

**THE COMMON COUNCIL OF THE CIVIL CITY OF NEW ALBANY, INDIANA,
HELD A REGULAR COUNCIL MEETING IN THE THIRD FLOOR ASSEMBLY
ROOM IN THE CITY/COUNTY BUILDING ON THURSDAY, NOVEMBER 17,
2016 AT 7:00 P.M.**

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

ALSO PRESENT: Mr. Lorch, Mrs. Moeller, Mr. Warren Nash, Mr. Gibson, Police Officer Davidson, Mr. Hall and Mrs. Glotzbach

Mr. McLaughlin called the meeting to order at 7:00 p.m.

MOMENT OF SILENCE:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OR CORRECTION OF THE FOLLOWING MINUTES:

Mr. Blair moved to approve the Regular Meeting Minutes for November 7, 2016, Mr. Caesar second, all voted in favor with the exception of Mr. Phipps who was not present.

COMMUNICATIONS – PUBLIC (AGENDA ITEMS):

COMMUNICATIONS – COUNCIL:

Mr. Barksdale stated that he would like to invite everyone to the Habitat for Humanity dedication tomorrow at 10:00 a.m. at 1921 E. Market Street and explained that Habitat has been in existence here for 20 years or longer. He then thanked Mr. Warren Nash and the board of public works for going ahead with the two-way street grid and for all of the work that he and the board had done on that. He said that regarding the Martin Drive situation, he saw Mr. Mark Truman who works at Baptist Health Floyd and has been one of the advocates at the hospital helping to come up with solutions for the flooding issue. He informed him that the hospital is in the process of getting a second bid for the study that they will fund and hopefully it will address the needs of that creek and the runoff.

Mr. Blair stated that he appreciates all of the work that has gone into the Martin Drive situation but there is also a situation in the Farmgate neighborhood where they are going to redo Mt. Tabor Road and it doesn't seem that any other council member cares but him. He added that there will be road improvements with no storm water plans and no one seems to care that we will be just dumping water in that creek as fast as we can which will cause more flooding problems. He also added that he just wants to make sure that we are looking at that situation too.

Dr. Knable stated that he takes issue with Mr. Blair saying that no one else cares about that area. He said that he, Mr. Nash and Mr. Barksdale have personally walked that creek with the residents and they have also met with the mayor to discuss those concerns so he doesn't feel that it is fair to say that Mr. Blair is the only one that cares.

Mr. Blair stated that they definitely walked away from them.

Dr. Knable stated that is completely inaccurate and explained that he has been speaking with those people as recently as an hour before this meeting tonight via email. He added that he doesn't think that it is fair to say that someone has a monopoly on caring.

Mr. Blair stated that maybe he used the wrong words but he just doesn't want that area to turn into a situation like Martin Drive and that's what we are doing.

Dr. Knable asked him to bring some solutions to the council so they can be discussed.

Mr. Blair stated that he did and he also took them to the mayor and had meetings with him. He said they talked about having a storm water plan before the construction and everyone comes back to that it is a road project and they are not doing a comprehensive plan. He said that it seems to him that if you are going to do a construction project of that scope then you would consider the storm water runoff and storm water problems in that area. He stated that he is not talking about what is happening on Klerner Lane but about the Farmgate neighborhood where the houses sit level with the creek and the creek will continue to overflow and water will get in those houses.

Dr. Knable stated that he thinks Mr. Blair has been more involved with it than anyone else but he has been more involved with Martin Drive and maybe brought that to the council more vocally but to say that no one cares about the Farmgate neighborhood is not true.

Mr. Blair apologized to Dr. Knable and said that the point still is that we are not doing anything about it.

