow portion is the portion he is asking to vacate. The blue portion is Sierra Ridge Unit 1, that has already been approved by the Plan Commission, the orange portion will be future phases, and the yellow portion is what is being hopefully vacated tonight, and will be Sierra Ridge Unit 2. He explained the areas that were developed as ponds to help alleviate the flooding in Indian Heights during the development of Village Green, but stated that the small pond had some issues keeping up when there were heavy rains. Part of the agreement with Phase 1 of Sierra Ridge was to go in and repair the issues this pond was having, which has been done to the town's satisfaction. Mr. Zunica further explained the multiple ponds that have been put in place to alleviate flooding, adding the expense of the ponds as well as the cost of maintenance and potential liability that comes along with owning the ponds. He stated they are asking that yellow portion be vacated

and that those lots and the pond are no longer part of Village Green but would be replatted. The next petition we have filed is a petition to subdivide that area in to Sierra Ridge Unit 2. If you vote for all three petitions, it will look no different, other than the yellow will be blue, which will be part of the Sierra Ridge subdivision. Lot sizes, building lines, and zoning will not change, just the name as it will become part of Sierra Ridge and Sierra Ridge will be able to maintain the ponds and stormwater system. There is also a petition to waive the requirements, as when we first started this back in 2010/2013, the Town's requirements for a subdivision were different. Since the subdivision is built, some of the requirements need to be waived otherwise we would have to dig up the streets and rebuild, which would not be practical or cost effective. Mr. Zunica pointed out the five items that he is asking to be waived that are part of the new subdivision requirements that were not in affect when this portion of the subdivision was developed.

Attorney Bennett presented Indiana Code 36-7-4-711 to the Commission and explained the Commissions role in this decision and what will actually take place if these lots are vacated. Even though there have been changes where these lots have been made larger and re-recorded, we are going back to the first plat which was from October of 2016 on the re-subdivision and prior to that 2010. Pursuant to the State Statue this goes back to the situation where not all owners of the land in a plat are in agreement. She continued in that respect and looking at this entire plat that encompasses other areas of the subdivisions as it sits now, that is why we are operating under this provision and why it must come to the Commission and have a public hearing. If everyone agreed, this would be a much simpler process. Attorney Bennett explained to the Commission the three factors that are for the Commission consideration; 1. Conditions in the platted area have changed so as to defeat the original purpose of the plat, 2. It's in the public interest to vacate all or part of the plat, 3. The value of that part of the land in the plat not owned by the petitioner will not be diminished by the vacation. She also explained that by removing these properties out of an identified plat, if there are covenants, those also would be vacated, which is part of the petition as well. All of these factors are in play because it's not just a switch of a name, rather it's a clearing of the title work for the future to show the events that took place with the specific lots.

Mr. Farrellbegg opened the meeting for public comment.

Josh Arflin, 820 Valley View Dr., stated based on Mr. Zunica's presentation he did not hear where the three factors that were stated are being met, rather just the desire to change the plat. He stated the concern he has is with the existing neighborhood of Village Green. If the pond is removed from the existing subdivision along with the two existing houses one the pond, what does that do for the rest of the subdivision? There is an HOA in place that is supposed to help with maintenance costs, but Mr. Zunica has decided to remain the sole director of that HOA and has not done an effective job in enforcing the covenants, fines, and HOA dues that are needed to maintain that.

Chris VanDyke, 727 Seminole Dr., stated had he known Mr. Zunica had already requested to change lots in Village Green to a different subdivision, he would have been at that meeting. Mr. Zunica is asking you, on certain properties, to change those covenants or lift them. At this time there are four different sets of covenants covering Village Green that do not match. According to the covenants for Phase One, after ten years, or the completion of the subdivision, the residents of the subdivision were allowed to elect their own governing board as a housing authority, but that has never taken place. Furthermore, when this was brought to Mr. Zunica's attention along with a mailbox issue, his final quote was, "I want nothing to do with you people anymore." Mr. VanDyke argued the fact that according to Mr. Zunica's maps, Seminole Dr. is nowhere near his subdivision lines and asked why he has paid HOA dues if he is not truly part of the subdivision. He also stated that per a public article, Mr. Zunica claimed the HOA dues were not being paid in Village Green, but according to 1st American Management Company, who was hired by Mr. Zunica to run the association, three-quarters of the homeowners were current with their dues. Mr. VanDyke questioned where that money went if it was supposedly not paid. He further stated the Commission would be allowing Mr. Zunica to lift covenants on three properties that are owned by him and his staff, yet covenants are forced on the rest of the subdivision, but only one set is being enforced when there are four different sets. Currently no one knows what rules to follow or who the leaders are as far as homeowners because there truly is no homeowner's association. Mr. VanDyke continued with personal issues he has had since living in the subdivision including the planting of trees in the easement and flooding on Shannon Dr. He concluded with asking the Commission to consider making Mr. Zunica clean up other issues before allowing him to go further.

