

WHITELAND, INDIANA  
TOWN COUNCIL

KENT BEESON  
PRESIDENT

JAMES KLENNER  
VICE PRESIDENT



DAVID HAWKINS  
MEMBER

ANDY BROCK  
MEMBER

SCOT FORD  
MEMBER

## WHITELAND PLAN COMMISSION

MARCH 22, 2016

7:00PM

### TENTATIVE AGENDA

- PLEDGE
- ROLL CALL
- MINUTES FROM FEBRUARY 2, 2016
- OLD BUSINESS
  - BUILDING COMMISSIONER REPORTS
- NEW BUSINESS
  - REQUEST FOR INTERPRETATION OF “NEWLY PLATTED SUBDIVISION” AND 75% BRICK REQUIREMENT AS APPLIED TO MILLSTONE SUBDIVISION AND TOWN’S PROPOSAL TO AMEND CURRENT PLAT TO: 1) ELIMINATE ACCESS DRIVE ONTO WHITELAND ROAD, 2) MOVE POND, AND 3) INCLUDE NORTHWEST CORNER PROPERTY PREVIOUSLY RESERVED FOR POTENTIAL COMMERCIAL USE
  - COMMUNITY DEVELOPMENT COORDINATOR REPORT
- ADJOURN

WHITELAND PLAN COMMISSION  
February 2, 2016

Richard Hill called the meeting to order at 7:00 pm

Present: Board members Scot Ford, Andy Brock, Andy Marker, Gary Howard, Byron Temple, Tim Brown, Richard Hill.

Others present: Dan Cartwright-Community Development, Rusty Snyder-MS/4 Coordinator/Building Commissioner, Norm Gabehart-Town Manager, Stephen Watson-Town Attorney, Debra L. Hendrickson-Clerk Treasurer

Stephen Watson requested Reorganization recommendations.

Scot Ford made a motion for President-Richard Hill, Vice Pres- Gary Howard, Secretary- Debra L. Hendrickson. Tim Brown seconded the motion. Passed 7-0

Byron Temple made a motion to approve the minutes from November 3, 2015. Gary Howard seconded the motion. Passed 4-0-3

Old Business- Rusty Snyder reported for the month of January 2016 3 Building permits were applied for, 1 inspection for garage finalization. No code enforcements

New Business- Dan Cartwright introduced himself. He reported the old Mr. D's demolition is in progress. The Millstone Subdivision has a builder interested in finishing it. There is a new owner of property out by the Interstate 65. Dan proceeded to explain the goals of the Plan Commission and how while using his own experience as a member of Johnson County Plan Commission and Johnson County BZA. Plan Commission's duty is to develop the future of the Town with recommendations based on the law determined by the ordinances of the Town and the Comprehensive Plan of 2011. Also to make recommendations to the Town Council. He passed out folders with information of rules and regulations they will be going by and discussed the contents.

Norm Gabehart spoke on hard surface driveways and enforcements.

Meeting adjourned at 8:06



# TOWN OF WHITELAND

Building Commissioner, Rusty Snyder

549 Main Street Whiteland, Indiana 46184 - (317) 535-5531 office - (317) 535-8724 fax  
www.townofwhiteland.com

## Building Commissioner's Report

|  |   |
|--|---|
| Permits Issued   | 1 |
| Building Permit Inspections                                | 1 |
| Code Enforcement   | 2 |
| <u>Permits Issued:</u>                                     |   |
| Number of Single Family Permits                            | 0 |
| Total Cost of Construction for SFD                         | 0 |
| Average Cost of Construction of SFD                        | 0 |
| Total Number of SFD Permits for the Year                   | 0 |
| Total Costs of Construction for SFD Permits Issued to Date | 0 |
| Number of SFD Permits Issued Same Time Last Year           | 1 |

Respectfully Submitted,

Russell T. Snyder  
Building Commissioner

## MILLSTONE PLAT AND BRICK BUILDING STANDARDS

### Request

The Plan Commission is requested to interpret the Town's Zoning Ordinance as to whether the Millstone Subdivision would be considered a "newly platted subdivision" and therefore subject to the 75% brick requirement, if, as requested by the Town staff, the current Millstone Preliminary Plat is amended to: 1) eliminate the access drive onto Whiteland Road, 2) move the pond, and 3) include the northwest corner property previously reserved for potential commercial use.

