

DRAFT

**MONROE COUNTY PLAN COMMISSION
Virtual Meeting via ZOOM - Minutes
May 18, 2021 5:30 P.M.**

CALL TO ORDER

ROLL CALL

INTRODUCTION OF EVIDENCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES – None.

CALL TO ORDER: Margaret Clements called the meeting to order at 5:30 PM.

ROLL CALL: Margaret Clements, Dee Owens, Julie Thomas, Jim Stainbrook, Trohn Enright-Randolph, Bernie Guerrettaz, Geoff McKim, Jerry Pittsford, Amy Thompson

ABSENT: *Beth Cate, City of Bloomington Plan Commission Representative*

STAFF PRESENT: Larry Wilson, Director, Jackie Nester Jelen, Assistant Director, Anne Crecelius, Planner/GIS Specialist

OTHERS PRESENT: Michele Dayton, Tech Services, David Schilling, Legal, Kelsey Thetonia MS4 Coordinator, Lisa Ridge, Highway Department Director, Paul Satterly, Highway Engineer

INTRODUCTION OF EVIDENCE:

Larry Wilson introduced the following items into evidence:

The Monroe County Zoning Ordinance (as adopted and amended)

The Monroe County Comprehensive Plan (as adopted and amended)

The Monroe County Subdivision Control Ordinance (as adopted and amended)

The Monroe County Plan Commission Rules of Procedure (as adopted and amended)

The case(s) that were legally advertised and scheduled for hearing on tonight's agenda

The motion to approve the introduction of evidence carried unanimously.

APPROVAL OF AGENDA

Motion to approve the agenda, carried unanimously.

APPROVAL OF MINUTES

No minutes to approve at this times.

ADMINISTRATIVE BUSINESS:

1. **CDU-21-1 Refund Request for \$400.00. Contact:** rpayne@co.monroe.in.us
2. **Harrodsburg PUD Extension Discussion**
3. **County PUDs - Discussion regarding Expiration and Rezoning**
4. **Resolution – House Bill 1437 to be presented by Legal**

UNFINISHED BUSINESS:

NEW BUSINESS:

1. **SSS-21-3** **Frazo Sliding Scale Subdivision Preliminary Plat
Sidewalks Waivers Requested.
Waiver of Final Hearing Request.**
One (1) parcel on 60 +/- acres located in Section 15 of Benton South
Township. Parcel #: 53-06-15-200-010.000-003.
Zoned AG/RR, ECO3. Planner: acrecelius@co.monroe.in.us
2. **REZ-21-1** **The Trails at Robertson Farm Rezone from RE1 to HR
Waiver of Final Hearing Requested.**
One (1) 44.07 +/- acre parcel in Section 20 of Perry Township at 4691 S
Victor Pike, parcel #53-08-20-400-102.000-008.
Zoned RE1. Planner: rpayne@co.monroe.in.us
*****CONTINUED BY STAFF*****

REPORTS:

1. Planning: Larry Wilson
2. County Attorney: David Schilling

ADMINISTRATIVE BUSINESS

1. CDU-21-1 Refund Request for \$400.00. Contact: rpayne@co.monroe.in.us

Use Variance to allow for Agricultural Event Center, Small
Jeanne Hopwood – 620 W. Chumley Rd.

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Nester Jelen: Margaret, I am going to go ahead and cover this as Rebecca is out today. This is a refund request for a Conditional Use that was filed for last month's BZA. We had spoken with the petitioner about asking for a variance or a Conditional Use rather for an Agricultural Event Center and after going through the file after submitting a Use Determination that they submitted, it became clear to staff that they would have a lot of barriers in order to do what they wanted to do and ultimately would be not able to meet the conditions of a Conditional Use. We had asked whether they wanted to continue on or ask to be removed from the agenda and so they wanted to withdraw their request and subsequently asked for refund of the filing fee. The filing fee was \$400.00 that was asked of the petitioner. Staff did put in a few hours of time going back and forth on this one but it didn't get to the point where it was actually written a report or presented to the BZA it was pulled in time, so we probably did about 25-50 percent of the work for this. But they had just requested a full refund in the event the Plan Commission was willing to grant that.

QUESTIONS FOR STAFF – CDU-21-1 – Refund Request for \$400.00

Clements: Ok, thank you. Do any Plan Commission members have questions for staff?

Owens: This is Dee. I just wondered if, why do we charge fee if we are just going to turn around and give them back? A fee generally speaking you pay it out, I don't know what the law is or the ordinance is on it but it seems to me that when you pay the fee that is to open up and to get that work done to even determine if you carry on or not. It is not a matter of, oh gee, I get a refund after you have done the work. I don't think so. My thoughts.

Nester Jelen: Just to add to that, Dee, I think that is a good perspective. I think that in order to issue a refund we do have a requirement that it is prior approval from the Plan Commission, so it is under your purview as to whether you would consider giving a refund for any petitions.

Clements: Thank you Dee and Jackie. Mr. Stainbrook, did you have a question?

Stainbrook: Thank you. I tried, I was sure Margaret if I had gotten my hand up. I tend to agree with what was just said. But even more broadly than that if I may generalize from this opportunity, I think sometimes when people come in even if it's something more sophisticated if that would be the case in this instance and the Planning Department tells them no, this won't work, you can't do it because of this and then after that it seems to me that the work of which Jackie eluded to for instance in this specific case, just goes on and on so that the Planning Department in some instances and this is just my take on it as others say from time to time on what it happening in this kind of situation, that in effect the Planning Department is doing work that independent or private planners or engineers or developers or architectural firms or whatever, it seems to me that they ought to be

doing that out of their pocket, rather than the planners working and having meetings and going back and forth if that is the case. Now, I observe it is with the Plan Commission even and so it seems and I would strongly suggest and anticipate being ignored but that the Planning Department tell people that they can't do this in a particular instance and tell them why they can't do it and then let these people go home, go back to their office and have these other resources that are available not at the county expense or at the Planning Department expense. You see I am coming back to Dee's point, except I am speaking much more broadly and speaking in lots more dollars and time but that is my take. That is my not-so-spectacular story on what goes on here. Thank you Madam President.

Clements: Thank you Mr. Stainbrook. Mr. Enright-Randolph and then Mr. McKim and then Mr. Wilson.

Enright-Randolph: I agree with a lot of points that were made but one thing that Planning staff did mention that they did about half the work that goes into this, so I am just kind of a little curious to hear a little more of that if we were to amend the request for half of the work. I do think the points of if we are putting time and effort and work into that the county should be compensated for that because this is why this permit fee is in place in the first place. Then I will also indicate that we are discussing it here and if we discuss it any longer, then we start thinking about our time and effort and we are going to hit that \$400.00 mark pretty soon. But I would be inclined to support a reduction of this to reflect the time and effort that does go into it and refund what time and effort didn't go into it.

Clements: Thank you. Mr. McKim and then Mr. Wilson.

McKim: Yes, first of all and I am just following on with Mr. Enright-Randolph's comments. Are we allowed to grant any potential refund up to \$400.00 or is it \$400.00 or nothing?

Wilson: I believe you can do a partial refund.

McKim: Ok and then the other question was I guess were the reasons that this project was not feasible, should they have been, were they I guess manifest to rear of the code pretty much easily or did a lot of, were these requirements that were not particularly well documented or only became manifest after a lot of discussion? In other words, should they have known?

Wilson: In this case we actually did a Use Determination. They requested whether or not their property could be used for an Agricultural Event Center and they received a Use Determination, which set forth the requirements for a Conditional Use. It was a Conditional Use in that the conditions were set forth in the ordinance and further they were advised as we are really trying to do in every case to seek the advice of an experienced design professional and/or land use zoning attorney prior to proceeding. Because and Event Center in this case it was adapting and existing agricultural storage building for an event center which we advised them specially to talk to the Building Department because of the cost involved in turning a structure into a public event center and also provided them with the conditions that included access to a public road and distance from adjacent residential houses and so on. That is not to say that we did not make mistakes. We do

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make mistakes but in this case they basically didn't think that they were going to get a Conditional Use Permit and chose to withdraw.

McKim: I am perfectly happy with giving them half a refund and calling it a day.

Clements: Is the petitioner here, is Ms. Hopwood here and would she like to address the Plan Commission?

Nester Jelen: Margaret, I don't think that Ms. Hopwood is here. The only thing that I will add is that with our new online permitting software we did add the Fire Department in as a workflow step and they were very quick to say that the road, Chumley Road, would need to widen to at least 20' which is not something specifically laid out in the Conditional Use for this. Chumley is a publicly maintained road but does not have any additional right of way, so it was going to be very difficult to get this use passed or to ignore the Fire Department. So, that was one thing that transpired that I wanted to add.

Clements: Ok, thank you. Well, if there is no further discussion, could we have a motion?

Enright-Randolph: Madam President, Mr. Stainbrook's hand is up.

Clements: Mr. Stainbrook.

