

August 08, 2006 – Tontitown Planning Commission – Minutes

7:01 PM – Called to order by Ralph Pendergraft.

Roll was called. Jerome Fantinel was not present.

Motion made by Chuck Savage to amend the agenda to interchange items #1 and #2 under new business. Seconded by Karen Inlow.

Motion carried with all ayes.

Chuck Anderson – ESI – explained the proposed lot split for the Fantinel property. Ralph Pendergraft asked if there was any discussion. He asked if everybody understood what was being proposed.

Motion made by Tommy Granata to grant the lot split. Seconded by David Bolinger.

Ralph Pendergraft asked if there was any discussion.

Motion passed unanimously.

Ralph Pendergraft called for the residents on S. Pianalto. He noted that the Commission just received the packets that were provided to them by the residents, as well as the fact that Mr. Potter has withdrawn his plans from Tontitown.

JR Carroll stated that as it stands, it's hypothetical. Mr. Potter has requested to take it to the county or through other avenues with Tontitown through litigation.

Melissa Lee and Joe Gonzalez – representing the residents on S. Pianalto – asked what recourse they would have.

Karen Inlow asked Mr. Hawkins what jurisdiction Tontitown has.

Jeff Hawkins stated that within the Planning Area they can control it, but they have no authority to zone.

Joe Gonzalez asked if it is based on the city limit lines.

Jeff Hawkins responded that it is; in the Planning Area the Commission can enforce all except zoning.

Karen Inlow asked if the City can't enforce anything like land use.

Jeff Hawkins replied that they can on developments as they affect city approved plans.

Karen Inlow pointed out that Tontitown has a land use plan.

Jeff Hawkins clarified that the land use plan takes into consideration future use on the county, but it's not zoning.

Joe Gonzalez asked is it would take into consideration future annexation.

Jeff Hawkins responded that if it is pending, maybe.

JR Carroll stated that territorial jurisdiction extends five miles; Tontitown filed in 2005. There was a discussion of what is covered under the Planning Area jurisdiction.

Mick Wagner stated that he and Mr. Carroll attended a meeting addressing if Tontitown can enforce more stringent standards than the county and the consensus is that they can.

Melissa Lee stated that she and Mr. Gonzalez are speaking on behalf of thirteen people.

Joe Gonzalez stated that they would like their comments made public record. He proceeded to read the following:

On July 11, 2006 a handful of residents of S. Pianalto Road presented a plea to the Tontitown Planning Commission requesting they deny Jay Potter permission to proceed with the development of an approximately 20 acre, 76 space RN, park in our rural, residential neighborhood. The planning commission was given a list of concerns the residents felt needed to be addressed. They were also notified a petition was being circulated within the neighborhood. After some discussion, the issue was tabled for 30 days.

Thirty days have passed and we come again to the Planning Commission with the same request: Do Not Allow This Development to Continue. Mr. Potter appears to have every intention of proceeding with his project. There is now a sign on the property announcing it as the future home of the American R.V. Park.

The concerns we first expressed have now been fleshed out with information we firmly believe will support our arguments. We contend that this large scale development will have nothing but adverse effects. It will have a negative impact on the quality and safety of our neighborhood, our property values, the environment, and the existing infrastructure.

We will address each of our arguments separately. We ask that you consider them on their individual merit but most importantly consider the total impact this development will have on our neighborhood and the city of Tontitown.

THE PETITION:

There are 67 signatures total on the petition before you. By our count, there are 47 houses on S. Pianalto Rd. At least one member of 40 houses signed the petition. There are also signatures of residents living on the west end of Kelly road and east end of Floyd Rd. The R.V. Park is in close proximity to their property and will impact them as well. We asked legal guidance from the former attorney of Tontitown, Mr. Steve Gunderson, as we proceeded with this petition. In his reply letter to us dated July 17, 2006 he stated, "I know of no legal requirements that the city neither of Tontitown nor for that matter the City of Tontitown Planning Commission has concerning a petition of this nature."

You are welcome to perform whatever statistics or wound truthing you wish to be satisfied that indeed, the majority of our neighborhood is truly is against this RV Park.

