

MINUTES OF MEETING
INDIAN HILL PLANNING COMMISSION

May 23, 2017

A special meeting of the Indian Hill Planning Commission was held on Tuesday, May 23, 2017 at 7:00 p.m. in the Council Chambers of the Village Administration building.

Members Present: Paul F. Madden
Richard C. Wiggers
Abbot A. Thayer
Joseph W. Rhodenbaugh
Rita M. Stolper

Members Absent: None

Officials Present: Jonathan D. West, Assistant City Manager
Dina C. Minneci, City Manager
Scott D. Phillips, Frost Brown Todd LLC

Visitors Present: Stella Williams Hassan, 8725 Red Fox Lane
Ann Kranbuhl, 9425 Holly Hill
Eric Kahn, 8095 Kugler Mill Road
Allison Kahn, 8095 Kugler Mill Road
Mady Kahn, 8095 Kugler Mill Road
Lily Kahn, 8095 Kugler Mill Road
Jackie Kahn, 8095 Kugler Mill Road
Karen Patrick, 9424 Hunters Creek Drive
C. Francis Barrett, Barrett & Weber, LPA
Mike Debbeler, Graydon Head & Ritchey LLP
Richard La Jeunesse, Graydon Head & Ritchey LLP
Kathy Ryan, Manley Burke LPA
Tim Burke, Manley Burke LPA
Greg Dale, McBride Dale Clarion
Doug Brendamour, 6105 Park Road
Beth Brendamour, 6105 Park Road
Cecily Harness, 6425 Park Road
Ed Neyra, 9400 Holly Hill
Lynn Neyra, 9400 Holly Hill
Carol Lichtenberg, 5955 Park Road
Bill Lichtenberg, 5955 Park Road
Christopher C. Cole, 9450 Holly Hill
Mike Wentz, Wentz Design
Kristie Sheanshang, 8400 Old Stable Road
Andrew Brendamour, 6105 Park Road

Don Highlands, 9375 Holly Hill
Ann Highlands, 9375 Holly Hill
Mark Addy, 5880 Park Road
Nolan Marx, 9005 Old Indian Hill Road
Jim White, 5520 Miami Road
Margaret White, 5520 Miami Road
Lisa Gray, 8700 Willow Run Court
Stephen Kohr, 6810 Drake Road
Johanna Kohr, 6810 Drake Road
Doug Dalton, 5400 Drake Road
Robert Harness, 6425 Park Road
Sheila Cole, 9450 Holly Hill
Jon McClean, 9225 Holly Hill
Bridget McClean, 9225 Holly Hill
Christopher Cole, 9450 Holly Hill
Kara Mangan, 6770 Camaridge Lane
Lynn Chabris, 7400 Brill Road
Evelyn Kirschner, 5850 Given Road
Steve Winter, 5450 Hobbit Road
Lance White, 8675 Pipewell Lane
Diana Cole, 8215 Shawnee Run Road
Ellen Slattery, 7855 Shawnee Run Road
Pam Irvine, 7200 Brill Road
Steve Sawyers, 7778 Rock Hill Lane
Pam Gibson, 6855 Alberly Lane
Tiger Kite, 7575 Demar Road
Kelly Stoddard, 6755 Alberly Lane
Tim Hershner, 903 Adams Crossing
Rita Chin, 8725 Deep Run Lane
Dean Kereiakes, 7405 Old Hickory Lane
Anne Kereiakes, 7405 Old Hickory Lane

Chairman Madden calls the meeting to order and asks for those in attendance to please stand, raise their right hand, and be sworn in prior to presentation of the case.

Item Number 1: Minutes for the May 16, 2017 meeting: Chairman Madden asks for comments or corrections to the May 16, 2017 Planning Commission minutes. There being none, Mr. Wiggers made a motion to approve the minutes. Mr. Thayer seconded, and the minutes were approved by a unanimous voice vote.

Item Number 2: Case #17-005 – Mike Wentz, on behalf of Eric and Allison Kahn, are requesting Planning Commission authorization to construct a new single family

residence on a non-conforming lot of record per **Section 81. Lot of Record** of the Indian Hill Zoning Ordinance. The subject property is located at 6175 Park Road.

Mr. Tim Burke, with Manley Burke LPA, comes before the Commission and notes that he has with him Ms. Kathy Ryan, attorney and City Planner with Manley Burke, LPA.

Mr. Burke states that his firm became involved with the case after the initial Planning Commission meeting. He explains that the Kahns have performed their due diligence which included meeting with the architect to make sure the home they wanted to build could be built on the lot. He notes that the architect then met with Village Staff to review the plan and ensure that the home the Kahns wished to build could be built on the lot in the location they desired.

Mr. Burke explains that there has been a lot of language used in letters and petitions that suggest that the lot is not a legal lot of record and/or is a non-conforming lot. The lot itself is a legal lot in accordance with the Indian Hill Zoning Ordinance, and has existed this way for decades.

Mr. Burke makes reference to a binder of documents from his firm that was previously submitted to each Commission member. Tab 1 of the binder includes email exchanges between the Village and Mr. Wentz in which the Village specifically states that the lot is a conforming lot. This email was written well before the Kahns purchased the property.

Mr. Burke adds that Tabs 1, 2, 4, and 5 include public records of the Village of Indian Hill. Tab 1 shows that the Kahns confirmed through their architect that they could build the home they wanted on the lot.

Contrary to what several letters that the Commission has received state, the Kahns do not seek to construct an easement to Park Road. They do not wish to construct a driveway out to Park Road. The applicants do not dispute that the access easement to Park Road was vacated. However, there still remains on record an unrestricted utility easement that the Kahns have a right to use to run utilities out to Park Road. Therefore, they would like frontage on Park Road for the lot.

