

**THE COMMON COUNCIL OF THE CIVIL CITY OF NEW ALBANY, INDIANA,
HELD A COUNCIL WORK SESSION IN THE THIRD FLOOR ASSEMBLY
ROOM OF THE CITY/COUNTY BUILDING ON MONDAY, OCTOBER 22, 2018
AT 6:00 P.M.**

President Knable called the meeting of the New Albany City Council to order at 6:00 p.m.

PRESENT: Council Members, Mr. Caesar, Mr. Phipps, Mr. McLaughlin, Mr. Nash, Mr. Blair, Mr. Aebersold, Mr. Barksdale and President Knable. Mr. Coffey was not present.

OTHERS PRESENT: Ms. Stein, Mr. Wood and Mrs. Glotzbach

Mr. Brian Stump, 11th Street Development, stated that they were very tight to the elements in the comprehensive plan in creation of the zoning ordinance, as you will see with the zoning map, which has been updated to reflect the land use areas of the comprehensive plan and the zoning classifications. He said that in the zoning ordinance they have gone from 23 zoning districts down to about 12 so that is a huge simplification. He stated that the updated zoning ordinance identifies many of the standards and processes and they made it easy to use with the formatting and some of the hyperlinks. He mentioned that they have two different addendums to the ordinance and the first change was that they added language on transitional housing on Addendum No. 1 and another change was the rental housing inspection program, which was updated with language that the building inspector recommended to them. He said that the second addendum was in reference to lot coverage and they increased the density from 35% to 40% and the other thing that the addendum did was if you have a duplex then that is two units on one lot and now there is the option to split that property.

Mr. Caesar stated that sounds that it could be problematic and asked if that is a good move because he hates the idea of subdividing something that has already been subdivided.

Mr. Stump stated that the lot size is already permitted so it just allows separate owners for each half of the duplex.

Mr. Caesar asked if there is something in there about maintenance.

Mr. Stump stated that would be between the parties.

Mr. Wood stated that it would be covered under Indiana Code, Chapter 32, which is a property law and it simply says that the plan commission stays out of it.

Dr. Knable asked if there were any concerns at the public meetings that reached the threshold to make any changes.

Mr. Stump replied no. He stated that they had three different public meetings and what they did hear was that people were happy about the fact that there is more covered on the steep slopes than previously.

Mr. Blair asked if we have more of a formal process from the building community, would we learn more from them because he is just afraid that there are things that the council may not see that they may see from a different perspective. He added that they are the ones who will invest in the community.

Mr. Stump stated that they did have a gentleman with the Builders Association as well as a developer at one of the meetings and they had reviewed the document and liked the changes.

Mr. Blair stated that he thinks this is the most important document that they are going to work on and if they don't get it right the first time then they will have to make amendments and changes by ordinances. He proposed that the council select a group of maybe a dozen people who work with the city such as developers, the Builders Association, engineers, etc. and ask them to review the ordinance and then come back with any suggestions.

Dr. Knable asked how many of the folks attended the public meetings.

Mr. Blair stated that he thinks they didn't because they didn't feel their opinions were going to be heard.

Mr. Aebersold stated that if he was one of the developers in town, he would want to review this carefully. He suggested picking 10-15 of them to go over it and if 4-5 of them come up with the same thing that they would like to see changed then he would really like to hear their opinions. He then asked if there is a rush on this because it has been worked on for the last year and a half and he just wants to make sure it is right.

Mr. Nash stated that we can change anything at any time by ordinance.

Dr. Knable asked Mr. Stump to review his qualifications for the council so that maybe that would put some minds at ease and put some perspective on it. He said that he is playing devil's advocate because if we give it to 12 people, they all have skin in the game and might want less regulation.

