

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
JUNE 15, 2011
5:30 P.M.**

The Planning and Zoning Commission meeting of June 15, 2011, was called to order by Gallagher at 5:30 p.m. at the City Hall Council Chambers, 1609 State Street.

1. Roll Call

MEMBERS PRESENT: Gallagher, Kappeler, Laas, Rafferty, Stoltenberg, Wennlund

MEMBERS ABSENT: Bennett

STAFF PRESENT: Greg Beck, City Planner; Bill Connors, Community Development Director; John Soenksen, City Planner; Greg Jager, City Attorney; Lisa Fuhrman, Community Development Secretary; Steve Knorrek, Fire Captain

2. Approval of the minutes of the meeting of May 18, 2011.

On motion by Rafferty, seconded by Kappeler, that the minutes of the meeting of May 18, 2011 be approved as submitted.

ALL AYES

Motion carried.

3. Review of Commission procedures.

Final Plat

4. Case 11-037; Schutter Farm First Addition, submitted by Joy Development Properties, LLC.

Beck reviewed the staff report.

Gallagher asked what changes had been made to the plat since the last time it had been presented to the Commission. Beck explained that the lot configuration had changed slightly and a sanitary sewer easement had been added.

Kappeler asked for clarification of the number of lots that Lot 9 could be subdivided into. Beck stated that it is unlikely that there would more than 2 or 3 lots, depending on where the access point is located.

On motion by Rafferty, seconded by Kappeler, that the final plat of Schutter Farm First Addition be approved subject to staff recommendations.

ALL AYES

Motion carried.

Site Development Plan

8. Case 11-022; 2185 - 53rd Avenue, submitted by Mike Mead/McDonald's. (Deferred from meeting of May 18, 2011 at the applicant's request)

Beck reviewed the staff report.

Rafferty asked how far the wooden fence extends north from the southwest corner of the property. Beck explained that it would reach to the edge of the building.

Rafferty asked for clarification of the location of the chain link portion of the fence. Beck explained that the fence would be chain link from Falcon Avenue to the edge of the retaining wall.

Wennlund asked for clarification of the location of the 25-foot buffer yard area and the existing berm as indicated on the original plat. Beck explained that the berm has already been constructed, adding that the 25-foot buffer yard is located at the southernmost portion of the lot.

Wennlund asked if the existing berm meets the requirements of the original plat. Beck confirmed this.

Wennlund asked where the speakers for the drive-up window would be located. Connors explained that they will be generally located on the eastern side of the lot near the southern edge of the building.

Wennlund asked if the City of Bettendorf identification sign is located on the applicant's property. Beck stated that it is not.

Wennlund asked if the applicant would be installing a monument sign. Beck stated that the proposed location for the sign is at the northeast corner of the property but that the style has not yet been determined. Gallagher asked if the proposed sign location is in conformance with ordinance requirements. Connors confirmed this.

Gallagher asked if there was anyone present wishing to speak in favor of or in opposition to the request.

Penny Jagers, 5200 Dove Court, stated that she has a 6-foot high privacy fence which provides inadequate screening from the applicant's property as her lot is at a higher

elevation and claimed that the existing berm does not extend into that area at all. She expressed confusion about what type of screening will be installed. Jagers commented that the revised plan is much more palatable than the previous one.

Kappeler asked if the existing berm would have to be extended further west in order to meet the requirements of the plat note. Beck stated that he is unsure of the exact verbiage of the plat note. He commented that a greater amount of screening could be achieved by building a retaining wall with a 6-foot high fence on top of it and evergreen plantings behind it instead of raising the height of the existing berm. He added that the retaining wall would be located on the northern edge of the 25-foot buffer yard. Connors indicated that in order to maintain a mowable slope, the berm could be only 4 feet tall. He added that any berm would have taper to a lower height at the terminus.

Rafferty asked for details regarding the proposed screening in the corner. He asked if there would be a retaining wall. Beck confirmed this. Rafferty commented that a 6-foot high wooden fence on top of a 4-foot high retaining wall would provide 10 feet in height of screening in addition to the evergreens that will be planted which would grow even higher.

Kappeler asked if the entire length of the wooden fence would be on top of a retaining wall. Beck stated that he believes that the retaining wall will run the length of the wooden fence on the south side of the lot and turn 90 degrees north for a short distance. Ted Rebitzer, representing the applicant, explained that there is a 2-3 foot change in elevation between the area where the arbor vitae plantings are proposed and the driveway area. He added that this elevation change shows that a berm has already been installed in accordance with the plat note.

