

**AREA PLAN COMMISSION OF TIPPECANOE COUNTY  
MINUTES OF A PUBLIC HEARING**

DATE.....July 18, 2018  
 TIME.....6:00 P.M.  
 PLACE.....County Office Bldg.  
 20 N. 3<sup>rd</sup> Street  
 Lafayette, IN 47901

**MEMBERS PRESENT**

Greg Jones  
 Diana Luper  
 Tom Murtaugh  
 Jake Gray  
 Jackson Bogan  
 Jerry Reynolds  
 Larry Leverenz  
 Gerry Keen  
 Perry Brown  
 Vicki Pearl  
 Tyrone Taylor  
 Roland Winger  
 Tracy Brown

**MEMBERS ABSENT**

Gary Schroeder  
 Dave Williams  
 Michelle Long  
 Dr. Carl Griffin

**STAFF PRESENT**

Sallie Fahey  
 Cat Schoenherr  
 Ryan O’Gara  
 Kathy Lind  
 Linda Underwood  
 Zach Williams, Atty.

The Area Plan Commission of Tippecanoe County Public Hearing was held on the 18<sup>th</sup> day of July, 2018 at 6:00 P.M., pursuant to notice given and agenda posted as provided by law.

President Tom Murtaugh called the meeting to order.

**I. BRIEFING SESSION**

Sallie Fahey said staff believes **S-4766 – BAKER FARMS (major-preliminary)** can be heard tonight. She went on to say **S-4767—THE PRESERVE SUBDIVISION** and its alternative **S-4768—THE PRESERVE SUBDIVISION** need to be continued to the August APC meeting because the street names were not submitted in time to be approved or put on the plat. She then said the petitioner for **Z-2727—HLH PROPERTIES, LLC (R1 to NB)** has requested his final continuance and asked that the case be continued to the September APC meeting.

Sallie Fahey introduced Amanda Rice of Columbia, South Carolina as one of the Indiana Division of FHWA summer interns. Amanda is beginning her last year in her Master of Urban Planning program at Alabama A&M. Her colleagues at Federal Highway thought it would be beneficial for her to spend a little time with a transportation MPO that also does local planning and she has spent three days with our staff.

**II. APPROVAL OF MINUTES**

Vicki Pearl moved to approve the minutes from the June 20, 2018 meeting. Jerry Reynolds seconded and the minutes were approved by unanimous voice vote.

### III. NEW BUSINESS

None

### IV. PUBLIC HEARING

Tom Murtaugh read the meeting procedures.

Vicki Pearl moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the By-laws of the Area Plan Commission, the application and all documents filed therewith, the staff report and recommendation on the applications to be heard this evening and responses from the checkpoint agencies. Jerry Reynolds seconded and the motion carried by voice vote.

Vicki Pearl moved to continue **S-4767—THE PRESERVE SUBDIVISION**, and **S-4768—THE PRESERVE SUBDIVISION** to the August 15, 2018 Area Plan Commission public hearing and **Z-2727—HLH PROPERTIES, LLC (R1 to NB)** to the September 19, 2018 Area Plan Commission public hearing. Jerry Reynolds seconded and the motion carried by voice vote.

#### A. SUBDIVISIONS

##### 1. **S-4755--BELLE TERRA (major-preliminary):**

Petitioner is seeking primary approval for a 77 lot (plus 2 outlots) single-family subdivision on 27.64 acres located at the northwest corner of CR 600 N and CR 75 E, in Tippecanoe 20 (SE) 24-4. *CONTINUED FROM THE JUNE APC MEETING AT PETITIONER'S REQUEST*

Vicki Pearl moved to hear and vote on **S-4755—BELLE TERRA (major-preliminary)**. Jerry Reynolds seconded.