Mr. Stump stated that he has been involved in this profession for close to 30 years and moved to Indiana back in 1997 in Monroe County. He said he was hired by the plan commission to write the city's zoning code ordinance and it was at a time when the county was taking over the two-mile fringe area so it was a pretty intricate ordinance. He stated that he worked for a national consulting firm after that for several years and did about 24 zoning ordinances total and served as on-call planning staff for several jurisdictions. He also stated that he worked for a developer for many years and started his own company back in 2012 so he has been doing this on his own since that time. He said that he also does development work so he understands both sides as far as how the ordinance is written and how it gets implemented.

Dr. Knable asked him if there was anything that stood out when he reviewed our ordinance in comparison to what other communities have on their books.

Mr. Stump stated that the biggest thing was the lack of standards that existed in the ordinance as well as the lack of direction both from a procedural side and a standard side and the new ordinance codifies a lot of that. He said that this ordinance is tailored to make sure we provide standards to raise the bar but aren't heavy handed so it sets guidelines that address compatibility.

Dr. Knable wanted to make sure that this will not push any existing businesses and that they are grandfathered in.

Mr. Wood stated that everything that is legal now will be legal after the council adopts the new ordinance.

Mr. Blair stated that we want developers to come in and spend money in our community and develop projects and if they have an input, he feels that they will be more likely to invest in New Albany. He added that at least they would be educated to the new ordinance and there would be no surprises to them if they were to review it prior to adoption.

Mr. Nash asked if there is a timeframe that we have to have this done.

Ms. Sue Beesley stated that there are two key timing issues. She explained that at the next regular council meeting following certification, you have to take some action but that doesn't mean it has to be approved or amended, it just means it at least has to be on your agenda. She said that you then have 90 days after the certification to act.

Dr. Knable stated that he thought they had options.

Ms. Beesley stated that the council can approve it, amend it or say no. She added that if it is amended, it would go back to the plan commission.

Mr. Blair asked if the process just starts over again if they say no.

Ms. Beesley replied yes.

Dr. Knable stated that he had some issues with the design committee but he is willing to hear that out and it is not necessarily a deal ender for him but his biggest bone of contention is some of the issues with the rental housing. He said that they discussed changing the term tourist home to short-term rental or Airbnb and his personal preference will be not to exempt them from the registration process and right now they are. He said that it was a huge issue for the council two years ago that inspections would be complaint driven. He said he is okay with a compromise on this that would allow inspection at time of occupancy and complaint driven thereafter as one form of an inspection process and the other would be some sort of a voluntary self-certification program. He said that if you are talking about an inspection that can be random or no less than once every three years as it now states, that is a deal breaker for him but otherwise, he feels it is a very good document.

Mr. Caesar stated that he would go along with Dr. Knable on most everything he said and feels that the Airbnbs should be registered and would like for inspections to be complaint driven or when someone moves out and someone moves in but feels it is more about manpower more than anything else. He asked how you would go around and inspect everything every year and stated that would take too many people to get that done.

Dr. Knable stated that he agrees with Mr. Caesar because pragmatically, how would you do it.

Mr. Caesar stated that he thinks it would be a good idea to tweak that.

Mr. Stump stated that there is a separate permit required for the short-term rentals knowing that it is a different animal from true rental housing.

Dr. Knable asked Mr. Wood if he was okay with the term tourist homes in there because he thinks short-term rentals is the more modern definition.

Mr. Wood stated that it is the state's language as well and he is generally in favor of trying to follow state language.

Mr. Blair asked if the inspections are really zoning or building commissioner and if it is zoning, are we taking over the county's jurisdiction in the fringe area and mentioned the Hausfeldt Lane situation.

Mr. Wood stated that was property maintenance on Hausfeldt Lane and we are not taking over any county jurisdiction.

Mr. Blair stated that he reads it as the city limits plus the two-mile fringe area and asked if property maintenance falls under building code or zoning code.

Mr. Wood explained that it can be either because a lot communities have their building commissioner under their planning and zoning.

Mr. Blair stated that is a big shift that we are doing here and asked if we are going to run into conflicting laws from one body to another because he sees a real conflict between the two documents. He then stated that the rental registration is now in the building commissioner's office and asked if that would be moved over.