Dave Berntgen, 5177 Dove Court, stated that while he is still opposed to a fast food restaurant being placed adjacent to residential homes, he believes that some good ideas for improving the site plan were generated at the last Planning and Zoning Commission meeting. He stated that he believes that the existing berm along Lindenwood Drive is approximately 5 feet high but claimed that it is not 2-3 feet high near his property where it ends. Berntgen stated that every other business has been required to place a 6-foot high fence and trees on top of the berm. He stated that Rafferty had suggested at the last meeting that the sanitary sewer line along the southern edge of the lot could be moved and that city staff had indicated that there is no reason that it could not occur except for the cost. He stated that Bennett had indicated that the buffering shown is inadequate. He stated that he feels that there was a consensus between the Commission members and the neighbors that there should be a requirement for a berm the same height as the one along the rear of the properties on Lindenwood Drive with a 6-foot high fence.

Berntgen stated while he was aware when he purchased his home that the adjacent property had a C-2 zoning, the City Code that was in existence in 1994 has been changed. He indicated that his realtor had informed him that there would be an office building or doctor's office built on the property in question. He stated after reading the code he has determined that the proposed use would not have been allowed in 1994. He added that he does not think that he should have been responsible for checking the

special uses permitted section of the ordinance. He stated that at the previous meeting Rafferty had expressed surprise that the proposed restaurant would not be prohibited because of the drive-in component. He stated that it is very easy today to determine that the definition for drive-in restaurant is meant to be used for a restaurant similar to Sonic. He questioned why he should have been expected to anticipate that a drive-in restaurant could be located on the property when there was no Sonic in Bettendorf. He stated that he does not believe it is fair to assume that the residents should have been aware that a fast food restaurant could be located on the proposed site when the code has changed over time. He stated that the residents should be given protection from the proposed use because of the zoning error that occurred in 1992.

David Fenton, 5182 Dove Court, expressed concern about the proposed screening. He commented that the property to the west of the proposed restaurant is zoned agricultural and is anticipated one day to be the location of an office/transitional use. He stated that he has had conversations with the City of Davenport as to the future use of the property adjoining his and has compromised with regard to the buffer that will be installed. He stated that the 6-foot high fence at 5200 Dove Court does not provide any sort of buffer to the proposed restaurant. He indicated that if a significant buffer is not installed, there will be no transition when the farm adjacent to the proposed McDonald's site and a buffer is installed there. He suggested that the Commission members require a much more substantial buffer than is currently proposed.

Wennlund asked for clarification regarding the amount of buffer yard available and what the feasible height of a berm could be. Connors explained that the buffer yard is 25 feet wide, adding that in order maintain a mowable 3:1 slope on both sides a berm could be only 4 feet high.

Wennlund asked what the practical maximum height of a berm would be. Connors explained that it would be 4 feet within that 25-foot wide area.

Fenton stated that the existing berm is higher than 4 feet. Connors stated that the existing berm is well in excess of the recommended slope, adding that there have been maintenance issues with the existing berm likely because of its steepness.

Kappeler commented that planting trees that would grow taller and fuller on top of a 4-foot high berm might eventually provide more screening than the arbor vitae that has been proposed. Laas commented that arbor vitae would provide year round screening whereas a deciduous tree would not.

Pete Moldt, 5131 Dove Court, asked how tall a mature arbor vitae would be. Snyder stated that mature trees could easily be 25 feet tall. Laas added that they are a fast-growing and dense tree that is suitable for screening.

Rafferty asked if the hindrance to raising the height of the existing berm is the fact that an existing sewer would need to be moved. Snyder explained that the existing sanitary sewer is clay, adding that sewer over 16 feet in length in easements is now required to be constructed of ductile iron pipe. He indicated that if the existing sewer ever needs to be excavated, all of the screening would be lost.

Mandy Brown, 5153 Dove Court, expressed concern about the noise and smells associated with a McDonald's restaurant. She stated that the proposed location for the restaurant is a poor choice and expressed her disappointment that the city has allowed this issue to move forward. She added that there are other better options in Bettendorf such as the north side of the 53rd Avenue by St. Andrew's Green subdivision. She stated that she believes that would be a better location instead of inconveniencing her and her neighbors. She requested a commitment that relatively mature arbor vitae be planted, not small trees. She stated that the traffic generated by the restaurant will be a nightmare and indicated that she is in favor of business development, but not in her back yard.

Rich Baltazor, 2324 Lindenwood Drive, attested to the value of the berm, adding that with the trees planted on top of the existing berm he does not even notice the lights at Frank's Pizza. He stated that he does not have access to the city code, nor does he have the time or interest to investigate what might be allowed to develop. He requested that the Commission members consider the smells, sounds, and traffic issues when determining if the proposed location for this fast food restaurant is appropriate.