Sallie Fahey presented the zoning map, aerial photos and preliminary plat and explained that the R1 and R1A zoned land to the north is the land contained in The Preserve Subdivision. The petitioner for The Preserve has submitted two components because one represents one way of developing and the other represents the development if APC requires a connection between the two subdivisions. She highlighted the area zoning history, area land use patterns, Coyote Crossing, and the church across CR 75. She referred to the site plan to highlight the triangular shaped land in the northwest corner which is a proposed outlot for storm detention and another outlot to the south for a proposed clubhouse. Petitioner has submitted a variance request to waive the ordinance requirement that proposed streets be extended to the boundary lines of the tract to be subdivided. Since 1980 the Subdivision Ordinance has required the internal connection between two subdivisions for many reasons and one of the reasons is for safety because each subdivision has only one entrance off CR 75. It is also more efficient for the school corporation to run its buses without having to go back out on the county road and back into the next subdivision. The ordinance states: "Proposed streets shall be extended to the property lines of the tract to be subdivided unless prevented by topography or the physical conditions or unless in the opinion of the Commission such extension is not necessary or desirable for the coordination of the layout or the most advantageous future development of adjacent tracts". Granting the variance is saying there is either a physical condition for why they cannot connect or your opinion is that a connection does not give an advantageous layout for the future development to the north. The County Commissioners recommended approval of the variance request with a condition to instead require an access, adequate to accommodate emergency vehicles, be constructed to the north boundary of the subdivision. The Commission may hear that staff has not been consistent with requiring connections but she disagrees. The exceptions have been related to what the ordinance says and she cited this developer's current project on Morehouse where no connection was required to the north because there is a platted 60's area subdivision with no connector and a substantial legal, regulatory drain and urban trail to the south. The petitioner will need to replace the temporary street names shown on the preliminary plat with four of the six new street names that have been approved and accepted and added that the developer has requested permission to bond.

Subdivision approval would be contingent on approval of the variance with the following conditions:

#### Variations

1. A variance to waive the requirement to extend new streets to the boundary lines of the subdivision to connect to adjacent tracts for future development, per USO Section 5.3(1)(c)(v).

#### Conditions

1. In the construction plans and on the final plat, the temporary street names (Streets A through D) shall be replaced from the approved names list (Coolabah, Eucalyptus, Gilwell,

Hazelwood, Hyperion and Tamarind).

**CONSTRUCTION PLANS** – The following items shall be part of the Construction Plans application and approval:

2. If the variance is approved, an access adequate to accommodate emergency vehicles shall be constructed from the north boundary of the subdivision to an internal street.
3. American Suburban Utilities, Inc. shall approve the sanitary sewer plans.
4. Indiana-American Water Company, Inc. shall approve the water plans.
5. The fire hydrants shall be approved by the Tippecanoe Township Fire Department. Plans for the actual placement of the hydrants shall be approved by the Indiana American Water Company in cooperation with the Fire Department.
6. An Erosion and Sediment Control Plan and a Stormwater Quality Management Plan meeting the requirements of 327 I.A.C. 15-5 shall be submitted to the Tippecanoe County Soil and Water Conservation District and shall also be approved by the Tippecanoe County Drainage Board as required by Tippecanoe County Ordinance #2011-27-CM.
7. The County Drainage Board shall approve the drainage plans.
8. An on-site utility coordinating sheet shall be approved and signed-off by the non-government utility companies. The assigned street addresses for each lot shall be included. If any of these utilities are being extended from an off-site location, this extension shall be made a part of the utility coordinating sheet.

**FINAL PLAT** – The following items shall be part of the Secondary Application and Final Plat approval:

9. Except for the approved entrance, a "No Vehicular Access" statement shall be platted along the CR 75 E and CR 600 N right-of-way lines.
10. If there is a mortgage on this property, a recorded partial release or written acknowledgment from the mortgage company must be obtained in order to dedicate the necessary right-of-way.
11. All existing easements, covenants or restrictions shall be shown and referenced with the corresponding recording information (Document Number and date recorded).
12. Gateway signs, if any, shall be placed in an appropriate easement at the entrance.
13. All required building setbacks shall be platted.
14. The street addresses and County Auditor's Key Number shall be shown.

**SUBDIVISION COVENANTS** – The following items shall be part of the subdivision covenants:

15. The "No Vehicular Access" restriction shall be made enforceable by the Area Plan Commission and irrevocable by the lot owners.
16. The purpose, ownership and maintenance of the outlots shall be specified.

Daniel Teder, PO Box 280, Lafayette, IN 479021, attorney representing the petitioner, distributed a sales brochure for the proposed new development and said he concurs with the staff report except for the comments on the street connection. The County Commissioners support the variance request and added that there is no stub street on the west side of the property because there is very little developable land. The owners of the future subdivision to the north concur with this request and will extend the emergency access between lots #10 and #11. He believes there have been a number of subdivisions that did not require the connection. He gave Oak Ridge, Ravenswood, Stonebridge, and Hartwood Village as examples of subdivisions that do not have stub streets. Hartwood Village was done as a retirement subdivision and he thinks that is the reason a street connection was not required. This proposal was reviewed with the Tippecanoe Township Fire Department and there was no objection. This subdivision will be for active adults with grown children and it will be very different from the proposed subdivision to the north. The developer wants to maintain a quiet, low-traffic subdivision. He agreed to the conditions and requested approval.

Roland Winger asked how the proposed safety access differs from a street.

Daniel Teder said the proposed safety access will have a surface that is grassed over and it will not be an actual street.