Stainbrook: Thank you. Was that Trohn? Thank you. I think this wouldn't change anyone's mind but I was interested again in Jackie's observation as I always am of course, but that Chumley Lane, 2 cars can't pass on there and the residents on both sides of the road have clearly marked off what they think to be their property line. So, you couldn't get a very big truck, in fact I have got a little teeny truck, a 3 quarter ton and I barely get up there to get my Christmas tree. Anyway, thank you again. Bye.

Clements: Ok. Is there any further discussion?

McKim: I will make a motion is no one else will?

Clements: Great.

McKim: **In the matter of CDU-21-1, Refund Request, I move we approve a Refund Request for \$200.00.**

Enright-Randolph: I will **second**.

Clements: Mr. Wilson.

Wilson: I will call the roll on the motion to refund half of the filing fee \$400.00 in regard to CDU-21-1. Again, it would be for a \$200.00 refund as opposed to the full filing fee of \$400.00. A vote in favor is a vote to approve the refund of \$200.00. Bernie Guerrettaz?

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Guerrettaz: Yes.

Wilson: Geoff McKim?

McKim: Yes.

Wilson: Dee Owens?

Owens: No

Wilson: Jerry Pittsford?

Pittsford: A very solemn response I support, yes.

Wilson: Jim Stainbrook?

Stainbrook: Yes.

Wilson: Amy Thompson?

Thompson: Yes.

Wilson: Margaret Clements?

Clements: No.

Wilson: Trohn Enright-Randolph?

Enright-Randolph: Yes.

Wilson: The refund is approved by a 6 to 2 vote.

The motion approve a partial refund for CDU-21-1, Refund Request, in the amount of \$200.00 approved, and carried (6-2).

ADMINISTRATIVE BUSINESS

2. Harrodsburg PUD Extension Discussion

Ch 811-4 E (3) **Expiration of Time Limit.** Periodically, the planning staff shall report to the Plan Commission on the Planned Unit Developments whose time limits have expires. The applicants shall be notified. The Plan Commission shall determine whether to consider extending the time or to initiate action to amend the Zoning Map so as to rescind the Planned Unit Development designation.

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Nester Jelen: Margaret, Larry and I are going to present this one. Jim, did you have a question before I get started?

Stainbrook: Yes, ma'am. Yes Miss Jackie and Madam President. This is kind of a dilemma for me and I think it is appropriate that I bring it up because we stay with our clichés transparently and open whatever the PC thing is to say. Dennis and Marnese Miller are friends of ours. On the other side of things we have other friends that are against this. Maybe that almost balances out as far as a recusal but I don't think that works officially. I have no financial interest in this. I do have an interest in not losing friends. You know as you get older if you lose too many friends nobody shows up at your funeral and so that it kind of a concerns. Although the ferry this morning counseled with me and while he was shoeing the horses he said well, Jim, on the other hand if make them all mad they will all show up at your funeral to make sure you are dead. So beyond that advice, I finally got a hold of our County Attorney, Doctor Schilling and he said as he saw it he didn't feel that I really had a legal need to recuse myself. But having said that I believe I would be more comfortable to recuse myself. So, Margaret, may I do that?

Nester Jelen: You are on mute.

Clements: Jim it is your choice. We respect your choice and your reasons for decisions. We haven't called the vote. When time comes for the vote you can merely abstain but in the meantime let's hear the case.

Nester Jelen: Thanks Margaret. This is actually not set for a vote yet. This is just an introduction and discussion and this Harrodsburg PUD. It came to staff's attention that there was the Harrodsburg PUD, there was a request for a Pre-design Conference, which is a pre-discussion before any filing takes place and upon reviewing the file and all of the development plans that have been submitted we determined that that this Chapter 811 because it is a PUD does apply. So it says there is an expiration of time limit. This is specifically under the development plan review section. Periodically, the planning staff shall report to the Plan Commission on Plan Unit Developments whose time limits have expired. The applicants shall be notified. The Plan Commission shall determine whether to consider extending the time or to initiate action to amend the Zoning Map as to rescind the Planned Unit Development designation. So, what we are looking at tonight is just a discussion and then next month we would actually do a formal hearing and more forward with how the Plan Commission would like to proceed. Larry can feel free to chime in if I am missing anything on this. We haven't done very many of these but as we are considering the County

Development Ordinance and the Zoning Map it is good time to be considering the PUD's in our jurisdiction that have not been completed. So, this is the area that we are talking about, South Harrodsburg Road and Popcorn. We have had preliminary discussions with their design engineer and they have relayed that information to the person who is interested in developing the property. So, just to give you a little bit of background about this particular PUD, it was approved in 2001 to allow for 10 duplexes. After an outline plan was approved they filed a development plan and that was approved but never completed. In 2005 they came back and amended that outline plan for an approval to allow for 9, 4-plexes. The development plan again was approved but never completed. Fast forward to today and they have requested a pre-design for consideration of 9 duplexes and the utilities are partially completed on the site though we would have some consideration of building that up to current standards. So, since the time has lapsed and therefore the Plan Commission is operating under Chapter 811-4 (E) 3. So, here is kind of how we are thinking that we can proceed. We could seek out, as planning staff we can ask the Plan Commission if they are willing to extend the 2005 outline plan extension. Because right now it has lapsed. The development plan has expired. It wasn't built out, so now we are in a position where we either extend the outline plan and say, ok if you can get this extension approved you may go ahead and file then a development plan or an outline plan amendment. If denied we would have to initiate a rezone of the property, because if a PUD is expired on property, the property no longer has any zoning designation. It doesn't fall back to the underlying zoning. So, these are kind of the steps that staff has laid out. Let's see if Dave or Larry have any points that they want to make before we move forward. Larry.

Wilson: Just one quick point. This differs from some of the other PUD's that were done by the City. In those cases the outline plan expired or the development had expired but we did not have clear authority too basically to say they had expired because it was the City's ordinance. In some cases we had not record of what had been approve or not approved. In this case there is a clear record of what had happened. It is clearly expired. I do note that our code aligns exacts with what the current case law is in Indiana in regard to expiration of PUD's in that when they expire, they are expired and there is no zoning. You either have to basically revive the old PUD by extending it amend the zoning map to a district that is appropriate for the site. I am actually very happy that we found this but it given us pretty clear guidance on how to proceed with other PUD's in the county.

QUESTIONS FOR STAFF – Harrodsburg PUD Extension Discussion

Guerrettaz: Larry, do you mean to say that you are glad that you found a section that said a PUD that expires does not revert back to the underlying zoning. Is that what you are talking about?

Wilson: Bernie, there was a case in Plainfield that where the developer said, hey it reverts to the underlying and the Court of Appeals said no, you rezoned it. It is no different than if you rezoned the property Industrial and if there is no Industrial that doesn't mean it goes back to the previous property. You have to take some action to amend the zoning map and under our PUD chapter it basically says it expires if you don't do a development plan within 2 years or complete the project within 2 years after you file the development plan. There is a process for asking for extensions throughout that process that did not occur in this case.

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Guerrettaz: So, with this, and I am just trying to absorb it, so this is a situation where the petitioners are requesting to keep the 9-4 plan that they had approved in 2005 and then it would just move on to the development plan stage. Is that correct? Or what would be the next step? Sorry there is just a lot of information there and I just wasn't following it 100 percent.

Wilson: Jackie can correct me but I think the scenario would be they would they would ask that Plan Commission would approve the existing outline plan. I don't think they want to build what is on the existing outline plan. So, they would be then after Plan Commission says they are willing to extend it they would file a request to amend to outline plan.

McKim: But what is it they want to build? They want to build the 9-4's? I thought you said they wanted to build the duplexes.

Nester Jelen: They want to build the duplexes, 9 duplexes.

Wilson: That is inconsistent with their existing outline plan.

Guerrettaz: And that is why it would be an amendment.

Wilson: Yes.

Guerrettaz: Gotcha. Thank you for taking the time to explain that Larry.

McKim: Does staff have a recommendation here?

Nester Jelen: What we are assuming is that planning staff would take an outline plan extension. As a public hearing we would start that process next month and notify the petitioner. You don't have to decide tonight to deny or approve. We are not making any votes. We just want to introduce this to you and then we are going to talk about at the next Administrative Item how we to deal with PUD's in the county that were never built out moving forward. But this was a situation where we have someone that is wanting to submit for an outline plan amendment soon to develop the property and we recognize that the timeline had run out and therefore we are going to be bringing it forward as an outline plan extension as Plan Commission initiated.

Wilson: We have not really initiated any review of their actual subsequent plans. We have just kind of dealt with the procedure at this point. I think if we had concerns it would be whether or not the existing PUD plan met current standards for things like streets, parking, landscaping, stormwater retention and so on.

Clements: So, am I correct to say that if we wanted the PUD to revert to the prior zoning we would have to pass another ordinance to reverse the rule and how many PUD's do we have in that category of expired or are expiring?

Nester Jelen: We have currently in our zoning map we one other PUD that is listed as expired that I don't think a rezone was ever initiated. I would say Margaret we have 102 PUD's and when I went through the zoning map there are a couple of layers to that but as it relates to properties that

are completely undeveloped that have an outline plan and either an expired development or never filed a develop plan, I would say there is somewhere in the ball park of 5 to 10 that is straight forward.

