

**KENT PLANNING COMMISSION
BUSINESS MEETING
MAY 17, 2016**

MEMBERS PRESENT: Anthony Catalano
 Peter Paino
 John Gargan
 Doria Daniels

ABSENT: Amanda Edwards

STAFF PRESENT: Jennifer Barone, Development Engineer
 Bridget Susel, Community Development Director
 Eric Fink, Assistant Law Director
 Sheila Uzl, Transcriptionist

I. Call To Order

The meeting was called to order at 7:00 p.m.

II. Roll Call:

Mr. Gargan, Ms. Daniels, Mr. Paino and Mr. Catalano were present.

MOTION: *Ms. Daniels moved to excuse Amanda Edward's absence from this meeting. The motion was seconded by Mr. Gargan. The motion carried 4 – 0.*

III. Reading of the Preamble

The Planning Commission operates in accordance with the provisions of the Kent City Charter, the Kent Zoning Code and Subdivision Regulations, all of which establish the powers and duties of the Commission. Members of the Planning Commission are appointed by Kent City Council and serve without compensation. Certain cases such as Conditional Zoning Certificates, Special Zoning Permits, Overlay District Projects and Zoning Amendment require Public Hearings before the Planning Commission. During the Public Hearing, any person wishing to address their concerns to the Commission will be provided the opportunity. Once the Public Hearing is closed, it shall be the discretion of the Chair whether to allow any additional public comment. Cases such as Site Plan Reviews and Subdivision Projects do not require a Public Hearing. However, the Chair will allow public comment on each case as it is taken on the agenda. In each instance where the Commission receives public comments or conducts a Public Hearing, those persons wishing to address their concerns to the Commission will be required to do so under oath or positive affirmation. The oath or affirmation shall be administered to all who wish to speak at the beginning of the Planning Commission Meeting. Once a

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decision has been made by the Planning Commission on a case, the Case is closed for the commission, as there is no provision to reopen a case. With the exception of cases falling under the Subdivision Code, any decision of the Planning Commission may be appealed to the City's Board of Zoning Appeals in accordance with the Chapter 1109 of the Zoning Code. Anyone interested in appealing a decision of the Planning Commission is advised to seek private legal counsel.

IV. Administration of Oath

Mr. Fink instructed those members of the audience wishing to be heard on any of the cases presented at this meeting to rise and raise their right hand. Mr. Fink administered the Oath, "Do you solemnly swear or affirm that the testimony that you are about to give this evening is the truth, the whole truth, and nothing but the truth, so help you God? Please say "I do." The participants responded, "I do."

V. Correspondence

None

Ms. Barone asked the Planning Commission to revise the agenda order and said a motion would be needed to do that.

MOTION: *Ms. Daniels moved to revise the order of the agenda so that New Business could be heard first. The motion was seconded by Mr. Gargan. The motion carried 4 – 0.*

VI. New Business

**A. PC16-011 MARC'S PLAZA
1599 South Water Street
Comprehensive Sign Plan Amendment**

The owner of the plaza, DeVille Developments, is requesting an amendment to the approved Comprehensive Sign Plan package to include signs for the out parcel, previously utilized as a bank at 1590 South Water.

Mr. Catalano asked the applicant to present the project.

Robert Brown (3951 Convenience Circle, Canton, OH) stated they were asking for a second amendment to the Sign Plan to address the changes that has taken place as they have fixed up the center for new businesses. There was an existing vacant bank building up front along the street. He said the Plasma Center needed more space and the only way they could accommodate them was to move the two tenants from the plaza to the vacant bank building. He said they divided the bank building and modified the space to allow for signage for the two businesses. When the building was used just for the bank, there was a sign over their door, just to the north, and there was a sign on the building that faced

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State Route 43. He said they have divided the space and modified it to allow for signage. Each business, Fancy Nails and Famous Hair, are moving into the building and would like to have two (2) signs. He said two (2) signs will face South Water Street and each business will have a sign on the building face where the entrance door is located. Each business has entrances located on the north and south side of the building. He showed the commissioners pictures of the signs and stated each sign will be under 25 square feet. He said three signs are up and they want four (4).

PUBLIC COMMENTS

None

PLANNING COMMISSION DISCUSSION

Ms. Barone stated Mr. Brown did a good job presenting the request. She said they are requesting four signs. She said all four (4) signs are being added to the comprehensive sign plan. She said they do not have to get a variance from the Board of Zoning Appeals. The number of signs, the size and the location can vary in a Comprehensive Sign Plan. She said the applicant was appearing before the Planning Commission to request signs for the businesses located in the former bank building.

Ms. Daniels stated she had no questions and it was a good proposal.

Mr. Gargan stated he had no problem with the request and it was a good plan.

Mr. Paino and Mr. Catalano had no comments.

