

WHITEHALL PLANNING COMMISSION ORGANIZATIONAL MEETING MINUTES JANUARY 4, 2024

The Whitehall Planning Commission meeting of Thursday, January 4, 2024, was called to order by Mayor, Michael T. Bivens, at 6:30 p.m.

Mayor Bivens had Barb Blake, repeat the oath of office for another term on the Planning Commission.

Mayor Bivens opened the first planning commission meeting of 2024 and asked for nominations of office.

Mr. Brown made a motion to elect Terry Anderson as Chairman. Mr. Thomas seconded the motion. On a roll call vote, Anderson, Abstain; Brown, Yes; Roberge, Yes; Blake, Yes; Plank, Yes; J. Thomas, Yes; C. Thomas, Yes and Mr. Anderson was elected Chairman.

Mr. Anderson made a motion to elect R. Mike Brown as Vice-Chairman. Mr. Roberge seconded the motion. On a roll call vote, Anderson, Yes; Brown, Abstain; Roberge, Yes; Blake, Yes; Plank, Yes; J. Thomas, Yes; C. Thomas, Yes and Mr. Brown was elected Vice-Chairman.

The Mayor then passed the meeting over to the Chairman Anderson.

Mayor Bivens thanked all members for their dedication to the Planning Commission.

Chairman Anderson requested a motion to adopt the Rules of Procedure 2024. Ms. Blake motioned and Ms. Plank seconded the motion. All voted in favor to approve the Rules of Procedure.

Chairman Anderson asked for a motion to approve minutes from December 7, 2023. Mr. Brown motioned to approve the minutes. Mr. Thomas seconded the motion. All voted in favor to approve the minutes.

Chairman Anderson introduced **Case 877, FAIRWAY CLIFFS, LLC**, is seeking a **PRELIMINARY PLAT REVIEW**, 1132, on property located at **750 – 800 FAIRWAY BOULEVARD**, parcels 090-001775, 090-001776.

City Attorney Bradley Nicodemus explained that what the Planning Commission is doing is preliminary plat review. This is an administrative action on behalf of the commission. Once the commission has the plat information, the applicant will provide the information for you. The commission's job is to make sure that the plat complies with the City of Whitehall's code in 1131 and 1132. If it complies, then they will approve the plat and if it does not comply,

they will disapprove the plat. They will have the opportunity to ask questions. Again, their job is to make sure it complies with the city's code.

Economic Development Manager Kelsey Miller advised the Commission that the City of Whitehall's Engineer is in attendance if there are any questions, in addition to Attorney Nicodemus.

Attorney Michael Shannon, representing the applicant, his intention tonight was to have his Co-Counsel Joe Miller address the commission with respect to the legal position that they are taking with respect for the approval of the preliminary plat. He has their Engineer in attendance from E. P. Farris and he is available to answer any questions. He is pleased that Kelsey had the foresight to have EMH&T there. In the normal course of business, applicants such as themselves do submit the preliminary plats so the City Engineer Ryan Andrews, on behalf of EMH&T. He did get input back from them. There was some deviation as to how the roundabout is going to be actually constructed at the intersection of Etna Road and Fairway Boulevard. EMH&T was able to clarify that for them and they were able to reflect it on the sub-division plat the Commission has before them. Again, this is not a zoning. This is certainly not a tax abatement. This is an administrative act, to make sure they dot their I's and cross their T's. He then turned it over to Co-Counsel Joe Miller.