Mr. Burke notes that the petition that was circulated suggests that the Kahn's proposed home sprawls behind seven other homes, which is not correct.

Mr. Burke adds that there is more distance between the proposed Kahn home and the Brendamour home than there is to the Brendamour's closest other neighbor, and the same case applies to the Kranbuhl home.

In Tab 3 is Kathy Ryan's analysis of the Village's zoning code and how the setbacks are interpreted under the code. Mr. Burke points out that although there may be language

in the Village's zoning code (as there is in many) that's not the clearest, zoning codes must be interpreted in support of the property owner's rights that are being impacted by the zoning code. Therefore, if there are two different interpretations to language in the code, the benefit goes to the property owner.

Tabs 4 and 5 reference the "Purchase and Sale Agreement" and the "First Amendment to Purchase and Sale Agreement" provided by the Brendamours. Mr. Burke points out that Worthy Tuttle (former owner of the Kahn property) refused to sign the initial agreement without the first amendment document being signed.

Mr. Burke adds that there is language in the first amendment that is critical in this case. This includes a statement that the Brendamours would not oppose either an expansion of the home that existed on the property at that time or the construction of a new one and would not oppose such use on the basis of inadequate lot frontage.

Mr. Burke explains that the only way to claim that this is a non-conforming lot is on the basis that it does not have 250' of lot frontage. Mr. Burke states that he and his client will argue that it does not need 250' of frontage at the street line. The lot the Kahns purchased is a legal lot, and the home they wish to build conforms to the zoning code and its setback requirements.

Mrs. Allison Kahn, currently residing at 8095 Kugler Mill Road, comes before the Commission and introduces herself and states that her husband and their three daughters are also in attendance.

Mrs. Kahn notes that prior to purchasing the property she and her husband, along with their architect, Mike Wentz, performed their due diligence on the property to ensure that the subject property was a legal lot in which they could build a home. On May 5, 2016 Jon West emailed Mr. Wentz information regarding the property (Tab 1). In the email Mr. West states that the lot is a conforming lot and gave two options for orienting the home. Mr. West also suggested doing a soil analysis to ensure that a septic system could be placed on the property. Clear Creek Environmental performed the analysis, locating two areas where a septic system could be located. Approval was then received from Hamilton County.

Mrs. Kahn states that Mr. Wentz had additional meetings with Mr. West and showed Mr. West the footprint of their home on the property, which is at the same location as the prior home. They felt this was the best area to place their home to ensure the most privacy for their family and surrounding neighbors.

Mrs. Kahn states that only after performing their due diligence, did they close on the property. They never would have purchased the property had they been told that the home they proposed would require special permission from the Planning Commission.

Mrs. Kahn refers to the "Purchase and Sale Agreement" (Tab 4) which show that Worthy Tuttle refused to sign the agreement without it being amended to provide her and her successors the ability to expand the home or build a new home on the property. The Brendamours and the Village signed the amendment (Tab 5).

Mrs. Kahn comments that some believe new homes hurt property values, whereas just the opposite is true. She feels that building a beautiful new home on a 5.1 acre lot increases property values and will benefit Indian Hill overall by increasing the taxes they pay.

Mady Kahn, the Kahn's daughter, comes before the Commission and comments that she is very excited to be building a new home and hopes the Commission approves their plans.

Mr. Mike Wentz, of Wentz Design, comes before the Commission and states that he has been a resident of Indian Hill for twenty years and a licensed architect for nearly thirty years. Mr. Wentz notes that he has done many projects in Indian Hill and is very familiar with the zoning.

Mr. Burke asks Mr. Wentz to explain the process they followed once the Kahns acquired his services and showed interest in the subject property.

Mr. Wentz states that they visited the site and discussed its benefits and limitations, considering the unusual shape of the lot. Because of the unusual shape, he contacted the Village to make sure they correctly understood the setbacks.

Mr. Wentz comments that he sketched a layout that he shared with Mr. West via email and then also met with him in person.

Mr. Burke asks Mr. Wentz, referencing the email exchange (Tab 1), who drew the sketch on the aerial photo listed as "Option 2". Mr. Wentz replies that Mr. West sent him sketches showing two buildable areas or options for the home. It was after this email exchange that a home was designed for the site and a meeting took place with Mr. West, all of which took place prior to the Kahns purchasing the property.

Mr. Burke asks Mr. Wentz if he was aware that in addition to being the Assistant City Manager for the City of the Village of Indian Hill, Mr. West has an AICP designation from the American Planning Association. Mr. Wentz replies that he was not aware of this designation, but is not surprised.

Mr. Burke notes that after the Kahns purchased the property, Mr. West asked for another meeting with Mr. Wentz. Mr. Wentz then asked the Kahns to attend the

meeting with him, as he was unsure of what might still need to be discussed since they had already reviewed everything and nothing had changed since their last meeting.

Mr. Wentz states that during the meeting Mr. West made them aware that it had recently come to his attention that there were a couple of neighbors that were not happy about the prospect of a new home being built on the lot. They also reviewed the layout and orientation of the proposed home, as well as once again going over the setbacks. In conclusion, they agreed that the footprint as designed conformed to the zoning code.

Mr. Burke makes reference to the minutes of the March 21, 2017 Planning Commission meeting (Tab 2), and asks Mr. Wentz to review the distances between the proposed Kahn home and the Brendamour and Kranbuhl homes.

Mr. Wentz states that the distance between the Kahn's proposed home and the Brendamour's home is approximately 313', while the distance between the Kahn's proposed home and Dr. Kranbuhl's home is 326'.