There were no other questions. Mr. Catalano asked for a motion.

MOTION: *Mr. Paino moved in case PC16-011, MARC'S PLAZA, property located at 1590/1600 South Water Street, that the Planning Commission approve the Comprehensive Sign Plan Amendment subject to the following conditions.*

- 1) The sign shall meet the requirements of the Kent Codified Ordinances section 1165.04(j.)*
- 2) Obtain a sign permit.*

The motion was seconded by Mr. Gargan. The motion carried 4 – 0.

VII. Old Business

- A. PC16-007 River Bend East Subdivision
 Replat Phase V
 Cindy Circle**

The applicant, Eric Hummel (Crooked River Land Co.), is requesting approval of a replat of the Final Plat for Phase V of the River Bend East Subdivision to eliminate Block “E”. The subject property is zoned R-1: Low Density Residential.

Mr. Catalano asked the applicant to present the project.

Eric Hummel stated he had no new information.

Mr. Catalano stated that the Planning Commission discussion would be heard first but told Mr. Hummel he would have another opportunity to comment later on in the discussion.

PUBLIC COMMENTS

None

PLANNING COMMISSION DISCUSSION

Ms. Barone said staff has done some research and have provided the Planning Commission additional information on the history on what the blocks were and what the purposes of the blocks were. She said staff does not believe that there will be a secondary access if Block E is released.

Ms. Susel deferred to Mr. Fink to address any questions and to discuss any actions that have been taken.

Mr. Fink stated he had sent a memo to the Planning Commission on May 10, 2016. He said he sent the memo in letter form to Mr. Hummel and asked if there was any missing or additional information that should be considered. He said the Court made a ruling in 1996 in favor of the developers. He said this ruling was made on four key components: The first is that bridges are viable means for travel and he felt that there is nothing in the current application that alters the Court’s view on that. The second component is that there is no violation in respect to cul-de-sacs. The third component is that vacating Block E would terminate any opportunity the City or any other developer to further assure access routes and that was one of the key factors the Court considered. The Court made it clear that it was not the developer’s obligation to build the additional access routes. The forth component stated that that in 1996 there was no problem because it was good City planning on that basis, but he was not sure if this was still the case. In 2003, the Court reiterates the fact that a developer cannot be required to work on land that they do not own. However, Block E is owned by the developer, so there is nothing in 2003 that limits what the Planning Commission does in this instance. He said another complaint in the original 1996 decision was that there were additional access points for each phase of development for River Bend as a whole. The access points were to be Block B (bike & hike trail), Block C (vacated) and Block E (land for bridge over Breakneck).

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Ms. Barone stated that Blocks B and C are no longer available as blocks as they were in the past.

Mr. Fink stated that at the time, it was believed that based on representations by people not here, that Mr. Durst through his company, had control over additional property which was not the case, but they believed that there were access points that would be available to Blocks B or C, but this was not the case because there was a railroad between the two and the railroad would not give access to cross over its property. This was part of the reason why Block C was vacated later on and become part of the development, because there was no further access from Block C unless the road was finished. Block E was an access point for a bridge to Breakneck.

Mr. Gargan asked how many lots are available.

Mr. Hummel replied there are thirteen (13). Phase V has five (5). He said Block B was enhanced to make it more accessible. He asked if the railroad would change their mind.

Mr. Gargan asked how much cost incurred, including interest and legal fees.

Mr. Hummel replied the costs were mixed in the cost of construction plus interest over the last ten (10) years.

Mr. Gargan stated he was working at Portage Community Bank and had worked on the loan. He said a significant amount of insurance had to have been carried.

Mr. Catalano was asked if there was a conflict of interest since Mr. Gargan worked at Portage Community Bank and worked on the finances on the project.

Mr. Fink replied that at this point in time, there is no conflict because Mr. Gargan would not financially benefit whether the request was approved or denied. He does not have a conflict of interest.

Mr. Hummel stated there was a considerable amount of money spent to upgrade the Block B Bridge. He said they want to make lots more buildable and recoup some of their investments. He said the bridge crossing to Breakneck is in a swampy area.

Mr. Fink stated the 2003 Court decision recognized that the plat filed in 1997 was in error because it reflected ownership and easement that the property developer, again not Mr. Hummel, did not own.

Mr. Paino confirmed there that has been a number of law suits.

Mr. Fink replied yes.

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Mr. Paino asked if the City of Kent had won any.

Mr. Fink replied that the Planning Commission was overturned in the 1996 law suit. He said several City departments testified against the Planning Commission at that hearing. The ruling was that the developer did not have to build offsite. Initially the City of Kent had to build out these pathways or to pay for the easement to acquire the ability. In 1996 the Planning Commission denied the application because they did not have a secondary access.

Mr. Paino asked how many lots there are in Phase V.