THE ROAD:

We have provided you with photos of the road and the bridge to illustrate that what we are describing to you is quite real and not at all exaggerated. The South end of S. Pianalto Road where it meets Arbor Acres Road is a mile of unimproved, one lane road with two "dog leg" or essentially 90 degree turns. When meeting on coming traffic, the vehicle closest to a wide spot in the road pulls over to allow the oncoming car to pass. Should both cars meet in a narrow spot, one car must back up to a wide spot. This has been our protocol and for the most part, we recognize the majority of the vehicles as those of our neighbors and show each other this courtesy. But this may not always hold true. 76 recreational vehicles with their tow vehicles or pull behind cars could easily double the traffic taking the short cut South into Fayetteville and vicinity. To compound this, there already is a 14 home development under construction at the intersection on S. Pianalto and Wildcat Creek Boulevard. And if the development trend continues, the 100 plus acre Sagely property, which is zoned for 3 houses per acre will swell the traffic burden on the road even further resulting in a bottle-neck at S. Pianalto Road and Arbor Acres Road and

create a lengthy wait to enter onto 412 from the north end. The other roads which tie into S Pianalto Road additionally feed into the daily traffic load.

However, while the road issue is a serious concern, it does not exist as a distinct threat to anyone's life. The bridge, however, does. The downstream side of the bridge has been undercut 3 feet and a portion of the concrete slab hangs suspended 3 feet in the air completely unsupported. With each successive flood, the undercut is deepened. We are not civil engineers; we don't know what the maximum load of a piece of unsupported concrete is. But what we would like to know is this: would it support the weight of the school bus loaded with kids that crosses this low water bridge twice daily during the school year?

Low water bridges are a documented danger during floods. Information we have provided you from the United States Search and Rescue Task Force states on page 5, "Two feet of water will carry away most automobiles." The photos you have show what this bridge looks like during a flood. The water level had peaked at well above 2 feet. The walnut tree on the upstream side of the bridge serves as a poor man's water gauge. Those of us who have lived on this road know better than to chance crossing it in this condition. But let us give you a worse case scenario: a tourist from New York City is staying at the R.V. Park. They return in the dark of the night after a U of A basketball game. The family approaches the bridge, are not aware of just how dangerous it can be during a flash flood and aren't familiar with the walnut tree water gauge. This is exactly how those so called "tragic accidents" happen and why couldn't it happen here?

Inarguably, this road must be improved before further development is allowed. But this is our dilemma: Per Frank Ditmars, Washington Co. Road Supervisor, Juliet Richey, Washington Co. Planning Commissioner and the Office of Washington County Judge Jerry Hunton, : S. Pianalto Road is in the city limits and is the responsibility to the City of Tontitown.

Regulating the RV Park:

We presented the majority of these questions to the Planning Commission on July 11, 2006. And we would appreciate hearing their answers tonight. While Mr. Potter maintains this will be a "5 Star Park" (a designation one typically earns, not awards himself), how will we be assured in the years to come it will not decline into something akin to the photo you have before you? It is quite feasible Mr. Potter could sell his R.V. Park to someone with lower standards and maintain it as say a "2 star park".

As this park is in the Tontitown Planning Zone yet technically in the county, who will assure us this will not become an eye-sore and further decrease the value of our property and the safety of our neighborhood? Some R.V. Parks seem to acquire "visitors" who stay 12 months out of a year. Will we rely on Mr. Potter's good will to prevent this from happening or are there specific county or Planning Zone ordinances to prevent this?

Environmental Concerns:

This area lies within the Illinois River Watershed. Every ditch, gully, and stream surrounding this R.V. Park eventually empties into the Illinois River which feeds into Tenkiller Ferry Lake, the main source of drinking water for Northeastern Oklahoma per U.S. Water News, October 2003 edition. Arguments over acceptable levels of agriculture and urban runoff continue today between Arkansas and Oklahoma. Using a layman's eye, it appears that the runoff from Mr. Potter's property will flow south from deep gully which appears to be between the planned sewage drip fields. From there it flows down thru a shallow depression on Mr. Phillip McGarrah's place then into a culvert under Floyd

Road. The culvert empties into a wet-weather creek which is traversed by the low water bridge mentioned earlier. This wet-weather creek then connects to Wildcat Creek which flows west into Osage Creek. Osage Creek then empties into the Illinois River.

According to Alan Fortenberry, chief executive officer of the Beaver Water District, in an article published by The Morning News July 30, 2006, the type of sewer system which Mr. Potter will be using in this RV park must be designed correctly, built correctly and operated correctly.

Ralph Pendergraft asked Mr. Gonzalez if a particular picture was indicating the flow across the low water bridge.