Mr. Burke asks how those distances compare to existing homes on Holly Hill and Park Road.

Mr. Wentz replies that the average distance between homes on Park Road is 273', and the average distance on Holly Hill is approximately 244'.

Mr. Burke asks how the site would be impacted if the frontage is changed from Park Road to Holly Hill and if a survey has been done that shows the setbacks.

Mr. Wentz replies that the layout as currently designed conforms with Holly Hill frontage and displays the survey showing that all required setbacks are met.

Mr. Burke emphasizes that the proposed layout shown on the plan did not change from what Village Staff approved when it was proposed with a Park Road frontage.

Mr. Burke references a petition that has been circulated which states that the proposed Kahn home sprawls behind seven other homes on Holly Hill and Park Road and asks Mr. Wentz if the statement is accurate.

Mr. Wentz expresses that the statement is a little misleading. He displays a plat and notes that the Kahn property is adjacent to five different parcels of which only three actually have homes on them. One parcel is a 13.7 acre tract of land that is owned by the Village and is Green Areas, and the other lot is a five acre conservation easement owned by the Brendamours.

Mr. Burke asks how visible the proposed Kahn home would be to other neighbors.

Mr. Wentz displays an aerial photo from Google Earth with the property lines drawn on the photo. The house has been placed at the end of a long tree lined driveway in the same location as the previous home and as far forward on the lot as possible to ensure the most privacy for the Kahns and adjacent property owners. If the home were to be pushed back further on the property, it would be more into the rear yards of adjacent neighbors.

Mr. Wentz notes that as shown on the plan, the proposed Kahn home is positioned roughly the same distance between the two adjacent neighbors. Additional buffering in the form of mounding, trees, and dense vegetation has also been added between the proposed Kahn home and the Brendamour home.

Mr. Wentz displays a computer generated digital model of the Kahn's home that was imported into Google Earth and shown at a zero elevation. Mr. Wentz points out areas of buffering that help screen the proposed home from adjacent neighbors.

Mr. Wentz displays a graphic showing the proposed Kahn home and other homes in the surrounding area on Park Road and Holly Hill. The proposed Kahn home is very wide but only the center portion of the home is two stories. The wings on both sides are only one-story. The footprint of the home appears very large, but it is actually smaller than the average of the two closest homes.

Mr. Burke brings before the Commission Mr. Greg Dale, with McBride Dale Clarion, who is a City Planner with a Master's degree from DAAP – University of Cincinnati and who also teaches at DAAP. Mr. Dale also has an AICP designation from the American Planning Association and has been involved in planning and zoning matters, including drafting zoning codes for communities around the country, for more than thirty years.

Mr. Burke notes that Mr. Dale has been used several times as an expert witness in court at both the state and federal levels. Mr. Dale also does training for planning and zoning commissions throughout the country.

Mr. Burke asks Mr. Dale if after reviewing the plans and the Indian Hill Zoning Ordinance, he feels the proposed home conforms to the zoning code.

Mr. Dale replies that he feels the proposed plans do comply with the zoning code. He states that it is a permitted use, the lot area is compliant, and the front yard setback of 100' is clearly met (as measured from Holly Hill).

Mr. Dale notes that one of the more complicated issues is as to whether or not the 250' minimum lot frontage is met. There are two different areas of the zoning code that come into play when making this determination (Tab 3).

Mr. Dale states that one area of the code relates to the front lot line itself, as he points this out on the plat for the Commission, stating that in this instance the 250' requirement would not be met. However, there is another area of the code which states "or the length of the line substantially parallel to the front lot line, at the required least front yard depth" Mr. Dale explains that the front yard least depth is the shortest distance, measured horizontally, from the nearest portion of a principal structure, excluding permitted obstructions, to the front lot line and shows on the plat where he feels this point is on the site.

Mr. Dale points out that the Staff Report indicates that this appears to be the interpretation that the Village used in the past, as with Lot 15 of the Carriage Trail Subdivision, which sets a precedent.

Mr. Dale notes that he found other cases where this interpretation was applied (see Tab 3), noting that 9200 Holly Hill was one of them.

Mr. Dale states that not only from a legal perspective, but also from a planning standpoint, it has always been the case that where you have language that could be interpreted in two different ways, the benefit of doubt is given to the property owner.

Mr. Dale explains that the "rear lot line" is defined as "the lot line which is generally opposite the front lot line". He notes that the term "opposite" is defined as being situated on the other or *further* side.

Mr. Dale comments that some may argue that because of the shape of the lot, the rear lot line is a line that is much closer to the front of the property. However, if that were the case then all other lines would have to be side lot lines, resulting in a side lot line that is behind the rear lot line.

Staff Report: Mr. West states that during the March 21st Planning Commission meeting and since that time, there has been a lot of new information submitted related to the status of the subject property as a "Lot of Record", the "Front Lot Line" (Park Road vs. Holly Hill), how the "Lot Frontage" is established, and then what are the appropriate setbacks (front, rear, and sides) based on the "Front Lot Line" (Park Road vs. Holly Hill) and "Lot Frontage". In addition, the applicant has submitted an alternative plan if the Planning Commission makes the determination that Holly Hill is the "Front Lot Line" for the subject property.

Mr. West notes that in order for the Planning Commission to effectively evaluate the request, it must first make a formal determination on each of the items listed above that have been brought into question.