Jose Lopez, 805 Seminole Dr., stated he has been living in the subdivision since 2005 and when he moved in Mr. Zunica had stated there may be a HOA in place in a few years, but nothing was ever brought to his attention that they are now in place. Mr. Lopez stated he read in the paper that Mr. Zunica has been paying on behalf of the homeowner's, but now after ten years' money is being requested and liens are being threatened through a management company. Mr. Lopez stated he has never seen where the money he is paying has benefited him and that the supposed \$10,000 it takes to maintain the pond is inaccurate according to 1st American Management Company. With this approval, you will be removing his house and one of his employees houses out of the covenants.

John Hicks, 810 Seminole Dr., stated there are different covenants in place and nothing has been going on. There are more than just those two houses that butt up to the yellow area, and it is his house and an employee's house that is targeted on there. If we are not on the map and everything is to be changed around, then will we receive our money back out of the HOA? Mr. Hicks stated we are all here because we have a lot of questions and do not want to be involved with Mr. Zunica anymore. Whatever happens tonight, we would appreciate that you take in to consideration what has been said. Mr. Zunica took the pond away and took control of people's land behind their homes. Further discussion was had

regarding who was notified of the public hearing and what specific section is asking to be vacated and for what reason.

Jim Curry, 844 Valley View Dr., stated his confusion in the discussion about digging up the roads and asked if in the future Village Green was going to have to do that. Attorney Bennett stated no. Mr. Salatas explained the differences in Town Standards that were being discussed earlier and that it only relates to the second petition.

Elaine Dainton, 766 Village Glenn Dr., asked what the purpose or advantage was in removing two properties from the subdivision and can other people petition to move their properties out of the HOA or out of the subdivision. Mr. Farrellbegg stated it has nothing to do with the HOA itself. Mrs. Dainton asked why a continual subdivision would be broken up to take two properties to another subdivision. Attorney Bennett stated it is not for us to say why, the Commission is just reviewing where the plat started versus where it would be if the four lots were removed and for the Commission to consider the three factors set forth. She also stated there would be nothing to stop someone else to make the same petition since they hold that legal right, but it is all determined on a case-by-case situation.

Josh Wierzba, 688 Village Parkway, stated the restrictive covenants were written and passed out by Mr. Zunica himself. He stated it is frustrating to him as someone who follows the covenants, that he is not allowed to take his kids fishing to a beautiful pond that is supposed to be community property, but has now been taken away. He asked the Commission to consider the homeowner's side in regards to things that have been promised to them in this subdivision and that have been taken away. He also stated his curiosity as to which subdivision he would actually be a part of since he is in the second phase of Village Green.

Rob White, 719 Seminole Dr., stated that he encouraged the Commission to drive by one of Mr. Zunica's employee's properties to view the fence that has been put up. The property owner behind them was appraised with a \$15,000 lake view credit, but half of that view is gone due to the fence. Mr. White stated there has been a lot of miscommunication and a lot of property owners are confused as to what is really going on.

Tom Frazee, 802 Seminole Dr., stated a lot of us do take our kids fishing to what is supposed to be a common area. We have paid for the maintenance of this area and are not willing to just have it taken away. This has never been a problem until those houses were put up. Mr. Frazee stated it is upsetting that this can just be taken away when we have had to pay for upkeep. There is a severe lack of trust and miscommunication with what has been going on. Giving away a common area to just one person seems wrong.

Dustin Hudak, 691 Village Parkway, stated he lives on lot 187 and asked if this petition passes, would he not have access to the pond that he backs up to anymore. He stated he

was aware that the Commission may not be able to answer his question, but that it was a concern of his because he currently manicures his lawn to the pond and maintains what he can as well as uses it for fishing.

Greg Honeycutt, 829 Seminole Dr., stated he has been on Seminole Dr. for eleven years and everyone around him has maintained their property well. As soon as the Arnold's moved to the lot that is proposed to be its own entity, all of a sudden HOA's were created. He stated he has requested to see receipts from Mr. Zunica and 1st American Management Company, but has not been given anything. There has been no accountability for the funds that have been paid.

Michael Kun, 858 Valley View Dr., stated changing the name of these plats does not benefit our pond or the existing lots. He asked the Commission to consider what does it benefit.

Rick Salas, 812 Valley View Dr., stated he is not by the pond, but he did not appreciate that he put in the effort when looking for a house to avoid HOA's. At his closing, Mr. Zunica stated himself there is no HOA, but now there is one. He asked the Commission to consider Mr. Zunica's character in their decision.