Dr. Knable asked Mr. Blair to bring forth a plan or help the council formulate a plan to do that. He added that he thinks we're looking at a pretty heavy duty storm water plan in the not too distant future from what he has been hearing and thinks we need to reprioritize. He then explained that the 1 thru 5 that was done prior to him coming on the council has pretty much been accomplished so we need to set the new priorities and perhaps Farmgate and Martin Drive will end up on the top 5 this time. He also explained that whether or not we will be able to do that without some sort of rate increase, which no one ever wants to talk about, he is not sure.

Mr. Coffey asked if there is a retention area going in anywhere over there.

Mr. Blair replied no and stated that we are doing a \$4M construction project and all they are doing is taking all that water off of the road and dumping it into the creek. He said that when you read their plans, it talks about a storm water study so he asked for the storm water study and received no response from the administration and then was told by the engineers that there was not really a study but more like staff notes. He also said that they stated they are allowed to do the drainage in the creeks because flowing creeks are where they are supposed to put water. He stated that a creek can only handle so much water and you can't continue to pour more water in it and expect it to handle that because it will overflow.

Mr. Coffey stated that he does know that more water goes into that creek from Beach Mold & Tool.

Mr. Blair stated that they have a lot of retention and we reviewed that here.

Dr. Knable asked Mr. Lorch if a council member is requesting information from the administration and is not getting it, do we have the right to subpoena that information. He said that he would like to think that it wouldn't come to that but doesn't think it is in

the best interest of the city for Mr. Blair or any one of us to request information and not be able to obtain it.

Mr. Lorch stated that the council could pass a resolution to that effect but we do have investigative powers with indulging any contracts or projects by the city.

Mr. Coffey stated that he is not advocating it but the council does have subpoena powers. He suggested having the head of storm water come in and talk to the council about how much additional water will be coming into that area.

Mr. Blair stated that he doesn't think they know because he has been told by the engineers that there is not a requirement to do a storm water study on a public works project. He said that just because one is not required, he still thinks that in good measure one should be done on a project of this size to see what the impact will be on the surrounding areas.

Mr. Aebersold said that he thought that they said that the engineers had a study on it and it didn't require any attention at that time.

Dr. Knable stated that he knows of people in the public that have requested that information and have never received it so if Mr. Blair requested information and didn't receive it then he will back him on whatever needs to be done.

Mr. Blair stated that he believes them that a study is not required but he feels it would be in good measure to do one.

Mr. Caesar stated that when you turn onto Farmgate there are issues there now.

Mr. Blair stated that there are other areas such as IUS and Porter Paint that could provide relief with retention.

Mr. Coffey said that would help.

COMMUNICATIONS – MAYOR:

Mr. Hall stated that Mayor Gahan wanted to wish everyone a Happy Thanksgiving. He said that the Christmas tree has gone up in Bicentennial Park and Develop New Albany will have their Holiday Festival there the Saturday after Thanksgiving so he hopes everyone can come for the lighting of the tree.

COMMUNICATIONS – OTHER CITY DEPARTMENTS OR CITY OFFICIALS:

Mrs. Moeller distributed the financial reports for the month of October and asked that they be read into the minutes.

Mr. Gibson stated that he would like to reach out to the Public Utilities and Transportation Committee and discuss how economic growth is impacting the sewer credits and various things of that nature.

Mr. McLaughlin stated that the committee is comprised of Mr. Coffey, Mr. Phipps and himself.

Mr. Gibson said he will have his staff reach out to those individuals and try to arrange a meeting within the next week or two.

REPORTS – COMMITTEES, BOARDS OR OTHER OFFICIALS AS REQUESTED BY A MAJORITY VOTE OF THE COUNCIL:

APPROVAL OF CF-1 FORMS:

INTRODUCTION OF ORDINANCES:

READING

Z-16-03	Ordinance Amending the Code of Ordinances of New Albany, Indiana Title XV, Chapter 156 (Docket P-03-16 Greg Andres requests a PUDD at 4402 Grant Line Road) As Amended	Caesar 3
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Mr. Caesar introduced Z-16-03 and moved to approve the third reading, Mr. Coffey second, all voted in favor with the exception of Mr. Phipps who was not present. Bill Z-16-03 becomes Ordinance Z-16-15.