Clements: My thinking is if it is expired we should revert back original and surrounding zoning plan and we should try to be on top of that. It doesn't sound too cumbersome to make the amendment and to pass that ordinance. It seems to me that would be most in line with the unique character of each proposed PUD. Mr. McKim and then Mr. Stainbrook.

Enright-Randolph: I need a point of clarification Madam President. You said revert back to the original zoning which would be the underlying zoning or at least that is what I am hearing but I think you mean to the current zoning. Would that be correct? I just I just need a little clarification on that.

Clements: Well, I would have to study that further. Because in this case for instance, I don't know which zoning would go into effect, so I think that probably in each of the 5-10 cases we would have to study exactly what the last and most appropriate zoning would be and then pass an ordinance for that. Ok, so I am going back to Mr. McKim, Mr. Stainbrook and then Ms. Owens.

McKim: So, this just seems to be another example of why we have been wanting to try to discourage PUD's going forward. Am I wrong? Does that not just add another layer of managerial or administrative burden and complexity on staff? I mean we had this dispute, not dispute, discussion relatively recently and I think a petitioner would question why we would ever want to discourage PUD's but I think this is an example here. By creating this unique zoning ordinances for each little parcel of land we are just creating a huge burden for ourselves to be able to manage it effectively and taking away time from other projects that staff needs to be working on.

Wilson: I do think they are very labor intensive and the other problem you get is because of the current statutes someone could keep a PUD with outdated development standards alive for a long time. I think what staff would prefer is we would want mixed-use or we want duplexes or multiplexes and so on, we should have those uses provided in the districts with clear standards that apply to everyone, so then you have a clear guidance for someone for where to go and how to put these projects together and we are not negotiating a new zoning ordinance a basis which is kind of what a PUD is.

McKim: Thank you.

Clements: Thank you. Mr. Stainbrook and then Ms. Owens.

Stainbrook: Geoff, I am glad you didn't call it spot zoning, although there does seem to be additional complications and for the record my read is that spot zoning isn't necessarily illegal or well, improper any more than a PUD is if it does have extenuating circumstances to best fit the Comprehensive Plan. I have quit talking about spit zoning but isn't really a dirty, dirty word necessarily. By way of just providing information in the case, I am hoping that folks realize but I couldn't tell from the conversation that this property is for sale. It is the buyer or the prospective buyer that tends to be affected by this and so the sale is affected. I don't think and I want to be

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careful here, that I believe I know that the Millers have not a plan to develop this but I can't speak for the Millers and I didn't intend to say as much as I am saying now. But the property is definitely for sale with the sign indicating it is zoned for and I forgot now the description but I am sure the Planning Department knows. Thank you Madam President.

Clements: Thank you, Mr. Stainbrook. Ms. Owens.

Owens: Yes, I have a question. Jackie said that the ordinance says that if a PUD expires that it doesn't revert back to what it was before, it is just in nothing land and that seem kind of, that doesn't make sense to me why that would be. Wouldn't some sort of solution be that it just reverts back when the time is up and then that is it? That would be a lot easier. Geoff is right. It is having these many zoning things puts a lot of effort on staff and so forth and I don't think that we should encourage that. So, can anybody tell me why the ordinance we made that way even or do you think that is a solution?

Wilson: I think the reason why the ordinance is set up this way is the prior zone may not be appropriate the time the PUD expires. Circumstances may have changed that may have changed, again, totally different circumstances and I think the way the ordinance works and the way the case law says is the Plan Commission rezones it and has the ability to change the zoning map to an appropriate zone, which may or may not be what the underlying zone was when it was made a PUD 20 or 30 years ago. The underlying zone may not even exist anymore. I think that is why the ordinance is set that way and why the case law is set that way as well.

Owens: Ok, thank you.

Clements: Ok, are there any other questions for staff?

Enright-Randolph: Quickly it would be nice if we added the parcel numbers or a bird's eye view into the packet that goes out to the Plan Commission. I found it by now but I am sure I am not the only one that was a little curious exactly where it is at. Thank you, Jackie. If you could add the parcel numbers that could be helpful moving forward.

Clements: Do we hear from the petitioner on this now Jackie or is that during the hearing?

Nester Jelen: I would say that is during the hearing though I do know the petitioner's representative is here, so if you have questions for them.

Clements: I see that Mr. Guerrettaz has his hand raised. So, Mr. Guerrettaz.

Guerrettaz: I can wait till after the petitioner's representative, Margaret. Thank you for that.

Clements: Ok, thank you. So, if the petitioner or Mr. Butler the petitioner is here and would like to address the Plan Commission we would be happy to entertain your questions.

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**PETITIONER/PETITIONER'S REPRESENTATIVE –
Harrodsburg PUD Extension Discussion**

Nester Jelen: You know Margaret, he was on a little bit ago. He might have dropped the call. Unless he is one of these phone numbers. I don't think he is.

Clements: I see a Marnese Miller.

Nester Jelen: Ok.

Wilson: One thing I would add is we are going to talk about this a little bit later but we are really trying to minimize the input of evidence and testimony through the Admin Meeting and make sure we keep that and reserved for the actual hearing, which will take place after notice that is given to both the land owner and to the public, so I would kind of discourage you from trying to create a record tonight just because that really creates confusion if we have 3 or 4 meetings it's like, well, was that introduced at an Admin Meeting or was introduced at a hearing?

Clements: Well, those are good points Mr. Wilson, so let's just keep it to the Commission. Mr. Guerrettaz?

Guerrettaz: Yes, I just want to be clear that staff is looking for some sort of direction to proceed to putting this on the next Plan Commission agenda as an Outline Plan Amendment. Is that the guidance that staff is wanting to kind of understand without a vote?

Nester Jelen: It would be an Outline Plan Extension.

Wilson: I think the option would be, what would be notified would be option either to extend the PUD Outline Plan or continue it to amend the Zoning Map. I am not sure we will actually have a Zoning Map Amendment prepared at that July meeting or June Meeting but it is possible that we might have a recommendation as to the rezone. So, it is kind of an A or B option, either you send the PUD or next step is to proceed with amending the zoning map to an existing district under the code.

Nester Jelen: I would suggest maybe because the petitioner representative and everyone doesn't have a chance to speak that we would just bring it forward as a basic Outline Plan Extension and then Plan Commission can hear from folks can decide deny or approve and then we will continue on with the next step. That would be our suggestion. No vote needed today because it is Admin Item.

Clements: Ok, that was a very worthwhile discussion of the intricacies of the PUD's and how we handle them at the county and what our duty is going forward and I look forward to the discussion at our Admin Meeting for us to further this discussion.

No vote was taken, item was for discussion only.

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ADMINISTRATIVE BUSINESS

3. County PUDs - Discussion regarding Expiration and Rezoning

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Clements: On Item #3 have we taken care of the county PUD's regarding expiration and rezoning or is there further information that you would like to share with us Jackie or Larry?

Nester Jelen: I think we are just wanting to let you know that report out future PUD's and prioritize expiration if they haven't been built. This one was one where it came to staff and it was pre-designed but when we did the rezoning of the map draft that we began, we identified PUD's that similar to this Harrodsburg haven't been built out and so we do think we are at time before we release a map to the public that we could start having these conversations that maybe the PUD is an inappropriate zone or just start having conversations with the property owner and get a take from the Plan Commission perspective. So, I just want to let you know that we are going to be more proactive with the list that we have and noting that we have staff limitations in terms of time but like I said I am pretty sure it is in the low hanging fruit would be in the 5-10 range, which I think is manageable for staff.

Clements: Well, that is wonderful. Thanks for staying on top of it and helping us clean up the map, so to speak, the zoning map.

ADMINISTRATIVE BUSINESS

4. Resolution – House Bill 1437 to be presented by Legal

BOARD ACTION: Clements introduced the petition.

LEGAL ACTION:

Schilling: Thank you very much. I think this is some legislation that was adopted to sort of help counties maintain some of the flexibility that they were able to enjoy in conducting public meetings now that the emergency orders have expired or are about to expire. This resolution if you adopt it, it would basically put in accord with recent amendments with Indiana Code 5-14-1.5-3.5. The Plan Commission Members could attend meetings virtually as long as at least 50 percent of the members are present physically. Plan Commission Members who decide to participate virtually could only participate for 50 percent of the meetings in any year. Now there are a few more requirements about how many consecutive you can have 2 consecutive virtual appearances and then there has to be at least a physically appearance in between sets of 2. So, there are a number of rules that relate to this, the way that this resolution is written that staff members could always participate electronically unless the Plan Commission President direct them to attend physically. So, this is a resolution that allows you to have some flexibility. It changes the previous law on attending public meetings but it does require staff to spend some time administering this resolution. In other words, keeping track of the number of meetings, keeping track of permissions, making sure that people have requested the permission to attend virtually prior to the meetings so forth. So, if you are interested in continuing some kind of virtual meeting participation then this is a resolution you might consider adopting. It became effective on April 21, 2021.

QUESTIONS FOR LEGAL - Resolution – House Bill 1437

Wilson: Dave, one question I have. Would basically 5 members of the Plan Commission have to be in attendance or is the majority 50 percent of the total? It appears to be 5 members.

