

## MINUTES OF MEETING

### INDIAN HILL PLANNING COMMISSION

December 17, 2019

The regular meeting of the Indian Hill Planning Commission was held on Tuesday, December 17, 2019 at 7:00 p.m. in the Council Chambers of the Village Administration building.

Members Present: Paul Madden  
Richard Wiggers  
Joseph Rhodenbaugh  
Shayne Manning

Members Absent: Rita Stolper

Officials Present: Jonathan West, Assistant City Manager

Visitors Present: Carter Gaither, 9655 Cunningham Road  
Doug Smith, McGill Smith Punshon, Inc.  
Jeff Decker, 9645 Cunningham Road  
Chase Decker, 9645 Cunningham Road

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 and Findings of Fact for the November 19, 2019 meeting: Chairman Madden asks for comments or corrections to the November 19, 2019 Planning Commission minutes and Findings of Fact. There being none, Mr. Wiggers made a motion to approve the minutes and Findings of Fact. Chairman Madden seconded, and the motion was approved.

**Item Number 2:** Case #19-020: Carter and Stephanie Gaither are requesting concept plan approval of a minor subdivision for the reconfiguration of Part Lot 19, Kugler Townsend Subdivision, located at 9655 Cunningham Road. The proposal will reconfigure three (3) existing tax parcels which total 13.235 acres into a 7.157-acre lot with the existing home, a 4.013-acre vacant building lot (reduced per **Section 86** of the Indian Hill Zoning Ordinance), and a 2.0-acre green area parcel.

Mr. Doug Smith, with McGill Smith Punshon, Inc., comes before the Commission and states that they are proposing a two lot subdivision with a green area gift. Mr. Smith displays a plat and explains that the existing residence will be on the 7.157-acre parcel.

Mr. Smith states that they are proposing a conservation easement on a portion of Lot 2 to help ensure privacy for the homeowners.

Mr. Smith explains that there is currently a 25' driveway easement that will be increased to 40' so that it complies with the Indian Hill Subdivision Ordinance.

**Staff Report:** Mr. West reviews the property history as follows:

- **08/18/28:** 18.77-acre parcel was created (529-0260-0006)
- **1930:** The house at 9655 Cunningham Road was built (existing home on Lot 1).
- **08/02/54:** The 5.058-acre parcel was split off of the 18.77-acre parcel.
- **04/09/57:** The 7.143-acre parcel was split off of remainder of the original 18.77-acre parcel.
- **10/26/59:** The 6-acre parcel was created from the original 18.77-acre parcel (now the Decker parcel). A 50' (from Cunningham Road to driveway split) and 40' (from driveway split to Decker property) easement for the driveway and utilities was created for access to the Decker parcel from Cunningham Road. The lot split was approved by Warren Parks, the City Manager at that time.
- **05/16/08:** The easement agreement for access, utilities, maintenance, etc., between then owner of the subject property, Patricia Briggs, and the Deckers was recorded and superseded the prior 50' and 40' easements created on 10/26/59. The new easement is only a 35' wide easement (from Cunningham Road to driveway split) and 25' (from driveway split to Decker property) where a minimum 40' wide easement is required.
- **06/14/12:** Patricia Briggs consolidates three parcels for tax purposes.
- **07/19/18:** Carter & Stephanie Gaither purchased the property from Patricia Briggs. At the time of purchase they believed they were buying two legal building lots of record. After a request from the Gaithers to reconfigure the two parcels, the Village real estate attorney reviewed the deeds and discovered that a legal description for the remainder of the original parcel 529-0260-0006 did not exist in any of the historic deeds prior to when the lot consolidation for tax purposes was completed in 2012; therefore, the parcel could not be re-created or re-configured without Planning Commission review and approval.

Mr. West references the Indian Hill Subdivision Ordinance, **Section 6.** Specific Procedures, **6.1 Concept Plan.**

**6.1.1 Purpose.** The purpose of the concept plan is to provide the Village with sufficient information to evaluate a proposed minor subdivision ... at an early stage in the process so as to allow such alterations in plans as may be necessary prior to the applicant incurring large expenditures in the preparation of formal plats. The applicant shall provide written statements from MSD, OEPA..., indicating whether or not sanitary sewers are available to serve the proposed subdivision.

