

The following are minutes of the Bettendorf Planning and Zoning Commission and are a synopsis of the discussion that took place at this meeting and as such may not include the entirety of each statement made. The minutes of each meeting do not become official until approved at the next meeting.

**MINUTES  
PLANNING AND ZONING COMMISSION  
APRIL 20, 2011  
5:30 P.M.**

The Planning and Zoning Commission meeting of April 20, 2011, was called to order by Chairman Gallagher at 5:30 p.m. at the City Hall Council Chambers, 1609 State Street.

1. Roll Call

MEMBERS PRESENT: Bennett, Gallagher, Rafferty, Stoltenberg, Wennlund

MEMBERS ABSENT: Kappeler, Laas

STAFF PRESENT: Greg Beck, City Planner; Bill Connors, Community Development Director; Greg Jager, City Attorney; John Soenksen, City Planner; Lisa Fuhrman, Community Development Secretary; Denny Snyder, City Engineer

2. Approval of the minutes of the meeting of March 16, 2011.

On motion by Rafferty, seconded by Wennlund, that the minutes of the meeting of March 16, 2011 be approved as submitted.

ALL AYES

Motion carried.

3. Review of Commission procedures.

**Preliminary Plat**

4. Case 11-019; Villas at Glengevlin, submitted by Towne & Country Manor Development Corp.

Beck reviewed the staff report.

Rafferty asked for clarification regarding the location of the future recreation trail in relation to the storm water detention area indicated on the plat. Beck explained that the main means for access to the recreation trail has always been the sidewalk along Devils Glen Road, not a new trail through the easement. He added that the easement indicated on the plat may also be used for a sanitary sewer line and its maintenance if it is installed in the future.

Wennlund asked for clarification of the purpose of Outlot A. Beck explained that staff suggested to the applicant that Outlot A be used as a common mailbox area as the Postal Service has indicated that that is their preference.

Wennlund asked if Outlot A would remain an open greenspace. Beck stated that that decision would be up to the developer.

Wennlund asked what existing structures would have to be removed. Beck stated that there is an old farmhouse on the property that would be demolished.

Wennlund asked if parking would be allowed on both sides of the street. Beck confirmed this.

On motion by Rafferty, seconded by Bennett, that the preliminary plat of Villas at Glengevlin be approved subject to staff recommendations.

ALL AYES

Motion carried.

### **Final Plat**

5. Case 11-020; Sundholm First Addition, submitted by Harlan Sundholm.

Beck reviewed the staff report.

Wennlund asked if Lot 1 is in conformance with ordinance requirements. Beck confirmed this.

On motion by Stoltenberg, seconded by Wennlund, that the final plat of Sundholm First Addition be approved subject to staff recommendations.

ALL AYES

Motion carried.

### **Site Development Plan**

6. Case 11-021; 3333 - 18<sup>th</sup> Street, submitted by Gary Hintermeister.

Beck reviewed the staff report.

Rafferty asked if new office functions will be brought to the high school building. Beck confirmed this, adding that there is already a 200 parking space surplus. He indicated that additional parking will be located along 18<sup>th</sup> Street, adding that the Board of Adjustment has approved a variance request to allow parking in a required front yard. Beck commented that the additional parking along 18<sup>th</sup> Street will add to the surplus of parking spaces already on the site. He stated that staff feels that the currently available

parking would be adequate, adding that events held in the new auditorium would not occur during school hours. Connors stated that the proposed addition on the southwest corner of the building will house the district's administration offices.

On motion by Bennett, seconded by Wennlund, that the site development plan for 3333 - 18<sup>th</sup> Street be approved subject to staff recommendations.

ALL AYES

Motion carried.

7. Case 11-022; 2185 - 53<sup>rd</sup> Avenue, submitted by Mike Mead/McDonald's.

Beck reviewed the staff report.

Gallagher expressed concern about east to west ingress and egress from 53<sup>rd</sup> Avenue. Beck explained that westbound access from 53<sup>rd</sup> Avenue is the same for all of the lots in the subdivision because of the configuration of the plat.

Rafferty commented that the traffic pattern on the site appears to be difficult because of the layout. He added that customers using the handicapped spaces in the angled parking area will be forced to contend with two lanes of traffic to reach the building. Beck stated that there is a median separating the two lanes of traffic. Connors stated that it appears to him as though there is a painted line delineating the two lanes.

