

**MINUTES  
PLANNING AND ZONING COMMISSION  
NOVEMBER 13, 2002**

A regular meeting of the City of Powell Planning and Zoning Commission was held on November 13, 2002, and called to order at 7:30 p.m. by Chairman Don Emerick. Other Planning and Zoning Commissioners present were Kevin Futryk, Tom Counts, Don De Palma, Roger Coville, Dan Wiencek, and Brian Murphy. Also present were David Betz, Director of Development; Dawn Nauman, Clerk to the Planning and Zoning Commission; Shawn Leininger, Development Planner, residents; and representatives of the press.

**HEARING OF VISITORS FOR ITEMS NOT ON AGENDA**

There was none.

**APPROVAL OF MINUTES**

The minutes of October 23 were amended and approved.

**PROPOSED AMENDMENT TO THE ZONING CODE: TO AMEND SECTION 1147.14 OF THE POWELL ZONING CODE REGARDING RECREATIONAL STRUCTURE REGULATIONS, REQUIRING LESS REAR YARD SETBACK AND ALLOWING LEGAL NONCONFORMING STATUS TO SOME RECREATIONAL STRUCTURES**

Shawn Leininger, Development Planner, gave his Staff Report on this item (Exhibit 1). He reviewed the three emails that Staff received regarding this issue (Exhibit 2). He reviewed photographs of one of the structures about which Terry Jo Smith, of Wallsend Court, is concerned.

David Betz, Director of Development, said that Council did not ask the Planning and Zoning Commission for a change regarding the portable basketball hoops within the right of way. He said there was an email sent requesting that such hoops be permitted on dead-end and cul-de-sac streets.

Commissioner Emerick opened this item to public comment.

Kevin Coady, 241 Shalebrook Drive, said that he addressed Council about this issue when he was cited with the current code requirements. He said he hasn't had a chance to look at the proposal for changes.

Commissioner DePalma asked about concerns on the play set colors. Mr. Leininger said that there are no prohibitions against multi-colored structures. Commissioner Emerick said that such regulations may be present in deed restrictions and covenants.

Commissioner Futryk asked about the change in setbacks from 5 to 10 feet. Mr. Leininger reviewed that without the setback requirement, people place these structures in the extreme corner of their property so that they don't have to deal with it, but surrounding property owners do. Commissioner Futryk asked Mr. Leininger to estimate the distance from the property lines for those structures Mr. Leininger presented a picture of. Mr. Leininger said that these playsets were installed before the regulations, and one is right on the front building line and would not meet the code requirements for the rear property line. Mr. Futryk asked how far the sets are usually placed from the property line. Mr. Leininger said that some are located right on the property line. Commissioner Futryk said that he is unsure why the issue of 5 or a 10 foot setback keeps coming back. Mr. Betz said that because of a request of a resident, Council would like this considered again. He said that kids will need room to go around the structures without trespassing on the neighbor's yard, and that is the reason for the setback.

Commissioner Counts asked if it is correct that this new legislation represents the following changes:

1. A 5-foot setback rather than 10-foot setback for recreational structures.
2. Existing structures were grandfathered. *Mr. Betz said that is correct except for in the circumstances of recreational structures within the rights of way, such as basketball hoops.*

Mr. Counts asked if the text includes changes for basketball hoops in the right of way on cul-de-sacs. Mr. Betz said they are not. Mr. Counts said that while that issue isn't current before the Commission, he would be opposed to changing that regulation. He said that he would be in favor of reducing the setback to 5 feet. He said that in his own home, he has irregular property lines making placement difficult. He said that a 10-foot setback prohibits those kind of structures on certain lots. He said that he doesn't think this is the type of community where it is desirable to prohibit normal-sized playground structures.

Commissioner Coville said he sympathizes with people moving in and trying to install a playset on a regular sized

lot, but he questioned how the setback requirements will be enforced if those currently in existence are grandfathered in. Mr. Betz said that in the event of a complaint, the homeowner will be required to provide a receipt or documentation as to when the playset was installed. Commissioner Coville said that a 10-foot setback would provide an area to install screening.

