

PLANNING COMMISSION MEETING MINUTES
AUGUST 1, 2006

The Planning Commission held its monthly meeting Tuesday, August 1, 2006 at 7:00 P.M. in the City Council Room at the Municipal Complex. The following items were on the agenda:

1. Consideration of preliminary plat for Forest Oaks Lots 91-140, Bransen Harris developer, represented by Larry Yancey of Hawkins-Weir Engineers, Inc.
2. Larry Yancey of Hawkins-Weir Engineers, Inc., to discuss the Master Street Plan in connection with Legacy Business Park roads
3. Any other business that comes before the Planning Commission

MEMBERS PRESENT:

Bob Freeman, Chairman
Philip Bagby, Co-Chairman
Lyn Brown
John Symonds
Dorvan Wiley
Sue Moore
Frank Newman
Andy Dibble

MEMBERS ABSENT:

Mark Evans

OTHERS PRESENT:

Cami Brown, Rec. Sec.
David Martin, Chief Bldg. Inspector
Brad Baldwin, City Engineer
Candice Settle, City Atty.
Kenneth Fry, Editor Press Argus- Courier
Larry Yancey, Hawkins-Weir Engineers
Ronnie Hawkins, Hawkins-Weir Engineers
Al Prieur, Hoffman-Prieur and Associates
Jimmy Bell, Jimmy Bell Realty
Mr. & Mrs. Bill Gaither

Chairman Bob Freeman called this meeting to order at 7:00 P.M. At this time, Mr. Freeman added to the agenda the approval of the minutes from the last

Planning Commission meeting. Lyn Brown made a motion to approve minutes as written, the motion was given a second by Andy Dibble, and the motion carried a unanimous decision.

The next item to come before the Commission was consideration of a preliminary plat for Forest Oaks, Lots 91-140, Bransen Harris developer, represented by Larry Yancey of Hawkins-Weir Engineers. There were no comments on this plat, and Andy Dibble made a motion to approve, with a second from Lyn Brown, and the motion carried with a unanimous decision.

The next item to come before the Commission was Larry Yancey, Hawkins-Weir Engineers, for discussion of the Master Street Plan in reference to street development in connection with Legacy Business Park. Bob Freeman commented this was on the Legacy Business Park Preliminary Plat and the North-South corridor in accordance of the Master Street Plan or otherwise. At this time the Chairman gave the floor to Larry Yancey. Larry Yancey commented he would like to give a brief history of this plat. Mr. Yancey commented the preliminary plat was reviewed on May 2, 2006, and Hawkins-Weir Engineers represented the owners, Mr. & Mrs. Bill Gaither, who were present at this meeting, and Mr. Yancey commented he wanted to introduce them to the Commission after he completed addressing the Commission. Mr. Yancey provided the Commission with copies of the preliminary plat, for reference. Mr. Yancey commented that since the approval on May 2, 2006, there had been a lot of meetings and discussions in regard to the North-South street that was not part of the preliminary plat. He stated that Hawkins-Weir, representing the Gaither interest, had not been back in front of the Commission since that time, and that they have been developing construction plans in accordance with the preliminary plat. Mr. Yancey commented that he and his clients had been informed that the final plat won't be considered unless they address the North-South street, and therefore Mr. Yancey needed clarification on the Commission's position on the final plat so they might proceed and finish construction plans. Mr. Yancey stated he was in front of the Commission for question, and not for any approval or anything of that nature, just for clarification only. Mr. Yancey stated there has been a lot on information floating around, and they need an official position from the Commission so they will know how to proceed.

At this time, Co-Chairman of the Planning Commission, Attorney Philip Bagby, stepped away from his position on the Commission, and took place at the podium in representation of his clients, Mr. & Mrs. Bill Gaither. Attorney Bagby commented one of the reasons this had come up is that this North-South street is not provided for on this particular preliminary plat. Mr. Bagby commented there is not an item on the agenda to be decided at this meeting, yet an issue that

Mr. Bagby and his clients were looking for guidance on to make sure all parties are on the same page. At this time, City Engineer Brad Baldwin attempted to pull up the Master Street Plan map for viewing. Due to technical difficulty the map could not be displayed.