Schilling: It says you have to have a quorum right?

Wilson: Yes that is the way that I read it.

Schilling: So, you would have to have 5 members and the state statute I believe requires zoning decisions to be made by a majority of all Commission Members, so you would have to have at least 5 people and they would all have to unanimously agree to any action that was taken to satisfy that.

Wilson: But my point is 5 members would have to be physically present and then the other 4 members could attend remotely.

Schilling: That is correct.

Clements: I would like to ask Mr. Schilling, are there any options or opportunities for people who have maybe a disability or kind of a concern about vulnerability? Is there an option for people to spend 100 percent of the meetings attending virtually?

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Schilling: Yes, basically if they have an illness or another medical condition and it is being highlighted there, they could exceed the 50 percent. I guess this is a brand new law so it would just be up to somebody to challenge that if somebody was gone 100 percent of the time then somebody could challenge that. The way the statute reads it looks like if somebody has an illness or a medical condition that they could participate remotely.

Clements: Who determines whether or not that is permissible?

Schilling: Well, it looks like it would be the President of the Plan Commission because you are required, let me see, people who plan to attend must notify the presiding officer within a certain period of time before the meeting so that arrangements can be made. So, I think that is going to be up to the presiding officer.

Clements: So, if somebody because of a medical condition would like to attend 100 percent of the meetings via zoom, it would be up to me to say that is fine?

Schilling: Or you could just have the Plan Commission approve that and then you would have that much more support.

Clements: Ok. Do any other members of the Commission have questions for Mr. Schilling?

Nester Jelen: Julie has her hand raised.

Clements: Julie?

Thomas: I saw that Amy had posted a question, which I will include in mine. We should probably try to avoid using chat because sometimes these things get lost. Amy's question is about the committees and then I have 2 related questions. One is whether the Executive Session is the same as the Execute Committee because it says the Executive Session must be held in person.

Schilling: Yeah, that is the Executive Session is different than the Executive Committee. Although the Executive Committee might have an Executive Session.

Thomas: Right, got it. With all of the subcommittees, each subcommittee has to come up with their acceptance of this. If this is not accepted than everybody has to be in person once there is no longer a health order.

Schilling: Correct.

Thomas: And that we think will happen June 1st because we are currently under the Governor's Orders for the pandemic. Now, if there were to be a local uptick or an issue related to the pandemic here in Monroe County and there was a local health order, health emergency declared all bets would be off and we would say, hey we are just going to meet via zoom. But we have to have health order in place that we no longer have locally but again we are living under the states right now. The other question I have is 50 percent and how it is calculated. Let say in an average month you have got 2 committee meetings and then you have got the Administrative Meeting and the

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Regular Meeting of the Plan Commission. How is that 50 percent calculated? Is it by committee or is it by group or is it by month? How is it calculated?

Schilling: Yeah, I think that has to be done by each committee. It is not by person, it is by your membership on a particular committee. That wouldn't be very valuable if one person who is on multiple committees could only participate in 50 percent.

Thomas: Yeah. The Commissioners are considering a similar ordinance, resolution, tomorrow morning and one of things that we are saying is that if we pass it is that it would sort of serve as a blanket coverage with this policy until committees have an opportunity to meet. Because we don't want to just suddenly say, everybody has to show up now because it is June 1st and we know that there are some committees that haven't met yet or will not meet until after June 1st, so that is also something to consider. We can make sure everyone knows what is going on once we meet tomorrow morning.

Schilling: Yes. I guess, oh, go ahead.

Clements: You go ahead Mr. Schilling.

Schilling: Just reading this, it looks like it says that as we noted, "one who plans to attend a meeting by electronic means of communication is required to notify the presiding officer within a certain period of time before the meeting as specified by the governing body." So that would be something else that you would have to decide, how many days' notice that you would want.

Clements: Can staff, you know how staff sends out the notice that we have a meeting and asks us to confirm, can they just merely include in there in that note whether or not that person indicates in person or via zoom the day of for instance?

Schilling: The day of the meeting?

Clements: Yes.

Schilling: Yes. You can make it any time you want as long as it is workable for staff. I mean that is the question. How much advance notice do you need to have to make sure that all of the requirements can be satisfied and that the right number of people can be physically present and so forth?

Clements: Ok.

Pittsford: Margaret, can I throw in real quickly?

Clements: Yes. Mr. Pittsford.

Pittsford: I am afraid if you do day of you could end up in a situation where 50 percent of the Board is not physically present, so somebody is going to be compelled to come in whether they want to or not.

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Clements: It is very complicated, isn't it?

Schilling: Yes and I don't know how well it work for some of smaller, informal committees. Plan Commission is pretty structured and has a pretty good system in place. It might be easier for staff to keep track of the Plan Commission and the BZA but the other committees it might be a little bit more difficult.

Clements: I wonder if I could beg, I know Mr. Enright-Randolph and Mr. McKim have their hands raised but I would like to just put this out there and ask everyone to consider what the weaknesses are in this kind of process. Staff, first of all is so wonderful in the way that they give us the packet 7 days in advance. Having been involved with other meetings, with other municipalities in other units of government I just have to say how proud I am of the county staff for their transparency and they information that they published and the completeness of that information. We religiously receive the packet 7 days in advance and I would beg of our fellow commission members to respond to that email, the one that is given 7 days in advance your intention to attend in person or via zoom and think about that while we go on to Mr. Enright-Randolph and then Mr. McKim.

Enright-Randolph: I am pretty neutral on this whole thing as long as we apply some fairness with people that we like to attend virtually outside of the context of if they have a medical condition or not, obviously we should most like prioritize them. Just kind of a thought is that we could lay out some future meetings for people that are already aware that they would like to attend those virtually. We could kind of get some type of idea and then as we get closer to the 7 days when the packets are sent out and if someone might want to switch that would be interesting. I do see the convenience of being able to attend meeting virtually. So, I do think we need so matrices or metrics to apply fairness. That is one thing. Also, I wanted to address small boards and committees. When I look at the House Bill 1437, Section 4, Dave it says it allows a member participating electronically to be conducted for quorum purposes. So, like we have a board of 3. If we need 3 for a quorum or maybe if we have an even split of 4, 2 would be 50 percent but we need 3 for a quorum then that means the third could join electronically. Correct? Because we were talking about that we actually needed quorum physically, present and this what I am reading doesn't go with that. So, that is a question for you Dave when you are ready for it, Section 4 of the House Bill. I had one more comment and I think it just needs to me clearly stated that if you do want to attend electronically, you have to be able to have camera and audio. You have to have the ability to do that to. I don't think that point has been driven home. But I do think it is really significant. That is all of my comments and Dave when you get please provide clarification on that.

Schilling: Are you talking about 5-14-1.5-3.7 B? Is that what you are talking about?

Enright-Randolph: Section 4 allows a member to participate in, participating electronically to be conducting for quorum purposes. So, that would maybe do a 4 person board.

Schilling: I don't have the House Bill in front of me, let me see if I can pull that up.

Enright-Randolph: I will put it in the chat right here for you Dave.

Schilling: Well, I got mine up. It is in Section 4. Well, I just don't have that.

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Clements: I think Mr. Enright-Randolph put it in the chat.

Schilling: Ok.

Clements: You have nice hands Dave.

Schilling: Sorry.

Clements: That's ok.

Schilling: Chat, there we go. Section, ok that is 5-14-8. Section 4, is that what you are talking about Trohn.

Enright-Randolph: Yes and I just bring it up because we talked about you had to be physically present for a quorum but it states, in my opinion that you can participate electronically as part a quorum as long as you are meeting that 50 percent as well. I think this goes more to the smaller boards and committees.

Schilling: I will have to try to find that because I am not seeing that on this document. Section 4 on the document that I pulled up relates to a completely different statutory section, so I will get back with you on that.

Clements: Ok, Mr. McKim.

McKim: I just wanted to see if there is anything that we are going to need to address, I know that it wasn't part of this particular legislation but if we start having these hybrid meetings, hybrid face to face and hybrid virtual meetings, are we going to have to specifically address public participation? Whether members of the public will be able to attend virtually and have their comments counted on the record for the purposes of counting the testimony? Is there any additional clauses we are going to need to add to our own procedures once we adopt or if we adopt the hybrid procedures?

Schilling: I think you have to allow anybody in the public to participate electronically and their comments would have to be part of the record of course just we have been for the past year.

McKim: Ok.

Clements: Commissioner Thomas.

Thomas: Yeah, Geoff are you asking about petitioner and whether we can do something like record a commitment virtually or they have to be in person? Is that your question?

McKim: That is probably the most extreme example of when it would be important it make sure that we document that but even just remonstrators. Do we need to update our procedures to say specifically that remonstrators and supporters would be able to make their comments as part of the

public record by attending virtually? But yeah, you are right, petitioners make commitments and it is even more important.

Nester Jelen: Geoff, I think that the resolution regarding the seen and heard, you know, because we get a lot of the phone calls for people that don't have a camera, I think that only pertains to the voting members. But Dave can correct us if I am wrong.