Commissioner De Palma asked if the sport courts in item G, are being considered structures (Exhibit 3). Mr. Betz said that they are, as such courts are usually a fairly intense use. Commissioner De Palma said that this legislation doesn't seem to prohibit the use of such a court in one's front yard, as long as it's not in a setback. Mr. Betz recommended that the section be amended to indicate that they can't be located in any front yard or front sideyard setback. He said there could be instances where a house is back far enough.

**Motion: Commissioner Counts moved to approve the amendments with a change to Section G so that the forth line reads "...in any front yard, or front or side yard setback." Commissioner De Palma seconded the motion. The motion was approved.**

Commissioner Futryk asked how concerns about size and color of these structures should be addressed. Mr. Betz said they would have to be addressed in this text if it is desirable.

Commissioner Futryk said he would be interested in setting standards for limitations on the size and color of such structures. Commissioner De Palma suggested first researching such restrictions in individual neighborhoods. Mr. Betz said that some of the deed restrictions would not apply, but some homeowners associations require architectural review, and some require wooden structures instead of metal. Commissioner Futryk asked if Staff could provide some background information on what certain neighborhoods and other municipalities do to regulate these structures. Mr. Betz said that most communities don't regulate these, but Staff can still report back.

#### **PRELIMINARY DEVELOPMENT PLAN**

**Applicant: Steve DeWesse, Esq.  
Rutherford West Associates and Harold and Patsy Coleman**

**Location: 43.47 acres located on the south side of Rutherford Road just west of the CSX Railroad.**

**Existing Zoning: Liberty Township FR-1, Farm Residential District**

**Proposed Zoning: City of Powell PR, Planned Residence District**

**Request: Approval of Preliminary Development Plan for 65 single-family dwelling units on 43.47 acres, including 3.51 acres of open space, for Property in Process of Annexation into the City of Powell**

David Betz, Director of Development, reviewed that the applicant brought a sketch plan before the Planning and Zoning Commission during their August meeting, and they are back with a revised layout based on those recommendations. He said that the plan is missing some elements but Staff thought it would be appropriate to begin the public hearing process for the preliminary plan. He gave his Staff Report on this issue (Exhibit).

Ron Stone, Developer, said that they have planned a meeting with the City of Powell and developer of Golf Village. He said that they intend to join the Golf Village Association and participate in paying for the parkway improvements. He said that their engineers are working with Jack Smelker, the Delaware County Sanitary Engineer, on how to tie in, and they feel that connecting to the south is the most appropriate to save the heavily wooded area. He said that they are proposing that the association will maintain the park, but that the bikepath will provide access for the public.

Commissioner Emerick opened this item to public comment.

Steve Hebenstreit, Liberty Township Zoning Board, asked what is the minimum lot size. Mr. Betz said that staff is recommending several lots be made deeper, but the average is about 85 feet wide, and 120 feet deep. Mr. Hebenstreit said that he doesn't believe the Township has approved a single family lot under 4/10 of an acre since the code was amended three years ago. Commissioner Wiencek commented that Golf Village is full of smaller lots.

J. Hoerath, Liberty Township Zoning Board, said that he looked at this property as it came in for zoning in Liberty Township. He said he doesn't understand how this works, because it sounds like there have been "two developer presentations...without a whole lot of questions." He asked why the Planning and Zoning Commission would want something with such small lots when "if you look at Golf Village (it) brought in a golf course, and that is why

they have some smaller lots." He said that he had to abstain from the zoning process in Golf Village, but this particular piece of property doesn't have any reason to have small lots on it and that the Planning and Zoning Commission "as a legislative body (*sic*) can accept or reject anything they wish." He said that since everyone lives in the same Township, he would think that the desire would be for it to be developed even better than it would have been in the Township. He said the only reason this development is before the Council is because the developer thinks they can get more lots in the City than the Township. He identified "better" as including larger lots, fewer homes to put kids in the school, and better homes. He questioned what the quality of the homes will be, as well as architectural elements. He said the number of lots is excessive, and rather than being moved around, some should be removed. He said that Delaware County Regional Planning recommends 2 entrances for each development, and this one only has one. Mr. Horath reiterated his concerns about density and questioned the Commission several times about their desires for how this property will be developed.