Mr. Caesar stated that the amendment says that the PUDD shall expire and the zoning return to R-3, Multi-Family (medium density) if PUDD Secondary review approval is not conferred by the plan commission within 18 months of the approval of this ordinance.

Mr. Barksdale added that Lot 5 on the first page was changed to Lot 3.

Mr. Caesar stated that he thinks this is a good thing for the city and he knows that there were some questions about the mini-storage warehouses but people in America just don't throw things away and several people he knows have these things and they are full.

Dr. Knable stated that he thinks the project is fine on this one but pointed out that we had one PUDD that one could argue went beyond the 18 month period and never came back to the council for review. He also stated that he thinks that the council needs to look at these with regards to the magnitude of projects to see whether or not we are comfortable with any secondary review going to the plan commission which is made of elected and non-elected officials. He said that in hindsight it would have been great to have amended the Summit Springs to come back to the council rather than the plan commission in his opinion. He is not saying that he wants to do that with this one but he just wants everyone to keep those two things in mind. He said that he thinks that the council is going to hear from some people tonight who feel that the Summit Springs PUDD expired and things went on beyond 18 months.

Mr. Caesar stated that he is not sure that the city had an 18 month timeline written into the PUDD for Summit Springs but he knows that the state also has a timeline written into ordinances for 18 months and he is sure that was in Summit Springs.

Dr. Knable said that he thinks that other one needs to be teased out because there is a lot of confusion on that.

Mr. Coffey stated that he would even go so far to say that the secondary reading should come back to the council for final approval as opposed to the plan commission because he has seen things that the council would have never agreed to. He also stated that once this body passes it the first time, it is out of our hands so we are giving a blank slate and saying that we are leaving it up to the plan commission to make it right.

Dr. Knable asked Mr. Coffey if he is suggesting that this PUDD needs to be amended.

Mr. Coffey replied no because he thinks this one is cut and dry. He said he just feels that down the road the council really needs to take a look at these things.

Dr. Knable stated that he thinks that safeguards need to be built in particularly if they go beyond a certain comfort level.

Mr. Caesar stated that he would be for that but feels that they would almost need an ordinance to make it stick.

Dr. Knable stated that they could do them case by case until they come up with a set a rules that applies to all of them.

INTRODUCTION OF RESOLUTIONS:

BOARD APPOINTMENTS:

COMMUNICATIONS – PUBLIC (NON-AGENDA ITEMS):

Mrs. Sarah Hellems stated that she was present to speak about Summit Springs and passed out PUDD facts and two maps for the council to review. She said that the Summit Springs PUDD as it stands now including the subdivision of land that was approved Tuesday night by the plan commission and the secondary review that was presented before the plan commission is illegal and is in violation of state law and city ordinance. She then stated that the first map with all of the detail that shows the location of all improvements and designated land use is the one approved by the city council in 2008. She stated that the other map with no detail is what was brought before the plan commission on Tuesday night for secondary review and the purpose of secondary review is to review the details of the PUDD such as utilities, fire hydrants, landscaping, etc. She explained that per city ordinance 156.107(C) one of the requirements for secondary review is a detailed site plan that conforms to the PUDD ordinance as approved by the city council. She said that the PUDD map that was presented to the plan commission looks nothing like what city council approved back in 2008. She said that the new map has no details whatsoever so what you now have a PUDD with no plans. She stated that under the advisement of their lawyer, they strongly believe that these changes to the PUDD map constitute amendments to this PUDD. She explained that the changes, in order to be legally approved, require a new PUDD ordinance per city ordinance 156.107 (B)(6). She also explained that state law permits the legislative body to define the types of amendments the plan commission can make to a PUDD that does not require approval by city council. She said that according to city ordinance 156.107 (B)(6) any amendment to a PUDD ordinance shall be subject to the procedure for approval a new PUDD, and no amendment shall be approved unless the application and review encompass the entire PUDD. She also said that the plan commission does not have the authority to make the changes that were made to Summit Springs. She stated that Tuesday night at the plan commission meeting when Mr. Scott Wood was asked if the new map conforms to the map that was passed in 2008 he clearly said yes and she doesn't see how that is possible if you look at the two maps. She also stated that when confronted by City Councilman Mr. Gregg Phipps to take this back before city council for review, Mr. Scott Wood declared that the PUDD could not go back to the council but she says that it can and is right there in the city ordinance. She said that if it is amended, it has to be treated as a new PUDD and is that simple. She also said that they are not entirely opposed to the new development but they are concerned that if a blank PUDD map is approved and laws have already been broken left and right then they have no protections. She then asked who is going to ensure that the Daisy Lane extension is not going to connect to Fawcett Hill Road. She said that Mr. Bob Caesar asked Mr. David Duggins this in numerous redevelopment meetings and Mr. David Duggins has repeatedly said that there are no current plans for a connection but he will not speak to future phases of this development and that concerns them deeply. She is also concerned about why Mr. Scott Wood is

