

Brookville Planning Commission
Virtual Regular Meeting
November 19, 2020

The Regular Meeting of the Brookville Planning Commission was called to order by Chairperson Henderson at 7:30 p.m. on November 19, 2020. The meeting was held virtually using Webex. The Pledge of Allegiance was recited. Mayor Letner; Members Boose, Claggett, Cordes, Schreier and Sievers; City Manager Keaton, Zoning Officer Snedeker, Law Director Stephan and Clerk Duncan were present.

Chairperson Henderson announced that the meeting is being recorded and asked everyone to mute themselves unless they are speaking.

Roll call by Manager Keaton.

Motion by Schreier, second by Sievers to approve the Agenda as presented. All yeas, motion carried.

Motion by Sievers, second by Schreier to approve the meeting minutes of the August 20, 2020 Regular Planning Commission Meeting. Cordes yea, Sievers yea, Claggett yea, Letner yea, Schreier yea, Boose abstained, Henderson yea. Motion carried with six yeas and one abstention.

Chairperson Henderson announced if any citizens are present who would like to comment they will have five minutes to speak. They must first state their name and address. Chairperson Henderson advised the intention is to reserve this time for citizens who have not been heard.

Steve Newbauer, of 27 Heckathorn Road, stated he is against this proposal and does not think it should be changed to benefit the gentleman so he can make more money off it. Mr. Newbauer stated he doesn't like that it is already hard enough to make a left off of Heckathorn Road onto Westbrook Road. He stated it is already hard to see making lefts and rights out of there and with more traffic it will just make it that much harder. He stated he lives right by the retention pond and when it rains it floods into his backyard and then it comes up to his house. He does not agree with the developer that says that it can hold this many houses with water flowing back there because it comes into his yard every time that it rains, so there is an issue with the water getting away from back here going down further on. Mr. Newbauer stated there are other issues that have to be fixed before you can even add houses to it more than doubling what you have now. Mr. Newbauer stated he is against it.

Chairperson Henderson thanked Mr. Newbauer for his comments and inquired whether anyone else would like to speak?

Karen Braund stated there are several who would like to speak again that have already spoken. It was not noted on any agenda that they could not speak, it just said citizen comments, so she would like to appeal to the ability for herself and others to have the opportunity to speak.

Chairperson Henderson replied this is an open session that allows citizen comments at every Planning Commission meeting. He stated Planning Commission has heard from many of them before. If they have something different to say they will be given the opportunity.

Karen Braund stated she appreciates the opportunity and asked if she needed to be sworn in?

Chairperson Henderson stated she did not need to be sworn in to comment.