Attorney Joe Miller, Vorys Law Firm thanked the Commission for their time this evening. This is not a rezoning which the Commission has the discretion to make a recommendation to City Council. It is not a conditional use permit application where the Commission has some discretion within enumerated factor. Instead, the city code and Ohio law are both very clear. Section 1131.02 says that a preliminary plat shall conform to the requirements set forth in Chapter 1132. That is it. The role of this Commission is that they are to check for conformity with those standards in 1132. Ohio law is similarly clear, Ohio Revised Code 711.09(c) says, if something meets the conditions of the rules set forth in this city code, it needs to be approved. The Commission cannot ask that the plat be altered in some way because it might be liked better versus but does not it meet the requirements of 1132. In fact, if there is a vote to deny this evening, the Commission needs to cite and reference under the Ohio Revised Code the exact rule violated by the plat and incorporate it into their decision. He submits to them and hopefully at the end of the evening that they have given the Commission all the comfort they need that all the technical requirements of 1132(a)-(s) have been satisfied. He thinks each member has been provided with a checklist and responses as to how those very technical requirements have been met. They may for members of the public or their Counsel hear contrary testimony and they want the chance to address any concerns they have. That is why their Engineer Chad Buckley is there, they are glad the City's engineer is there to help assist the Commission as to whether (a)-(s) are met of 1132. The application checklist is not incorporated into 1132(a)-(s). What is proposed meets in every way the zoning code. It is compatible with everything the city has said it wants under law but that is not what is before the Commission tonight. It is what Mr.

Shannon suggested. Did they dot the I's and cross the T's. He welcomed question of Mr. Buckley or their own engineer, your thorough review of the checklist that was provided and the opportunity to speak later after the public has made their comments as well.

Attorney Shannon and Engineer Buckley went through the presentation and explained all the documents that were provided to Commission members. There was a malfunction with the screen as it would not come down. Mr. Shannon stated that he has had many conversations with the Attorney that represent many of the property owners here in particular the owners to the north and south of the site. They have engaged in conversations regarding entrance screening and landscaping and they are willing to sit down and discuss those same items in the future. They have not closed the doors to continue negotiations with their neighbors. They want to address their concerns to the extent possible.

Chairman Anderson asked if the prospective homeowner/builder, are they allowed to purchase two plats to build or is it just designate for one home per plat? Mr. Shannon stated that it will be one home per plat.

Mr. Brown asked if there has been any discussions about lots/plats that are two times the size of a larger house on it as opposed to two smaller houses. Mr. Shannon said they are complying with the zoning code in terms of the size of the lots. There have not been discussions about combining those lots.

Attorney Tom Hart, 5029 Cemetery Rd. gave Chairman Terry Anderson written testimony to share with commission members. He represents the immediate adjacent families and property owners of the Fairway Cliffs project. His clients are the Williams, Inglis, Kelly and Sugar families who will be directly affected by the project. He saw a plat that was filed in December and the one that was held up earlier has a roundabout on it. He questioned which plat is being considered tonight. He believes it is an issue with having a hearing when we are not really sure which plat it is. Section 1302.02 calls for the names of the record property owners for the parcels immediately adjoining the proposed sub-division to be on the plat. He did not see the Inglis or Williams family on there. If there is going to be a debate on code, they are going to meet the code or they do not meet the requirements. Section 1132.03(i)(j) requires a list of the proposed streets and service drives be on the plat. These should be shown on the plats requirement. Service drives also relate to things like where the parking is going to be and that is why it should be on the plat. Where is site parking going to be located? Parking is also a requirement on the plat. Lots 45 and 46 do not meet the code because they are not two hundred feet wide. 1132 (l) through 1132 (r) calls for all reserved parcels that are on the plat need a description as to what they are being used for. Reserve areas need to be called out. 1132.03 (o) covers the submission of deed restrictions. This is one of the most important zoning that Whitehall has had in years. It has a huge impact on the existing community and the community as a whole. They had deed restrictions and development standards that were circulated involving this case. He has attached those as