Commissioner Wiencek asked how many lots Mr. Horath would think is acceptable. Mr. Horath said that in the Township, the area is zoned for 1.25 d.u./acre and the zoning code only allows the maximum in return for an amenity. He reiterated his concerns about the lack of buffer and smaller lots. He expressed concern about only one entrance. He said that the park isn't an appropriate amenity. Mr. Stone said there is only one entrance because of the way the Township zoned Golf Village. He said they have provided for an additional emergency exit. He said that the Fire Chief told him they have never been unable to get to a fire. He said that the reason for the size of lots, entrances, etc., is to provide the park. He said that some people would prefer a park to a 3-acre lot, and he feels the homes will sell for \$500-600k.

Commissioner Futryk questioned the lot sizes in Canterbury in Liberty Township, where there are more homes and only one entrance. Mr. Horath said that Canterbury was developed prior to the lot size regulations he brought up. Commissioner Futryk said that he is hearing Mr. Horath say that density is an issue, yet the Township approved pretty high density in Canterbury and Golf Village. Mr. Horath said that the 1.5 d.u./acre was in exchange for the golf course. He said that had he not been recused from voting on this issue, he probably wouldn't have approved the 1.5 d.u./acre. Commissioner Futryk said that there is a boundary of the railroad track, and everything to the west of this development has a higher density, and he doesn't understand the logic of making these 1 acre lots. Mr. Horath said that it is not the Zoning Board's responsibility to make the developer whole financially. He said that the property next to the railroad should probably be zoned at a lower density.

Mr. Betz reviewed a map of adjacent areas and identified lot sizes and densities. He said that this property falls within the Northwest Area Plan boundary, and the committee of Township and City officials determined that 1.5 d.u./acre was appropriate with parkway and open space development. He said that these 65 lots will tie into golf village and the Liberty Infrastructure Financing Authority which will pay for improvement of Sawmill Parkway and the sanitary sewer in the area. The City sees a benefit in this property joining the financing authority because it helps the City buy the bonds down more quickly and increases the property value. He said it meets the 1.5 d.u./acre the Northwest Area Plan requires. He agreed that the lots are smaller along the railroad. He said the plan is about as good of a plan as the City will get without putting a hardship on the property owner who has had the land around his developed as Golf Village. Mr. Betz said the sketch plan will be revised for the next meeting, and the architectural guidelines that match Golf Village will be submitted. They will be proposing cement fiber siding, stucco, and masonry fireplaces. In addition, the developer will meet the city street tree and residential landscape requirements, which are more than that required in Golf Village. He said that regarding the lot size, the Zoning Code does require a minimum street frontage of 100 foot lots, however, several of these are smaller to provide the central open space area.

Mr. Stone continued that the park is not a "mudhole" as described by Mr. Horath. He said it will consist of an asphalt path and well-landscaped area the size of three football fields. He said this park is estimated to cost approximately \$300,000, and they tied it in with the bikepaths which is very important to the community.

Mr. Horath said that they can still meet the minimum lot requirements and have the open space. He said that the parkway is already paid for, and they will just be helping to pay for it after the fact. He said that they are probably doing that to receive sewer service. He said that the standards that are to be met are 1.25 d.u./acre maximum. He said that he agreed with the 1.5 d.u./acre approval from the Northwest Area Plan, but he said the anticipation was not that all development would be at the maximum. He said that he noticed on another development, "they" said "we'll shoot to meet the 1.5 d.u./acre goal, but I don't know if we'll be able..." He said that those developers cannot say that. They have to meet the requirements. He said the Planning and Zoning Commission can zone this property however they want to. He said he is shocked that City Staff is speaking as though they are biased toward the developer, when he assumes they are supposed to be neutral.