Matthew Rice, 2350 Hunter Road, asked for clarification regarding the anticipated direction and slope for storm water runoff. Snyder explained that the grading plan indicates that storm water will be retained and released at a 2-year rate and that the lot will be sloped toward the 53rd Avenue and Falcon Avenue intersection so that it enters the storm sewer system at that point.

Rice asked what the maximum allowed height for the sign and site lighting would be. Connors explained that if the sign is located 15 feet from the property line it could be 20 feet in height and if it were located 25 feet from the property line it could be 30 feet tall. He added that when the applicant applies for a building permit for the sign and indicates the chosen location, it must be in compliance with city codes.

Rice stated that the lighting will be much higher than the proposed screening and will have a negative effect on the adjacent homes. Connors stated that any site lighting must be shielded so as not to reflect on other lots, adding that the applicant has not yet determined how tall the on-premises identification sign would be.

Rice stated that what he has gleaned from this information is that even though the lighting is shielded, there is the potential for light to be directly reflected into the windows of the adjacent homes in the evening. Connors stated that Rice misinterpreted the information, reiterating that lighting must be directed downward so as to not negatively impact adjacent properties.

Rice asked if a 3:1 slope for a berm is merely a practice or a code requirement. Connors explained that the code does not specify the required slope. Rice asked if the berm could be higher if the neighbors request it. Connors confirmed this. Rice stated that this would mean that the shielding would potentially be much higher. Connors requested that Rice not make additional erroneous statements and attribute them to him.

Ann Schwister, 4920 Bob White Court, asked if any of the storm water will drain to the existing retention pond serving her neighborhood. Snyder reiterated that the storm water from the site will be directed to the storm sewer in 53rd Avenue. Schwister asked if there would be any effect on the pond in her neighborhood as it currently fills completely after a storm. Snyder stated that he believes that the storm sewer from 53rd Avenue continues down 18th Street but that he is unsure of where it empties. He explained that since Schwister's subdivision had been built, the required release rate has been changed from a 5-year storm to a 2-year storm which will significantly reduce the flow rate leaving the site. He indicated that effect of the storm water will be less than currently exists.

Schwister stated that there is a great difference between the types of businesses that currently exist at 18th Street and 53rd Avenue and the proposed McDonald's restaurant. She indicated that her realtor had told her at the time she purchased her home that office type uses would be located at the intersection in question. She stated that more security would be required as a result of the proposed restaurant.

Julie Berntgen, 5177 Dove Court, stated that the intensity of the use and the proposed hours of operation had been discussed at the initial Board of Adjustment meeting. She indicated that the proposed use is not similar in intensity to any of the other uses in the area. She requested that the hours of operation be restricted. She expressed concern about possibly never being able to open her windows again and about the restaurant's negative effect on public safety. She indicated that there will be an increase in vandalism and trespassing. Berntgen stated that she will likely be forced to install a fence at her own expense to ensure that her son and her property are safe.

Tom Pastrnak, attorney representing the applicant, stated that despite the comments of the neighbors, McDonald's should be commended for the changes that were made to the site plan as a result of concerns expressed by the neighbors and the Commission members. He indicated that commercial property owners have rights as well as those who own residential lots, adding that most of the issues that have been brought up are land use and zoning matters. He indicated that the site is zoned commercial and is appropriate for the proposed use. Pastrnak stated that the site development plan as proposed meets code requirements and as such should be approved.

Laas asked if a neighborhood meeting had been held to discuss the revised plan for the restaurant. Connors confirmed this.

Mandy Brown stated that the neighborhood meeting had been a waste of time as no one from McDonald's was in attendance. She stated that the revised plan had been shown to the neighbors, but that the bottom line is that it should not be allowed to be there. She stated that the representative was very short with the neighbors.

Rafferty commented that it is not in the Commission's purview to refuse to allow McDonald's to locate a restaurant at their chosen site. He added that the best that the Commission can do is to make it as palatable as possible to the neighbors. He asked if the proposed berm could by some method be made similar in effectiveness as the one

to the east. Rafferty suggested that some investigation be done to determine if the noise generated by the proposed restaurant would in fact negatively affect residential property values. He commented that steps must be taken with regard to screening so as to minimize the effect on adjacent properties.

Baltazor commented that the city is legally bound to allow the restaurant, adding that the Commission's only purview is with regard to controlling how it develops. Jager stated that a restaurant is a permitted use in the C-2 district and is allowed to locate there. He indicated that if it so chose, the City Council could deny an allowed use or change the zoning but that such an action could result in litigation. He explained that because of investment backed expectations, when the City Council attempts to deny property rights to property owners there is some legal exposure. Jager stated that issues such as the special use permit for a drive-up window which was granted by the Board of Adjustment cannot be denied by the City Council.