1. Is the subject property a "Lot of Record"?

The application filed by the applicant requested authorization from the Planning Commission to construct a new single family residence per the Indian Hill Zoning Ordinance, **Section 81. Lot of Record**, which is defined as:

“On any lot of official record, as defined in Section 3 of this ordinance, at the time of the enactment of this ordinance, even though a smaller area and/or frontage than required by this chapter in the district in which it is located, a one-family dwelling with its customary accessory structures may be authorized by the Planning Commission provided that the owner of the lot does not own any adjacent land and provided that all structures are so designed and located as to conform as closely as possible to the yard and distance from lot line requirements of this ordinance for the district in which the lot is located.”

In **Section 37.13 Lot of Record** is defined as:

“... a parcel of land, the deed to which was of record on or prior to the effective date of these regulations. In any case where multiple parcels of land are recorded or consolidated under one deed, the individual parcels shall not constitute separate lots of record, unless they conform to the requirements set forth in this ordinance and the Indian Hill Subdivision Regulations.”

The effective date of these regulations refers to the regulations that are in place at the time when the lot was created. It has been stated that the lot did not exist prior to the adoption of the zoning regulations in 1945, therefore this parcel is not a lot of record. When the lot was created in 1947, splits that occurred in 1962 and 1972, the lot met the requirements of the zoning ordinance and the subdivision regulations and was permitted to be split with approval by the City Manager. Therefore, this property is a lot of record.

A determination by the Planning Commission that any lot created after the adoption of the Indian Hill Zoning Ordinance in 1945 is not a lot of record would be setting a new precedent and would, in essence, affect all lots in the Village that were similarly created after 1945.

2. Is the “Front Lot Line” Park Road or Holly Hill?

In the Staff Report prepared for the March 21st meeting, Staff concluded, based on the history of the parcel, that Park Road was the “Front Lot Line” and “Lot Frontage” for the subject property. During the March 21st meeting and since that time, there has been a lot of information submitted as to why Holly Hill should be considered the “Front Lot Line” and “Lot Frontage”. In addition, the applicant has submitted an alternate plan for consideration if the Planning Commission determines that the “Front Lot Line” and “Lot Frontage” are Holly Hill.

Staff would like to make note that the Indian Hill Zoning Ordinance does not directly address a situation where:

- a parcel abuts on one road (Park Road) with an existing home;
- then the lot is split and a 40' ingress/egress and utility easement is provided for access (becomes a lot that is adjacent to a lot which abuts upon a street);
- then a new road (Holly Hill) gets dedicated abutting another portion of the same parcel while the easement still exists to Park Road;
- then a property owner vacates its 40' ingress/egress access easement to Park Road, which only leaves a portion of the property abutting Holly Hill;
- then the house that was there burns down; and
- most notable, all of this happened without the Planning Commission's involvement or review.

The Planning Commission has never reviewed or approved a change to the "Front Lot Line" for this parcel since the time that Park Road was the "Front Lot Line". Staff believes that the Planning Commission should make a determination, based on all of the changes to the parcel, as to which road (Park Road or Holly Hill) is the "Front Lot Line" and to establish the "Lot Frontage" for the subject property.

In **Section 37.21** "Lot Line, Front" is defined as:

"In case of an interior lot, the line separating the lot from the street..."

Mr. West notes that the subject property is an interior lot and a portion of this parcel abuts Holly Hill.

The definition continues to read:

"Wherever a principal building is to be located on a lot, which does not abut upon a street, but which is adjacent to a lot which abuts upon a street, there shall be an unobstructed easement of access at least forty (40) feet wide. When this situation exists, a front lot line shall be selected which will meet lot frontage requirements, provided that such choice, in the opinion of the Planning Commission, will not be injurious to the existing or desirable future development of adjoining properties."

Since the easement was vacated out to Park Road in 2003 and the lot only abuts on Holly Hill, the Planning Commission has been asked to determine if the changes to the lot, specifically the vacation of the ingress/egress easement and the removal of the existing home on the lot, would automatically change the "Front Lot Line" for the subject property from Park Road to Holly Hill.

3. Establishing the “Lot Frontage”

In **Section 37.3** “Lot Frontage” is defined as:

“The greater of the following two distances; either the length of the front lot line or the length of the line substantially parallel to the front lot line, at the required least front yard depth.”

Mr. West states that the Park Road “Lot Frontage” was detailed in the original Staff Report for the Park Road front lot line. However, if the Commission determines that Holly Hill is the front lot line, Staff acknowledges that the determination of “Lot Frontage” as described in the applicant’s alternative submittal (Tab 3), received on May 5, 2017 is consistent with how other lots in the Village have determined where the front building line is to be located. The applicant has provided a number of examples throughout the Village where the front lot line that abuts the street does not meet the minimum lot frontage, the line substantially parallel to the front lot line at the minimum 100’ front yard depth does not meet the minimum lot frontage, and the front setback line for the building is established at the least depth that the “front yard” meets the minimum lot frontage width of 250’.

In **Section 39.11** “Front Yard” is defined as:

“A yard extending across the entire width of the lot, between a principal structure and the front lot line.”

In **Section 39.111** “Front Yard Least Depth” is defined as:

“The shortest distance, measured horizontally, from the nearest portion of a principal structure, excluding permitted obstructions, to the front lot line.”

Section 63 states, “Required Minimum Lot Area, Lot Frontage, Yards, and Distances from Lot Lines – All structures shall comply with at least the following minimum requirements, ...”

Table “63.1 Lot Area, Lot Frontage and Yards” requires dwellings to have a minimum “Lot Frontage” of 250 feet with a minimum “Front Yard Depth” of 100 feet.

Mr. West reviews an example from Carriage Trail Subdivision (Lot 15) where the lot frontage requirement is not met at the street or at the 100’ setback. The lot frontage requirement is met at 285’ from the street where the width of the lot is 250’.