McKim: I agree that is true. The statute doesn't seem to affect members of the public. I am just saying the work that we do may, unlike say Council and Commissioners where it is important that we be able to stay to the public, but yes, if you are attend virtually your commitments your statements are going to be part of the public record. I guess that is what I am getting at.

Nester Jelen: Just logistically speaking the way that we will be doing it, we have reserved Room 100B Nat U Hill where we can and you will still be on zoom with like one virtual camera and microphone that is able to panorama the room and zoom in, thanks to tech services and you will actually be see the screen, the zoom screen and interacting with the public pretty much seamlessly, is our understanding. But we do have a little bit more to figure out before June 1st. But we are getting there.

Clements: In the chat it says, Section 5 provides that a member participating electronically may participate in a final action taken by the Governing Body only if, does that indicate that a person a member participating electronically may not at times participate in a final action?

Schilling: There are, for example if some is participating electronically and they are able, their communication is able to be received by everybody participating then they can generally participate in a final action. But if they are calling in and talking to a member, communicating their thoughts and so forth through a member then they can't participate in the final action. But their comments can be put on the record.

Clements: Ok. Commissioner Thomas do you have another comment?

Thomas: Yes. Just a thought that it may be that packets may need to go out a little earlier but just to make sure that we have a quorum. But it seems like it may be obviously it is going to take some tracking but it seems like it make just be whoever response first if they plan to attend electronically and they are eligible to do so would get to the top of the list of that subsequent meeting. That may be just one way of doing it and keeping track but somehow, yeah attendance is going to have to be tracked across committees and across the months to make sure somebody is attending half and live and somebody has attended 2 meetings consecutively, has not attended more than 2 meetings consecutively. So, something is going to have to be created but I think the question is whether I think it is going to be difficult to create that here now, but the question is whether or not this group wants to pursue this option or just meet in person beginning June 1st and not pursue this option at all. I think that is where we are today.

Clements: So much for the paperwork reduction act. Mr. Guerrettaz did you have a comment?

Guerrettaz: Yes, I think that we should meet in person as soon as we can. I think that we need to revolve back to where we were and I think my first question when I think this through is will we make better and stronger decisions virtually or will we do it when we are all together in a meeting?

Clements: My feeling is first of all we, everyone has been so good and thoughtful and deliberative, my preference is to attend in person but I recognize that other people may not be as comfortable. They may have real reasons to not be so comfortable. So my commitment is to attend in person, you know, that is what I will be doing probably close to 100 percent of the time and the one of two time that I might have been absent before I now might be able to attend by zoom if I am not in the county so to speak. But that being said, I really do want to respect the valid concerns of other committee members and I will be attending in person and I would like to honor what other people feel is important for their own health and livelihood. Mr. Pittsford.

Pittsford: Thank you President Clements. I have long been concerned about the influence that members may be receiving during the course of even public meetings when they are able to look at electronic devices, maybe someone is advising them to email or text message, which would be contrary to full disclosure of the public meeting. To continue on an electronic format when there are no constraints physically against us meeting in person just furthers that opportunity for undue influence that is not seen by the public. There is a reason for public meetings. Because when you sit down in public and you face the public it influences your decision making process, it influences the way you receive information, it influences the way you process information. It is easy to sit behind a computer blank you screen and roll your eyes or make snide comments while your mic is on mute but it is still inappropriate. It is still dismissive of the petitioner and that is the reason that we have public meetings. That is my piece.

Clements: Thank you Mr. Pittsford. Mr. Guerrettaz.

Guerrettaz: I know you weren't saying this Margaret but I need to clarify. I wasn't being disrespectful of an individual who didn't feel comfortable attending a meeting in person. I just wanted to clarify that's not my point. My point is that maybe there are other committees that person would be better suited for because they are probably in depth in a different way a better way of communicating. I think we get a lot out of a public meeting and those are just my feelings. I don't have any opinion on somebody who decides that they are not able to attend the meeting in person. I just think that they should look for another venue or another way to serve and I think Jerry said pretty much the rest of what I got, so that's all.

Clements: You are never disrespectful, Bernie. Thank you. Mr. Pittsford and then Mr. McKim.

Pittsford: Ok, again just real quickly. There is also the element of being in the presence of the public and feeling that pressure of looking people in the eyes. Right now I can see in addition to my face 3 other faces. I can't scan the room. I can't feel the presence of people around me and the influence for both the good and the bad that may be endemic to that kind of public meeting and again I just want to reiterate, there is a reason that government processes occur open and in the public. There is a reason we have an open door law. Because government function should be not behind closed doors, it should be in rooms with open doors and I am a firm believer in transparency

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and I do not believe in continuing in electronic based meetings when there is no physical reason compelling that to happen is a disserve to the community that we serve. Thank you.

Clements: Thank you Mr. Pittsford. Mr. McKim and then Ms. Owens and then Mr. Enright-Randolph.

McKim: Thank you. My reason for supporting a hybrid model is probably a little bit self-serving. I have a day job that does once in while does require me to be out of state just due to the nature of my job and I really do like the ability to once in while if absolutely necessary participate remotely. It has been really, really helpful. I certainly commit to being there in physical presence as much as possible and I agree that is probably better and that is what the public deserves and if we decide to require in person presence that is fine I will miss 1 out of every 10 meetings or something like that. But it has been an opportunity to participate on the times when I am out of town on travel.

Clements: Thank you Mr. McKim. Ms. Owens.

Owens: Yes, I am 100 percent for wide open transparent government but I am always conscience of what I say in any public meeting these included. I think it is sad to hear such low opinion of participants in these meetings that they are off making snide remarks and texting and so forth. I think that is just kind of unbelievable and I can tell you as far as my camera is concerned, until Smithville decides to come where I live, which is way the heck out in the country, I have low broadband. If I leave the d** camera on I have to keep dialing in all the time and you and ask Steph I tried that last time and it just didn't work, so if I have to turn the camera on to vote, I will turn the camera on to vote. I also have other constraints that do not need to be discussed in a public meeting and to assume anything else is kind of sad as well. So, you know, this is something that the legislature has said is going to happen. We have to figure out how to deal with it. But I think that we ought to be able to do that besmirching other people when so doing. That is my comment.

Clements: Thank you Ms. Owens. Mr. Enright-Randolph and then Commissioner Thomas.

Enright-Randolph: I think what Ms. Owens was saying was good and I also think what Mr. Pittsford was saying is notable as well. I do think the underlining truth of both of them is when we are conduction it electronically there are distractions in front of us that may not occur if we were all in person and it may take our focus away. I am not saying that ill intended but it is the truth and I thank Mr. Pittsford for addressing that. Also I am kind of neutral but after hearing a lot of discussions I remain neutral to a point but I do think being physical in person is needed and the last I heard and this I heard something to the effect of where you could only attend may only electronically 2 consecutive times in a row and it doesn't look that is necessarily part of this anymore but maybe that where we could strike a balance with the Commission here. Also. I enjoy the in person. I do think there is a different way we deal with business and I also like the fact that you can't turn off cameras and things, you are kind of there. I guess I am not really providing guidance on where I stand if we are going to vote on this today but I do think that we could maybe tailor it a little bit more to meet the concerns that are addressed today and ultimately if the order gets switched and we have to meet in person we might just have to cross that bridge when we get there and it might not be there far off. This might just be something in place for a short period of time anyway.

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Clements: Thank you Mr. Enright-Randolph. Commissioner Thomas.

Thomas: Actually, Ms. Thompson had her hand raised physically before me so I will defer to her.

Thompson: Thank you. My hand raising thing is hiding today, sorry. I do think it is a nice option. I have many times had out of town commitments the day before and the day after Plan Commission Meeting and I have driven 3 hours to attend and then turned around and driven 3 hours the next day to do back. This would allow people to continue to participate when those kinds of occasions arise. I too, would plan to be there in person the majority of the time but I think flexibility is a good thing. I also think these meetings have been quite transparent and that in fact public participation has increased because of the option to participate electronically. So, I do hope we will vote for the flexibility to allow people to attend virtually whether that is for illness or for other occasions that they can't be at a meeting, like Geoff I will probably miss 1 or 2 a year but I would necessarily have to miss them if I was able to attend virtually. Thank you.

Clements: I just would like to thank you for doing all of that heavy road lifting to get to our meetings. Thank you Amy. Commissioner Thomas.

Thomas: Yeah, I think just because the CDC has said masks off if you are vaccinated, I think we are fooling ourselves if we think the pandemic is over because it is not. Part of this for me is I think it is important that we not crowd the room unless we have to. I think we have, as Ms. Thompson said we have greater participation by members of the public in these hybrid meetings. These hybrid meetings will continue in some form or fashion even whether or not all members have to be present in one room because we have found that it has increased participation across the board in county government and so we are re-making the Nat U Hill Room to make it almost like a little tv studio so that we can continue to offer hybrid meetings no matter what, whether, no matter what this group decides, the public is going to be participating online. I personally, if I am not feeling well I don't want to go in and I don't want to risk spading anything to anybody. I would probably be in a mask anyway just until this thing is really under control. I don't have a problem making it a priority to be in but just be aware that this thing isn't over and if we can keep the number of people present in one room down, I think that would be better for the health of the community. Yes, yay transparency but, yay, living and not having covid. We can't assume everyone is vaccinated, that is a bad assumption. We are not asking. I don't think we should. So, anyway, I just wanted to put that out there that hybrid meetings will continue no matter what. I would like this to be an option. Because if there is an uptick in cases, if something goes on in somebody's life I don't want them to feel like they have to show up at a meeting just because. I would rather they be safe and participate from home and keep others safe as well and the same thing goes for the public. They can participate via zoom, great. They can participate via zoom, great, do it because that keeps the rest of us health too. Thank you.