Karen Braund, of 15 Heckathorn Road, stated she would like to start with an apology for any of the members who may have taken the residents' concerns in any way other than a sincere desire to protect their largest investment, which is their homes. This clearly is an emotional issue and as she stated on Tuesday, they reached the majority of the residents in their plat. All but four single homes signed the petition and in addition to that, almost half of the doubles are represented. Mrs. Braund stated she previously misstated her figures, it is actually 94% of the single homes that are opposing the rezoning and 100% of the citizens reached are opposed. Mrs. Braund stated tonight is the fifth time she is bringing up due diligence, she has brought it up twice at City Council meetings, at both Public Hearings and again this evening. Mrs. Braund stated she cannot express enough the importance of due diligence and voting based on facts. Prior Boards and Councils were concerned with their interests and concerns and they pray this evening that this continues and the vote is based on facts and the desire not to increase monetary gain for either the City or the developer at their expense. Mrs. Braund referenced Law Director Stephan's memo to Planning and City Council dated October 16, 2020, in which he outlined the history of the Meadows of Brookville. Mrs. Braund stated she would like to bring attention to Section G which addresses the replat of 9.6 acres by Tim Taylor on August 21, 2008. Mrs. Braund stated a motion was made by Mr. Claggett, second by Cantrell with all yeas, unanimously approved. That was affirmed at City Council on September 2, 2008 by Garber, second by Ullery, all yeas, motion approved. In that, there was a path for Section 6 that a contractual agreement between the City and the developer as required by the motion was not executed. However, the motions by Planning and City Council required that a future replat of this Section 6 be approved in the preliminary plat. Law Director Stephan wrote it is his opinion that the preliminary plat referenced in these motions is the Meadows of Brookville, Section 5 preliminary plat that was approved in 2005 which was fully incorporated in the Meadows of Brookville, Section 5 subdivision plan of record in 6. That legal opinion that was given to this body and the City Council affirms a clear path defined by the two motions that were approved in 2008 for future development in Section 6. Doubles do not meet that criteria. Mrs. Braund stated she has made numerous information requests pursuant to the Sunshine Law. All information provided to her does not overturn dispute nor conflict anything in those approved motions. There is no clear path to a vote of yes. Voting yes would only benefit Mr. Taylor, the developer, through his profits. Building doubles would clearly, by numbers, do that. Mrs. Braund stated you do have an ordinance that states the purpose of a variance is not based exclusively on the desire to increase financial gain. Gemma, from Fischer Homes, indicated at least twice that they wanted to build single-family homes. Single-family homes are what they all want. It is an eyesore, they want development, but they want it as the clear path defined. That clear path, also in 2015, was modified by Mr. Taylor, when he modified the single-family home minimum requirements. That is in contrast to the motion that both bodies approved because the covenants and restrictions are on the filed plat plan. Mrs. Braund implored Planning Commission to do the right thing and restore their faith in the elected officials. The process has left an incredible amount

of bad blood with the residents and they just ask to uphold their interests. Mrs. Braund inquired whether the information she requested was forwarded to all members of Planning Commission and City Council? She also stated, no offense, but she would like it on record, that this was all read thoroughly and that goes straight to the due diligence question and it being such an important item she thinks potentially having that on record from everyone is important.

Chairperson Henderson thanked Mrs. Braund for her comments and stated he did receive the information that was passed on to Planning Commission.

Mrs. Braund asked if everyone else read those?

Chairperson Henderson replied every member of Planning Commission was emailed a copy of the information.

Member Schreier and the other Planning Commission members indicated they received a copy and read the information as well.

Chairperson Henderson inquired whether anyone else would like to speak?

Jessica Wells, of 21 Heckathorn Road, stated she has spoken passionately a couple of times at City Council meetings about why she is opposed. The motions passed by Planning Commission and City Council in 2008 that Mrs. Braund was discussing are really her main argument. Last night the representative from Fischer Homes stated that they wanted to build single-family homes initially and it wasn't until they came out and looked at the land that they realized that the lots were too small to build single-family homes so that is why they requested the zero-lot line rezoning. Mrs. Wells stated her problem with that is the reason that the lots are that size is because Mr. Taylor has already been granted at least three different variances from Planning Commission, against Brookville code to make the lots that size. Mr. Taylor drew the lots himself, if the lots are too small, he needs to come in and request a fourth variance and restore them to a larger size. Mrs. Wells stated all of her neighbors and herself were told when they purchased their homes that there would be 45 single-family homes built there, not 48 doubles and 22 additional homes. It is unreasonable to put that many homes and that many people in this small of an area of land. Mrs. Wells stated she and her husband moved into their home just over a year ago after their former home in Brookville was completely decimated by the tornado. They were displaced for several months and after their insurance payout came through they could have moved anywhere they wanted but they chose to live here. They chose to invest in Brookville and raise their three young children here. Her husband works in Lebanon which is a 45 minute commute one-way. Mrs. Wells asked how many of you drive 45 minutes to work? They chose to live here because they love this city. They love the community feel that you can't find in many places outside of Brookville. She has been in several Brookville Community Theatre productions, her kids have gone to school here for four years. After the things that she has learned, the things that are on the record between Planning Commission and City Council and reading through zoning ordinances, she is not a construction builder. She is a teacher. She should not have to spend her time pouring over a city building code to point out that this isn't right. If this re-zoning is allowed it just negatively impacts her life and the decision that she made to raise her family here, very greatly. Mrs. Wells stated she just wants that to be on the record and stated thank you.