Commissioner Emerick closed the public comment portion.

Commissioner De Palma said that he is not as concerned about how much the homes will cost as he is with the configuration of the whole plan. He said that he believes that the developer said the homes would have brick and stone, but the minutes only request brick and no vinyl. He said he is opposed to varying the developer's original intent, and he is opposed to cement fiber. He said he would like the Planning and Zoning Commission to set a precedent regarding density. He said he did commend the developer at the last meeting for the design of the subdivision and their intention to keep the structures high class and high price, but he is not convinced that he will support the proposed density.

Commissioner Futryk asked about the tree replacement program. He asked if there is a plan to preserve trees rather than just remove and then replant some. Mr. Betz said that all subdivision development will remove trees, and he identified the trees areas of this plan. He said that there is an area where an easement is proposed to help preserve the tree stand, but a street tree program will be instituted to make up for trees that are lost. He said the end result will be about 7 - 11 trees per lot and the beginning of a new urban forest in what is currently a farm field. He said this tree program is very acceptable to staff. He said a similar program was instituted in the first four sections of Grandshire.

Commissioner Futryk asked what is the average square footage of homes proposed. Mr. Stone estimated homes at about 3500 square feet. Commissioner Wiencek said there is no guarantee of that. Commissioner Futryk said that he still has concerns over lots 44, 45, and 65, and those lots that are close to the railroad. He said that he agrees with Mr. de Palma that a reduction in the lots is needed.

Commissioner Wiencek thanked the members of the Township Zoning Board for coming and commenting. He said he is inclined to agree with some of them, but he finds it disappointing to be concerned about only one road in and out of this development when the only reason that is the case is because the Township should have allowed for a stub street off of Golf Village. He asked how the developers of Golf Village feel about the emergency access plan. Mr. Stone said they have no problems with that. Commissioner Wiencek said that he thinks it is important to address all the concerns about cut through traffic the emergency access could create as well as the visual impact.

Commissioner Wiencek said that the 1.5 d.u./acre is considered a maximum by Powell standards, and if the Commission were to follow the rules, it would begin with .7 d.u./acre and build toward 1.5 d.u./acre. He concurred that some lots should be removed. He said that the variance from the sideyard setbacks indicates that the lots need to be larger. He said the minimum requirement for a sideyard setback is 10 feet. Mr. Betz said that the plan includes that variance because they are matching the Golf Village standards. Commissioner Wiencek said the City needs to be aware of Golf Village but not make everything permissible because they were done in Golf Village. He asked if the city has a 20% open space requirement. Mr. Betz said they do. Commissioner Wiencek asked if the retention area is included. Mr. Betz said the water would not be, but any usable land would be. Commissioner Wiencek expressed concern that the open space requirement is not met. Mr. Betz reviewed all the areas that can be included in the calculation, and said he would outline that for the Commission. Commissioner Wiencek said he would support widening the lots to the 100 foot requirement and providing some setback from Rutherford Road to provide a nice entry feature and keep the houses back from what could be a busy road.

Commissioner Wiencek asked what the bikepaths connect to. Mr. Stone said they connect to the Centex Homes development to the west and into the sidewalk system in that development. Mr. Betz said that will connect up to Rutherford Road. He said the City is working with the developer of Golf Village to provide additional pathway connections. He asked if the developer has tried to obtain from the railroad the triangle of property adjacent to this development. Mr. Stone said they have tried and been unsuccessful.

Commissioner Wiencek asked if the development will have curbs and gutters. Mr. Stone said that it will. Commissioner Wiencek expressed a desire for the City to review each house as they come in since they are custom homes. Mr. Betz said that the Planning and Zoning Commission will have the opportunity to review the deed restrictions and covenants. Commissioner Wiencek expressed a desire to make sure that the wording regarding the natural easements be clear enough that people can determine whether they have the right to clear trees within the easements, plant grass, etc.