Mr. Wood stated that we are small enough that we can do it

Mr. Blair asked if we would go back over the building codes and see what is conflicting with this document.

Mr. Wood replied no.

Mr. Blair stated that when he reads the building code, there are things in there about property maintenance and asked if this will supersede that.

Mr. Stump stated that when you do land use, developments, etc., there are multiple codes on multiple jurisdictions that come into play. He said there will be elements of overlap and that's why there is language in it that when there are conflicting requirements, it tells what takes precedence. He said that if there is a more stringent standard that applies from the county then it would apply in areas where they have jurisdiction.

Dr. Knable stated that he thinks it would be beneficial for at least the council attorney and the city attorney go through it to make sure there is nothing contradictory in it.

Mr. Blair stated that he is just concerned about having two documents trying to control the same thing but with different wording.

Mr. Barksdale stated that one of his major concerns is the rental inspection and he would prefer it to be complaint driven and then upon occupancy as Mr. Caesar and Dr. Knable said. He said that one of the stipulations on the short-term rentals is that the owner provides off-street parking on paved portions of the premises and there are several Airbnbs in the downtown area which have no parking on their premises. He asked if something should be addressed in it as far as the area.

Mr. Wood stated that he will have to check and see if that is still in the ordinance. He said he absolutely agrees and will make sure that language is not in there.

Mr. Phipps asked about the building maximum heights because there was some concern about it being limited to three stories in the downtown where there is a historic precedence for four stories.

Mr. Caesar asked if that is in the C-2 district or anywhere.

Mr. Wood stated that it is 80 ft. in the C-2 district as well as anywhere in the city with the exception of cell towers, Park View Towers, etc.

Mr. Barksdale asked what that equates to in stories.

Mr. Stump stated that it would be six-eight stories.

Mr. Phipps stated that is reasonable.

Mr. Caesar stated that an exemption could be applied for in a case where something made sense to be higher.

Mr. Blair asked how they would go about applying for that.

Mr. Wood stated that it would be a PUDD because they couldn't do it through a variance.

Mr. Phipps stated that he can think of other situations where depending on elevation, a building could stick out way above the community and throw it out of character as well but he is not going to make that a sticking point. He then said that he concurs with Mr. Caesar and Dr. Knable on the registration of the Airbnbs and more of a complaint driven or occupancy inspections.

Mr. Blair stated that there is a section that says this does not apply to residential hotels but he does not see a definition for residential hotels in the document.

Mr. Barksdale stated that it should go into the definitions and he noticed several items that should have been in definitions that weren't.

Mr. Blair said that throughout the document, he sees a lot of proofreading errors that need to be cleaned up and feels that it should be reviewed from a critical standpoint. He suggested that they ask an attorney that does not do business in the city to tighten it up. He said that in some ways he is a little disappointed because we keep talking about all of the groups who read this document yet there are a lot of proofreading type errors.

Dr. Knable stated that he is much more inclined to do that rather than hand out 12 different copies to 12 different people who may have 12 different opinions.

Mr. Stump stated that he wanted to address Mr. Blair's concerns on the small apartment complexes. He explained that in the description of that building type, it identifies that it has the appearance of a large size family and is appropriate to scale to fit in with residential or mixed use. He stated that it says it is an appropriate use for that but that language does not say that it is a by right use. He said that on the permit of use table, they are showing the small apartment complexes as a mixed density residential just because they could be out of scale for that neighborhood so that's why the decision was made to make those special exceptions. He also said that there is a review process that has to happen and the board of zoning appeals can address any potential conflicts.

Mr. Blair stated that he understands it since it was explained but most lay people won't understand those nuances so he feels we should be as specific as possible. He then told Dr. Knable that having an attorney review this is different from having another group review it. He said that it is two different entities for two different purposes.

Mr. Caesar stated that we are open for business in New Albany and we want to see new development come in but we have paid professionals here that have been in business for

many years that know Indiana code and know it better than any contractor out there. He is all for proofreading it in some way but he likes what he sees and thinks it is a great document.