4. Establishing the “Rear Lot Line”

In **Section 37.22** “Lot Line, Rear” is defined as:

“The lot line which is generally opposite the front lot line.”

The Park Road “Rear Lot Line” was detailed in the original Staff Report for the Park Road rear lot line.

If the Commission determines that Holly Hill is the front lot line, Staff notes that the “Rear Lot Line” is the line on the subject parcel that is generally opposite the front lot line. The Commission should review all lot lines that are generally opposite the front lot line to determine if multiple property lines may be considered a rear lot line.

5. Establishing the “Side Lot Line”

In **Section 37.23** “Lot Line, Side” is defined as:

“Any lot line not a front lot line or a rear lot line. A side lot line separating a lot from a street shall be called a street side lot line; a side lot line separating a lot from another lot or lots shall be called an interior side lot line.”

The Park Road “Side Lot Line” was detailed in the original Staff Report for the Park Road side lot lines.

If the Commission determines that Holly Hill is the front lot line, then all lot lines that are not a front or rear lot line shall be side lot lines.

Mr. West concludes his report by stating that upon completion of the Planning Commission’s review and determination as it relates to the five items above that have been brought into question, the Planning Commission shall make a determination on whether the applicant’s original Park Road front lot line or the alternative plan submitted on May 5, 2017 with a Holly Hill front lot line shall be approved, denied, approved with modification(s), or tabled due to additional information and review being required to make a formal recommendation.

Mr. C. Francis Barrett, with Barrett & Weber, LPA, comes before the Commission on behalf of Dr. Kranbuhl who resides at 9425 Holly Hill (previously 6305 Park Road).

Mr. Barrett notes that when this case was before the Commission on March 21, 2017, it was decided that the matter be tabled in order to obtain an opinion from the Village Legal Counsel as to whether Holly Hill or Park Road was the frontage.

Mr. Barrett notes that he maintained that Holly Hill was the frontage because that’s the only legal frontage the property has, as there is no access to Park Road and no

frontage on Park Road. However, Staff disagreed with this opinion, stating that Park Road was the frontage. It was represented that the Staff Report was approved by Village Legal Counsel, also indicating that Park Road was the frontage.

Mr. Barrett comments that since that time, it has been learned that this is not the legal opinion of Mr. Scott Phillips, who serves as Village Legal Counsel. Mr. Barrett notes that a meeting was held on March 8, 2017 with Mr. Phillips at his office where he was present in addition to Mr. Debbeler and Mr. La Jeunesse (attorneys for the Brendamours), Mr. West, and Mrs. Minneci.

Mr. Barrett notes that it was at that time that he was informed that Mr. West had only made a recommendation, not a determination that Park Road was the frontage. Mr. Phillips advised that he was going to leave it up to the Planning Commission to decide if the frontage is Park Road or Holly Hill.

Mr. Barrett comments that it is unequivocal that Holly Hill is the frontage. He notes that if in fact Holly Hill is the frontage and if the lot is conforming and meets all setbacks, then it never would have been brought before the Commission. He feels that Mr. West brought the case before the Commission because he believed the Planning Commission had to approve the layout.

Mr. Barrett states that the real issue is compliance with the Indian Hill Zoning Ordinance, as he feels strongly that it is not being complied with in this case.

Mr. Barrett comments that the issue of this being a lot of record is misleading, as it's not an issue. Technically every lot that's in every subdivision that is approved and recorded becomes a lot of record. However, they are all not lots of record as defined in **Section 81** of the Indian Hill Zoning Ordinance as it refers to lots that existed prior to the zoning ordinance being adopted in 1945. Mr. Barrett argues that this lot is not a **Section 81** lot of record because this five acre lot did not exist in 1945.

Mr. Barrett makes reference to a plat dated in 2003 and points out that this lot was part of a ten acre lot, and then it was split into two five acre lots. Therefore, **Section 81** does not apply in this case.

Mr. Barrett makes reference to the definition of "Lot Frontage" – the greater of the following two distances; either the length of the front lot line or the length of a line substantially parallel to the front lot line, at the required least front yard depth. Mr. Barrett notes that at 100', which is the required front yard setback in District "A", there is not 250' of frontage as required. Therefore, this is a non-conforming lot and variances are required. The applicant has not applied for variances at this point. They would need to resubmit and ask for variances in order for this plan to be approved.

Mr. Barrett also refers to the definition of “Lot Line, Rear” – the lot line which is generally opposite the front lot line. He states that there is only one lot line that is generally opposite the front lot line, and it is not the line that was referenced earlier. From the true rear lot line, a 100' setback is required. The plans before the Commission do not meet the setback requirement. Therefore, a variance would be required.

Mr. Barrett distributes a number of documents as follows:

- A letter from Mr. Wentz to the Planning Commission received on February 28, 2017 referencing 6175 Park Road – Mr. Wentz indicates that he is writing on behalf of Eric and Allison Kahn. In this letter Mr. Wentz makes reference to this being a non-conforming parcel and states that they are not requesting a variance of any kind. He notes that the property currently has frontage and access to Holly Hill. Also noted is that previously the lot had access to Park Road prior to the construction of Holly Hill. Mr. Wentz goes on to say that it was Mr. West's recommendation that this case be brought before the Planning Commission as it is a non-conforming legal lot of record.
- A letter dated March 6, 2017 from Mr. West to Mr. Brendamour – Mr. West makes reference to a conversation where Mr. Brendamour asks him to put together the building setbacks for the property at 6175 Park Road if the non-conforming lot frontage was Holly Hill. Mr. West included an exhibit showing frontage on Holly Hill with a 100' setback and side yard setbacks of 25' every place but the rear lot line. Mr. West shows the rear lot line as being that line opposite Holly Hill, which requires a 100' rear yard setback. Mr. Barrett notes that based on this setback, the proposed house is in violation of the Indian Hill Zoning Ordinance and variances would be needed. The document also shows that the lot is a non-conforming lot because it does not have the required lot frontage.
- A plat that was attached to the March 17, 2017 Staff Report – This plat shows access to Park Road which no longer exists.
- A portion of the transcript from the March 21, 2017 meeting – Mr. Barrett makes reference to page 7 where Mr. Wentz states “Obviously, we don't have 250' of road frontage either on Park or Holly Hill so therefore the code reads from the point at which you do have a 100' front yard building setback from the point at which you have 250' of frontage”. Mr. Barrett notes that even Mr. Wentz recognizes that the 100' setback begins at the point where you have 250' of width.
- A original layout of the house presented in March based on frontage being on Park Road – Mr. Barrett makes reference to where Mr. Wentz shows 250' of

frontage at the setback line. This shows that Mr. Wentz measured the 100' setback at the point where there was 250' of width, proving once again that the lot does not conform to a front yard setback from Holly Hill.

- The plot plan that was displayed this evening and also in the Planning Commission's packets – Mr. Barrett explains that this plan also shows that the proposed house is not in conformance with the Indian Hill Zoning Ordinance, as it does not meet the required rear yard setback of 100'.

Mr. Barrett emphasizes that the integrity of the Indian Hill Zoning Ordinance is the only real issue and any plan before the Commission needs to comply or be granted a variance.

Mr. Mike Debbeler, with Graydon Head & Ritchey LLP, comes before the Commission and states that he and his partner, Mr. Richard La Jeunesse, are representing Doug and Beth Brendamour and the various family trusts which own the property at 6105 Park Road and the adjacent lot.

Mr. Debbeler notes that their firm has provided all Planning Commission members, Mr. Phillips, Mr. West, Mrs. Minneci, Mr. Barrett, and Mr. Burke with a binder containing copies of all of their documents. Mr. Debbeler reviews an index of the documents contained in the binder, and notes that there are not copies of documents that have already been submitted into the record.

After a brief overview of the documents contained in the binder, Mr. Burke objects to the inclusion of anything with regard to settlement discussions. Mr. Burke states that it is unheard of to put these types of documents in front of the deciding body, and that he feels it is absolutely inappropriate.

Mr. Debbeler expresses that there is nothing personal in the objection by his clients to the application; they simply want the zoning code to be applied as it was intended.

Mr. Debbeler adds that he wants to dispel the notion that his clients do not want a single family residence built on the Kahn lot. It has been stated that if the Kahns had requested to build what is referred to as "the Tuttle house" on the same footprint, his clients would not have objected. The proposed house simply does not fit the location on the lot where it is currently placed, as it does not meet the front and rear setbacks.

Mr. Debbeler displays a plat from 2003 showing the location of the Tuttle house. He then shows the proposed Kahn house superimposed on the plat to show the difference in size, as it is much larger. He explains that his clients don't have a problem with a house like the Tuttle house being reconstructed on the same footprint.

Mr. Debbeler notes that his clients entered into an agreement in 2003 with the Village and others in good faith. The Brendamours paid over \$260,000 at that time for the acquisition of the Brendamour lot which is adjacent to the Kahn property. In reliance on the 2003 agreement, the Brendamours constructed an addition to their residence costing \$4.6 million. At the time they built their addition, the Tuttle house was already there, and the Brendamours had no problem with it being there.

Mr. Debbeler explains that the 2003 agreement established Holly Hill as the frontage for the Kahn lot. He references Recital 1.5 of the agreement which states:

“Tuttle owns improved real property adjacent to the north and east of the Property, designated as Auditor’s Parcel No. 529-31-20, and located at 6175 Park Road (the “Tuttle Property”). The Tuttle Property is benefited by an existing easement for ingress, egress, and utilities over the Property to Park Road. The Tuttle Property has frontage on Holly Hill, and primary access to the residence on the Tuttle Property is via Holly Hill rather than the easement over the Property.”

Mr. Debbeler states that the easement for ingress/egress to Park Road was vacated as part of this agreement, leaving Holly Hill as the only access.

Mr. Debbeler makes reference to page five of the agreement under 14. Miscellaneous, quoting the last statement, “All representations, warranties, covenants and agreements contained in this Agreement will survive the Closing and the delivery of the deeds by Seller.”

Mr. Debbeler addresses an earlier remark made by Mr. Burke where he references the amendment and inadequate lot frontage. Mr. Debbeler explains that he wants to make sure the Commission reviews and understands this provision of the amendment (page 2, 4. Agreement by Brendamour, Trustee, and Bliss, (a.) which states:

“Brendamour, Trustee, and Bliss covenant and agree with Tuttle, her heirs, administrators, successors, and assigns, that, as long as any proposed addition to the existing residence located on the Tuttle Property, or alternatively the demolition of the existing residence and the construction of a new residence on the Tuttle Property, otherwise conforms with the Village’s Zoning Ordinance, Brendamour, Trustee, and Bliss will not oppose such use on the basis of inadequate lot frontage....”

Mr. Debbeler agrees that his clients did agree not to oppose the construction of a new home on the property, but only if the plans conform with the Village’s zoning ordinance.