demanding that plan commission members explain why they are voting against Summit Springs and about him misinforming plan commission members. She was concerned Tuesday night at the plan commission meeting because Mr. Shane Gibson was not present to answer legal questions because Mr. Scott Wood didn't think there would be any problems with the secondary reading despite them raising their legal concerns in the September and October plan commission meetings. She asked if this is gross incompetence or is there pressure by someone else to get this PUDD passed and at this point they are starting to believe that it is the latter of the two. She then explained that Pam and Pat Kelly sued the city in 2014 and a summary judgment was reached in December 2014 and was followed by a monetary suit that was mysteriously settled in October 2015 and the outcome of that suit is not entirely clear. She said there are only two documents in the county clerk's office regarding this and asked where the other 30 or so documents are. She then asked if this was a back room agreement sealed with a hand shake reached between the Kellys and the city where the city agreed to just rubber stamp the PUDD. She said that laws are being broken time and time again and that scenario is looking more likely. She explained that in early 2016 storm water permits were issued and Mr. Scott Wood permitted the clearing of the trees behind Big O Tires despite this clearly violating the PUDD ordinance. She said that since the trees were cleared there has been no construction at all and construction was not planned to even begin until spring 2017 so why the rush to cut these trees illegally. She asked if it was to help the Kellys market the property to potential developers. She said that her husband has addressed the city council many different times about his concerns that this would only lead to additional violations of both the PUDD and city ordinance. She said that they fully intend to exhaust all administrative remedies by appealing this at the next BZA meeting, however, Wednesday morning Mr. Hellems went down to Mr. Scott Wood's office to request a BZA application and was denied and told that their lawyer was the one that needed to get the application. She believes that these actions have denied them their due process and wants the city council to step in and put a stop to this because it has gone too far too long. She said that the council can repeal zoning ordinances, file injunctions and subpoena Mr. Scott Wood, Mr. David Duggins and Mayor Gahan to demand answers. She strongly encouraged the council to study the PUDD facts and the ordinance as well as the maps and asked them not be part of what is wrong in politics today or a part of the dark side. She said that it is a lot to digest but they have been working on this for years and since the day they moved to New Albany, this has been their thing.

Mr. David Ruckman, project surveyor, stated that the document that was submitted to the plan commission is a final plat document but they also submitted construction plans and details. He said they are working in a little bit of a joint effort from the standpoint that the city engaged Jacobi, Toombs & Lanz to facilitate the TIF and to design the roadway to the hotel. He said that the plat conforms within .04% which they think is not substantial but is a positive evolution. He said there was a 2.71 acres change on 61 acres and that they are saying that 2.71 acres should be commercial instead of multi-family. He explained that they certainly not trying to damage anyone but simply trying to get through the plan commission so they can provide final plat to the hotel people so they can get their financing because without a final plat approval, you can't apply for financing. He added that it takes a year to construct the hotel and they have to start in spring 2017 in order to be open in spring 2018. He asked what they need to do in order to allay fears and would be glad to answer any questions even though they will still have to come before the council at a later time.