Mr. Blair stated that he is concerned about the design committee because he wonders if developers are going to view that as another unnecessary bureaucracy that they have to go through and look at it has a hindrance to doing business in our city. He added that he personally does not like the design review board and feels that is a staff function.

Mr. Phipps stated that they heard those same arguments from the historical district as well and Mr. Barksdale can concur with him that it has not had that effect.

Mr. Barksdale stated that he is definitely for the part of the design review because he doesn't think they are going to pick at everything and will be looking mainly for compatibility and he feels that is the key with infill. He also stated that New Albany does not have a lot of open space for large developments so there will be a lot of infill and he feels it is very important for it to be compatible with what is around it. He added that we want to take our city to the next level and to take it there, we need to be very cognizant of what is being built in the future.

Mr. Blair stated that we do that now with our staff

Mr. Wood stated that he does design review when instructed by the board of zoning appeals but wanted to get something in the code because he feels that the community deserves that.

Mr. Stump stated that the design board is intended to speed up the process so that it is not something that you are trying to negotiate at a public hearing. He said that it will also flush out issues with infrastructure or anything that needs to be done.

Mr. Blair stated that he just likes people who have more familiarity with planning and zoning to make those types of decisions versus someone who may not have familiarity with it. He pointed out that the way it is written, you can appoint pretty much anyone on it. He also stated that he would like to see the technical advisory committee expanded to storm water, mail services, etc.

Mr. Phipps stated that on the same rationale of having developers review this, would we want to invite landlords to weigh in on the inspections portion because he thinks that would really open up a can of worms.

Mr. Blair stated that he would like to have a couple of landlords in too. He added that he is just afraid that we are going to lose good developers and investors in this community.

Mr. Phipps stated that he sees his point but respectfully disagrees.

Dr. Knable asked if there is a restriction on the duration of the review process by the design board.

Mr. Stump stated that the application is what triggers the date with the board of zoning appeals and the plan commission so the design review board is obligated to meet within that time to give its recommendation.

Mr. Wood stated that from the time that an application is received to the time of the public hearing is about three weeks. He then went into more detail about the design review board.

Mr. Barksdale asked if that could go in a definition for the design review board and spell out exactly what the board is about.

Mr. Wood replied absolutely.

There was a lengthy discussion regarding the design review board and its purpose.

Mr. Barksdale stated that he had some concerns about definitions in the document because there are items discussed in the document in several places but there are no definitions for them. He said that he gave them a list of maybe five or six items.

Dr. Knable then stated that he is interested in Ms. Stein's opinion on legal proofing of the document.

Ms. Stein said that she is open to that and could certainly look into it.

Dr. Knable asked her to talk with Mr. Gibson to see where they are on the administrative end.

Ms. Stein pointed out that it has been certified so they will not be changing anything before the council discusses it.

Mr. Stump explained that the design board participates in the process when a development is proposed that has more than one building on a parcel, if the site is five acres or larger, if you are expanding a building more than 50,000 sq. ft. and if it is required by a PUDD ordinance.

There was more discussion on the design review board.

Mr. Blair stated that there is a category called retail special handling and it includes things such as massage parlors, tattoo parlors, vapor smoke shops, pawn shops, gun sales, etc. and are things that are detrimental and maybe deadly to the community. He said that right now we have them allowed in the industrial district and the way this document is written, they can be an exception in the highway commercial district and he would just like to eliminate them entirely from highway commercial and regulate them to industrial. He added that he thinks these types of businesses deter development and investment in the highway commercial districts.

Mr. Phipps asked how a tattoo parlor poses a risk to the community.

Mr. Blair stated that would be an exception and was just listed in that category but he has seen statistics on the other establishments. He added that it seems that the board of zoning appeals and the plan commission tend to approve everything so he wants to make it as hard as possible to get those things approved as they can.