Mr. Debbeler notes that he agrees with Mr. Barrett's rationale as to how you measure lot frontage according to the Indian Hill Zoning Ordinance. He adds that he also agrees with Mr. Barrett as to the location of the rear lot line, and the fact that variances would be required for approval. The proposed plan before the Commission for the Kahn home does not comply with the ordinance.

Mr. Debbeler displays a copy of the plot plan dated May 23, 2017 that was provided by Mr. West. Mr. Debbeler notes that this is an erroneous document as it incorrectly shows an existing ingress and egress easement even though this easement was vacated fourteen years ago. This easement no longer exists.

Mr. Doug Brendamour, residing at 6105 Park Road, states that from the start of this case all he has asked of the Village is to honor the 2003 agreement and enforce the zoning code.

Mr. Burke asks Mr. Brendamour what involvement he had in the petition that was circulated in the neighborhood and filed with the Village.

Mr. Brendamour replies that he helped draft the petition, along with Mr. Barrett.

Mr. Burke makes reference to the term "non-legal lot" used in the petition and asks Mr. Brendamour how he describes the term "non-legal lot" and how he explained it to his neighbors.

Mr. Brendamour replies that his attorneys have already addressed the definition of a lot of record, and that this property is not a lot of record.

Mr. Burke asks what is non-legal about the lot.

Mr. Brendamour reviews the history of the lot and explains that the once ten acre lot did not meet the zoning code in 1945 because it only had 50' of frontage on Park Road. The lot was then divided into two 5+ acre lots. The zoning code states that you cannot further reduce a lot that does not meet code, which makes it a non-legal lot.

Mr. Burke notes that Mr. Brendamour states that the basis for which the ten acre lot did not meet code is because of frontage; however, he signed an agreement stating that he would not dispute the right to construct a new residence on the basis of lot frontage.

Mr. Brendamour states that he is not objecting to the lot frontage concerning the Kahn property and that his statement was concerning the prior ten acre lot that was split.

Mr. Burke makes reference to prior testimony which stated that there aren't seven houses that the Kahn lot sits behind, and that there are only three.

Mr. Brendamour states that he disagrees, and that there may actually be more than seven, as he points out different properties on the plat.

Mr. Richard La Jeunesse, with Graydon Head & Ritchey LLP, comes before the Commission on behalf of the Brendamours. Mr. La Jeunesse states that he has with him Mr. Timothy Hershner who is a land planner with over thirty years of experience.

Mr. La Jeunesse stresses that the Brendamours are not objecting on the basis of inadequate frontage.

Mr. Timothy Hershner comes before the Commission and states that he has had a 30+ year career in both the private and public sectors involving land planning and community development. Mr. Hershner notes that he also served as the Development Director for Deerfield Township, Planning Supervisor for Clermont County, Assistant Administrator and then the Administrator for Pierce Township, and even went to Afghanistan for a year and a half and served as the Master Planner for the whole country. Mr. Hershner adds that he also has an AICP designation from the American Planning Association.

Mr. Hershner comments that he agrees with much of what Mr. Barrett has already noted, stating that not only is Holly Hill the only property frontage, but it is also clear that the ingress/egress easement has been vacated.

Mr. Hershner displays plats of the Kahn lot (Tabs D and E), and points out where the rear yard setback is located. He comments that the zoning code reads that the rear lot line is generally opposite the front lot line, noting that in this case it is not the area the farthest back on the property, as that area is not "generally opposite" the front lot line.

Mr. La Jeunesse makes reference to an email sent to Mr. Brendamour from Mr. West dated March 6, 2017 and displays a plat included in that email showing where Mr. West drew the 100' rear yard setback, which is consistent with where they show it on their plat.

Mr. Hershner notes that he agrees with what Mr. Barrett presented concerning the fact that at the 100' front yard setback, there is not 250' of frontage which is required by the zoning code.

Mr. Hershner reviews several addresses where the houses are placed 100' back from the point where the width of the property reaches 250', as these properties have the proper amount of lot frontage and comply with the zoning code. He also reviews some addresses that do not have the proper amount of lot frontage and possible reasons why these lots were approved or granted variances (Green Area donations, topography of the lot, etc.).

Mr. Hershner states that the application as submitted does not comply with the Indian Hill Zoning Ordinance, and variances would be needed for approval.

Mr. Burke confirms with Mr. Hershner that the last few lots he reviewed didn't meet the theory he's applying to the Kahn lot, and so he "guessed" there must be some other explanation but doesn't know what that might be or if there is one other than what Mr. West explained in the Staff Report.

Mr. Hershner confirms Mr. Burke's statement.

Mr. Burke displays a plat showing the rectangular shaped area marked as the "rear yard" that was referenced by Mr. Hershner. Mr. Burke asks Mr. Hershner if the line they are claiming to be the "rear yard line" extends all the way across the property.

Mr. Hershner replies that it does not extend all the way across the property.

Mr. Burke states that the zoning code defines "Yard, Rear" as: A yard extending across the entire width of the lot between a principle structure and the rear lot line. Mr. Burke references the line further back on the lot that he claims to be the rear yard line and asks Mr. Hershner if that line extends all the way across the lot.

Mr. Hershner replies that it also does not extend across the full width of the lot.

Mr. La Jeunesse comments that the Brendamours are not opposed to development on the original footprint of the former house on the Kahn property, as it was more appropriately sized for the lot. The current plan overburdens the parcel and violates the Indian Hill Zoning Ordinance, and they request that it be denied.

Mr. Ed Neyra, residing at 9400 Holly Hill, comes before the Commission and states that he has been a resident of Indian Hill for over thirty years. Mr. Neyra comments that he was reluctant to speak before the Commission because he lives in a wonderful neighborhood, noting that Dr. Kranbuhl has always been a great neighbor and that Doug Brendamour has been a friend for the past forty years. Mr. Neyra adds that he has known Beth Brendamour for even longer, as her brother is one of his best friends.