Mike Mead, the applicant, explained that the configuration of the lot is intended to encourage customers to use the one-way traffic lane to exit. He added that the space between the rows of parking is wide enough to accommodate two-way traffic. Mead stated that it was difficult to design the site so that stacking vehicles could be accommodated on the lot, setback requirements are met, and neighborhood concerns addressed.

Wennlund asked how high the proposed fence would be. Mead stated that it would be 6 feet tall, adding that arbor vitae would be planted on the south side of the fence.

Wennlund asked if a lighting plan for the site had been submitted. Beck stated that he had not received one, adding that the lighting is required to be downcast and installed such that it does not reflect onto the adjacent residential neighborhood.

Wennlund asked if there is an estimate for average daily traffic for this type of restaurant. Mead stated that he does not have that number.

Rafferty asked what the hours of operation would be. Mead stated that the preference would be for the store to be open 24 hours per day.

Rafferty asked how often and at what time trash would be removed from the site. Mead stated that typically trash is removed 1-2 times per week, but that the time would be scheduled by the franchisee. Rafferty expressed concern about the disturbance that

would be caused by scheduling trash removal during late night or early morning hours. Mead stated that if the Commission wishes to place restrictions on the schedule for removal of trash, the franchisee would abide by them.

Mandy Brown, 5153 Dove Court, expressed concern about the sights, smells, and sounds generated by the restaurant, adding that there is nothing that could adequately buffer them. She stated that she does not believe that Falcon Avenue is an appropriate location for the proposed restaurant. She stated that drive-through traffic accounts for the majority of a fast food restaurant's business, adding that the proposed 24 hour per day operation is disturbing. Brown indicated that she believes that the restaurant would exacerbate an existing traffic bottleneck problem on 53<sup>rd</sup> Avenue, adding that she believes that it would be dangerous to turn from 53<sup>rd</sup> Avenue onto Falcon Avenue. She suggested that if Bettendorf wishes to have another McDonald's restaurant, it should be located near the roundabout because there is a large number of empty lots near it and easier access. Brown stated that when she purchased her home she had been told that the lot in question would likely be developed as office space. She indicated that Frank's Pizza has been a good neighbor since she moved in. She expressed concern that the trash might be removed in the middle of the night.

Dave Berntgen, 5177 Dove Court, stated that because of a mistake that occurred in 1992 when the property where his home was eventually built was rezoned, his property directly abuts a C-2 district. He stated that nowhere else in the city does such a situation exist.

Julie Berntgen, 5177 Dove Court, stated that she and her husband had attended the Board of Adjustment meeting to address the members who they had mistakenly thought would be professional. She indicated that it was clear that the Board of Adjustment members had made up their minds even before the meeting began. She stated that some of the concerns that had been expressed by the residents at the meeting were declining property values, public safety, and crime and claimed that there are overwhelming studies to support these concerns when high-intensity commercial developments are placed near low-intensity districts. Berntgen stated that other issues that were raised were noise, traffic, smell, screening, rodents, and the zoning mistake that was made in 1992 when the area was rezoned from C-5 to R-2. She stated that if the restaurant is open 24 hours per day and 363 days per year it would affect those concerns as well as cause sleep deprivation for school age children. She indicated that there is no precedent in Bettendorf in the past, present, or future indicated in the Comprehensive Plan for a chain fast food restaurant with a loud 'squawk box' to be allowed in a residential back yard. She stated that city staff had suggested in the staff report that a restaurant operating 24 hours per day, 363 days per year is of similar intensity to Charm Boutique, Red Crow Grill, or Sensasian restaurant. She stated that the hours of operation and number of customers do not even approach the intensity of what would occur at a fast food restaurant, adding that common sense should tell you that it is a no-brainer. Berntgen stated that staff had talked all around the issue of decreased property values in the staff report, but never really answers the question as stated in the code. She explained that this is likely because common sense and numerous studies agree that residential district property values significantly decline when commercial property develops nearby. She stated that not all C-2 properties are

equal and have the same impact on property values. She asked the Commissioners to consider whether a McDonald's restaurant in their back yard would decrease the market value. She stated that before granting a special use permit, the Board of Adjustment is required to determine that the proposed use is in harmony with the general purpose, intent, and spirit of the ordinance. She added that the surrounding property must be reasonably protected and assured that the use will not unreasonably diminish or impair established property values in the surrounding area. Berntgen stated that the use must not impair public health, safety, comfort, or welfare of residents. She indicated that she believes that none of those standards are met by the proposed use.