Elizabeth Rike, of 130 Poplar Run Place, stated that what she has noticed looking at the plans is the size of the doubles that they want to put in. If they put in single-family homes, they would not get the profit of twice as much, but the size of the lots are perfectly fine to fit 12 single-family homes along through there. Mrs. Rike stated she guarantees that they would be able to find plans or someone could draw up the plans to easily design a single-family home that fits the criteria that is already zoned for the area. She just wanted to point out that they could definitely fit single-family homes in those lots.

Delbert Braund, of 15 Heckathorn Road, stated in rebuttal to what Gemma said the other night, he brought up the potential of 1.5 children in several of the new homes and take that as an average of children coming into the school system times the number of homes that they want to put in. These homes that they are wanting to put in are not the style of homes that older retired people such as himself. Mr. Braund stated you are going to have younger people coming in. With that said, 1.5 children per home, is our school system going to be inundated or potentially have to hire more teachers, knock out walls, possibly put a levy on? Her response was that is a problem with the school district as they are responsible for doing that. Mr. Braund stated that is our school district and that is everybody in the area that is going to be impacted by what happens in this plat just because of a decision of putting doubles, or whatever the buzz word is, instead of single-family homes which was originally put in. Mr. Braund stated as he said originally, none of us are against having single-family homes. If you put a home like his on any of those lots down the way, you'll never hear from him again. Mr. Braund stated he spent hours volunteering after the tornados before he went and helped out in Harrison Township. He bagpiped at some of the ceremonies uptown. He is in fraternal organizations in the town. He is seated in the town. Mr. Braund stated they are dedicated to the town, but they do have a long memory. They don't forget and they appreciate you doing the right thing tonight.

Pete Chakiris stated he does not know why there is an issue with this as Mr. Taylor and the City came to an agreement when the development was to be restarted in the Meadows of Brookville, things would revert back to the original plat plan. Mr. Chakiris urged the Planning Commission and the City to stand by the agreement made with Mr. Taylor and vote no on the rezoning of the Meadows of Brookville.

Johnathan Wells, of 21 Heckathorn Road, stated he presented some things at the meeting on Tuesday, trying to figure out and didn't really get it explained at any point as to what exactly they are trying to rezone too. The rezoning classification that was listed on the plans that were sent to them was not something that he saw in Section 1163. They are describing them as townhouses. The townhouses requirements for the lots are not that. Mr. Wells stated if they are requesting for a zero-lot line then why can't they be zero-lot lines with singles. It doesn't make sense to him why they have to go doubles for that. This feels like it is purely for profit which strictly goes against the special use provisions, so his question is what is the specific rezoning request that they are trying to rezone to, aside from just R-3 Special Use. Mr. Wells asked what they are trying to use to actually build these homes because nothing that he sees in any of the lot requirements would allow without a variance, aside from zero-lot line, them to build any of these with the spaces that they are showing with the lot sizes that they are indicating. Mr. Wells stated front yard, rear yard

and side yard violate at least one of those, except for the zero-lot lines. Mr. Wells asked what are they specifically trying to get this rezoned to aside from just R-3?

Chairperson Henderson stated it is currently zoned R1-C which is Urban Residential, they are requesting to go to R-3 which allows multi-family residential.

Mr. Wells replied even looking at the multi-family lot size requirements, these plans do not meet those requirements.

Chairperson Henderson stated there would also have to be a variance request as well. Chairperson Henderson stated Planning Commission will discuss that this evening and thanked Mr. Wells for his comments. Chairperson Henderson inquired whether anyone else would like to speak?