Mr. Hummel replied there are seven (7) now and seven (7) enhanced lots after re-platting.

Mr. Fink stated the engineering and fire department had concerns.

Ms. Susel stated it is hard to envision what will be in the future but did anyone envision moving Crain Avenue Bridge and realigning it with Fairchild. The Fire Department and the Engineering Department are looking from the perspective of what could potentially be developed in the future. She said there were multiple rulings made by the Court and one of the continuous messages was that the developer did not have to create that secondary access, but they had to provide or leave a means by which the City of Kent could create that secondary access. She said with the redeveloping of some of blocks, opportunities for these secondary accesses are slowly being eliminated or altered so after each court case, it is basically down to Block E.

Mr. Paino stated that there are a lot of new regulations and it is hard to build a bridge with these code changes. He felt it was inconceivable to build a bridge over Breakneck.

Mr. Catalano stated this issue was self-imposed and felt the developer had other options.

Ms. Susel stated that there was an environmental issue when Fairchild Bridge was built over the river. She said projects are considered every day where environmental conditions have to be taken into consideration.

Mr. Hummel stated that there was access to Block B.

Mr. Fink stated that the Block B access was for emergency uses only and not for public use.

Ms. Susel stated the concern is that if something happens to the existing bridge, there is no way to get emergency services in or the public having access out. There is only one way in and one way out so that is the concern. If Block E is taken out, there is no where that can be done. If another block could be made, that would satisfy what the City of Kent is looking for, then the Thoroughfare Plan may be satisfied. With the elimination of Block E, the City of Kent doesn't have an option.

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Mr. Hummel asked why the developers spent money to make Block B an emergency exit.

Mr. Catalano asked if it was stated on record or otherwise that the developer did not have to make a second egress point, if the developer reinforced the bridge.

Mr. Hummel responded there is emergency access. He said he did not know the answer to Mr. Catalano's question.

Mr. Fink stated that Block B development was approved in 1997 and later determined by the Court to be in error because it was originally connecting the property the owner claimed to control. Any conditions or terms connected to this are somewhat suspect on anything he owned or controlled. The idea was that the City of Kent could travel across the land but it could not because the original developer did not own nor could he create a water line on the same area.

Mr. Hummel stated that they do have ownership of the Beckwith property.

Mr. Fink stated that the City of Kent was not requiring the developer to build anything on Beckwith property or with the Beckwith Christian railway. He said there is no emergency access because the City of Kent cannot get anything through Block B without the railroad's permission. He said nothing can go through Block E because there is no bridge or road.

Mr. Paino stated that there seemed to be two separate issues regarding this request. There needs to be an emergency access and there is no second access. Block E would give the opportunity to have that. This request also does not meet the requirements of the Thoroughfare Plan. He asked if the builder would have to build a bridge if Beckwith was developed.

Mr. Fink stated that is outside of the City, so the City of Kent has no authority to tell them what to do in regards to that property, but the township would have that authority. If the City of Kent purchased part of that property, it could then make that connection.

Mr. Catalano asked when the Thoroughfare Plan was enacted.

Ms. Barone replied it was before her time; about thirty (30) years ago.

Mr. Hummel replied to a question and said that Block E is a pretty wide piece of land that is an easement to get across the land.

Ms. Barone stated that it shaped like it is because it was evaluated to have a bridge.

Mr. Hummel asked if it was possible to circumvent the Riparian requirements to build a bridge.

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Ms. Barone replied that she did not have the Riparian requirements with her, but that bridges are addressed in requirements.

Mr. Catalano stated that the Thoroughfare Plan was already known before the onset of this project. He also stated that Blocks B, C, and E existed as part of this project, but Block B and C were taken off.

Mr. Fink replied Block B and C meet the Thoroughfare Plan requirements.

Mr. Catalano stated that the developer had options. Option B was taken off and option C was vacated.

Mr. Fink replied that Block B is the access to the Hike and Bike Trail. The developer could have used Blocks C or E but C is no longer available because of no easement over the railroad tracks.

Ms. Susel stated that Block C was not a viable option because there was no easement in regards to the railroad.

Mr. Catalano stated that the Engineering Department nor the Fire Department were in favor of this request so he was not in favor of it.

Mr. Hummel asked if any credit was being given to Block B as being viable as a speculative ingress/egress, even though it is being used as access to the Hike and Bike Trail and it was designed to be an emergency exit. It could be extended a lot more easily and expand with a bridge across the creek.

Ms. Barone stated that it was intended to be an emergency access point. Full access is a minimum of 60 feet wide which is a requirement of the Thoroughfare Plan.

Mr. Paino asked if the Phase V plat was approved.

Ms. Barone replied yes and it was recorded.

Mr. Paino stated this was a hard decision. He did not feel that it was platted out very well.