Mr. Farrellbegg read a letting from Mr. Don Hicks, 810 Seminole Dr., in to the minutes that stated when their house was purchased, it was expressed that there would be an HOA that included common areas such as ponds and playgrounds, and that there would be a log kept showing what the dues were spent on. This has not happened, and we have not received anything that was promised to us. The letter also stated that Mr. Zunica only began requesting dues to be paid last year. Since the Arnold's and Mr. Zunica, himself have decided to build at the end of the block, an HOA has been put in place. The letter explained the issues Mr. Hicks has had since the Arnold's and Mr. Zunica have built at the end of their block which included the development of an HOA, covenants that were enforced by Mr. Zunica as he went, kids being harassed while they were fishing, and neighbors having pictures of their houses taken and reported back to Mr. Zunica with any minor lawn maintenance issues they may have. The letter also expressed their frustration with the fact that the HOA is being forced on everyone except Mr. Zunica's and the Arnold's properties along with how vacating these parcels and the pond will only benefit these two parties.

Mr. Zunica stated this is not about a homeowner's association. When the first phase was put in, we had restrictions. In those restrictions it does call for a homeowner's association, which was formed, but it was never activated nor were charges put in place. There are other restrictions and as we built new phases we found issues with people, so the covenants would change as we were going through the phases. Mr. Zunica went on to explain some of the changes that were made per phase to the covenants. He also stated if the lots in question are vacated, they will be vacated of the covenants, but will be subject to the Sierra Ridge covenants. In regards to the factors in making this decision, no one's

value will decrease if these lots are vacated, it is in the public's interest to vacate the plats to be a part of Sierra Ridge so that there is source of money to maintain the ponds and stormwater. The \$150/month does not cover all of the expenses for the pond. Mr. Zunica also mentioned the light that was put in at 173rd that he paid for out of his own pocket and continued to pay for until 2017. He stated, in regards to the factors, the pond is used to maintain the stormwater issues. The area that is in yellow is to become Sierra Ridge along with the rest of the eighty acres. If this is approved, the Village Green homeowner's association will be turned over to the homeowners. If the homeowners do not continue to maintain the ponds in place, then the Town can decide what to do if the structures go bad. He stated he believed he had come up with sufficient findings as to why the request should be granted.

Mr. Farrellbegg asked specifically where the HOA dues have been going. Mr. Zunica stated that money has paid NIPSCO, the company to take the fountains in and out of the ponds, and the gentleman who maintains the weeds. Mr. Farrellbegg stated it would be fair for the homeowners to know where that money has been spent. Mr. Zunica stated when it was turned over to 1st American, there was a meeting where they should have had records and they were paying those items. He stated he was not going to steal \$150 a month from the homeowners.

With no further comments or questions, Mr. Farrellbegg closed the public hearing.

Attorney Bennett stated the basis of the partial vacation is phase two unit one, but the other four plats are available here as well if it helps to see where these run from one to the other. The pond that is part of the four lots requesting to be vacated was in and only ever in phase two unit one, it was not platted in phase one. It may have been contemplated or discussed, but it was never platted that way legally. The lot with the pond is deeded to Divi Development and is reflected that way in all County Records. Likewise, the covenants that go with those plats are in your packages as well. They would have appeared in time as lots are purchased. Mr. Salatas asked if the pond would eventually be turned over to the HOA. Mr. Zunica responded yes, both north and south ponds will be owned by the Sierra Ridge Homeowner's Association. Mr. Newel stated with it moving from one HOA to another, why would the other HOA be more sufficient in taking care of this pond than the other that is already in place. Mr. Farrellbegg stated we have no say over the HOA's. Chris Adams, owner of Sierra Homes and President of the HOA for Sierra Ridge, stated the biggest problem everyone has is that the HOA was never put in to effect since day one. If it would have been, this would be much less of an issue. He stated his idea was to take all of the property owners along the pond to be involved in the new Sierra Ridge HOA, but we can't just replat all of the lots on the pond. Mr. Adams stated he has been dealing with HOA's for twenty years and will also be the exclusive builder for Sierra Ridge. He then stated his ideas for the new HOA board members. Mr. Thiele asked Mr. Zunica what the cost would be to fix the issue of flooding on Shannon Dr. Mr. Zunica stated that is what he was referring to earlier and that has been fixed to the town's standards. Mr. Thiele stated currently the ponds are in

good working order and there are no flooding issues. Mr. Zunica stated that was correct, they just now need to be maintained.