Bob Freeman took this time to back up to the preliminary plat being discussed. Mr. Freeman commented that he believed what we had here was a miscommunication. Mr. Freeman commented when Larry presented this plat for approval, discussion came up about the North-South corridor and the issue of topography, and where the street should go. Mr. Freeman went on to say he was given the impression Larry was talking about the topography within the location of that plat in the North-South corridor, not the topography South of that corridor. Mr. Freeman went on to say that the vision was, there would still be a North-South corridor because that is in a commercial zone, and that the question was where the corridor was going to go. Mr. Freeman commented in the engineer's view, they were looking at where the North-South corridor sets in this particular plat, and moving it further East, and that was the misdirection, misunderstanding. Mr. Freeman gave the floor back to Philip Bagby at this time.

Philip Bagby asked his clients to introduce themselves to the Commission at this time, which Mr. & Mrs. Bill Gaither did, and Mr. Gaither gave a brief personal history to the Commission about his family and his connections and involvements with this property. After introduction, Mr. Bagby commented to the Commission that his position was there was no requirement on their part, but Dr. Gaither is willing to dedicate and build a street running North from Northridge to North of his property line. Bagby commented Dr. Gaither would voluntarily have a dedication of a right-of-way to the South. Mr. Bagby commented that, as a lawyer, his suggestion to his client was to submit the plat the way it is. He stated his client has a preliminary plat approval, and if there is nothing else required by law or by ordinance, you don't have a basis to deny a client. Mr. Bagby stated that his client, against his strictest advice, was offering to work out some sort of compromise. Mr. Bagby went on to say what he and his clients were looking for was some direction from the Planning Commission as far as the Commissioners thoughts on this. Mr. Bagby commented he and his clients do not think the Commission can require anything of the Gaither's in this matter. At this time, Philip Bagby commented on the other hand, putting his Planning Commissioner "hat" back on, one of the things the Commission needs to be real concerned about is we don't have this problem come up in the future. This is a situation, where, if someone wanted to take a hard line and say no, I am not going to build a road there, that frankly, as an attorney, Bagby doesn't think the City has a defensible position, right now, with regard to the Master Street Plan. Mr. Bagby commented that the Master Street Plan does not specifically ask for location. Mr. Bagby then went on to refer to the actual Subdivision Regulations,

where he stated it says "Street Grading and Surfacing", and under that heading Mr. Bagby stated it reads, "Streets shall be constructed with a dust-free hard surface according to the Van Buren Master Street Plan". Bagby then referred to the section from City of Van Buren Minimum Street Standards, Sections 4, Street Classification, "Classification of streets shall conform to the Master Street Plan with regard to location and general requirements", which City Attorney Candice Settle pointed out. Mr. Bagby commented classification of streets shall conform, but as far as every plat being required to have a street located on it, which does comply with the Master Street Plan, that gap has not been closed. Mr. Bagby stated he thinks we need to close that in the future, but, taking off his Planning Commissioner "cap", and going back to "advocate", he did not think that is in affect in this situation. Bagby then commented as Dr. Gaither's lawyer, he was seeking guidance from the Commission.

Chairman Bob Freeman asked to summarize Mr. Gaither's position, and was that position that the Master Street Plan was not an enforceable document. Mr. Bagby replied that was correct, as far as location of streets. Commissioner Frank Newman asked what our City Attorney, Candice Settle, had to say about this matter. Ms. Settle commented she did research on this when it came up, and there is a fine line in what a Planning Commission can require in regards to subdivision property. The commented there are case laws specifically authorizing cities to do so as part of subdivision process. Ms. Settle commented she thinks our language isn't strong, but she feels the reason for that is the City might get itself in a position that is not defensible. Ms. Settle commented that at this point her opinion is the City can enforce the Master Street Plan as far as location. Attorney Settle went on to say she thinks it can be a flexible document, and she thinks this is a very gray area.

After more discussion, Attorney Bagby verified for the Commission that Dr. Gaither was offering to build to the North, and volunteering to make a dedication to the South for a period of time, and if the dedication was never used or developed, say, within 5-10 years, that dedication would revert back to the original property owners.

Attorney Candice Settle commented the reason she was originally brought into this matter was the property North of the particular property was being developed at the same time, and when talking about this road, they wanted to put the road to the West of what the Master Street Plan called for. Dr. Gaither wanted to locate the road in a different location. Ms. Settle commented in her opinion the Master Street Plan can be modified by the Planning Commission, to make things more cost effective when building a road. Attorney Settle commented this is what she was talking about when she stated that she believes the Master Street Plan can be flexible. Attorney Settle also commented she

believes the Commission needs to be consistent in the future in enforcing the Master Street Plan.

Larry Yancey commented that this request has come about and their developer is willing to comply with the Master Street Plan on the North leg. The South leg is a topography issue, and that is the reason for the request for deviation on that leg and that there is a willingness to comply on their development side to resolve the issue.