Dave Berntgen stated that when the Board of Adjustment had made its decision regarding the special use permit for the drive-up window he should have been informed that he could appeal the decision in district court. He indicated that perhaps some of the information that the Board of Adjustment used to make its decision was misinformation. Jager stated that Berntgen has no recourse as the appeal was not submitted to the court in the statutorily-required time frame, adding that Berntgen could consult an attorney about the matter. He indicated that none of the Boards or Commissions would routinely inform citizens of their right to sue.

Laas commented that she feels that the applicant has done a good job of reconfiguring the site development plan, adding that she would like to maximize the amount of screening in the southwest corner of the property. She suggested that perhaps another method of screening other than a berm could be used.

Pete Moldt, 5131 Dove Court, asked why the required setback can't be 35 or 40 feet rather than 25. Connors explained that the easement area indicated on the plat is 25 feet wide, not 35 or 40. Moldt asked if the setback distances can be changed once the property is platted. Connors explained that that would be up to the developer, adding that the city does not make a practice of platting property that is under other ownership.

Rafferty asked for clarification of the height of the existing berm behind Frank's Pizza and asked why the berm for McDonald's cannot match it. Snyder stated that he is unsure of the height or slope of that berm. Moldt commented that the berm by Frank's Pizza is not necessarily mowable. Connors stated that he believes that it is mowed by hand. Snyder stated that a berm does not necessarily have to be covered in grass.

Wennlund asked if the applicant would be willing to install a berm of a greater height. Beck suggested that a possible alternative to a taller berm would be to increase the height of the retaining wall and place a 6-foot high fence on top of it. Tim Vogel, representing the applicant, stated that he would be more than willing to work with city staff to reach a satisfactory solution to the screening issue that would be feasible. He added that McDonald's has every intention of planting fir trees and arbor vitae of a size that is code-compliant.

Connors commented that in the buildable area of a lot, a fence is considered to be a structure and is therefore held to those design standards. He indicated that the maximum height for a structure in the C-2 district is 100 feet or 10 stories. He stated that the intent of the ordinance requirement for buffering would be met even if the actual screening is not located on the property line but is closer to the parking lot. Connors stated that there is a lot of flexibility available for designing the buffer.

Rafferty stated that he is not necessarily in favor of limiting the hours of operation for the restaurant. He asked if any consideration has been given to the amount of noise that will be generated by the speakers near the drive-up window and if the decibel level could be restricted in some manner. Connors explained that the noise level cannot be greater than 60 decibels when measured 4 feet from grade level at the property line between the residential and commercial district. He stated that in his opinion if the speaker is 250 feet from the property line, there is no chance that it will exceed code requirements.

Wennlund asked if noise generation is an enforceable item at any time the allowed noise level is exceeded. Connors confirmed this. He added that recently when he had dealt with a gas-powered generator 10 feet from a property line it had been determined that it produced 75 decibels. He explained that after a 8-foot section of privacy fence was installed, that level was reduced by 10-12 decibels. Jager added that the noise is measured at the property line of the receiving point and must be reduced to 50 decibels in a residential district after 10 pm.

Stoltenberg asked if McDonald's has completed a separate traffic study from the one that was done by the city. Vogel stated that the proposed McDonald's restaurant was taken into account when the city's traffic study was completed.

Wennlund asked if the study had indicated that any additional steps would be required as a result of the anticipated use. Connors explained that no warrants had been indicated as a result of McDonald's, but that perhaps when full build-out occurs this could be the case.

Snyder stated that a traffic impact study is intended to determine if additional traffic improvements are required based on certain conditions such as delay, safety, and access issues as a result of a particular use. He explained that Institute of Transportation Engineers requirements are used to make that determination. Snyder added that it is likely that a right-turn lane on 53rd Avenue may be warranted at such as time as full development is achieved but that no additional improvements would be needed on 18th Street. He reiterated that the proposed McDonald's does not trigger those warrants but that a re-evaluation would be required at such time as future uses in the development are known.

On motion by Laas, seconded by Wennlund, that the site development plan for 2185 - 53rd Avenue be approved subject to staff recommendations and the agreement that staff will work with the applicant to design a buffer on the southwest corner of the property that equals the effectiveness of the existing berm to the east.

Rafferty commented that while he sympathizes with the neighbors, it is not within the Commission's purview to limit the hours of operation for the restaurant.