Kelly Scherer, of 133 Poplar Run Place, stated she is wondering if there has been a study done between single-family income and multi-family income by the City?

Manager Keaton replied there has been no survey done on that.

Kelly Scherer stated she is asking because she noticed in the summertime when you folks were talking about revenues coming into the City and talking about the income taxes and just wondering if that was thought about when they started to entertain 48 multi-family type units going into this section. Mrs. Scherer stated it might be something that they might want to look into regarding that income that would be coming in meaning that a multi-family home typically makes a lower wage than a single unit so just a thought there.

Chairperson Henderson stated that is something he has considered and Planning Commission will discuss that more in a few minutes. Chairperson Henderson inquired whether anyone else would like to speak?

Manager Keaton read an email sent to Clerk Duncan from Mary Jo Klaus which stated my name is Mary Jo Klaus. I spoke to council on Tuesday. We citizens are asking you to vote no on the rezoning. My question is do you listen to the citizens or favor Taylor and Fischer homes? We don't need another worry in this terrible year.

Chairperson Henderson stated if no one else indicates they would like to speak Planning Commission will move on to the next item in the agenda.

Zoning Officer Snedeker reported Planning Commission has been provided a copy of the Zoning Permit Applications and the Property Maintenance violations for the last two months. Also included is a list of permits from the Montgomery County Building Department that Planning Commission will now get a copy of each month.

Zoning Officer Snedeker reported on Monday, November 16, he met with Dan Bish of Montgomery County Economic Development at the old Payless building at 1 Collective Way. Zoning Officer Snedeker advised he received permission from Realty Income Corporation to enter the property for a RV360 3-D Marketing video. This video is a virtual tour of a building, which

took over four hours to shoot and will feature every room of the building. Zoning Officer Snedeker stated this is a great tool from companies abroad and others who are not traveling during this pandemic. Zoning Officer Snedeker stated he will forward the video to Planning Commission and Council when he receives it.

Zoning Officer Snedeker reported Heather Smith has applied for a Certificate of Occupancy for an All that Apparel Retail Shop at 202 Market Street. Zoning Officer Snedeker stated the shop is right across from Blue Finery and they will probably be able to work off each other.

Member Boose asked where they got the idea for the video of the old Payless building?

Zoning Officer Snedeker stated he was contacted by Dan Bish, who was working with an individual promoting Economic Development for Montgomery County.

Law Director Stephan had no report other than the memo he provided regarding proposed Ordinance 2020-06.

There was no Old Business.

Chairperson Henderson stated Planning Commission must discuss and vote on whether to recommend to Council the adoption of proposed Ordinance No. 2020-06, which amends the Zoning Classification of Lots 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, and part of Lot 2609 of the City of Brookville from its present Zoning Classification of (R-1C) Urban Residential District to the New Classification of (R-3) Multi-family Residential District. Chairperson Henderson inquired whether any Planning Commission members had any questions or statements regarding the proposed Ordinance prior to the vote?

Law Director Stephan directed Chairperson Henderson to ask if there are any members who need to abstain from this discussion and vote on the proposed Ordinance.

Chairperson Henderson asked if any members need to abstain from discussions and voting on proposed Ordinance 2020-06.

Member Schreier indicated that he does need to abstain.

Chairperson Henderson indicated he appreciates the interest of the Brookville residents and has been inspired by their level of involvement and care of this community. This certainly is a community that he cares deeply about and he is here to protect the citizens of this community. Chairperson Henderson thanked everyone for caring so much as this an important topic in the City and stated he has had mixed feelings about this rezoning. When he viewed the original plans by Fischer Homes he was excited to have new development. That land has been vacant for as long as he can remember and the prospect of new homes being built got him excited for the community that resides there. It is an aging community but newer homes make everyone's property values go up. Chairperson Henderson stated when he listened to community members, what he took away was that there is a really strong desire to limit the ability to have multi-family dwellings, or split homes or zero-lot line homes in that area or in that community. Chairperson Henderson stated that