Mr. Neyra explains that he had a contract to purchase the Kahn lot a year ago and planned to build a new home. However, his wife strongly disagreed with buying the property because she worried there might be the exact same opposition that the Kahns are facing now, so he decided not to move forward with the deal.

Mr. Neyra recalls that he received the same information and drawings from Mr. West that have been shown this evening. He expresses that he does not understand why there is so much opposition to the proposed application by the Kahns. Mr. Neyra

comments that he has never met the Kahns, but he has decided to do what he feels is the right thing and speak up. He notes that he can't believe that there is this much interest by the entire community on this home being built. There was a home there before, and the Kahns should be permitted to build a home there now.

Mr. Neyra states that the home the Kahns are proposing to build will only raise property values in the area, not devalue them. He adds that the only two home owners being affected by this house being built are the Brendamours and Dr. Kranbuhl.

Mr. La Jeunesse notes that there have been several people who arrived after the swearing in, and asks that Chairman Madden swear everyone in again.

Chairman Madden has everyone in attendance stand and performs the swearing in again.

Mr. Nolan Marx, residing at 9005 Old Indian Hill Road, states that his concern is that the Village is giving advice and that advice is being taken as a matter of fact, which can end up being a disservice to residents. The Village needs to urge residents to seek legal counsel who specialize in real estate and to do their due diligence.

Ms. Lisa Gray, residing at 8700 Willow Run Court, comes before the Commission and states that she is a friend of the Kahns. She explains that she feels that in a situation like this where the zoning code is interpreted differently, well educated, successful people should be able to act in a more civil manner and come to a reasonable solution.

Ms. Sheila Cole, at 9450 Holly Hill, comes before the Commission and states that her home is across the street from the subject property. She asks that this property be given a Holly Hill address, as the driveway will be off Holly Hill. She explains that it can be very confusing to emergency personnel when attempting to find a residence.

Ms. Cole adds that she feels the size of the proposed house is too large for the irregularly shaped lot and asks that the Commission deny the request.

Ms. Ann Highlands, residing at 9375 Holly Hill, comments that there have been a lot of emotions expressed. However, she feels that emotions should be left out of the decision making process and only the rules should be considered.

Ms. Cecily Harness, at 6425 Park Road, notes that she agrees with following the zoning code, but in this case it appears that the code is interpreted differently by those involved. She comments that it is her understanding that when situations like this arises, the benefit should be given to the property owner.

Mr. Mark Addy, residing at 5880 Park Road, states that with just building his home within the last five years, he is probably one of the newer home owners in the neighborhood. Mr. Addy explains that one of the main reasons he bought in Indian Hill was because of the strict zoning regulations. He understands the emotions and desire for exceptions by some, but when an exception is made it can affect others in a negative way.

Mr. Steve Winter, residing at 5450 Hobbit Road, notes that he owns a small insurance and mortgage company and is very familiar with the Village and this particular property. He expresses that the philosophy in Indian Hill is preservation and nature. Mr. Winter comments that he knows there is interest in the lot by the neighbors most affected and offers to donate his services as a mediator in possibly offering the Kahns an “exit strategy”. He also offers to help locate a new lot where the Kahns can build their home with less opposition.

Mr. Burke states that those considering building in Indian Hill should be able to consult with Village officials and rely on the information they receive, especially if everything else they learn about a specific property supports that conclusion.

Mr. Burke comments that the Commission can choose to ignore some of the conclusions that Staff has provided and the expert testimony provided on behalf of the Kahns, but to do that the Commission would have to adopt someone else’s interpretation of the Indian Hill Zoning Code.

Mr. Burke recalls Mr. Hershner’s suggestion on how to calculate the rear yard, and states that it does not match the definition in the zoning code.

Mr. Burke notes that Mr. La Jeunesse claims that they aren’t arguing about frontage, yet that is the only argument there can be for why this is a non-conforming lot because in all other aspects it’s a conforming lot.

Mr. Burke concludes by stating that when there is a dispute over what the zoning code actually means, zoning is in derogation of the common law and is construed in favor of the property owner and their rights.

Mr. Wiggers made a motion to close the public portion of the hearing. Mr. Rhodenbaugh seconded, and the motion was approved by a unanimous voice vote.

Chairman Madden points out that through all the changes and development surrounding the property, this particular piece of property has always remained with the same Park Road address, and he believes it is still a Park Road address today.

Mr. Wiggers comments that he feels that when they divided the two lots and extinguished the ingress/egress easement it changed the frontage to Holly Hill.

After brief discussion, Mr. Wiggers made a motion to approve Holly Hill as the front lot line. Mr. Thayer seconded, and the motion was approved by a roll call vote with Mr. Wiggers, Mr. Thayer, Mrs. Stolper, and Mr. Rhodenbaugh voting in favor of approval, and Chairman Madden voting against approval of the motion.

The Commission discussed the designation of the rear lot line and side lot lines.

After further discussion between the Commission and Village Counsel, Mr. Rhodenbaugh made a motion to approve the alternative plan as submitted showing Holly Hill as the front lot line. Mr. Thayer seconded, and the motion was approved by a roll call vote with all members in favor of approval.

There being no further business to come before the Commission, Mr. Thayer made a motion to adjourn. Mr. Wiggers seconded, and the motion was approved by a unanimous voice vote.

Respectfully submitted,

Paul F. Madden, Chairman

ATTEST:

Dina C. Minneci, Secretary