Beck asked Rafferty if it would be acceptable to him to substitute some other type of screening in lieu of a berm such as a retaining wall with a fence on top of it that is of a similar height. Rafferty indicated that he would prefer not to design the buffer at this meeting, adding that the motion had not included a requirement for a berm. He stated that the details of the buffer from the proposed use would be left to the applicant and city staff but that it must provide an equal screening effect as that of the existing berm to the east.

Stoltenberg commented that while on the surface the site development plan meets the city's requirements, he believes that the proposed location is inappropriate. He stated that even prior to full development it is likely that there will traffic problems. Rafferty and Kappeler concurred, expressing the belief that unfortunately members have little option but to recommend approval. Kappeler added that the members can only provide as many reasonable accommodations as possible. She indicated that the restaurant represents a significant investment for the applicant and believes that McDonald's will do as much as possible to be a good neighbor.

ROLL CALL ON MOTION

AYE: Gallagher, Kappeler, Laas, Rafferty, Wennlund

NAY: Stoltenberg

Motion carried.

Jager explained that if residents have a desire to make further comment, the site development plan will most likely be presented to the City Council on July 5.

Ordinance Amendment

7. Case 11-033; Section 15.52.6 of the Zoning Ordinance - Permitted uses in the C-5, Office/transitional District.

Jager reviewed the staff report.

Kappeler commented that staff's solution seems logical.

On motion by Rafferty, seconded by Kappeler, that the ordinance amending Section 15.52.6 of the Zoning Ordinance - Permitted uses in the C-5, Office/transitional district be approved subject to staff recommendations.

ALL AYES

Motion carried.

Site Development Plan

6. Case 11-025; 880 Lincoln Road, submitted by Great Western Properties, LLC.

Beck reviewed the staff report.

Kappeler asked for clarification regarding access to the site from Lincoln Road and the shared parking arrangement with the adjacent use that was discussed at a previous meeting. Wennlund stated that it had been his understanding from that meeting that the school to be located on the adjacent lot and the proposed restaurant would have alternating hours of operation which would facilitate an easier shared parking arrangement. He indicated that it now appears that both facilities will be in use at the same time. Connors explained that the existing curb cut to Kimberly Road near the center of the lot will be eliminated. Beck stated that there will be cross easements for the shared parking and that staff had evaluated both uses and determined that the parking provided is adequate.

Kappeler asked if there is the possibility that another building could be built to the east of the restaurant that might eliminate some of the existing parking spaces. Beck explained that the ordinance requirements with regard to parking would have to be met even if another building were built.

Laas expressed concern about the number of parking spaces that overlap and have been counted to satisfy the required number for both uses. She asked if those same spaces would be used to satisfy the requirement for a new structure. Beck reiterated that the circumstances would be evaluated at that time and parking space requirements set. Laas commented that it is possible that the overlap of operations could occur during as many as 12 hours per day.

Wennlund asked where the speaker for the drive-up window would be located. Jason Holdorf, engineer representing the applicant, indicated that the window will serve strictly as a pick-up for call ahead orders, not an order window.

Stoltenberg asked for clarification of the location of the dumpster as it appears to be in the front of the building. Holdorf explained that it would be located on the southeast corner of the building, adding that the front door is on the northwest corner.

Rafferty asked for a clearer explanation of the traffic flow from the roundabout and as it relates to the entire site. He expressed concern about the potential conflict between the access point from the roundabout and the exit from the school parking lot that is in very close proximity. He suggested that more definition of the school's parking lot be added to the site development plan to eliminate this problem. He commented that the landscape plan appears to be different. Holdorf explained that the landscape plan had not been updated to reflect the reincorporation of the southern leg of the roundabout into the development.

Kappeler asked for Holdorf's opinion of the most likely traffic pattern for students wishing to exit the school parking lot. Holdorf indicated that most likely they will use the

Kimberly Road exit. Rafferty stated that students who are parked closer to Lincoln Road will mostly likely exit to that street. He added that the parking lot configuration as shown will likely cause confusion for motorists and is a potential safety hazard. He stated that he does not want to duplicate the difficulties caused by the lot configuration at Duck Creek Plaza. Beck suggested that the curb cut closest to the roundabout be closed to eliminate the proximity issue. Rafferty indicated that extending the island would be a much better solution. Holdorf indicated that this would be acceptable.

On motion by Rafferty, seconded by Wennlund, that the site development plan for 880 Lincoln Road be approved subject to staff recommendations and the reconfiguration of the parking lot such that the conflict between the roundabout and the exit from the school is eliminated.

ALL AYES

Motion carried.

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

These minutes approved _____

Gregory W. Beck, City Planner