Berntgen stated that the Board did not discuss, deliberate, or debate the merits of the arguments against the approval of the special use permit. She stated that the members did not even have the courtesy of addressing why they had voted to approve the special use permit, indicating that to her it had felt like a kangaroo court. She requested that the Commission do its duty and hold the site development plan to a higher standard because the City Code demands it.

Berntgen stated that there are many references in the City Code that demand that the bar be set high for McDonald's such as the requirement for additional buffering of a more intense use from a less intense one. She quoted Sections 18.66.1, 18.66.9, 18.66.12, 18.11.5(e).4, 15.27.4, which describe the landscaping, buffering, and setback requirements which pertain to the request.

Terry Schenk, 2327 Lindenwood Drive, stated that he is obviously completely unaffected by the proposed McDonald's since he was not notified by mail of the request, adding that he learned of it on television. He stated that even after the impassioned pleas of the neighbors objecting to the request, the Board of Adjustment took only approximately 27 seconds to make a decision stating that the neighbors should have been aware of the existing commercial zoning designation of the property adjacent to their homes. He indicated that he lives very near Frank's Pizza who has been a good neighbor, adding that he can never even smell pizza but intimated that he will likely be able to smell McDonald's french fries. He stated that his property value will decline as a result of the proposed McDonald's. He expressed concern about the noise, pollution, and dangerous traffic that will occur as a result of the use.

Schenk stated that he is aware that the city is required to notify a certain number of people of the upcoming request, adding that while he is not sure he believes that perhaps 5 or 6 were notified. He stated that he had circulated a petition regarding the proposed restaurant on Hawk Drive, Hunter Road, Bald Eagle Court, Dove Court, and Bob White Court. He indicated that one of the residents on Bob White Court which is far away from the proposed restaurant had stated that she is not in favor of a McDonald's restaurant in her neighborhood. He stated that two people had indicated support of the request. Schenk questioned the distance that the trash corral would be located from the homes, adding that a french fry grease pit will have a noxious smell.

Julie Berntgen read a letter in opposition to the request from Penny Jagers of 5200 Dove Court. The letter expressed concerns about hours of operation, times of trash removal and deliveries, unhealthy noise, and sleep deprivation. She requested the

maximum buffer from the restaurant to alleviate some of her concerns. Jagers indicated concern about a reduction in property value caused by the restaurant.

David Lundy, representing Tom Lundy's estate, stated that any commercial development in that area should be welcomed. He indicated that regardless of the testimony that was given in opposition to the request, he believes that the neighbors in question should have considered the fact that their homes are located adjacent to a commercial district prior to purchasing them. He explained that in the early 1990s the property from Kynnelworth Drive to Lindenwood Drive was rezoned to R-2. Lundy stated that regardless of the neighbor's assertions that the city made a mistake by rezoning those properties, it allowed the residents to have nice homes in a desirable neighborhood. He reiterated that the area where Lindenwood Drive is located was rezoned to R-2 before any homes were built. He indicated that one of the reasons Bettendorf does not have much commercial development is that oftentimes the neighbors object as they did when Frank's Pizza was proposed to be located adjacent to the rear yards on Lindenwood Drive. He stated that the owner was treated terribly, adding that one of the neighbors had gone so far as to video record customers at another Frank's Pizza location to determine the percentage of carryout versus eat-in business. Lundy stated that future business owners who want to locate in Bettendorf on a properly-zoned lot should not have to contend with this level of antipathy from the neighbors.

Dave Berntgen stated that the area where his home is located was rezoned by Doyle McCully from C-5 to R-2 thus eliminating the buffer zone. He stated that the lots on the south side of Falcon Avenue where Frank's is located should have been rezoned to C-5 at that time. He stated that in his opinion, McDonald's would have needed more than one special use permit if the restaurant had been proposed in 1992.

Gallagher commented that the special use permit that was granted was for a drive-up window only.

Ted Rebitzer, realtor representing McDonald's, clarified that the trash container would have an internal trash compactor and that there would be no chance of any rodents or smells emitting from it. He added that the grease will be pumped into a secondary containment unit that is located inside the building. He submitted a spreadsheet listing 9 homes that were sold in the 53<sup>rd</sup> Avenue and 18<sup>th</sup> Street area between 2003 through 2010. He stated that while during that time a gas station, restaurants, and other retail facilities were built, none of the homes sold for less than the previous purchase price. He added that some of the homes have been sold multiple times, adding that he does not believe that the proposed restaurant would negatively affect property values.