the area along Westbrook Road will be hard to develop for any developer as it is probably the least desirable real estate there. Chairperson Henderson stated he felt what was proposed by Fischer homes was an attractive alternative to what would be difficult land to ever develop. As that migrated into the community on that interior road, he had mixed feelings and felt like those should be single-family homes. Chairperson Henderson stated he thinks where his heart is today is that he has read all the past information from previous Planning Commission members and it seems all of the members of that community were under the impression that if that area ever did get developed and built, those would be single-family homes. Chairperson Henderson stated if he put himself in their shoes he would be equally as concerned. He is struggling with this because he really wants new development and new homes in the area but the way it is currently proposed he does not think it is the right mix. Chairperson Henderson stated we can get creative and it can be developed in a way that we can all agree on but at this time his heart is telling him we have to make some kind of adjustment to what is being proposed. Chairperson Henderson stated he is not likely going to be voting yes for this proposed ordinance. However, he does not want to influence other Planning Commission members as they all have their own opinions. Chairperson Henderson asked each Planning Commission member to share how they feel about it before they vote on the issue.

Member Claggett stated Chairperson Henderson conveyed the same thoughts and feelings he has on the proposed rezoning. Member Claggett stated he was excited about at first too, but his feelings changed. He stated he expected to be the only one in this meeting that felt that way and he appreciates Chairperson Henderson's comments.

Member Cordes stated he gave a lot of thought of this and seconds Chairperson Henderson's comments. Member Cordes stated his initial thought, which he confirmed with knowledgeable members of our community, was that the proposed buildings would carry a \$200,000 price tag. A single-family home can be purchased for far less than that in the community. He stated his opinion is those buildings would also have a very small client prospect list as younger couples with children would not likely want to live anywhere near the front of Westbrook Road. There is hardly any yard and nowhere for the kids to play. There is very little back yard as well. Elderly people would probably not want to buy the homes because they would not want to go upstairs. Not wanting to go upstairs was one of the reasons that he and his wife moved to Brookville over six years ago. Member Cordes stated he also received a call from a community member who stated they were told that the existing residents of the Meadows of Brookville are feeling panicked and are looking to move immediately if this rezoning passes. Member Cordes stated he concurs with Chairperson Henderson and will vote no on this issue.

Member Boose stated Mr. Taylor has come before Planning Commission members several times and as a senior member of Planning Commission he has likely been present for most of the votes for the items Mr. Taylor has brought in front of them. Member Boose stated through the years Planning Commission has been more than cordial to his requests to change the properties to where they would dump out of Westbrook Road as opposed to back into the development. For whatever reason, that property has just not moved. Member Boose stated he does not think that zero-lot line multi-family dwellings is the right thing for the rest of that development. Member Boose stated there are some doubles that back up to Smitty's Salvage yard property, but for the rest of that development he does not feel that multi-family dwellings make sense.