Mr. Corns made the motion to approved the vacation of part of the subdivision plats and applicable restrictive covenants as to the lots owned by the petitioners in Village Green Subdivision Phase 2 Unit 1. The motion died due to no second. Mr. Newell stated since he had reviewed these three factors, he would like to make a motion to decline the application, PC #18-018, to vacate part of the subdivision plats and applicable restrictive covenants as to the lots owned by the petitioners in Village Green Subdivision Phase 2 Unite 1, seconded by Mr. Thiele. Mr. Salatas stated there are a lot of outstanding issues that need to be fixed. He asked Attorney Bennett if there was a time restriction to act on the motion. Attorney Bennett stated no, the time table was getting it to hearing and for consideration. Mr. Salatas stated it would be beneficial to table this petition so that the outstanding issues can be figured out and decided on outside of the Commission. Mr. Zunica stated if it is tabled, the petition will be withdrawn. The motion to deny the vacation carried by roll call vote, four to two, with Mr. Farrellbegg and Mr. Konradi abstaining.

Attorney Bennett stated in regards to the rest of the items on the agenda they pertain to the same lots that where identified and are the basis for PC 18-018 which was just denied. Attorney Bennett stated she would refer to Mr. Zunica on how he would like to proceed but these lots based on the denial of the vacate cannot be replatted in to another. This Board does not have the authority to make that decision legally. They are petitions that are on your agenda and in front of the Commission for decision tonight. Mr. Farrellbegg asked Mr. Zunica if he would like to continue. Mr. Zunica stated there was no point in wasting everyone's time and withdrew the further petitions. Mr. Farrellbegg stated the petitioner has withdrawn PC #18-021 and PC #18-022, which carried by roll call vote with all ayes.

FOLLOWING PETITIONS HAVE BEEN WITHDRAWN:

PC 18-021 An application requesting waivers from the Standard Specifications for Construction of Public Facilities in the Town of Lowell pursuant to Subdivision Control Ordinance §155.191 has been filed for parcel(s) within the Town boundaries of Lowell, IN located approx. at the area bounded by Shannon Dr. and Village Glenn Dr., and identified as: the “Common Area” at Village Glenn Dr., Lowell IN; Lot 56A at 535 Shannon Dr., Lowell IN; and Lot 57A at 545 Shannon Dr., Lowell IN. The lots are owned by Petitioners, Divi Development, Inc., PO Box 302, Lowell, IN 46356; Kim and Gregg Arnold, 613 Cheyenne Dr., Lowell, IN 46356; and, Richard A. Zunica, as Trustee of the Richard A. Zunica Trust, PO Box 302, Lowell, IN 43656, respectively.

PC 18-022 An application for Preliminary Plat Approval for Sierra Ridge Subdivision Phase 2 has been filed for parcel(s) within the Town boundaries of Lowell, IN, located approx. at the area bounded by Shannon Dr. and Village Glenn Dr., and identified as: the

“Common Area” at Village Glenn Dr., Lowell IN; Lot 56A at 535 Shannon Dr., Lowell IN; and Lot 57A at 545 Shannon Dr., Lowell IN. The lots are owned by Petitioners, Divi Development, Inc., PO Box 302, Lowell, IN 46356; Kim and Gregg Arnold, 613 Cheyenne Dr., Lowell, IN 46356; and, Richard A. Zunica, as Trustee of the Richard A. Zunica Trust, PO Box 302, Lowell, IN 43656, respectively.

FINDINGS OF FACT:

PC #18-012 - An application for a site plan approval has been filed in accordance with §155.113 public improvements for a parcel within the Town boundaries of Lowell, IN has been filed by Family Express, 213 State Road 49, Valparaiso, IN. The parcel is located at 1520 E. Commercial Ave., Lowell, IN Parcel #45-19-25-126-002.000-008

Mr. Konradi made a motion to approve the Findings of Fact for PC #18-012 as read, seconded by Mr. Thiele and carried by roll call vote with all ayes.

PC #18-014 - An application for a final plat has been filed by Divi Development, PO Box 302, Lowell, IN, parcel #Sierra Ridge Phase 1 part of parcel #45-19-22-126-001.000-038 and part of parcel #45-19-22-176-008.000-038. Preliminary plat was approved January 11th, 2018.

Mr. Salatas made a motion to approve the Findings of Fact for PC #18-, seconded by Mr. Thiele and carried by roll call vote with all ayes.

ANNOUNCEMENTS: Next regularly scheduled meeting will be on October 11th, at 7pm.

PUBLIC COMMENTS: NONE

ADJOURNMENT:

With no further comments or questions, Mr. Newell made a motion to adjourn the meeting at 8:55pm, seconded by Mr. Salatas and carried by a voice vote.

Will Farrellbegg, President

Ryan Thiele, Secretary