Mr. Catalano stated that the burden is self-imposed. He asked what would happen if no motion was made.

Mr. Fink replied if this matter dies due to a lack of a motion, it would be as if the request was approved.

Ms. Barone stated it would not go to Kent City Council if it was denied.

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Mr. Fink stated that under Section 1183.04(c) it requires approval, conditional approval, or disapproval. If it was approved, it would allow the applicant to request a variance from Kent City Council. If it was denied, then the applicant has to use the plat that still has Block E.

Mr. Paino asked if the Planning Commission approved the request, it is saying to Kent City Council that it is up to them to make the decision.

Ms. Barone stated that the Planning Commission is approving a re-plat but there also has to be a recommendation to Kent City Council to approve a variance to eliminate compliance with the Thoroughfare Plan. She said if this request was denied, there was no need for a second motion to make a recommendation to Kent City Council.

Mr. Paino stated that Block B does not meet the requirements of the Thoroughfare Plan because of its width and it is being used as an access to the Hike and Bike Trail.

There were no other questions or comments so a motion was made.

MOTION: *Mr. Catalano moved in case PC16-008/River Bend East S/D Replat Phase V, located on Cindy Circle, that the Planning Commission denies the applicant's (Eric Hummel Crooked River Land Co.) request to re-plat the Final Plat for Phase V of the River Bend East Subdivision to eliminate Block "E". The motion was seconded by Ms. Daniels. The motion carried 3 – 0. (Mr. Gargan abstained)*

Mr. Fink stated that the applicant can reapply for the same request.

Mr. Hummel interjected and stated that all they want to do is get the re-plat approved and not have to come back.

Mr. Catalano stated that the Planning Commission denied their request and would not make a recommendation to Kent City Council. He suggested that the Thoroughfare Plan be put on the agenda for one of the upcoming Planning Commission meetings.

Ms. Barone agreed to do this.

**B. PC16-002 CITY OF KENT
 Zoning Code Text Amendment
 Chapters 1127 – 1155 and Chapter 1171**

The applicant is seeking input for the proposed code language amendments to Chapter 1135: R-4: Multifamily Residential, Chapter 1137 R-C: High Density Multifamily – Commercial and Chapter 1139 N-C: Neighborhood Commercial

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Ms. Barone stated that the next chapter to be discussed is Chapter 1135. She said there have been some things added and changed such as parochial to private schools. She said some things had not been addressed before such as Private Commercial parking lot. She asked if there were any questions or comments about parking lots being in the R-4 Zoning District. There were none, so she continued. She said there have been some issues with the open space so Useable Open Space for Multifamily and Rooming Board Houses has been added. She asked if the 25% lot coverage should be changed for Multifamily and Rooming and Boarding Houses. She said it could be taken out or increased to a higher percentage. She said staff is looking at 50% to 75%.

Mr. Paino stated that in other areas thirty (36) units are permitted per acre.

Ms. Barone stated that is a lot of units and part of that is because it is the maximum impervious percentage. She said most people do not want to go over three or four stories, but could go higher and get more density. Part of the problem is the 30% Open Space, which is very significant with specific criteria. Staff is going to review the definition of open space to see if it can be made a little more flexible.

Mr. Paino suggested checking to see what other communities do and look at the density requirements of these communities.

Ms. Barone stated staff could do that. She added that the Fire Department did not want the height of a building to be more than 65 feet, so the ladder truck could be used.

Mr. Paino stated that the standard is the same throughout the City of Kent, but maybe a different requirement should be used around the central business district. He suggested looking at lot coverage in other communities.

A discussion continued on the code changes including conditions and overlay districts and open space.

Mr. Fink stated that if any of the commissioners have ideas or thoughts they should state them so they can be incorporated into the code. The Planning Commission will see another rough draft of this no matter what.

Ms. Barone stated that she understood that a Form Based Code was focused on conceptual idea for an area. She said staff will continue to look at the code for changes and amendments.

Ms. Barone suggested waiting until the next meeting to discuss the next Chapter 1137, because there were a lot more changes to this section.

MOTION: *Ms. Daniels moved to defer the continued discussion on the code changes to the next Planning Commission Meeting on June 7, 2016. The motion was seconded by Mr. Catalano. The motion carried 4 – 0.*

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VIII. Meeting Minutes Regular Meeting Minutes – April 19, 2016

MOTION: *Mr. Catalano moved to approve the April 19, 2016 as amended.
The motion was seconded by Mr. Paino. The motion carried 3 – 0
(Mr. Gargan abstained.*

IX. Other Business

Mr. Fink stated that a brief from Capstone was received, if anyone wanted to see it.

X. Adjournment

Motion: *Ms. Daniels moved to adjourn. The motion was seconded by Mr.
Gargan. The motion carried 4 – 0.*

The meeting adjourned at 8:25 p.m.