Exhibit C. Today there are no deed restrictions. This commission can take up to ninety days to request modifications of the preliminary plat. He submits to the Commission 1132.03 which is the precedential nature of this case. There should be deed restrictions that explain how it is going to operate, what the development standards are, what the architecture is going to be. Looking at Exhibit D, those are architectural elevations that were posted on the city's website, submitted and circulated in October/November and were presented as what was going to be built. Now they have an application with a plat where the architecture and the house elevations are vastly different. He would argue a little lower quality and value than what was talked about when this case was pending and some of the economic issues were pending in Council. That is why deed restrictions matter. There is a require statement that is to be filed with the application. He feels it was very limited. Per code 1124.06, there is a requirement that there is an evaluation of the facts of this development on adjoining properties from traffic, noise, glare, odor, fumes and vibration. This was not included with the application. The confusion about the roundabout vs a regular intersection is key if you are to evaluate and understand what is being done with traffic. How is it going to operate? It is unimaginable that something like this would be approved without buffers, landscaping, fences, walls or mounding. Buffering and landscaping matters and should be part of the modification of the plat. What should happen here is less density so that appropriate buffering is included. Even the condos to the north, has development in the center and perimeter setbacks and landscaping to buffer what is around it. That is what should happen here. He talked about some procedural issues that are in the code. 1131.02 (c) requires that plat preparation and has notice of requirement with the plat preparation so that just not immediate, adjacent and contiguous owners get notice. He read the code out loud. He talked about another code section and put some legal and policy issues on the record. There has been a very long history of this community protecting Fairway Blvd. and the estate lots, their integrity, the Fairway Blvd. corridor. When Council recently updated the zoning code, it included very specific language requiring a 200 foot lot minimum on Fairway. Out of all the land in this community and neighborhoods, only Fairway was singled out in this new Chapter 1103.02 of having that 200 foot wide lot restriction for any new development. It defies logic that Council intended that the simple use of an access road into this development could defeat that 200 foot rule. If they intended that, it would say so. Where does the interpretation of the code allowing 50 foot or less lots come from? He asked the City Attorney or anyone else if there has been any legal opinion on that. He has submitted the delineation of the checklist items, per the code, as Exhibit A as he does not believe this plat meets. You have ninety days to make additions or changes to the plat, it is not just up or down and he will be available for questions and he respectfully appreciates the time he has been provided.

Chairperson Anderson asked that if anyone wanted to come and speak, come forward and state their name and sign in please.

Marty White spoke in opposition of Fairway Cliffs development and he felt that the meetings should be moved to the high school.

Al Johnson spoke in opposition of the Fairway Cliffs development and that many of these issues have been brought up but have never been addressed. He asked that the commission listen to the details and to think outside of just the work in here as it encompasses more than that.

Holly Stein spoke in opposition of the Fairway Cliffs development. A home is the single largest investment for these families and you as a commission are tasked with protecting that investment. She asks that this commission reject the application submitted by the party on the grounds that it is faulty and incomplete. She spoke about the application process serves the critical process to the commission and to the public the intent of this development. There are glaring omissions in this documentation that require redress. She lives across from the proposed development and she never received notice. She requested the full ninety day review period so the public response can be submitted. The developer is Brian Wilmer's also known at JDS.

James Williams spoke in opposition of the Fairway Cliffs Development. He represents his family at 846 Fairway Blvd. development. He has seen a downward progression in the quality of this development and he feels it will have a negative impact. This needs to be addressed.

Maureen Havens spoke in opposition of the Fairway Cliffs Development. She represents her parents at 878 Fairway Blvd. She is disappointed, not at the commission, but a crowd was expected at this hearing, just the same as with the Council hearing, and yet accommodations were not made for this crowd. There are three officers in attendance in the anticipation of a crowd, a handwritten capacity notice right outside the door and yet it did not matter that the community, who wants to give input would not be admitted into the room. There have been a long line of things since the introduction of Fairway Cliffs, which feel like a denial of the citizen's rights to due process.

Marlaine Preston spoke in opposition of the Fairway Cliffs Development. She read part of a letter she sent to City Council members after the last public hearing.

Patricia Balser spoke in opposition of the Fairway Cliffs Development. She felt that this was a proposal to see how many houses they could cram on this piece of land. She feels this proposal is insulting and everyone feels it.

Mrs. Nancy Kelly spoke in opposition of the Fairway Cliffs Development. She has lived on Fairway Blvd. for sixty nine years. It is said to be the quiet place off of Main Street. She has great neighbors. She told a story about Mr. Lane and the cherry blossom trees.