Kim Kreidler, PO Box 2662, West Lafayette, IN 47906, developer, explained that the safety access that will allow access for utility trucks and emergency vehicles will be constructed of layers and layers of fine gravel and will look a lot like a walking trail and is environmentally friendly.

Diana Luper asked where the emergency access will be located.

Daniel Teder referred to the site plan to show the proposed access between lots #11 and #12.

Tom Murtaugh said this variance request was discussed at the Commissioner's meeting and there was discussion about how different this community will be from the subdivision to the north. Communities like this are unique.

Tracy Brown concurred and said he drove through Soleado, Stonebridge, and Hartwood Village and he understands

the character issue of the neighborhood and what the developer is trying to do and maintain. He was pleased with the compromise to have the emergency access. He spoke with the Tippecanoe Township Fire Department and knows they do not have issues with the compromise for the emergency access.

Sallie Fahey said the developer has not talked with staff about the emergency access. How the emergency access will be constructed and what it will look like will be determined at the construction plan phase with the input of the Fire Department and any other emergency management people. Typically, these emergency access roads are paved and in an easement. An easement would have to be platted otherwise property owners on either side could close off the access.

The Commission voted by ballot 13 yes to 0 no to approve **Variance #1** for **S-4755—BELLE TERRA (major-preliminary)**

The Commission voted by ballot 13 yes to 0 no to grant conditional primary approval for **S-4755—BELLE TERRA (major-preliminary)**

The Commission also voted by ballot 13 yes to 0 no to permit bonding for **S-4755—BELLE TERRA (major-preliminary)**.

**2. S-4766--BAKER FARMS SUBDIVISION (major-preliminary):**

Petitioner is primary approval for a 109-lot single-family subdivision (plus 5 outlots) on 54.95 acres, located on the east side of Dayton Road, just north of the CR 375 S intersection, in Dayton, Sheffield 9 (NW) 22-3.

Vicki Pearl moved to hear and vote on **S-4766—BAKER FARMS SUBDIVISION (major-preliminary)**. Jerry Reynolds seconded.

Sallie Fahey presented the zoning map, aerial photos and preliminary plat and said the site was rezoned from AW to R1 by the Town of Dayton earlier this year. She highlighted the area zoning history and area land use patterns and she referred to the aerial to highlight the single entrance near the middle of the Dayton Road frontage. Two of the five outlots for drainage are being proposed for utilities, drainage and landscaping on both sides of the entrance and parallel to Dayton Road. She referred to the preliminary plat to point out the location of the street stub in the undeveloped property belonging to the Dayton United Methodist Church. The staff report shows the line along Dayton Road to the north is partly an existing utility easement and partly a proposed utility easement for sewer and water. The proposed part of the easement has not been fully-negotiated with the church although the developer is in the process of doing that. There is a condition that states this subdivision cannot move forward without an easement. The street stub will include a temporary emergency vehicle driveway connecting to Dayton Road to satisfy the requirement for street connections to adjoining developable land and the Sheffield Township Fire Department's requirement to provide a second entrance. She explained that the developer has filed street name requests for the six streets. Three names have been approved and three names were not but staff allowed this request to move forward because new street name requests were filed today. Staff is recommending that all non-standard setbacks be noted on the final plat and referenced in the subdivision restrictive covenants. She concluded with a recommendation of approval contingent on the following conditions:

Conditions

1. The three rejected street names (Swick, Merkle and Harris) shall be replaced by three names accepted by 911, the Post Office and APC Staff, and included in the construction plans and on the final plat.

**CONSTRUCTION PLANS** – The following items shall be part of the Construction Plans application and approval:

2. A recorded copy of the finalized off-site sanitary sewer and water easement agreement with the Dayton United Methodist Church shall be submitted.
3. The sanitary sewer, water and drainage plans including the off-site main extensions shall be approved by the Town of Dayton.
4. The fire hydrants and locations shall be approved by the Sheffield Township Fire Department.
5. An on-site utility coordinating sheet shall be approved and signed-off by the non-government utility companies. The assigned street addresses for each lot shall be included. If any of these utilities are being extended from an off-site location, this extension shall be made a part of the utility coordinating sheet.

**FINAL PLAT** – The following items shall be part of the Secondary Application and Final Plat approval:

6. If there is a mortgage on this property, a recorded partial release or written acknowledgment from the mortgage company must be obtained in order to dedicate the necessary right-of-way.