Brown stated that there is not a fast food restaurant in the area. She stated that the distance that smells from fast food restaurants travel are affected by cloud coverage and weather. She reiterated her concern about the traffic in the area. She stated that just because a corporation wishes to build a restaurant on land that someone would like to sell does not mean that they should be able to do so. She stated that she believes that better decisions could be made for that area.

Dave Berntgen stated that he does not feel that the information on Rebitzer's spreadsheet is relevant as he is receiving a commission for selling the property.

Pete Moldt, 5131 Dove Court, requested that a berm similar to the one that was required by the city to be installed at Frank's Pizza be required for the McDonald's property. He stated that the berm should continue along the west side of the property to protect the adjacent farmhouse. He suggested that the dumpster be moved further north toward 53<sup>rd</sup> Avenue.

Connors explained that a sanitary sewer easement would preclude the installation of a continuation of the existing berm separating the proposed restaurant from the homes to the south.

Moldt commented that the issue of hours of operation had been raised at the Board of Adjustment meeting by residents and Board members. He explained that the residents had been told that the hours of operation had not yet been decided. He expressed disbelief that a franchisee could submit a business plan without indicating the proposed hours of operation, adding that he believes that the applicant had been dishonest. He questioned the validity of the traffic study and the stated impact of the restaurant on the neighborhood. Moldt stated that the Commission should regulate the dumpster site, hours of operation, and noise levels allowed.

Mead stated that while the corporation would like the restaurant to be allowed to be open 24 hours per day, the hours of operation have not been decided. He expressed a willingness to restrict the hours of operation if necessary.

Schenk stated that he has heard that McDonald's will not site a new restaurant unless certain average daily traffic numbers exist. He asked for clarification of what that volume threshold might be. Mead explained that he is a construction project manager and therefore could not comment on that issue.

Kelly Meyer, 2459 Lindenwood Drive, stated that McDonald's core demographic is 18-34 year olds. She expressed concern about the traffic generated by the restaurant endangering students who are walking and biking to the high school along 18<sup>th</sup> Street and 53<sup>rd</sup> Avenue. She added that a lot of traffic will also be generated after crowded nighttime high school events. She requested more information on how many vehicles would be expected to present during a typical day. She reiterated that school age children would be traveling along 18<sup>th</sup> Street during some of McDonald's peak times of business.

Rafferty asked if the Board of Adjustment had addressed the issue of the prohibition of drive-in restaurants in the C-2 district as he feels that the proposed use could be considered equivalent. Connors explained that the Board's decision was unanimous and that their interpretation of the definition of a drive-in restaurant is one at which customers are served outside, such as a Sonic or A & W restaurant.

Dave Berntgen stated that he strongly objects to staff's assertion that the proposed McDonald's is of a similar intensity to the other uses in the area.

Gallagher stated that the Board of Adjustment is a quasi-judicial body, adding that neither the Commission nor the City Council has the power to change their decisions.

Stoltenberg asked staff if the area can handle the traffic that will be generated by the proposed restaurant. Connors explained that the city commissioned a traffic study taking into account the vacant lots, the developed lots, and the proposed McDonald's. He said that the results of the traffic study had indicated that no changes would be necessary at the intersection of 53<sup>rd</sup> Avenue and Falcon Drive or at the intersection of 18<sup>th</sup> Street and Falcon Drive. Snyder commented that he had expected different results, but explained that the traffic impact analysis for McDonald's and the surrounding lots did not indicate the requirement for any additional turn lanes on Falcon Avenue, 53<sup>rd</sup> Avenue, or 18<sup>th</sup> Street.

Stoltenberg asked if any consideration was given to the possibility that any of the empty lots would eventually be the location of a high-volume drive-up business. Snyder confirmed this, adding that existing conditions were taken into consideration and that traffic counts for the empty lots were assigned an estimate from the high and low ends of estimates for different types of businesses. He reiterated that the study reflects existing conditions, including the proposed McDonald's.

Rafferty asked if the sanitary sewer easement area in question is the terminus of the line. Beck confirmed this, adding that it would serve only the proposed location of the McDonald's and the adjacent lot. Rafferty commented that it should not be too difficult to move the sewer. Snyder asked for clarification of the suggested location for the sewer. Rafferty stated that he is unsure of where it should be moved.

