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Subject: FW: Aug 18 Mtg

Date: Thu, 24 Aug 2006 19:08:14 -0500

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----- Original Message -----
From: David Mueller
To: Eileen Sieger;Mary Avery;Glen Unrau;Willis Ensz
Sent: 8/18/2006 10:03:56 AM
Subject: Aug 18 Mtg

Eileen, Mary, Glen & Willis,

Since I had your email addresses, I thought I would send a brief summary of my impressions from the meeting last night with Eileen, Bobbi and Dan Holub. OK, I just finished and it is not so brief... Eileen, please correct any misstatements or add comments where needed.

The confrontation began before we even went into the building, but we did get past that and sat down to talk. Eileen had made arrangements to have Jim Kaup on speakerphone so we could all ask questions and hear the response. Dan at first refused to even allow the call to Jim, but finally agreed to call him if we had a question. Within minutes of sitting down to outline the issues, it was clear we needed an independent, informed opinion on: 1) the Benny Key application and 2) interpretation of the current regulations pertaining to property under 40 acres.

Dan agreed to call Jim to get clarification on these two issues, but insisted on using his cell phone. The next hour was spent repeating questions and responses and passing the phone around. In the end, we understood his response which was not a clear cut right or wrong, yes or no.

To get to the answer for question 1, we have to look at question 2. Refer to the Zoning Regulations, Article 2 Agricultural District Regulations, 2-101, page 29, first paragraph, the last sentence. "The District is intended to allow net density of one residence per 40 acres, and sell-offs of 5-acre lots..."

Previous Marion County interpretation and consistent application for new home construction has been that the 5 acre lot had to be split from an intact 40 or more parcel. Bobbi's interpretation is that the 5 acre lot could come from any sized parcel as long as the net density in the area remained one per 40. To demonstrate her point, she pulled out previous minutes where we have allowed smaller acreage lot splits for existing home sites. As Eileen and I pointed out, existing home sites meet different regulations allowing the smaller acreages, justification being to make existing home sites more attractive.

Jim Kaup's response was that the regulations are vague enough that they could be interpreted either way. My question then was "can the interpretation be changed, even though the precedent is set in the 5 acre lot coming from a full 40 acre parcel?" His response was that the interpretation could be changed at any time as long as there is sufficient justification for the change. The only way to prove that justification would be if it would be challenged in court.

The next factor to consider in the lot split issue is the fact that the regulations have made it an administrative decision. As you recall, David was bringing them to us not for a decision, but to keep us informed. Bobbi "technically" is correct that it is her decision and she can use her interpretation. The Planning Commission can disagree with that interpretation, but we only have input. The County Commission has the final say and their interpretation will support Bobbi.

A HUGE issue which was not clarified until the end of the meeting was Bobbi's statement that she would issue a permit on ANY sized parcel because to deny it would be a taking. She clarified that statement to apply to any sized parcel BEFORE zoning, essentially using a grandfather clause to smaller properties in place before zoning. In my mind that completely changes her statement. The Planning Commission has "talked" about using a grandfather clause to apply to these smaller lots, but never put it into the regulations. We also have made exceptions for properties that were changed by highway right of way or other factors beyond their control. She would NOT issue a permit on any new lot split that did not meet the setbacks, wastewater, and other regulations. Of course this line of thought again hinges on interpretation. In the past the grandfather clause was not used. Bobbi interprets it as being applicable.

What to do??? First, Jim Kaup recommended letting the Benny Key issue stand and not bring it up again. It is a change in interpretation of the regulations and a change in precedent, but more harm would be done trying to pull the permit. It could be used as a gauge of public opinion. If there is a challenge, the Planning Commission has no risk as it acted properly and consistently. The liability lies with the administrator and County Commission.

Second, the regulations can be interpreted to support either view. There is a big difference in those two views and the regulations need to be changed to more clearly represent one or the other. Dan fully agreed that the proposed changes currently on the table to not help the situation. He suggested that we look at some new options, consider the different interpretation and come up with a new proposal. He acknowledged that he wanted to move fast early on, but now is willing to take some more time and put the thing to bed once and for all. Or, as was pointed out, until a new administrator or County Commission has a different interpretation. As Eileen pointed out, the Planning Commission was there to be a step back from the political process and bring some stability to the process. But the County Commission carries the big stick, not the Planning Commission.

At the end, Eileen tried to tactfully approach the issue of Bobbi's unprofessional attitude toward the Planning Commission. Bobbi and Dan both turned it around and said Bobbi was the one being "put on the spot". From there it spiraled down into Dan's personal bad experience before the Planning Commission and inconsistencies by David and on and on. Basically, they changed the topic and there was not any use arguing the point.

I think the meeting was productive in getting some of the issues identified and a better understanding of both viewpoints. There obviously is a difference of opinion/interpretation and that needs to be resolved. In my opinion, neither view is right or wrong. Eileen, Bobbi and Dan will likely all disagree with that statement. Ha! The decision is finding an approach that will best serve the citizens (and that means BOTH current landowners and future applicants) of Marion County.

Thanks,
David Mueller