Commissioner Wiencek expressed concern about removing the right turn lane on Rutherford Road. He said it is currently recommended to be 45 mph, but as speeds are reduced, the need for the turn lane is diminished. He asked if the reduction in speed refers to the limit or the speed of traffic. Mr. Betz said it refers to the limit. He said

it is anticipated that the speed will be below the limit because of the approach to and drive away from the railroad crossing. Mr. Betz said that the City Engineer is recommending instead of the right lane, that a left turn lane be provided. Commissioner Wiencek expressed concern that people will be traveling faster than the speed limit, and removing that turn lane may not be a good idea.

Commissioner Wiencek suggested that the bikepaths be installed prior to the homes so there is no confusion for future homeowners that there will be a bikepath in that location. He said he is pleased to hear this developer is planning to join the financing authority. Commissioner Wiencek suggested that this development meet the fencing requirements of Golf Village. Mr. Betz said that he can find out what is permitted in Golf Village. Commissioner Wiencek said a fence, however, may be appropriate along the railroad track as a safety feature. He said that it might be desirable to install a fence prior to developing.

Commissioner Wiencek asked about the siding defined as "plank-type" materials. Mr. Stone said they would like to use cement fiber siding. Commissioner Wiencek said that the majority of Council and the Planning and Zoning Commission are currently opposed to such a material, but it is the developer's right to request a variance. Commissioner Wiencek asked if the trees were counted instead of caliper inches. He said that using the City's process for counting trees will increase the amount of trees that will need to be replaced. He said that he doesn't think that street trees can be counted in the replacement trees, as they are a separate requirement. Mr. Stone said he will work with Mr. Betz on that.

Commissioner Wiencek asked if there is a concern about the turning radius being symmetrical. Mr. Betz said that the biggest concern is the turning radius. Commissioner Wiencek asked if it is correct that it is not the fact that they are different, but that they might be too small.

Commissioner Counts agreed that the entrance to Rutherford Road needs more open space, and he would like to see closer to 100 foot wide lots than those proposed. He asked what is the density of Golf Village. Mr. Betz said that the overall density is 1.5 d.u./acre with a little more open space. Commissioner Counts asked, if this property were part of Golf Village, if the density would not be different. Mr. Betz said the overall density wouldn't change. He said, however, that a number of the lots in Golf Village have been removed through the engineering process.

Commissioner Coville asked if sidewalks are required on developments. Mr. Betz said that they are not always required on both sides of the street in Powell. Commissioner Coville said they would be desirable to tie into the sidewalks and bikepath system. Commissioner Coville concurred with other members of the Commission that the density is a little high. He said that he thinks the park is a great feature but he is unsure about squeezing in more lots. He said that he thinks cement-fiber siding will not be preferred with \$500,000 homes. Commissioner Wiencek said that the developer is required to have 20% open space, and the park Mr. Stone is describing is not an added amenity except to the extent that it is being improved. He said it may look like a park, but it is required open space. Mr. Stone said they are also installing bikepaths, heavy landscaping, a fountain, and a gazebo. Commissioner Coville said that the 20% requirement is the minimum.

Commissioner Coville said that standing alone, this plan may not be the greatest, but in the context of where it is situated adjacent to Golf Village, it is very consistent. He said he would like to the lots be 100 feet across. He said he doesn't think this property will ever be developed with 2 acre lots. Commissioner Emerick had nothing to add except that he would like the 85 foot lots widened and the entire number decreased.

Commissioner Futryk asked Staff to put together a list that will summarize the property densities of Canterbury, Golf Village, etc., so that he has it for reference. Commissioner Murphy said he would also like to know the average lot sizes.