Clements: Thank you Commissioner Thomas. Mr. Stainbrook.

Stainbrook: I talked earlier so I limited myself, tried to have some self-restraint as far as unnecessary talking but I am compelled to agree with Julie really in conscience. This thing about if folks have had the vaccine that they might, there is no way in the world that Walmart or even count government can know who has had the vaccine and who hasn't and the way in which this has been

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treated now for a year and a half, it is just scary. I think, well, I have got some extreme friends on this and I just can't image the denial, and well, anyway I liked what Julie said. I agree.

Clements: Ok, thank you. Oh, Mr. Enright-Randolph?

Enright-Randolph: I just want to make sure it is clear some of my comments earlier were more about the Committee members, the Commission members. I applaud the county to take efforts with creating a hybrid approach to allow the public to participate virtually. That is amazing. I am 100 percent for that. I absolutely agree we have gotten more participation by adding that virtual option and I absolutely support that. I just wanted to make it clear that I felt there were 2 different discussions taking place and I wanted it to make clear where I stand.

Clements: Ok, great. Is there any motion that is required or do we pass anything here or is it just by order, Julie or Larry or Dave?

Thomas: That is a Dave question.

Schilling: If you want to adopt that, you need to do that and I think you can certainly adopt it and continue to work on it, refine it and come up with details as you work through the process.

Clements: So, if there could be a motion to approve that I would be most grateful. We can change it or amend it as time goes on and as difficulties emerge but we are kind of on a June 1st deadline. If someone would be so kind, oh, sorry, Ms. Owens, you have a question or statement?

Owens: Yes I do. This was something that was flashed on the screen. I haven't even read it. I am not comfortable voting about something I haven't read.

Clements: Ok, well, that is a good point.

Owens: I don't recall seeing it in the packet. Was it in the packet?

Nester Jelen: No, Dee. This has kind of come on a little bit later than we wished. But we apologize, this is the first time you are seeing this and the Legal Department has put this together for each one of our committee and boards and they are doing this for all of Monroe County Government Departments. So, this is pretty verbatim language across the board just with Plan Commission switched out.

Thomas: Can this get sent out via email and then we talk about this? I don't know. I didn't realize that it hadn't been, I guess because I have seen it for the last week so many times, or can it get read through? Because it is actually really short, Ms. Owens. It is actually a pretty short piece and it just basically complies with the state statute. The other question, Dave, then is if we don't want, if people don't feel comfortable approving this tonight. Again, the Commissioners are considering this tomorrow with a blanket approval for every board or commission at every governing body and if that passes it will become effective anyway unless a board or commission or governing body makes a decision to not do it. Correct?

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Schilling: Well, I guess that is one approach. I kind of read the statute to read that all governing bodies are going to have to adopt it. But the Plan Commission Administrative Meeting next one is June 1st and if there is going to be at least 5 people there physically then it could be the first order of business and anybody that needs to participate virtually could do so.

Nester Jelen: We can also email this out now and we push this out till the end of the meeting.

Clements: Ok, I think Mr. Guerrettaz had one other comment.

Guerrettaz: Just one more, Margaret. You are limiting me to one. Here is my question and it goes to what Julie and Dave were talking about. The Commissioners are going to be passing this in effect tomorrow. Why are we talking about it? I don't mean that to be abrasive sounding but I am just wondering the discussion it sounds like the Commissioners are going to make this happen tomorrow anyway or does each governing body as Dave was saying that, Plan Commission as a governing body, BZA as a governing body, Plat Committee as a governing body, the Commissioners aren't speaking about the governing body of the county.

Thomas: We considering this tomorrow. I am looking for the text right now. We are considering this tomorrow because we know that there are committees that haven't met and will not meet before June 1st so that this gives them the opportunity to have a meeting this way, part in person, part virtually so they can have that vote and make that decision. As Mr. Schilling pointed out in deed if that passes tomorrow we could make this the first agenda item on the June 1st Administrative Meeting but we would have to be following those rules that are included here, that will be for every board, commission, or governing body. At the June 1st meeting I would ask that be the first item and we have that vote on whether to support this or not. That will give people time to read it understand it. But at least if you present it we will have to be in the room for the June 1st meeting.

Guerrettaz: Very clear, thank you Julie.

Clements: Ok, well, then we will consider this at the Admin Meeting because we believe in transparency and we are going to continue our sunshine efforts and giving every member of the Plan Commission the written text in advance unless there is a motion at the end of this meeting, if someone feels so inclined.

NEW BUSINESS

1. SSS-21-3

Frazo Sliding Scale Subdivision Preliminary Plat Sidewalks Waivers Requested.

Waiver of Final Hearing Request.

One (1) parcel on 60 +/- acres located in Section 15 of Benton South Township. Parcel #: 53-06-15-200-010.000-003.

Zoned AG/RR, ECO3. Planner: acrecelius@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION:

Crecelius: I am here, thank you. As you said, the Frazo Sliding Scale Subdivision Preliminary Plat. This parcel is located in Benton South Township. It is currently unplatted. It is approximately 4848 North Brummetts Creek Road. It is currently zoned Agricultural/Rural Reserve and Environmental Constraints Overlay Area 3. There are some slopes present but adequate buildable area for a subdivision. The Comprehensive Plan designates this as Farm and Forest. The current zoning map on the left is technically outdated. Just recently they went through a rezone process. This petition was originally filed in 2020 so you have seen this before as a rezone. Because there were inconsistencies in the zoning to be able to subdivide so and now it's back on our radar again. So, there is no longer any ER, well, there is 2 plots of ER, but the lot that we are considering is completely AG/RR and ECO Area 3. The petitioner is requesting a 3 Lot Sliding Scale Subdivision. They were originally requesting a Sidewalk Waiver and also a Utility Waiver that has been amended to only be a Sidewalk Waiver request and there is also a Waiver of the Final Hearing, which would be a June meeting. This is the proposed plat. The 3 lots would meeting all of the design standards of the subdivision ordinance and the zoning ordinance. The property is one lot of record of 60 acres. Because the petition site is located within a mile of a public school which would be Unionville Elementary, it has triggered a sidewalk construction. There were Highway comments by the Highway Engineer and also the MS4 Coordinator, those have been met. The Farm and Forest Comprehensive Plan designation is consistent with this proposal, which is just a very low density residential area. The Sidewalk Waiver because it is within that mile of the Unionville School it is going to require of 2,200' of sidewalk, that is approximate. I tried to outline it here on the top left image. It would be on the north and the south sides. The 2 small parcels, well if you see the 2 residences that 2 parcel that looks farther to southeast is actually directly adjacent to the northern small parcel. Those are both zoned ER. So there would be a gap in the sidewalk requirement. This area is a little bit to the south along Brummetts Creek. This is the street view on bottom right. You can see that it starts to curve. There is a drainage ditch along the side. There is a lot of vegetation. To install these sidewalks, there would be a fair amount of grading and vegetation removal. Staff overall does support the Sidewalk Waiver. Currently, there are no Sidewalk along North Brummetts Creek Road. I know we have seen this before but all of the proposed lots do meet the requirements. There are approved septic sites. There are 2 shared driveways and 25' of right of way that will be dedicated. The parent parcel does include the required amount of acreage and it will be put in that 25 year moratorium. So, overall staff is recommending approval of this Sliding Scale Subdivision Preliminary Plat and the Sidewalk Waiver based on the finding of fact and subject to the Highway Engineer and the MS4 Coordinator reports. Does anybody have questions?

RECOMMENDATION

Staff gives a recommendation of **approval** of the Sliding Scale Subdivision Preliminary Plat and the Sidewalk Waiver request based on findings of fact and subject to the Monroe County Highway Department reports.

FINDINGS OF FACT - Subdivisions

850-3 PURPOSE OF REGULATIONS

- (A) To protect and provide for the public health, safety, and general welfare of the County.

Findings

- Approval of the subdivision would subdivide one lot into three (3) lots which will meet all design standards;
- The proposed lot acreage configuration is as follows: Lot 1: 12.9 +/- acres, Lot 2 (parent parcel); 31.7+/- acres, and Lot 3: 12.8 +/- acres;
- Lot 2, the designated Parent Parcel Remainder, shall not be further subdivided for a period of twenty-five (25) years from the date of recording of the Final Plat unless connected to a public sewage disposal system or further subdivision of the property is authorized by ordinance;
- Steep slopes are present on the proposed lots but would meet the Buildable Area design standard requirements;
- Proposed lots have an approved septic permit location;
- Proposed lots 1 and 2 have received approved with conditions driveway permits off of S Stanford Road;
- Driveway locations have not been approved at the time of this report publication but will be required;
- The MS4 Coordinator has reviewed the application and the petitioner has added drainage easements;
- 25' of right-of-way will be dedicated along N Brummetts Creek Road, a Local road;

- (B) To guide the future development and renewal of the County in accordance with the Comprehensive Plan and related policies, objectives and implementation programs.

