

**THE PLAT COMMITTEE OF
THE AREA PLAN COMMISSION OF
ST. JOSEPH COUNTY, INDIANA**

MINUTES

January 21, 2021
8:30 a.m.

Council Chambers, 4th Floor
County-City Building, South Bend, IN

MEMBERS PRESENT:

John R. McNamara, P.E., L.S.
Chuck Bulot
Sky Medors, P.E.
Brett Davis
Dave Cherrone

ALSO PRESENT:

Abby Wiles
Shawn Klein
Frank Fotia
Ryan D. Fellows

SUBDIVISIONS REQUIRING A PUBLIC HEARING

1. MAJOR SUBDIVISIONS - PRIMARY APPROVAL:

A. Hickory Heights Estates

7142-20-P

SHAWN KLEIN: This Major Primary subdivision is located on the east side of Hickory Road approximately 660' north of Brick Road, St. Joseph County. This subdivision will consist of 8 building lots. The total area is 14.65 acres. A check of the Agency's maps indicates that no environmental hazard areas or wetlands are present. The rights-of-way are correct as shown. It will be served by private well and private septic. The County Surveyor recommends approval. The County Engineer's office recommends approval, as the applicant has demonstrated that the location of the new street opening complies with St. Joseph County and INDOT site distance standards. The County Health Department now recommends approval subject to revisions that will be communicated to the Surveyor. The Subdivision went through Technical review on March 19, 2020. The Staff has reviewed this Subdivision and finds that it complies with the requirements for Primary Approval as specified by the St. Joseph County Subdivision Control Ordinance. Therefore, the Staff recommends this subdivision be granted primary approval subject to Health Department revisions and detailed language related to the rights and obligations of the ingress/egress easement, whether this is the existing easement or if another arrangement is arrived at prior to secondary approval.

IN FAVOR

MIKE HUBER, of Abonmarche, with offices located at 315 W Jefferson Blvd., South Bend, IN, spoke in favor of this petition stating: "We're here representing the applicant, the developer, this morning. Also on the line from Abonmarche we have John Linn and Chad Knip, they were involved in helping make sure we do the site distance analysis and

all the technical requirements for the drainage plan as well. Yulia Lee is the developer, she is also on the call this morning as well. We don't have much to add to Shawn's overview of the project but are available for any questions that you might have."

REMONSTRANCE

(Audio Position: 8:20)

JOHN LADUE, residing at 51770 Hickory Rd., Granger, IN spoke in remonstrance of this petition stating: "My wife, Joyce and I, own the only other lot in the Tokay Major Subdivision. Hickory Heights is proposing to subdivide our small subdivision and I believe the proposed subdivision also proposes to modify the existing restrictive exclusive easement in a way that's both unlawful and not properly addressed in the subdivision plan. When we bought our lot, Lot 1A, it was one of only two lots in the Tokay Major Subdivision. The ingress/egress drive, our driveway, includes an easement that is restricted to the exclusive use of the two lot owners in the existing subdivision. Under Indiana law, the use of that exclusive ingress/egress easement can't be expanded beyond its current scope without the consent of myself and Joyce. I've been talking with Shawn Klein about the proposed subdivision and I asked Shawn to clarify that the proposed subdivision will not impose any additional burdens on the ingress/egress easement and Shawn told me that the County's interpretation is just the opposite. Shawn told me that the County interprets the easement in this way after the subdivision is approved as the 8 lots are sold then the easement, its burdens and its benefits would be shared equally between my wife and 8 new lot owners even though those 8 new lot owners will have a new road and have no need to use the easement, the drive that goes to our property. I disagree with this interpretation, I don't think it's accurate but if the proposed subdivision is open to that interpretation, then I believe that the proposed subdivision is unlawful and imposes additional burdens on the existing easement and exceeds the permissible use of the existing easement. Which is exclusive to only two lots, not 9. The Committee shouldn't approve the proposed subdivision if the Committee believes that it might alter the existing easements and the existing plat. Consent of all the existing lot owners of the existing plat is required before the existing easements can be changed and Joyce and I do not consent. Second, on the drawing of the proposed subdivision, I don't think it complies with the subdivision ordinance because it doesn't include a separate legal description of the existing exclusive easement. Section 153.062 (a)21, requires that areas that are reserved for the use of the property owners shall be shown on the drawing and labeled as to their use and shall have a separate legal description on the drawing. The current plat drawing has a note 10 and in that note 10 it provides a separate legal description of the exclusive ingress easement and that's important because it says it's an ingress and egress easement which is a restriction and it's exclusive to the two lot owners, another restriction. So the legal description is important. The current drawing of the proposed subdivision doesn't include a separate legal description of the existing ingress/egress easement that's supposed to be incorporated into any new subdivision of the plat. The lack of a proper description of the existing easement creates confusion and violates the ordinance in my opinion. So the

Committee should deny primary approval until this is cleared up. The Committee should know that Joyce and I have proposed a private solution to this problem but we haven't heard back. We object and we hope that the Committee will deny primary approval.

JOHN MCNAMARA: I guess my feel is that this issue needs to be worked out before the secondary.

SHAWN KLEIN: Correct, and that will fully give Mr. LaDue the opportunity to present relevant case law that demonstrates that subdivisions have been denied based on their impact on the rights and obligations of a private ingress/egress easement. He'll have that opportunity then, alternatively he can also appeal to the Area Plan Commission and flesh out that case better there.

JOHN MCNAMARA: Because he's raised some legal questions...

SHAWN KLEIN: Right, and he would have to provide better evidence to support those claims.

JOHN MCNAMARA: The only thing I can do is reassure Mr. LaDue that we will work this out before any secondary gets approved.