Brian Inglis spoke in opposition of the Fairway Cliffs Development. He is a Bexley transplant who is proud to be a Whitehall citizen. His family lives on the property north of the proposed development. He has seven acres of ground and they love it. This is a horrid idea and everyone in the room knows it. He feels the Planning Commission has the power to shut it down. He encouraged them to disapprove the plan.

Tiffany Inglis spoke in opposition of the Fairway Cliffs Development. Details matter. Never has this group of people who are so interested in collaborating and coordinating with them, have never spoken to them. She emailed the former City Administrator seven times in four months and received no reply. They do not want this.

Christine Davis spoke in opposition of the Fairway Cliffs Development. She shared info she shared with Mayor Maggard a number of weeks ago. She asked the commission to please not let this project destroy the special part of Whitehall.

Tracey Heise spoke in opposition of the Fairway Cliffs Development. She stated that the application is considered a legal document. She pointed out a few mistakes on the document and thinks that it should be resubmitted, thrown out or amended. Page nine is part of the application. She questioned where the extra four houses came from. If an environment impact study has been done she would like to see it.

Kimberly Orr spoke in opposition of the Fairway Cliffs Development. She stated she does not feel the development matches the aesthetics of Fairway Blvd. There will be problems with the traffic and proper notice has not been given to the residents.

Mark Schieber spoke in opposition of the Fairway Cliffs Development. Notices of the development must be given to the residents at least two weeks prior to the meeting occurrence. The community members have not been given enough notice of their involvement to react.

Heather Stanek spoke in opposition of the Fairway Cliffs Development. She read an email that she sent to everyone that would listen regarding the Fairway Cliffs project. She is upset about the proposed project.

Colin Finan spoke in opposition of the Fairway Cliffs Development. He spoke about the notification issue. There were signs posted along Fairway Blvd; one being at the intersection of Greenwood and Fairway. That is how he found out about and those signs looked no better

than a cheerleader advertising a car wash. He asked if it was the city that put this together would they try a little harder next time.

Cindy Ebner spoke in opposition of the Fairway Cliffs Development. She spoke on process and procedure. She referenced 1131.02 that the correct plat is required, it needs to be filed correctly, pay for or have a letter that this project can be paid for and there has to be a notice two weeks ahead of time. She stated that she was not notified.

Attorney Joe Miller, Vorys Law Firm took the time to address concerns that Attorney Tom Hart voiced. The plat they are moving on is clear. They have met the requirements of 1132.03(a)-(t). The procedure set forth on 1131 and 1132 was followed. Notice was given as required by code. A traffic impact study is not required but it was previously done in that prior iteration and has been reviewed by the city's engineer from EMH&T and it passed to the city engineer's satisfaction. While he is sympathetic to the neighbors, they brought forth what they thought was a good plan last year and it was found unpopular. They brought a plat with another plan tonight and just because it is not popular does not mean that it is not in conformity.

Kelsey Miller reviewed the staff report stating that the City recommends approval of the preliminary plat hearing. The plat was rigorously reviewed by planning staff, by the City Engineer and an extension of the Engineer's team. The City Engineer did have modifications in regards to the roundabout, which she can have him speak to; as well as a few things brought up by 1132 which was sent to the applicant and was incorporated into the final site plan application. The site plan is a preliminary document and it is still flexible and the applicant does have the right to incorporate those changes and have it brought to them today without any repercussions. Exhibit A does cover her process in evaluating that plat.

Ryan Andrews, EMH&T had a few comments. He looked at the plat document that was submitted. His focus is on the roadway, infrastructure, utilities and the roadway, things of that nature. Looking at the right of way with the proposed roadway, the roundabout is actually a separate project, not really part of this development. Everything they would want to see in a residential sub-division is all there. Additionally, he knows it is not a requirement of the preliminary plat, they actually completed a traffic impact study on the city's behalf, and they were not part of the development team and they have no interest in the project other than making sure that the proposed traffic meets the city's goals and that it does not create negative impact on the adjacent intersection. Their traffic impact study actually looked at the development, they used standard practices that are regionally accepted and identified for performing a traffic study. They looked at Fairway Blvd., the intersection with Main Street, the intersection with Hamilton Road and the intersection of Etna Road where the sub-division comes in and found there were no significant findings.