Mayor Letner thanked everyone for their testimony Tuesday night. There were 18 citizens who spoke or sent in emails voicing their opposition to what has been proposed. Mayor Letner stated he wants to dispel a few things that have been brought up. Regarding the storm sewer and water run off, the City has taken care of the detention basin and we do realize that there is a problem across the street on Heckathorn Road, which involves the County. Mayor Letner stated we are going to work with the County, and with Soil and Water Conservation, to deal with that issue, whether this property got developed or not. Regarding the sanitary sewer, there is a lift station on Heckathorn Road which feeds into Mosier Drive across from Dr. Studebaker's office. When this area was developed, it was constructed to be more than capable of handling whatever is built in the Meadows of Brookville. Mayor Letner stated regarding the school's capacity and the possibility it may be overwhelmed as brought up by Mr. Braund, that number fluctuates every year, with numbers as low as 100 and as high as 150. The school is prepared to accommodate those numbers and we are also. Mayor Letner stated the word rental has come up numerous times. At the \$200,000 price point for these units, it would cost a person \$3,000 a month to rent it, which is not feasible for anyone to make any money. Mayor Letner stated regarding the question about whether people will have to look at construction equipment for three to five years, that is correct because this area has been under development since 1993. Every homeowner there bought with the knowledge that this was an unfinished development which would eventually be built out one way or the other. Mayor Letner stated regarding whether this is the right thing, his clear conscience will not allow him to deny those that spoke at the Public Hearing, along with the petition in opposition signed by 90% of the residents of the Meadows of Brookville. He must think about the citizens of Brookville as a whole but he also has to think about the development. Mayor Letner stated his recommendation is that he will oppose proposed Ordinance No. 2020-06 at this point but he would also like to see Tim Taylor and Fischer Homes come up with a viable plan to develop this area together without any animosity between Taywood Development and the residents. Mayor Letner advised we need to come together and come up with a plan. Brookville needs the housing, that is what the development was designed for back in 1993, and we need to develop this thing and do it right. Mayor Letner stated his vote is negative vote for proposed Ordinance No. 2020-06 but he also wants to see the residents and Taywood come together for a logical solution to make Brookville better. Mayor Letner stated he has heard the residents' plea and feels their plight but reminded them that we must come to terms on how to develop this because that is what Planning Commission is here for.

Member Sievers agreed with all the points brought up by the other Planning Commission members this evening. Member Sievers stated she does want to see something go into the vacant land but wants to do it right. She has driven past the development many times but cannot see how this is the right thing to build along Westbrook Road. Member Sievers stated she will vote no.

Chairperson Henderson thanked everyone for their comments and asked if anyone had anything additional to add?

Chairperson Henderson called for a motion to recommend approval of proposed Ordinance No. 2020-06 entitled "AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF LOTS 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, AND PART OF LOT 2609 OF THE CITY OF BROOKVILLE FROM ITS PRESENT CLASSIFICATION OF (R-1C)

URBAN RESIDENTIAL DISTRICT TO THE NEW CLASSIFICATION OF (R-3) MULTI-FAMILY RESIDENTIAL DISTRICT."

Motion by Letner, second by Cordes to recommend approval of Ordinance No. 2020-06 to City Council. Boose nay, Claggett nay, Cordes nay, Sievers nay, Letner nay, Schreier abstain, Henderson nay. Motion failed with six nays, one abstention.

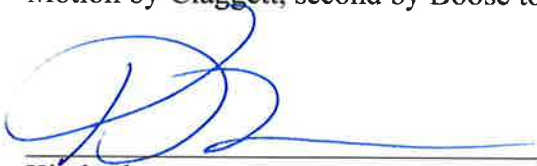
Chairperson Henderson stated the motion does not pass and the recommendation is to keep the zoning R-1C at this time.

Member Boose announced that he will not seek to pursue another 3-year term on Planning Commission as he is building a home and relocating away from Brookville. Member Boose stated this is definitely a bittersweet moment, as serving on Planning Commission has been a great community service opportunity. Member Boose stated Mayor Letner is the third Mayor he has worked with on Planning Commission and he appreciates his time.

Mayor Letner stated he appreciates Member Boose's service, stating he has been a good friend and great ambassador for the City. Mayor Letner stated Member Boose has made great decisions and taken the City at heart and while he hates to see him go he wishes him all the best and thanked him for his service to the community.

Chairperson Henderson thanked Member Boose for his service, stating he has dedicated a lot of years to the City of Brookville and it is very much appreciated. Chairperson Henderson stated Planning Commission is sad to see him go but at the same time is excited for him and wishes him the best of luck.

Motion by Claggett, second by Boose to adjourn. All yeas, motion carried.



Kimberly Duncan, Clerk

Ryan Henderson, Chairperson