Rafferty expressed concern about the impact of a very intense use on the residential lots that are adjacent to it. He suggested relocating the section of the sewer line that would impede the construction of a berm and possibly placing it in the driveway of the McDonald's. Snyder explained that it would be possible, but that it would require the installation of two additional manholes to serve those two lots. Rafferty stated that he believes that an improved buffer should be required.

Rafferty expressed concern about the trash receptacle being located so close to the residential homes, adding that he believes it should be moved further to the north and screened more substantially. He suggested that the case be deferred until such time as the developer has had time to address the issues that were raised and possibly change the lot configuration.

Mead explained that the grease interceptor tank indicated on the site plan is located underground and is intended to separate the grease before it enters the sanitary sewer and is pumped out every 6 months or so. He added that there are no odors associated with the system. He stated that there is also a grease storage system within the restaurant that is pumped out to a truck when it becomes full. Mead stated that it would be possible to relocate the trash receptacle further to the north but indicated that it would become much more visible from 53<sup>rd</sup> Avenue.

Wennlund expressed support for Rafferty's suggestion to defer the request until revisions to the plan could be made. He commented that the trash enclosure has the potential to become a nuisance when the noise associated with emptying it is factored in. He stated that he is not in favor of moving it to the northwest corner of the site.

Wennlund acknowledged that the residents are very emotional about the timing of the rezoning of property that occurred in the past, adding that he believes that the neighbors were on notice that they were purchasing homes adjacent to C-2 property. He stated that in his opinion the values of the residential properties in the area have already been adjusted to account for the fact that there is a commercial zoning district adjacent to them. Wennlund stated that anyone purchasing a home adjacent to an empty commercial lot would assume that some type of commercial use would eventually be located there.

Wennlund commented that there are ways to improve the development, adding that he would be inclined to vote to recommend denial of the site plan if a vote were held at this meeting. He indicated that if some changes were made to the plan including consideration of the hours of operation he would be inclined to support it. Wennlund reiterated that the Board of Adjustment has already made a decision regarding the drive-up window and that the Commission cannot change it. He stated that he believes that there are other issues related to the site development plan that can be addressed, adding that the Commission is adequately doing so.

Bennett stated that she does not believe that the proposed landscape plan includes adequate buffering from the residences. She requested that a lighting plan be included with the next submittal if the case is deferred.

Stoltenberg indicated that he is not in support of moving the trash receptacle further north on the site. He stated that his greatest concern is the traffic that will be generated by the proposed restaurant. He explained that already there is a great deal of congestion in the area which would only exacerbate the problem. He stated that regardless of any changes that may be made to the plan, he will likely vote against the proposal. Stoltenberg stated that while he understands the concerns of the neighbors regarding the rezoning of property in the area, he is not opposed to the request for that reason.

Dave Berntgen expressed concern about public safety as children oftentimes use his yard to cut through to the empty lots on Falcon Avenue. He requested that the site plan be revised so that it would better protect the residents who do not have fences.

On motion by Wennlund, seconded by Rafferty, that the site development plan for 2185 - 53<sup>rd</sup> Avenue be deferred to the next regularly scheduled meeting.

Mead requested that the Commission give him some direction as to what would be acceptable with regard to berm height. Beck explained that typically berm height is restricted as a 3:1 slope is required. Gallagher suggested that staff be consulted with regard to the berm. Rafferty stated that he would expect something similar to the one

behind Frank's Pizza even if part of it has to be placed on the adjacent lot. He indicated that his concerns are the congestion, difficult traffic pattern on the site, noise, hours of operation, and the schedule of trash pickup and food deliveries. Rafferty stated that drivers using the parking area nearest the building being forced to back up into two lanes of traffic could be unsafe.

Rafferty and Wennlund suggested that a neighborhood meeting be held to discuss their concerns.

ROLL CALL ON MOTION

ALL AYES

Motion carried.

**Other**

9. Commission Update.

Connors stated that at the April 5 Council meeting the following had occurred:

Schutter Farm First Addition, preliminary plat approval  
Lot 4, Shoppes at Duck Creek First Addition, site development plan approval  
Marolf's Second Addition, final plat approval  
3017 State Street, site development plan approval

There being no further business, the meeting adjourned at approximately 7:10 p.m.

These minutes approved \_\_\_\_\_

\_\_\_\_\_  
Gregory W. Beck, City Planner