Commissioner Lyn Brown asked Attorney Settle since the topography South is an issue if she thought a dedication at this time would be sufficient. Ms. Settle replied she couldn't answer that because her understanding property South of there was a problem. Brad Baldwin stated there is no reason not to build a road all the way across that property. Lyn Brown then asked if, in addition to the North part of the North-South leg, was Dr. Gaither intending to do the Northridge drive extension. Bob Freeman and Philip Bagby both responded that this was correct.

At this time Attorney Settle commented that her opinion stands that the Master Street Plan is enforceable. Attorney Philip Bagby commented that he does not agree.

Commissioner Frank Newman commented that the Planning Commission decision has nothing to do with it, as the City Council will be the one to make the final decision.

Bob Freeman reviewed the proposal the Gaither's were offering at this time. Mr. Freeman commented that the proposal is to build in accordance with the Master Street Plan from Northridge Drive to the North, and then dedicate the Right of Way, according to the Master Street Plan, to the South for a period of some time. Andy Dibble commented he heard 5 -10 years on the dedication, and he felt 5 years was way short, and that he agreed with Candice Settle, that it is not the City's purpose to be building roads. Commissioner Dibble also commented it doesn't serve much purpose to dedicate a Right of Way to build a street that may be needed when the City won't have the funds to build.

Philip Bagby asked if the final plat came in with that road on it would the Planning Commission approve it. Mr. Bagby agreed with Andy Dibble, wearing his Planning Commission "hat", but wearing his attorney "hat" he commented that to him it is black and white, if the developer submitted a final plat that looked exactly like the preliminary plat, having one road running East-West, nothing running North-South, and there is nothing the Planning Commission can do about it. He also commented denying the plat would be arbitrary and

capricious, and would be just like the cell towers, which he and Attorney Settle also do not agree on. Mr. Bagby commented this is why he and Attorney Settle represent different people. Attorney Bagby then commented he was trying to throw out a compromise, even though not ideal, given the confusion, and the gray area that we have in the ordinance. He asked if this sounded like a reasonable compromise to the Commission. If not, Bagby commented, then back up and take your chances, fine, he and his clients will do that. Bagby commented what he was hoping was throwing this out was something the Commission could say yes, no, or give some guidance. Commissioner Frank Newman asked Attorney Bagby when he wanted an answer. Bagby stated he guessed when it comes down to it, when they submit the final plat. Once again Attorney Bagby stated his advise to his clients was don't back down an inch, but they are offering this compromise.

Commissioner Dorvan Wiley asked if the Commission had not had plats before that the final plat was required to make changes. Philip Bagby stated once we make the changes on the preliminary plat, if the developer complies with those final requirements, according to the ordinance, it has to be passed. Attorney Candice Settle commented that she disagreed with this, stating that this is a process, and that the Planning Commission is not the final body, the final say so, in this proceeding. She also stated while Philip was doing a great job representing his client, making the Planning Commission fearful of a lawsuit by intimidating or confusion was not the way for the Commission to make a decision. Frank Newman commented that his question was when did they expect an answer, because he did not feel he was in a position at this time to make a decision. Mr. Bagby commented as soon as possible, obviously.

Dorvan Wiley asked, because the Planning Commission made an error in approving the preliminary plat, in Attorney Bagby's opinion, his advice to his client was to hold fast and not do anything. In lieu of a compromise, Bagby was allowing them to propose to build a road to the North, and dedicate an easement to the South. Attorney Bagby stated it wasn't intentionally done, but after studying this, as to what can be required, this can't be required at all, in his opinion. Bagby commented his hard-nose lawyer advise to his client was to dig in his heels and not do a thing. He commented that was when he had on his attorney "hat". Bagby then stated he turned around and asked himself what was best for the community, and Dr. Gaither is obviously a concerned citizen, the kind we would want to have if we have this gray-area situation. He commented Gaither threw this compromise out on the table, and even though it was not hard-nosed, it is reasonable. Bagby stated this is what he was pitching to the Commission tonight, what we have here is two attorneys with different opinions as to whether or not something is enforceable. Both attorneys agree there is some gray area, and this is where all the fuss comes in. Bagby then stated he did not

threaten any kind of litigation, but to avoid a big problem, here is a compromise on the table, and asked does it sound reasonable to the Commission, and if so, this will clear up all these problems, and then we can patch up whatever problems we have with the ordinance.