Mr. West describes the properties as being located in District “A” – minimum 5 acre, with the following setback standards:

- Minimum lot frontage width: 250 Ft.
- Minimum front yard depth: 100 Ft.
- Minimum rear yard depth: 100 Ft.
- Minimum side yard width: Equal to height of building within 40 Ft. of side yard, but not less than 25 Ft.

Mr. West states that the total acreage of the property to be subdivided is 13.235 acres. There will be a 0.065-acre right-of-way dedication along Cunningham Road, as shown on the plat.

The portion of the property proposed to contain Lot 1 and Lot 2 (11.170 acres) is made up of slopes 20% or greater (0.30 acres), young canopy forest (4.00 acres), and mature canopy forest (0.2 acres). The remaining acreage (6.67 acres) includes a green area gift parcel (2.0 acres) and land that does not qualify for resource protection (4.67 acres). There is an existing bridle trail easement that runs along the east property line of the proposed green area gift parcel.

The concept plan calls for creating two (2) single family home building lots. Lot 1 (7.157 acres) with the existing home and detached garage that will remain, and Lot 2 is proposed to be 4.013 acres (lot reduction is requested per **Section 86 Green Area Development** of the Indian Hill Zoning Ordinance), and one green area parcel containing 2.0 acres. Lot 2 is proposed to contain a conservation easement area to protect the home on Lot 1 from development on this portion of the lot. This private conservation easement area will also contain the natural resource protection area easement per **Section 14** of the Indian Hill Subdivision Ordinance. The two lots proposed follow the subdivision requirements per **Section 13.2 Lot Standards**.

The subject property, as well as the adjacent property owned by the Deckers, is currently not in compliance with the requirements of **Section 13.2.2 (b) Lot Abutment** of the Indian Hill Subdivision Ordinance because the easement was modified to a 35' easement (Cunningham Road to driveway split) and 25' easement (driveway split to Decker property), not meeting the required 40' in width. The easement was modified on March 31, 2008 by agreement between the Deckers and Patricia Briggs (prior owner of subject property). This modification, which reduced the easement width below the 40' minimum required, was not approved by the Village and requires amendment to meet the minimum requirements.

The concept plan notes that the private drive and easement are to be modified to meet the requirements of a 40' wide easement and 18' wide pavement section. A turnaround

will be required by the fire department, subject to their review and approval. The right-of-way on Cunningham Road (30' half width) will be dedicated with the final plat.

Sanitary sewer service is not available. Soil samples and suitable septic system locations will require approval by Hamilton County Public Health for the existing home on Lot 1 (replacement site) and the proposed home on Lot 2.

Utilities are available at the property. All utility extensions shall be placed underground. An additional fire hydrant is proposed to meet the Indian Hill Water Works and MIHJFD requirements.

The developer has provided the existing recorded "Agreement for Maintenance of Private Drive". The agreement may need to be amended to address maintenance responsibilities for all three parties as well as amend the easement to 40' in width from Cunningham Road to the Decker property.

Mr. West explains that the Resource Protection Analysis has been submitted and meets the required standards per **Section 14 Natural Resource Protection Standards** of the Village of Indian Hill Subdivision Ordinance.

Below is a breakdown and totals of the resource protection areas as shown on the concept plan:

<b><u>Natural Resources</u></b>	
Floodplain & Kope (100% protected):	0.00 acres
Slopes 20% or Greater (80% protected):	0.30 acres (0.24 acres)
Mature Canopy Forest (70% protected):	0.20 acres (0.14 acres)
<u>Young Canopy Forest (40% protected):</u>	<u>4.00 acres (1.60 acres)</u>
<b>Total proposed to be protected</b>	<b>4.30 acres</b>
<b>Total required to be protected</b>	<b>1.98 acres</b>
<b>Total protected with green area</b>	<b>5.82 acres</b>

Note: Some resources overlap (Ex: 20% Slopes and Young Canopy Forest).

There is one 2-acre parcel shown as a green area gift. An access easement shall be provided from Cunningham Road to the parcel. The green area gift parcel contains slopes greater than 20% (0.90 acres) and young canopy forest (2.0 acres).