Attorney Joe Miller, Vorys Law Firm disagrees with Attorney Harts thought that somehow the lots to the east of Fairway should be two hundred feet wide. They do not front on Fairway, which is why they meet city code. They would be willing to accept as a condition of approval tonight, that lots 45 and 46 be consolidated. Those are the lots at the corner of Etna and Fairway. Lot 46 is not oriented towards Fairway, but they would accept as a condition of approval, that those two lots, 45 and 46 be consolidated and taking that issue off the table.

Attorney Tom Hart said he raised that issue because he cannot tell from what has been turned in how lots 45 and 46 are oriented. It is not complete and that in itself does not meet the application requirement. He disagrees with Attorney Miller on several fronts. There is a requirement that record owners of such parcels immediately adjoining the sub-division proposed be on the plat. This plat does not meet that requirement. He held up the December 21, 2023 plat. The plat on the screen he described as the new plat. He does not feel that the Planning Commission should vote because they have no idea what plat they are voting on.

Chair Anderson asked for a motion to approve **Case 877**, Fairway Cliffs LLC is seeking a preliminary plat review with a condition lots 45 and 46 being consolidated. Mr. Brown motioned. Ms. Plank seconded the motion for a favorable recommendation on this case. On a roll call vote, Anderson, No; Brown, No; Roberge, No; Blake, Yes; Plank, Yes; J. Thomas, No; C. Thomas, Yes and **Case 877** was **disapproved**.

Chair Anderson said each person that voted no has to share why they voted no. He thinks that there were some conditions that were presented he thinks they should reconsider, look at and listen to prior to giving an affirmative answer. On behalf of the conversation that was brought up by Mr. Hart, for him personally he is not comfortable in making an affirmative vote with some of the things he identified as well as some of the things identified by the public and for the most part, reviewing the checklist there were some items no in order for him to give a favorable recommendation.

City Attorney Brad Nicodemus stated that they need to specify which particular conditions you found not met for the record.

Chair Anderson said specifically the proper notification given to the public and the plat variation that was given tonight compared to what was shared earlier. He has concern about that. He did not have enough information shared with him to feel comfortable for a favorable recommendation.

Mr. Brown said for him it was the timing of the notification and more people getting notified. There needs to be better communication.

Mr. Roberge thought there were a number of items that were displayed by both the public and the attorneys that he did not have enough information on. Some materials were received late and the plats being different in the same room. He feels they were not organized to make a presentation. He did not vote on that plat the last time. He will not support it without the background.

Mr. Thomas voted no because there appeared to be not enough information and as a community member of Whitehall he feels that there must be communication with the community. The community that communicated with them was completely against the project and besides if it is not working, it is just not working. This project should go back to the drawing table and bring something back. It seems to be way too confusing for them and most of the community feel that they did not get proper notification.

Chair Anderson said years ago there was Langport subdivision with seventy to eighty homes. This will be the same opportunity to get a better feel and feedback. If you look at the homes, there are some that are very similar and some that are different. They have not had a development like that in Whitehall since Langport to his knowledge.

Kelsey Miller spoke on the staffs behalf as well in terms of notification. She understands the frustrations of not everyone being notified but as the code is written proper notification was sent to the proper property owners directly. In terms of public notification, they did post on the city's website forty hours ahead of time. The code states (many talking at once) they gave the notice in advance by forty eight hours.

Chairman Anderson asked if there was any further business. Ms. Thomas so moved. (Could not hear the second) All members voted in favor to adjourn the meeting. Therefore, the January 4, 2024, Planning Commission meeting was adjourned at 8:48 p.m.

APPROVED _____, 2022, respectfully submitted,

Terry Anderson, Chairman

Julie A. Ogg, Clerk of Council