Attorney Candice Settle commented what she was hoping the Commission will consider is not litigation, but that the Commission considers the facts in this case, and that they may find they've got someone putting in a 2 ½ mile road to Oliver Springs Road, that will bring some major traffic relief it may be in the citizen's best interest not to make him build part of the road that is going nowhere, instead of looking at this as a potential litigation. Ms. Settle commented everything is a potential litigation. Ms. Settle commented what Planning Commission needs to consider is what is best for the citizens of Van Buren.

Al Prieur, Hoffman-Prieur and Associates, Inc., stepped up to say they were representing SEMMC on this property, and, they can't make any kind of decisions tonight at this meeting. He commented they submitted their plat to the North of this property after seeing the plat submitted by Hawkins-Weir, and seeing the Commission had approved it without any North-South street. He stated when they presented their plat, their request was, since there wasn't a North-South street below us, was that going to be all right on their plat, and it was basically approved with our North-South street. We came back after the fact, talking about mutual access, then back to where we are right now. Mr. Prieur commented he thought St. Edwards is more that willing to work with the City as best we can, but then he thought Frank Newman had made the fact clear that no decision can be made tonight, but that he and his client would like to have the opportunity to see how that alignment is going to affect this property, because their property has a unique topographical feature in the fact it has a North-South power line that cuts off a portion of it and leaves a narrow band on the East side of the property. Therefore road development or Right of Way requirement in there almost makes that piece of property unusable.

Commissioner Frank Newman asked Mr. Prieur if that power line was there when property was purchased, to which Mr. Prieur answered yes, and Mr. Prieur then commented that it was brought up to see what was happening and nothing was said. Mr. Newman commented the Commission did not catch it at the time, and Mr. Prieur said it was brought up because it had not been brought out on the plat to the South of their property. Mr. Prieur commented he hoped the Commission would not make a decision tonight so they could have time to see what is being proposed on the property to the South.

Bob Freeman asked at this time to go back to the preliminary plat that was approved, and commented we are in agreement there was a miscommunication as it was talked about moving that North-South corridor because of topography,

and Mr. Freeman made it clear he was referring to the Legacy Business Park. Chairman Freeman went on to comment the requirement did not go away, it did not appear on the plat, but that was the miscommunication between the Commission and the engineer, or the engineering firm. Mr. Freeman commented looking back into the minutes when Al and the preliminary plat for this St. Edwards Medical were in front of the Commission, that there is a note from the Commission to coordinate between them and the Legacy Business Park Project, to coordinate on the Master Street Plan, where that North-South corridor was going to go, so the intent is clearly there that there was going to be a North-South corridor. Mr. Freeman stated the issue comes back to the location of that North-South, and as Candice has pointed out, that North-South in location, where it needs to go, we are down to the point now, of do we require that South leg from Northridge to the end of their property, or do we accept the dedication of the Right of Way.

Commissioner Lyn Brown asked Bob Freeman if Legacy was asked to hold to the Master Street Plan and build the North-South portion, then would the property to the North, SEMMC, be asked to do the same. Commissioner Frank Newman commented that if the two could compromise, and SEMMC was willing to move their part over, and Dr. Gaither was willing to do the same, then that would be fine, but if the two could not agree, then the Commission would have to make the decision where the street would go. Lyn Brown brought up a scenario of, if SEMMC was willing to build to the North all the way to Northridge, and Legacy was willing to build the road all they way South, at which time Jimmy Bell, developer and realtor, asked to answer that question. Mr. Bell commented that SEMMC would not be willing to build a road to the South. Bob Freeman commented if the North-South road was in accordance with the Master Street Plan, and SEMMC was to come in and say, okay, going to the North we can join up here but we need to move it back, where it still provides access for transportation, ease, etc., then we could look at that and say yes, we still have a North-South, but that is something that SEMMC would have to look at, how that would align with what we are requiring as a North-South here. Candice Settle commented that this is what she meant by the Master Street Plan being flexible.