7. All existing easements, covenants or restrictions shall be shown and referenced with the corresponding recording information (Document Number and date recorded).
  8. The off-site sanitary sewer and water easement shall be noted with the date recorded and document number.
  9. All building setbacks shall be platted. Any nonstandard setbacks shall be clearly noted.
  10. The Dayton corporation line shall be labeled.
  11. The street addresses and County Auditor's Key Number shall be shown.
- SUBDIVISION COVENANTS** – The following items shall be part of the subdivision covenants:
12. The purpose, ownership and maintenance of all the outlots shall be specified.
  13. Any nonstandard front setbacks shall be referenced by lot number.

Daniel Teder, PO Box 280, Lafayette, IN 47902, attorney representing the petitioner, concurred with the staff report, agreed to the conditions and requested approval.

Robert Adams, 5658, Roseberry Ridge, Lafayette, IN 47905, Dayton Methodist Church representative, said the church has made several attempts to participate in the development of Baker Farms. A resolution passed by the Dayton Town Council adopting a fiscal plan and definite policy for the annexation of Baker Farms states the Town of Dayton, the developer, and adjacent property owners will establish a plan to extend the existing sewer and water main to the new area. The Town of Dayton had not replied to two letters from the church requesting information. The church informed the developers in May that information about the sewer and water extension be mailed to the church but no proposal has been submitted to date. He said the church does not want to impede, delay progress, or change the plans but do want to avoid actions that could be detrimental to the Town or the Church. The church is asking that this request be delayed until an agreement is reached with the church, the lawsuit against the Town of Dayton has been settled, commitments are in place for the water and sewer extensions.

Cindy Marsh, 749 Shady Lane, Dayton, IN 47941, President of the Dayton Area Community Coalition, said she knows the rules and understands that a petition with signatures from 90% of the Dayton residents opposed to this request would not make a difference. She knows opposition letters would not make a difference either. She knows the *Unified Subdivision Ordinance* does matter and the Commissioners have to follow all the rules, requirements, and specifications included in the *USO*. She thinks there are other things included in the *USO* that are unrelated to development. The first policy calls for the orderly, planned, efficient, and economical development of the participating jurisdictions and she thinks there is a problem there. No one knows if this subdivision will be economical or not because the Dayton Council failed to include a cost for the capital improvements for water, sewage, and stormwater as well as fire hydrants, sidewalks, and lighting when they adopted the fiscal plan for the annexation. She would like to see a commitment that the developers are paying for all that before approving this request. There is a year-old lawsuit trying to get the town to say who is paying. She does not believe the developers would come this far without knowing what their expenses will be. The second policy of the *USO* said APC should ensure the requirements for drainage, water supply, and sewer facilities are met and provisions for public capital improvements have been made. No provisions for the capital improvements have been made. It is a stated policy to enforce the provisions and standards contained in the building and housing codes, zoning ordinance, Comprehensive Plan, Land Use Plan, Council budget, and program of the participating jurisdictions. Dayton has both an ordinance and a development guide that says developers will pay for extending utilities but that has not been stated in the fiscal plan and they have allowed a lawsuit to continue for over a year. Approving this request with conditions disregards the policies of the Subdivision Ordinance. She concluded by saying that the lawsuit is in the Indiana Court of Appeals after it was dismissed when Judge Busch retired and Dayton has until August 1<sup>st</sup> to file its remarks.

Gordon Hardebeck, 7701 Adams Road, Lafayette, IN 47905, said he purchased 40 acres adjacent to this site and said he has fewer than two acres of woods he, his son, his son-in-law, and his neighbors hunt on his property. He is not sure he will be able to do that if this subdivision is approved. He asked the developers for a commitment to build a fence but he has not been able to discuss that with them. He and his neighbors asked M&C Development and the Town of Dayton to keep them informed because they have drainage concerns. All their houses are worth between \$350,000 and \$800,000 and they all are 40' down at the bottom of the drop-off Sallie Fahey referred to earlier. Water coming down from the hill will come across his land and flood his basement. To date he and his neighbors have not heard from the developer or the Town.

Matt Jonkman, 7623 Adams Road, Lafayette, IN 47905, said his property abuts the northwest corner of the proposed subdivision. He said he has a pond that floods every two or three years and he thinks the additional pavement in the subdivision will increase his basement flooding.

Daniel Teder said Mr. Adams said his clients have not responded to the church but that is not the case because over a week ago they met a four-person committee from the church. At that meeting the church was given a plan to review. A lawsuit was filed over the appropriate and legal fiscal plan that was filed. The trial court dismissed the lawsuit and that dismissal is now being appealed. The Commission is only granting conditional, primary approval tonight. Certain conditions must be met before entering the next phase of the subdivision process. All conditions must

be met prior to final plat submission and recordation. This subdivision has been done in an orderly fashion by following the process.