Findings

- The Comprehensive Plan designates the site as Farm and Forest, which includes low-density single-family subdivisions;
- The site has access to utilities;
- See findings under Section A;

- (C) To provide for the safety, comfort, and soundness of the built environment and related open spaces.

Findings

- See findings under (A);
- The proposed use is residential;
- Structures may not cover more than 65 percent of the lot;

- The surrounding uses are residential or agricultural;
- (D) To protect the compatibility, character, economic stability and orderliness of all development through reasonable design standards.

Findings

- The property is currently zoned Agricultural Rural Reserve (AG/RR) and ECO Area 3 is used for Single Family Residential;
 - Adjacent properties are zoned Agricultural Rural Reserve (AG/RR) and are used for Single Family Residential or agriculture;
 - Approval of the subdivision would create three (3) lots that meet the design standards for the zoning designation AG/RR;
 - See findings under Sections A & C;
- (E) To guide public and private policy and action to ensure that adequate public and private facilities will be provided, in an efficient manner, in conjunction with new development, to promote an aesthetically pleasing and beneficial interrelationship between land uses, and to promote the conservation of natural resources (e.g., natural beauty, woodlands, open spaces, energy and areas subject to environmental constraints, both during and after development).

Findings

- See findings under Sections A & C & D;
- (F) To provide proper land boundary records, i.e.:

- (1) to provide for the survey, documentation, and permanent monumentation of land boundaries and property;

Findings:

- The petitioner has submitted a preliminary plat drawn by a registered surveyor.

- (2) to provide for the identification of property; and,

Findings:

- The petitioner submitted a survey with correct references, to township, section, and range to locate parcel. Further, the petitioner has provided staff with a copy the recorded deed of the petition site.

- (3) to provide public access to land boundary records.

Findings

- The land boundary records are found at the Monroe County Recorder's Office and, if approved, this petition will be recorded there as a plat. The plat must comply with Chapter 860 - Document Specifications to be recorded.

FINDINGS OF FACT – WAIVER OF SIDEWALK REQUIREMENT

The petitioner has requested a waiver from the *Improvement, Reservation and Design Standards* outlined in 856-40 (A) (Sidewalks), which reads:

(A) Sidewalks shall be included within the dedicated, unpaved portions of the rights-of-way on both sides of all streets when any of the following are applicable:

- (1) the proposed subdivision has road frontage or the streets will connect with an existing or proposed subdivision or business development that has sidewalks, or;*
- (2) a proposed major subdivision will be located within an area that is subject to the Business and Industrial Overlay as defined in Chapter 802 of the Zoning Ordinance, or;*
- (3) the proposed subdivision is within the Urban Service boundary as shown in the comprehensive plan, or;*
- (4) the proposed subdivision is within a designated growth area in one of the Rural Communities as identified by the Comprehensive Plan, or;*
- (5) the proposed subdivision has frontage on a street that provides direct access to destinations such as schools, recreational facilities, etc.*

OR

a proposed subdivision is within 1 mile radius of destinations such as schools, recreational facilities, etc., or;

- (6) a proposed subdivision will result in the creation of at least five lots where any of the lots in the proposed subdivision are less than 2.5 acres in size.*

Section 850-12 of the Monroe County Subdivision Control Ordinance states: “The Commission may authorize and approve modifications from the requirements and standards of these regulations (including the waiver of standards or regulations) upon finding that:

1. Practical difficulties have been demonstrated:

Findings:

- The site gains access from N Brummetts Creek Road, a designated Local Road with 25’ of right-of-way;
- The sidewalk improvements are due to the petition site being within 1 mile of Unionville Elementary;
- Sidewalks are not currently constructed between Unionville Elementary and the petition site;
- Extensive grading would be required for sidewalk construction;
- The terrain along the petitioner’s property is along the frontage is both flat and steep, which may cause issues with accommodating a sidewalk that meets ADA standards;
- The requirement is for sidewalks to be constructed within the right-of-way on the north and south sides along N Brummetts Creek Rd unless the waiver is granted;
- The length of sidewalk required for the north side of the road is 1,258 feet, or 0.25 miles;
- The frontage along the north side would include two (2) gaps of sidewalk, totaling 400 ft., or 0.08 miles;
- The length of sidewalks required for the south side of the road is 960 ft., or 0.18 miles;

2. **The requested modifications would not, in any way, contravene the provisions of the Zoning Ordinance, the Comprehensive Plan or the Official Map of the County;**

Findings:

- The Comprehensive Plan calls for an alternative transportation system throughout the county;
- The sidewalk improvement is required due to the petition site's location to Unionville Elementary School;
- Transportation Alternatives Plan identifies this area as 'Moderate Priority Road Improvements';
- Sidewalks can alleviate safety concerns for pedestrians and promote alternative modes of transportation that are consistent with the Comprehensive Plan and the Zoning Ordinance;

3. **Granting the modifications waiver would not be detrimental to the public safety, health, or welfare and would not adversely affect the delivery of governmental services (e.g. water, sewer, fire protection, etc.):**

Findings:

- The presence of sidewalks does not have a relationship to the delivery of governmental services (e.g. water, fire protection, etc.) to facilitate the new building sites;
- Sidewalks can alleviate safety concerns for pedestrians and promote alternative modes of transportation;
- N Brummetts Creek Road is a Local Road and does not currently provide safe pedestrian/bicyclist access in this area;
- There are no other adjacent sidewalks along N Brummetts Creek;

4. **Granting the modifications would neither substantially alter the essential character of the neighborhood nor result in substantial injury to other nearby properties;**

Findings:

- The proposed use for Lots 1-3 is residential;
- There are 6 residences south of the petition site that do share an easement through the proposed parent parcel;

5. **The conditions of the parcel that give rise to the practical difficulties are unique to the parcel and are not applicable generally to other nearby properties;**

Findings:

- See findings under #1 above;

6. **Granting the requested modifications would not contravene the policies and purposes of these regulations;**

Findings:

- See findings under #1, #2 and #3 above;

7. **The requested modifications are necessary to ensure that substantial justice is done and represent the minimum modifications necessary to ensure that substantial justice is done;**

Findings:

- See findings under #1, #2 and #3 above;

8. **The practical difficulties were not created by the Developer, Owner, Subdivider or Applicant; and,**

Findings:

- See findings under #1 and #7 above;

9. **The practical difficulties cannot be overcome through reasonable design alternatives;**

Findings:

- See findings under #1 and #4 above;

In approving modifications, the Commission may impose such conditions as will in its judgment substantially secure the objectives of these regulations.

QUESTIONS FOR STAFF – SSS-21-3 - Frazo

Clements: I can't see the screen right now so do any members of the Plan Commission have questions for Anne?

Crecelius: Bernie?

Guerrettaz: Very quickly we can actually approve this this evening if we vote for a Waiver of the Final Hearing, correct?

Crecelius: That is correct. Yes.

Clements: Any other questions of Anne? If not is the petitioner here and would he like to speak?

Nester Jelen: Yes.

Clements: Thank you for your patience Mr. Frazo while we took care of that administrative business. I would like to move those administrative items the end of the meeting for all future meetings just to be considerate of the public.

PETITIONER/PETITIONER'S REPRESENTATIVE – SSS-21-3 – Frazo

Frazo: Yes, I am here. This is Ernie Frazo.

DRAFT

Clements: Thank you, Mr. Frazo. Would you like to make any statements to members of the Plan Commission?

Frazo: Please pass it.

Clements: Thank you for your brevity. Is there any further discussion? Would anyone else like to speak in favor of this petition? Would anyone like to speak in opposition to this petition? We come back to the Plan Commission. Are there any other comments? If not, we can entertain a motion.

SUPPORTERS – SSS-21-3 – Frazo – None

REMONSTRATORS – SSS-21-3 – Frazo – None

ADDITIONAL QUESTIONS FOR STAFF - SSS-21-3 – Frazo – None

FURTHER QUESTIONS FOR STAFF - SSS-21-3 - Frazo

Guerrettaz: I can do that Margaret. **In the matter of case number SSS-21-3, Frazo Sliding Scale Subdivision Preliminary Plat, Sidewalk Waiver Request and Waiver of Final Hearing, I move that we approve the Subdivision, we approve the Sidewalk Waiver and we Waive the Final Hearing, subject to the staff report and subject to the reports of the Monroe County Highway Department MS4 Operator as found in our packet.**

Owens: **Second.**

Clements: Mr. Wilson, will you please call the roll?

Wilson: I will call the roll. The vote is on SSS-21-3 Frazo Sliding Scale Subdivision Preliminary Plat. A vote to approve is a waive the final hearing and approve the sidewalk waiver and approve the Sliding Scale Subdivision Preliminary Plat subject to the Highway Engineer and MS4 Coordinator reports and the findings and fact. Again, a vote in favor is a vote to approve the subdivision. Jerry Pittsford?