Mr. Coffey stated that they don't have to come back before the council and that is what they have been discussing and there is no way to tell them what his fears are in a half hour. He explained that so many times the council approves a PUDD and what we approve compared to what it ends up being is two totally different things.

Mr. Ruckman asked if that is not an evolution.

Mr. Coffey stated that it could be an evolution but he feels that some of that evolution should have been seen in the original PUDD.

Mr. Ruckman explained that they present a proposal to people that could bring that hotel to us and they come back with what they would like to see happen so this amendment was their suggestion to put the second hotel next to them. He said they are saying that is a positive thing and is only a .04% change to the overall acreage that was allotted. He added that he sees it as a positive to have the hotel rather than apartments.

Mr. Coffey said that he can see that is a positive but he can't believe that we are building on a steep slope like that in the first place.

Mr. Scott Waters, Waters, Tyler & Hoffman, stated that he has been doing a lot of work with Floyd Memorial which is now Baptist Health on Martin Drive. He said that he has been looking at other projects and would like to help the Kellys because they engaged him to draft restrictive covenants that are verbatim to the PUDD that was approved in 2008. He also said that the owners with real estate surrounding the development have enforcement rights in the restrictive covenants. He explained again that if the plat is not done then they can't sell a lot and they have to have a lot so they have a legal description to sell it to get funds to do development. He said that the reason no work has been done is because they can't sell a lot yet so it is a catch 22. He then said that some of the issues that have been raised are great issues for another day and another battle and really need to be looked at by Mr. Lorch and Mr. Gibson to be sure that they are all put in place but not in the middle of the process because that's where you get into discrimination and cause additional problems.

Mr. Ruckman stated that Fawcett Hill was blocked but not by the Kellys ever but by LG&E. He explained that they came in and put the big mono pole up on the Kelly property and spanned across the interstate and put the new substation on the west side of the doctor's property. He also said that the contractors building the hotel will be bonded 100% so any damages that may occur to Fawcett Hill Road will be repaired and they are required to give notice to the city and the residents if they are going to bring something big up the hill. He stated that once the new road is done he sees very little use on Fawcett Hill.

Mr. Coffey asked what the differences are in the maps.

Mr. Ruckman stated that it is a 2.71 acres change which is .04% difference between the two plans. He also stated that construction plans were submitted.

Dr. Knable suggested that Mr. Gibson and Mr. Lorch meet to see if there is any validity to what was presented to the council tonight. He stated that if there is something that trips the necessity for the council to see this on a secondary review because there was an amendment and that requires starting at the beginning, then let's expedite it. He added that he doesn't think there is anything to be feared by doing a secondary review. He said that he stated publicly that he is for this and has tried to help the Hellems' be heard here but the thing that is at risk is the transparency of the project and the veracity of the process.

Mr. McLaughlin asked Mr. Lorch if he would be willing to meet with Mr. Gibson.

Mr. Lorch replied yes.

Mr. Aaron Hellems stated that Mr. Ruckman admitted that the PUDD was amended and refers to it as an evolution. He said that evolution is defined as change over time and change is an amendment. He pointed out that Mr. Ruckman said that it was a 2.71 acres change and if you look at the new lot line that was added in the box on the map, it is 4.5 acres in itself so we are already off on our math. He explained that the big difference is that there are no buildings on the new map so there is no guide as to how it will be developed and it is now a blank slate.

ADJOURN:

There being no further business before the board, the meeting adjourned at 7:55 p.m.

Pat McLaughlin, President

Vicki Glotzbach, City Clerk