Commissioner Wiencek asked Mr. Betz to put up an overhead of a map that was put together as a reference for the Comprehensive Plan redevelopment process. He said that this map identifies the differences in lot sizes within the City and Liberty Township. He said that previous commissions have approved higher densities for one reason or another than the Zoning Code allowed for. He said there was always some sort of concession, and that unfortunately has made it difficult for future commissions to say no when they have said yes in the past to properties on other sides. He said that "the guy in the middle" can't sell a 1 acre lot when surrounding properties have lots that are 1/10th of an acre. He said there is a substantial difference in Powell lot sizes than in Liberty Township. He said that since the late 1980's or early 1990s, the Township and Powell Zoning Codes have been very much the same, so he doesn't understand that. Mr. Betz said the City had a code that permitted up to 2.5 d.u./acre until about 1995. Commissioner Wiencek said that the City has approved over 3.0 d.u./acre to allow for parks and other improvements. He thinks that is very important because as the City moves closer to traditional

Liberty Township developed areas, that zoning is impacting the neighbors more.

Mr. Betz said that in the Comprehensive Plan study process, Staff reviewed the report by Larry Gherkins in 1988, who said at the time that the overall planning area should not be over .8 d.u./acre, because that is the maximum roadway capacity. He said that Staff reviewed the current development and estimated population and determined that the current density is .82 d.u./acre. He said that overall, the City and Township have kept to that overall recommendation.

**MOTION: Commissioner Counts moved to table this item until December 11, 2002. Commissioner Futryk seconded the motion. The motion was approved. Yes: Emerick, Futryk, Murphy, Wienczek, Counts, Coville, De Palma.**

#### **OTHER COMMISSION BUSINESS**

Mr. Betz announced that the Comprehensive Plan steering committee will meet tomorrow night to discuss the preliminary responses to the survey. He said that there will also be a public workshop, hopefully sometime in December.

Commissioner Futryk asked for an update about the cement fiber siding building code regulations. Mr. Leininger said that it is scheduled for a future Planning and Zoning Commission meeting.

Commissioner Wienczek suggested that the Commission review the fence ordinance in the City. He said most subdivisions have restrictions against fencing, but not all do. He said that there is an appeal that is an issue currently, and there have been several Board of Zoning Appeals cases in the last few years for people who have decided to install fences. He said that he thinks that behooves the commission to review that section of the code and change it however appropriate. He said that his personal feeling is that fences should not be encouraged, and if changed at all, should be more restrictive than the current code. He asked what is the procedure for considering amendment. Dawn Nauman, Clerk to the Planning and Zoning Commission, said that he just needs to make a motion to consider amendment.

Commissioner Futryk asked what is at issue. Commissioner Wienczek said people are putting them in and their neighbors don't want them. It is that simple. Mr. Betz said that the City has issued 94 fence permits since 1997, so there is a segment of population that wants them. Commissioner Wienczek said that needs to be balanced against residents who bought into a neighborhood that didn't have them. He said that most residents don't even know they are allowed until they go up. Commissioner Futryk said that there are deed restrictions in his neighborhood that prohibit them. Mr. Betz said that there are a fewer number of subdivisions that prohibit fences than those that permit them. Commissioner Wienczek said that some healthy discussion would be appropriate.

**MOTION: Commissioner Wienczek moved to initiate consideration of amendment to Zoning Code section 1145.34. (2) (C) and hold public hearings as appropriate. Commissioner De Palma seconded the motion. The motion was approved. Yes: Emerick, Futryk, Wienczek, Counts, Coville, De Palma. No: Murphy.**

Commissioner Wienczek said that his other concern is that the Zoning Code allows appeal of the Zoning Administrator within 20-21 days of that decision, so that if someone was putting in a fence and someone wants to appeal, they have three weeks to do that. Unfortunately, there is no notification that the permit is pulled, so there is no way of knowing the fence will be built. He said this appeal process applies to all construction projects as well. Mr. Betz said that Staff can put together a report determining how administratively burdensome it would be to notify people of every permit being issued. He said that sometimes adjacent neighbors know because of design review requirements. After a brief discussion, Commissioner Wienczek said he would like to study this issue further. Mr. Betz said Staff will provide additional information.

#### **ADJOURNMENT**

The Commission adjourned at 9:15 p.m.

#### **DATE MINUTES APPROVED**

 1-8-03

Don Emerick  
Chairman

Date