At this time Jimmy Bell asked to address the Commission. Mr. Bell commented as per SEMMC, it was his understanding that they are not planning to develop the property. Mr. Bell stated they would be building buildings on this property, and according to the Building Inspector, David Martin, they can build numerous medical buildings on this site without doing a plat on it. Mr. Bell went on to say at this point in time, as far as SEMMC being required to file a plat, that they can withdraw their preliminary plat at any point in time, and that is where SEMMC stands on this matter. Mr. Bell then turned to David Martin and asked David to correct him if he was wrong, and that according to the building code they had

read that was possible, and Mr. Bell wanted to point that out to the Commission. Mr. Bell went on to say if they could potentially, and this was a potential compromise from Mr. Bell, go South from their property to where the proposed Northridge Drive is, the utility lines still go South, and if they could compromise possibly where there was an offset, we have a North-South corridor from Northridge Drive going North to Old Uniontown Road under the power line. At this time Dr. Gaither began to ask questions directly to Jimmy Bell, at which time Chairman Freeman stepped in and stated that at this time he did not want to get off track, and that he wanted the Commission to stay focused on the issues. Mr. Bell then commented he was just offering that as an alternative.

After more discussion, Chairman Bob Freeman asked City Attorney Candice Settle if the Commission comes to a consensus, hypothetically, either way, that we feel the North-South corridor should be built in accordance with the Master Street Plan, and they disagree with that can they appeal that to the City Council. Attorney Settle replied that she did believe they could. Chairman Freeman then put emphasis on the fact he was not suggesting to pass this on, but he did want to know what avenues would be open. Freeman then commented that the City Engineer Brad Baldwin had stated he felt strongly that there was no reason to not build the South leg. Brad Baldwin then commented that he can't pick and choose which ordinances to enforce and which ones not to, and that the Planning Commission can't decide that, City Council has to decide that, and that he can't approve plans without a North-South street, until the City Council says we don't have to have that street. Mr. Baldwin stated he didn't care where the corridor is, but that it needs to be addressed before it gets to the final plat stage.

Bob Freeman commented he had a similar concern, back with Dorvan Wiley, that if the Commission doesn't require a corridor to be built, and if the Commission is not consistent, then we could see this more and more, an argument of not building a particular leg because it is going nowhere.

Ronnie Hawkins, Hawkins-Weir Engineers, Inc. addressed the Commission at this time. He commented that when a preliminary plat is approved, that yes, you can come up and change things when you come up to the final, but, you have to realize that a developer often has a lot of time and money in the development of the land by the time the final plat is approved, and that you might be able to tweak it, his opinion was he doesn't think you have that much latitude as far as the approval is concerned. He then commented that this brings us to Brad Baldwin's comments, and Mr. Hawkins commented that they went to work on the plans upon approval of the preliminary plat, without the North-South corridor, and 45 days into it, they then ran into this "hiccup", and have been in limbo since.

He then commented for the last 30 days, he hasn't known what to advise Dr. Gaither. That is why they were here, to seek that guidance. Mr. Hawkins commented that he thinks it is important that the Commission understands when they approve the preliminary plat, what it sets in motion for the developer.

At this time Chairman Bob Freeman stated the original question was still on the table.

Dorvan Wiley commented the Commission move forward with dedication of the North-South corridor on the North end and the South end as stated, between C2 and R2, leaving latitude between property developers to amend location if in agreement, working with the City Engineer. This motion was given a second by Andy Dibble. Philip Bagby commented he wanted to make sure he understood the motion, and that was placement of a street that is not on the preliminary plat now. Bagby commented he wanted to be sure he understood the motion is the Planning Commission requiring the placement of a street on a plat that isn't there. He commented if that is the motion, he wanted to make sure he understood, to which Bob Freeman and Dorvan Wiley responded that this was correct.

Candice Settle commented this should also take into consideration the discussions, that this was not just an arbitrary decision. At this time Frank Newman commented that this motion was the Planning Commission's advice to Philip Bagby, which is what he asked the Commission to do for him and his clients, and this was the advice they were giving him. Philip Bagby recognized and agreed that is what he was asking for.

Philip Bagby commented he wanted to make sure he understood this was going to be the requirement before the final plat. Andy Dibble commented that this was just a motion. At this time Bob Freeman stated the motion was basically to build the road in accordance to the Master Street Plan. Philip Bagby again commented the Commission was requiring the placement of a street on a plat that isn't there. He commented if that's the motion he wanted to make sure he understood, to which, once again, Bob Freeman and Dorvan Wiley responded, "That is the motion".

Commissioner Dorvan Wiley made the motion, motion was given a second by Andy Dibble, vote was taken, motion carried with 5 for the motion, 1 against, 2 abstaining.

At this time Chairman Bob Freeman asked if there was any other business to come before the Commission. With no other business, Dorvan Wiley made a

motion to adjourn, Frank Newman seconded the motion, and motion carried with a unanimous vote, and this Planning Commission meeting was adjourned.

Bob Freeman, Chairman

Cami L. Brown, Rec. Sec.