JOHN LADUE: We do have that case law and I am happy to provide it for you and give you more of a detailed description of our objection based on the case law.

SKY MEDORS: So that would be fleshed out before secondary approval?

SHAWN KLEIN: Yes. Or he could appeal.

After due consideration, the following action was taken:

Upon a motion by Sky Medors, P.E., being seconded by Brett Davis and carried, the Plat Committee finds the evidence adduced at this Plat Committee Hearing supports each element of the Staff Report, and Hickory Heights Estates Subdivision therefore complies with the St. Joseph County Subdivision Control Ordinance and is granted Primary Approval, subject to the following: revisions requested by the Health Department and a note clearly describing the ingress/easement by referencing the instrument number of the plat on which it was established and detailing the rights and obligations associated with the easement

SUBDIVISIONS NOT REQUIRING A PUBLIC HEARING

1. MAJOR SUBDIVISIONS - SECONDARY APPROVAL:

Pleasant Valley North Section Five

7201-20-F

(Audio Position: 3:14)

After due consideration, the following action was taken:

Upon a motion by Brett Davis, being seconded by Sky Medors, P.E. and unanimously carried, the Plat Committee finds the evidence adduced at this Plat

Committee Hearing supports each element of the Staff Report, and Pleasant Valley North Section Five Subdivision therefore complies with the St. Joseph County Subdivision Control Ordinance and is granted Secondary Approval, subject to the following: elimination of Lot 11 and a note placed on the SDS stating "The septic systems for this subdivision are a mix of elevated sand mound and conventional septic systems and three bedrooms are permitted. If four bedroom homes are desired, additional approval from the St. Joseph County Department of Health will be required."

2. MINOR PLATS:

- A. Brewer's State Line Road Minor 7194-20-M
(Audio Position: 17:35)

After due consideration, the following action was taken:

Upon a motion by Sky Medors, P.E., being seconded by Brett Davis and carried, the Plat Committee finds the evidence adduced at this Plat Committee Hearing supports each element of the Staff Report, and Brewer's State Line Road Minor Subdivision therefore complies with the St. Joseph County Subdivision Control Ordinance and is granted Primary Approval.

- B. Boyer-Rivera Pine Road Minor Subdivision 7197-20-M
(Audio Position: 17:55)

After due consideration, the following action was taken:

Upon a motion by Sky Medors, P.E., being seconded by Brett Davis and unanimously carried, the waivers from 1) from Section 153.135 (H), the requirement that lots abutting an arterial street shall have their access from a minor collector or local street, to allow one 20' opening across the 5' non-access easement to allow for future access onto Pine Road for Lot 1. were approved.

Upon a motion by Sky Medors, P.E., being seconded by Brett Davis and carried, the Plat Committee finds the evidence adduced at this Plat Committee Hearing supports each element of the Staff Report, and Boyer-Rivera Pine Road Minor Subdivision Subdivision therefore complies with the St. Joseph County Subdivision Control Ordinance and is granted Primary Approval.

- C. McCormick's Sycamore Road Minor 7198-20-M
(Audio Position: 18:10)

After due consideration, the following action was taken:

Upon a motion by Sky Medors, P.E., being seconded by Brett Davis and unanimously carried, the waivers from 1) from Section 153.135 (H), the

requirement that lots abutting an arterial street shall have their access from a minor collector or local street, to allow one 20' and one 40' opening across the 5' non-access easement to allow for continued access onto Sycamore Road for Lot 1, and one 20' opening to allow for continued access onto Sycamore Road for Lot 2. were approved.

Upon a motion by Sky Medors, P.E., being seconded by Brett Davis and carried, the Plat Committee finds the evidence adduced at this Plat Committee Hearing supports each element of the Staff Report, and McCormick's Sycamore Road Minor Subdivision therefore complies with the St. Joseph County Subdivision Control Ordinance and is granted Primary Approval.

3. REPLATS:

- A. Nadine Street Minor Subdivision First Replat 7196-20-R
(Audio Position: 18:25)

After due consideration, the following action was taken:

Upon a motion by Sky Medors, P.E., being seconded by Brett Davis and unanimously carried, the waivers from 1) from Section 153.021(F) to not have a frontage street or reverse frontage with a minimum five foot non-access easement along the arterial street, and 2) from Section 153.025(M) to allow for one 20' opening across the 5' non-access easement for continued access onto Nadine Street for Lot 1A, were approved.

Upon a motion by Sky Medors, P.E., being seconded by Brett Davis and carried, the Plat Committee finds the evidence adduced at this Plat Committee Hearing supports each element of the Staff Report, and Nadine Street Minor Subdivision First Replat Subdivision therefore complies with the St. Joseph County Subdivision Control Ordinance and is granted Primary Approval.

4. TYPE II CORRECTIVE PLATS:

None for consideration at this time.

5. MINUTES:

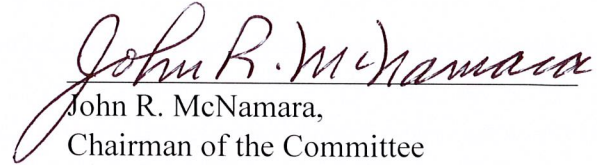
- A. Approval of the minutes from the January 7, 2021 Plat Committee meeting.

Upon a motion by Sky Medors, P.E., being seconded by Brett Davis and unanimously carried, the minutes from the January 7, 2021 Plat Committee meeting were approved.


6. ADJOURNMENT:

Upon a motion by Sky Medors, P.E., being seconded by Brett Davis and unanimously carried, the January 21, 2021 Plat Committee meeting adjourned at 8:49 a.m.

RESPECTFULLY SUBMITTED,


John R. McNamara,
Chairman of the Committee

ATTEST:


Abby Wiles,
Secretary of the Committee