Pittsford: Yes.

Wilson: Jim Stainbrook?

Stainbrook: I said yes.

Wilson: Ok. Julie Thomas?

Thomas: Yes.

Wilson: Amy Thompson?

Thompson: Yes.

DRAFT

Wilson: Margaret Clements?

Clements: Yes.

Wilson: Trohn Enright-Randolph?

Enright-Randolph: Yes.

Wilson: Bernie Guerrettaz?

Guerrettaz: Yes

Wilson: Dee Owens?

Owens: Yes

Wilson: The motion is approved by an 8 to 0 vote. Geoff McKim left the meeting.

The motion in case SSS-21-3, Frazo Sliding Scale Subdivision Preliminary Plat, Sidewalks Waivers Requested, Waiver of Final Hearing Request, to approve the petition with all waivers being approved, carried, unanimously (8-0).

DRAFT

NEW BUSINESS

2. REZ-21-1

**The Trails at Robertson Farm Rezone from RE1 to HR
Waiver of Final Hearing Requested.**

One (1) 44.07 +/- acre parcel in Section 20 of Perry Township at 4691 S
Victor Pike, parcel #53-08-20-400-102.000-008.

Zoned RE1. Planner: rpayne@co.monroe.in.us

BOARD ACTION: Clements introduced the petition.

STAFF ACTION: Petition was continued by the staff.

DRAFT

REPORTS:

Planning/Wilson: Just real quickly, I kind of mentioned this, if I can share the screen, I am not sure I can do that, here I got it. Can you see that now?

Nester Jelen: Yes.

Guerrettaz: Can you blow it up?

Thompson: Yeah. It is tiny.

Wilson: I'm sorry.

Guerrettaz: I learned how to do this last time.

Wilson: Way to make me feel bad Bernie.

Guerrettaz: You can go into zoom ratio under your view options. Jackie gave me a tutorial on this.

Nester Jelen: So, Larry, in the very bottom right there is a plus sign, it's very tiny, push that.

Wilson: Oh, wow. It really is tiny, isn't it? Now can you see?

Nester Jelen?

Wilson: Ok. I won't read this out loud but and we intended to send out and email earlier to everybody and we just got really busy. When we first set up the Administrative Work Sessions the idea was that it would be administrative issues and we would focus on long-term planning, ordinance update, Plan Commissioner training, enforcement and we have always included a review of the upcoming meeting but it always been a curser review. We have these cases coming up. These are the petitions that we will be hearing that the regular meeting and these are the issues that may arise at that regular hearing. I think part of this is related to having meetings via zoom but over the last year or so these Admin meetings have basically morphed into really a pre-hearing or a re-hearing of the regular meeting subject matter. We have had people testify. We have had people try to introduce evidence and it is becoming a problem because we don't notice these meetings and we don't keep a record of them and so it becomes very confusing as to when somebody said something or when a question was raised or whether material has to be re-submitted. We are now getting requests from both petitioners and remonstrators to include material in the Administrative Meeting packet so it has just kind of got out of hand. What we would like to do is kind of revert to the original model where we have a an Administrative Work Session and focus on things that, such as the PUD's that have expired or Plan Commissioner training or an update from Dave on enforcement, those kinds of things. We will still review the upcoming agenda items but the idea is that we will not take testimony from either the petitioner or opponents to a project and the discussion would be limited to really asking questions and not really debating the merits of the case. Again, the reason for doing this is primarily is legally we are supposed to give notice to the public and actually hold a public hearing when we review these items that we take evidence on the

items and I think that includes actually talking to the Plan Commission Members as well as introducing paper evidence. So, I think this clarifies everything. I do want to note that we have done this in the past that if you have a public hearing and you are closed and missing something, you can continue that hearing to the next Administrative Meeting and that's fine because you continued the hearing but otherwise we will just deal with administrative matters at the Admin Meeting. I wanted to bring it everybody just to make sure that no one has a strong objection to it. I do think if we don't think if we don't revert to that we do need to start noticing hearings at these meetings because they have become sort of de facto public hearings. Dave, if you have any comments from a legal standpoint.

Schilling: I do not.

Wilson: Ok.

Clements: Mr. Pittsford I see you have your hand raised.

Pittsford: I just wanted to say that having been a member of the Plan Commission when these meetings were instituted and then had a period of absence and then returning, I was a little bit surprised by the content of the meetings, administrative meetings when I returned. I believe Mr. Wilson that these actually originated during the time we were working on the Comprehensive Plan back in the day. I can't remember what year that was approved but my recollection is it came out of the desire to deal with Comprehensive Plan issues without muddling up the regular business meetings where petitions were hurt just my old man's historic perspective.

Clements: Thank you Mr. Pittsford. Commissioner Thomas.

Thomas: It seems like and I agree with Mr. Pittsford as someone who has been on here since 2009. It seems like it has evolved into sort of a rehearsal for the regular meeting and that is not a good use of anybody's time, including out petitioners. But I think one of the benefits of it, one of the benefits of it is that it does allow for questions to be raised or concerns to be issued and rather than 9 people sending Planning staff a note when they read the packet and going I don't understand what this means, you can ask that question. I think if we and I appreciate that this has been brought up, Mr. Wilson, but that if we could just make it a question and answer rather than a presentation. Because for me I feel like there is so many times that I hear the same presentation and that is because of what I do but by the time it gets to the Commissioners we hear it in the work session and we have a regular meeting on it, because my colleagues are not always able to attend these meetings regularly. There are plenty of opportunities to present the information to the public and a lot of opportunities for the public to respond. So, I would prefer that if people could just ask questions about any of the petitions that are coming up even before we have the first hearing on it and that is why we have a first hearing and a second hearing as well. Yeah, I don't want to be doing this rehearsal stuff. This is, I don't think it is a good use of anybody's time.

Wilson: I think the intent is to allow Plan Commission members to raise all kinds of questions at this Administrative Meeting. I have got concerns because of the traffic or because of there are a lot of sinkholes in that area and that gives us a heads up as to what we need to address in our packet and at the regular meeting without getting into a debate on the issue when we don't really have the

information yet. That is kind of our idea but we fully intend to take questions, prepare for concerns, what people want to see addressed in the report but again we are now on a 2 week cycle of doing reports over and over again is the way that we have been doing it and it is just too much work and it is creating some inconsistencies.

Thomas: I don't think it is fair to petitioners either to have to be and of course obviously staff, but to have present over and over again the same information again and again. I agree. I would like this to just be just a q and a session or a question session or a concern session, not a let's review the entire packet and then ask questions and then let's review it again. We can hear these things 4 times just in Plan Commission meetings outside Plan Review, Plat and the other committees, so this overkill. It is a lot. I would prefer that we focus on reading out packets, just asking questions, not having the whole thing presented to us every week and being more structured with our time. We have a CDO that we are going to be getting modules for and I want to spend time on that. I do not want to spend time hearing a packet for the fourth time.

Clements: Ok, I think those are all over constructive items. Mr. Pittsford.

Pittsford: 2 quick things. First of all Commissioner Thomas, thank you for noting that there are plenty of opportunities for the public to be heard and I want to make clear that Mr. Wilson actually pointed out that fact that statutorily we are not supposed to be hearing this. We are not supposed to be receiving public comment or hearing from petitioners and the second thing is when this originally began and petitions were presented, often times the petitioner would be present be had to remain silent and if they did try to interject or to expand upon facts, they were asked to stop. There was no comment from anyone present. Only questions and answers by Plan Commissioners and staff. Again just a little perspective.

Clements: That is very important, what you shared as former President of the Plan Commission, Mr. Pittsford, and thank you. I really cherish these insights and inputs. I think this is good practice what you have placed here Mr. Wilson and I will try to do better in presiding over these meetings so that we can adhere to your guidance here.

Wilson: I will tell you what we will do, we will go ahead and prepare for the June Admin. Meeting with this guidance and hopefully it will reserve some space to do, we need to update the Plan Commission on the number of permits coming in, number of variances, things we used to do at the Admin. Meeting and we have been hesitant because the Admin. Meetings have been going so long. That's the Administrative stuff. One of the reasons we put that first that the Plan Commission Meeting is often times we just run out of time or endurance.

Clements: Well, these are good suggests and we will adhere to these. Thank you. Are there any other comments or questions from any other member of the Plan Commission on this item?

Legal/Schilling: On the Huff case the court ordered us to mediate and effective date of our mediation agreement and a potential mediation period would be mid-June. I need the Plan Commission and the Commissioners to think of a representative for the mediation like we did last time and to determine whether Judge Huffman is acceptable mediator. That could possibly be done at your next Administrative Meeting to give you a chance to think at about. That's it.

DRAFT

Clements: Ok, great. Is there a motion to adjourn the meeting?

Thomas: **So moved.**

Clements: Anybody opposed? Thank you all for a good evening.

The meeting adjourned at 7:17 pm.

Sign:

Attest:

Margaret Clements, President

Larry J. Wilson, Secretary

DRAFT