Tom Murtaugh said the petitioners will have to get approval from the Drainage Board. At that time the drainage plan will be reviewed by the Surveyor's Office and submitted to the Drainage Board for approval. Going through that process will ensure that no additional damage is done to those concerned about flooding.

Sallie Fahey explained that this subdivision will not go through the Drainage Board because the subdivision is located in the Town of Dayton. When the drainage plans are submitted the Town will engage its consultant firm to review the plans. The drainage plan will then go back to the Town for approval before APC staff can approve the construction plans.

A gentleman in the audience made a comment that was unrecorded because he did not step up to the podium to speak.

Zach Williams said the Commission has closed the evidence portion of the meeting and explained that the APC Commissioners can only address what is in front of them. The task tonight is to determine if the drawings submitted meet the technical requirements of the ordinance.

Sallie Fahey said APC is saying the subdivision plat meets the requirements of the ordinance. Drainage plans also have to meet requirements of an adopted ordinance and the drainage plans will be reviewed by an independent, professional engineer for compliance with Dayton's drainage ordinance. The Town has no discretion on whether to approve the drainage plans or not because the plans either meet the ordinance or they do not.

Tyrone Taylor said he spoke with one of the pastors at the church as a response to a letter sent to the Town from a church volunteer. He informed the pastor that the Town is under a lawsuit and Dayton officials are barred from discussing the utilities by the Town's counsel.

Robert Adams and Tyrone Taylor discussed the utility contract between the church and the Town of Dayton.

Zach Williams said the contract between the Town and the church is a Town issue and should not be discussed at this meeting. The Commission needs to stay on topic for the specific issue. There should be more discussion regarding utilities at the Town level.

The Commission voted by ballot 13 yes to 0 no to grant conditional primary approval for **S-4766—BAKER FARMS SUBDIVISION (major-preliminary)**

The Commission also voted by ballot 13 yes to 0 no to permit bonding for **S-4766—BAKER FARMS SUBDIVISION (major-preliminary)**.

#### **V. ADMINISTRATIVE MATTERS**

None

#### **VI. APPROVAL OF THE AUGUST EXECUTIVE COMMITTEE AGENDA**

Vicki Pearl moved that the following subdivision petition be placed on the August 1, 2018 Area Plan Commission Executive Committee agenda at petitioner's request, placement thereon being without reference to compliance or non-compliance with the adopted subdivision ordinance:

**S-4773—BEDFORD FALLS SUBDIVISION (minor-sketch)**

Jerry Reynolds seconded and the motion carried by unanimous voice vote.

## VII. DETERMINATION OF VARIANCES – AREA BOARD OF ZONING APPEALS

Vicki Pearl moved that the following requests for variance from the Unified Zoning Ordinance are not requests for use variances, prohibited from consideration by ordinance and statute:

**BZA-1986--PURE DEVELOPMENT, INC.**

**BZA-1987--MEZZANINE 7, LLC.**

**BZA-1988--NATHANIEL METZ.**

**BZA-1989--LONGARDNER INVESTMENTS, INC.**

**BZA-1990--WEST LAFAYETTE SCHOOL BUILDING CORPORATION, and**

**BZA-1991--SHERYL S. KENNY**

Jerry Reynolds seconded and the motion was approved by unanimous voice vote.

## VIII. DIRECTOR'S REPORT

Sallie Fahey thanked APC staff for all their hard work they did updating the local census addresses. Updating the information is critical for the 2020 Census. The more addresses we have correct the more likely we are to get better and more complete responses to the Census. Accurate population data means so much for all our communities from how much community development block grant money the cities get to whether or not the APC is a small or large MPO based on its urban population. Before we get to that stage it shows how much our metropolitan area is part of the entire state's metropolitan area and that determines the money for the office for planning and for transportation projects in our sharing agreement with INDOT. Everything starts with accurate addresses so that everybody who should be filling out a Census form receives it so that all the heads get counted and we get our share of what should come to this community. Staff did a huge amount of work led by Kathy Lind and including Linda Eastman and Aria Staiger. Out of 77,000+ residential addresses we had to make over 10,000 changes through deletions, additions, or corrections.

## IX. CITIZEN COMMENT AND GRIEVANCES

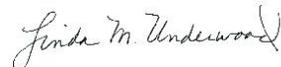
None

## X. ADJOURNMENT

Vicki Pearl moved to adjourn. Jerry Reynolds seconded and the motion carried by voice vote.

The meeting adjourned at 7:00p.m.

Respectfully Submitted,



Linda M. Underwood  
Recording Secretary

Reviewed By,



Sallie Fahey  
Executive Director