### History

- The original Preliminary Plat for Millstone Subdivision was approved on February 8, 2005 and Phase I of the subdivision was constructed in 2005 and 2006. The developer was an affiliate of J. Gregg Allen & Associates known as Sawmill Development LLC.
- The Whiteland Plan Commission and Town Council accepted the Millstone Subdivision Covenants and Restrictions which were recorded with the Johnson County Recorder as Instrument No. 2005-034534. This was prior to the Town establishing minimum brick requirements for homes.
- The recorded Covenants and Restrictions for Millstone Subdivision specifically state in Section 21 that a one story dwelling must have a minimum of 1,200 s.f. and a two story dwelling must have a minimum of 900 s.f. on the first floor with a total area of not less than 1,200 s.f.
- The recorded Covenants and Restrictions specifically state in Section 22 that all homes shall have a minimum of 40% brick on the front of the dwelling.
- Part of the original plat for the Millstone Subdivision included some duplexes, and the area where these would be built was originally zoned as R-3.
- The Town of Whiteland did not have any building standards requiring a minimum amount of brick on the exterior of new homes until 2008. At that time Amy Nelson, with the Brick Industry Association wrote the ordinance for the Town Manager, requiring 75% masonry on all R-1, R-2, and R-3 homes. This was adopted by the Town Council as Ordinance 2007-5 on January 14, 2008. The Ordinance expressly states that, "The masonry portion of this ordinance only applies to newly platted subdivisions and does not apply to any lot platted or any building built prior to January 14, 2008." (Emphasis added.)
- At the January 3, 2012 Plan Commission meeting Landman Properties appeared requesting approval of Phase II of the development. This included a request to change the R-3 zoning back to R-1 classification. It also proposed to amend the preliminary plat to exclude the corner of Whiteland Road and Sawmill Road and identified this area as a Future Outlot.
- In giving its approval to the 2012 rezoning proposal, the Plan Commission specifically stated that the existing Covenants and Restrictions will apply for the entire development. This included the 40% masonry requirements. The masonry requirements were discussed openly during the meeting by the

Commission members, and it was agreed that the new Town Building Standards requiring 75% masonry would not apply to this development. It was an existing project and the Commission members felt it was important to maintain consistency throughout the project on exterior building finishes.

-The Plan Commission approved the 2012 rezoning by a vote of 7-0. And the rezoning ordinance, Ordinance 2012-01, was passed by the Town Council on February 13, 2012 with no negative votes by the Council. Attached to the Ordinance and made part of it is a Statement of Commitments that the Developer offered. Specifically the Commitments state, "The project shall comply with the current Declaration of Covenants and Restrictions of Millstone Subdivision recorded as Instrument Number 2005-034534."

- On February 5, 2013, the Whiteland Plan Commission approved the amended preliminary plat of 70 acres with 138 lots that was zoned R-1. This action was identified as a Preliminary Plat Re-approval/Revision. It was approved with two conditions: that a 1.5" asphalt overlay will be installed on the frontage of Sawmill Road with the development and that the installation of the sidewalk required on the perimeter of the "Future Out Lot" may be delayed until development of the out lot. It was passed 4-0. This Amended Preliminary Plat expires February 5, 2018, since at the time of approval the Subdivision Control Ordinance stated that approval of a sectionalized preliminary plat shall be effective for a period of five years.

-The construction plans submitted by Landman Properties for Section 2 of Millstone were later approved on March 25, 2014. The approval letter was written by Nathan Bilger, Director of Planning and Zoning.

-Landman Properties did not develop the remaining phases of Millstone, and it sat dormant until 2015. During this period David Baird was contracted as the Real Estate Broker to market the property to residential developers. He had communications with 8 different builders about the property over the last couple of years.

-Arbor Homes committed to the project in January, 2016, and has an agreement to purchase the property from the current owner.

-Arbor Homes met with Norm Gabehart and Dan Cartwright shortly after getting the property under contract. During this meeting it was agreed that the plat would have to be revised in order to satisfy the staff's new requirements. These requirements were specifically: No permanent entrance off of Whiteland Road, no pond on Whiteland Road, and the plat revision must include the property at the corner of Whiteland Road and Sawmill Road and dedicate right-of-way sufficient to accommodate a future Roundabout. Including the corner property in the plat eliminates the possibility of anyone coming in and requesting commercial development on the corner. Furthermore, it was stated that the existing commitments for the development would still be applicable. Arbor agreed to these new conditions.

### Staff Recommendation

The Staff recommends that the Plan Commission determine that the proposed amendment of the Millstone Subdivision Preliminary Plat **would not** cause the Millstone Subdivision Preliminary Plat to become a “newly platted subdivision” for the following reasons:

1. The original plat of the Millstone Subdivision was approved before the adoption of the 75% brick requirement.
2. Ordinance 2007-5, which established the 75% brick requirement, expressly states that, “The masonry portion of this ordinance only applies to newly platted subdivisions and does not apply to any lot platted or any building built prior to January 14, 2008.”
3. The term “newly platted subdivision” is not defined in Ordinance 2007-5, the Zoning Ordinance, or the Subdivision Control Ordinance.
4. The first section of Millstone Subdivision has been constructed under the minimum 40% brick front commitment.
5. In 2012, after the adoption of the 75% brick requirement, the Plan Commission gave its approval to the amendment of the Millstone Subdivision Preliminary Plat and expressly agreed that the new Town Building Standards requiring 75% masonry would not apply to the development.
6. The currently proposed amendments to the Millstone Subdivision Preliminary Plat are being initiated by the Town. And,
7. Under Indiana case law, ambiguities in the terms of a zoning ordinance are to be interpreted in favor of the property owner.