Dr. Knable stated that something that may not be savory to one person may be to another. He pointed out that there is a gun shop and massage therapist located in the Underground Station right now.

Mr. Barksdale stated that in the adult entertainment section under location standards it says that establishments are only permitted on the permitted use table and he didn't see the table.

Mr. Stump stated that it is listed in Chapter 5, Page 8.

Mr. Blair asked why it could be a special exception in the mixed corridor use.

Mr. Stump stated that some communities have had that.

Mr. Blair stated that he doesn't understand why we would ever allow that as a special exception.

Mr. Phipps stated that you can't outlaw it.

Mr. Blair stated that you can put it in industrial and that's where he would like to put the special handling retail too.

Ms. Beesley stated that we can't just totally outlaw them and then if you start putting all of this stuff in the industrial area then what will you be creating in that area. She added that you always have the grandfathering issue too.

Mr. Blair stated that he thinks if we limit how many of those types of establishments we have then we will have a better community.

Mr. Phipps pointed out that in his neighborhood a tattoo parlor went in where the old laundromat was and the appearance has significantly improved.

Mr. Nash pointed out that in his district the old Taco Bell was turned into a vape shop and it looks nice and he doesn't notice anything nefarious going on there.

Mr. Blair stated that the vape shops do pose health risks but he would probably take tattoo parlors out of that category. He then stated that the sign portion of the zoning ordinance has changed quite a bit.

There was a lengthy discussion regarding luminated sign regulations.

Mr. Stump stated that you are not allowed to create a hazardous road condition with lighting.

Mr. Blair asked about campaign signs because there is a stipulation that you can only have one sign in your yard.

Mr. Stump stated that is mainly for home-based businesses but they couldn't set that out.

Dr. Knable stated that he thinks that state law probably covers campaign signs and that would supersede this.

Mr. Blair stated that he thought there was a case in Clarksville where a campaign sign was too large and asked if that isn't what we are saying in this.

Mr. Caesar stated that he doesn't know exactly but there are a lot of things that don't apply to campaign information.

Mr. Blair stated that if that is the case, then it just needs to be noted in here.

Mr. Barksdale stated that he wanted to bring up another issue on signs in Chapter 6, Page 77, which is business uses in the downtown. He asked Mr. Wood if this is in line with the preservation commission's design guidelines because signs come before that group quite often.

Mr. Wood stated that he would double check that.

Mr. Barksdale then asked about billboards.

Mr. Wood stated that they are outlawing billboards other than existing billboards.

Mr. Blair asked about the section that states you can swap out two regular signs for a LED sign at the sole discretion of the director. He questioned if they really want to give that kind of authority to the director to make that kind of decision or should it come before the plan commission or council. He added that they really shouldn't even allow it and would like to eliminate that section.

There was a lengthy discussion regarding LED signs.

Mr. Barksdale stated that he agrees with Mr. Blair to just eliminate it because we do not need any more LED signs.

Mr. Caesar asked Mr. Stump if he will be present for the November 5th meeting.

Mr. Wood stated that he is the sole proprietor of his business and will be traveling on that date so he will not be able to make the meeting.

Dr. Knable asked if the council is under any stipulations or timeline on this.

Mr. Wood stated that if the council has not acted by January 26th then it will become law.

Ms. Stein stated at the beginning of meeting it needs to be decided if the council is going to amend it or ask for outside input.

Dr. Knable stated that he is in favor of this being proofed by a legal team but he is not in favor of turning over copies to people in the community because there have been lots of opportunities for them to give input and feels there will be more forthcoming.

Mr. Phipps stated that he concurs with Dr. Knable.

Mr. Barksdale stated that he agrees with Dr. Knable.

Mr. Caesar stated that he thinks the process should start now because he doesn't want to wait until the November 5th meeting.

Ms. Stein stated that she will research some firms.

ADJOURN:

There being no further business before the board, the meeting adjourned at 7:45 p.m.

Al Knable, President

Vicki Glotzbach, City Clerk