Mr. West reviews comments from Village departments as follows:

- Police Department – The police department had no comments.
- Fire Department – The fire department requests the following:

- Ohio Fire Code requires a hydrant within 400 feet of any structure, measured along hard surface as they lay hose.
  - When a private drive serves more than one residence, the access drive is required to be 18' wide with construction capable of supporting over 60,000 lbs.
  - The “dead end” treatment by circles should be so constructed as to permit the turning of fire apparatus, usually requiring a turning radius of 45+ feet. A “T-turnaround” is also an acceptable solution.
  - A vertical and horizontal clearance of 11' minimum is required along the drive.
- Public Works Department – The Public Works department requires the right-of-way dedication along Cunningham Road.
  - Water Works Department – Must meet Indian Hill Water Works specifications. May need to add a hydrant for Lot 2 to meet the 400' distance/spacing requirement. A detailed review will be completed during the construction plan stage and shall be coordinated with the fire department.
  - Health Department – Will require HCPH review and approval for a replacement system for the existing home on Lot 1 and for a new system for the proposed home on Lot 2 prior to the construction plan review.
  - Village Engineer – See Engineering Review Report dated June 13, 2019. Includes requiring the upgrade of the easement to 40', upgrade the private drive to Indian Hill standards, make sure there is adequate site distance at drive and Cunningham Road, storm water review, construction of a turnaround, etc.
  - Other Review Comments – Easement document will need revised to address easement width and may need to address maintenance of the private drive. An access easement will be required from Cunningham Road to the proposed green area parcel.

Mr. West summarizes by stating that Staff and the Village Engineer have reviewed the proposed concept plan and find that the proposed plan as shown, subject to the items outlined in this Staff Report and Village Engineer Report, would meet the Village of Indian Hill Subdivision Ordinance, **Section 6.1 Concept Plan Approval** and **Section 14 Natural Resource Protection Standards**.

Staff has properly notified all adjacent property owners through first class mail and was contacted by Mr. Jeff Decker at 9645 Cunningham Road, located at the end of the private drive adjacent to Lot 1. Mr. Decker was not supportive of the request to add an

additional home on the private drive and was not supportive of changes to the existing easement.

Staff was also contacted by Mr. Richard Maxwell at 9560 Whitegate Lane. After reviewing the plan, Mr. Maxwell did not have any concerns with the request.

**6.1.5 Planning Commission Review and Action.** ...The Planning Commission shall...approve, conditionally approve or disapprove the concept plan.

Should the Planning Commission choose to conditionally approve the request, Staff would recommend that the approval be subject to the information contained in this Staff Report, the Engineering Review Report, as well as the comments provided by the various Village departments and any additional comments that are discussed during the public meeting.

Mr. Jeff Decker, owner of 9645 Cunningham Road, comes before the Commission and states that his property is adjacent to the subject property. Mr. Decker states that he is against the subdividing of the property. He feels subdividing the property will negatively impact the privacy that currently exists on his property.

Mr. Decker explains that when he was building his home, the Indian Hill Water Works required the installation of an 8" water main. He negotiated with the neighbor to pay his portion of the cost in exchange for an acre of property. Mr. Decker notes that part of the agreement with the neighbor was that the property would never be subdivided.

At that time, the new easement was created, which was supposed to be 40' wide. However, it appears that when their attorney split the property up, they took part of that 40' that was supposed to be included for the easement. In addition, they did not get approval from the Village. Mr. Decker states that he does not have any of his records to reference on this matter, and that he relied on the attorneys to get the required approvals.

Mr. Decker notes that he feels the water pressure is not adequate to add additional houses in the area, based on the previous history with the fire on his property.

Mr. Chase Decker, of 9645 Cunningham Road, states that he is against subdividing the property, as it would greatly affect the privacy and value of their property.

Mr. Carter Gaither, applicant of the proposed request, comments that it's his understanding that they are in compliance with the zoning ordinance. In addition, they have no problems addressing the issue with the easement.

Chairman Madden asks if the driveway easement is separate from the utility easement. Mr. West replies that they are one. It is defined as an “ingress/egress access and utility easement”.

After brief discussion, Mr. Wiggers made a motion to approve the proposed concept plan subject to the information contained in the Staff Report, the Engineering Review Report, as well as the comments provided by the various Village departments. Mr. Rhodenbaugh seconded, and the motion was approved by a unanimous voice vote.

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

Respectfully submitted,

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Paul F. Madden, Chairman

ATTEST:

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Jonathan D. West, Secretary Pro-tem