Joe Gonzalez indicated that it was. He continued to read as follows:

Lifestyle and Pocketbook:

This road was once surrounded by family farms but with the rapid growth of this area, there are houses where there once were fields. That's the reality of living in NW Arkansas. Newcomers have escaped to the "country" and built many impressive and well-kept homes along our road. Long time home owners have enjoyed an appreciation in their property values brought about by the quality of homes being developed. You have a photo taken from the second story window of my home (Mr. Joe Gonzales) looking out over the proposed R. V. Park. How can this not slash the value of my property and the other adjacent property owners? No doubt, it will cause a ripple effect and reduce property values for neighbors in all directions.

Melissa Lee provided an overview of the blue notebook that was provided to each Commissioner which contained information relating to wastewater/storm water/septic issues, potential for increased crime, and the Planning Commission's authority in the City's territorial jurisdiction.

Ralph Pendergraft asked if Mr. Potter has withdrawn, was there anything the Commission could act on.

JR Carroll replied that right now there is nothing; if Mr. Potter continues to construct then the Commission would need to decide if they want to act.

Ralph Pendergraft asked if they would be able to legally.

JR Carroll responded that he would need to review the ordinances.

Ralph Pendergraft commented that Tontitown is in between lawyers and he just doesn't know if they have the legal right to tell them what they can do there. He continued that Mr. Potter has withdrawn, so there is nothing to vote on.

Wes Doss – attorney for Mr. Potter – assured everyone that the park will comply with all laws. He continued that everyone out here is on a septic tank, Mr. Potter's will be governed by state health just as other residents are. He commented that he lives in the county because he doesn't want a municipality telling him what he can do; that's the pro and con. He continued that it's not zoned so he can do whatever, but so can his neighbor. He went on that traffic won't be going past the park. He stated that seven to eight percent of parks' clientele are daily turnovers; heavier use vehicles frequently use that road. He agreed with Ms. Lee regarding the laws and confirmed that his client will comply. He addressed the Commission asking if other properties have been subjected to this.

Mick Wagner commented that 82 bays with motor homes that each contain two to three people is hardly in comparison to 2.79 (average) people in a single family home. The standards which are applicable were adopted by Water and Sewer in 2005.

Several comments were thrown around in discussion.

Nathan Young – Floyd Road – asked what zoning would be required.

The general answer was R-4.

Ina Brown – Pianalto Road – stated that the site has water in all directions and as of yesterday there was blasting and work being done.

Chuck Savage clarified that it was not blasting; that it was the tailgate of a dump truck.

Greg Taylor stated that he was representing Dan and Mary Atwood who are adjacent to the west side and that based on the info at hand, they are opposed.

JR Carroll suggested that the residents also present to George Butler at county.

Sunny Hinshaw – Barrington Road – asked if this would be different if they annexed.

Jeff Hawkins commented that voluntary annexation takes a minimum of 75 days.

Ralph Pendergraft called for a break and asked everyone interested in staying to return at 8:30.

Ralph Pendergraft called the meeting back to order. He asked Mr. Williams if he had anything he wanted to say.

Rick Williams stated that he had a question and request for legal counsel. He continued that he was brought on board in January and given a multitude of responsibilities: one being Planning Director, two being Building Official, Fire Marshal, Code Enforcement, Plan Reviewer, maintenance codes, etc. That said, interpretory authority lies on his head when things are submitted. That power was given to him via Planning Commission, i.e., City Council by ordinance. He continued that also the ordinance supports all adopted codes, whether it be building code, mechanical code, electrical code, plumbing code, housing code, NFPA standards and codes, his point being the enforcement of those authorities run through all corporate areas as well as adjacent and contiguous and continuous areas within our planning district. So what has been said to this point and the retraction of Mr. Potter's property, whether he wants to adhere to it or not, Mr. Williams's interpretation in that stance being that would be Tontitown's requirement of him irregardless of whether he wants to do it or not, piggy-backed with county's requirements, alongside state's requirements. Mr. Williams continued that we have to be equal to or greater than (county and state requirements). As far as he knows and can interpret, again within his authority of interpretation, we're fully within our rights to make him comply with all this, stacked on top of all the other things. He stated that this was in regard to previous counsel; what he asked of current counsel was to give him an interpretation of what he just said from a legal counsel with his enforcement authorities – potential, now, and in the future. Mr. Williams commented that the city will annex more property and boundaries will increase.

JR Carroll responded that that was an extremely complicated question and he thought it'd be best if direct to your legal guide in regard to those responsibilities because you set up in different levels and different facts, actually same facts just in different levels.

Basically as it applies to Mr. Potter and that situation, the city has territorial jurisdiction which enables them to do what they want with those areas, and you (Mr. Williams) are put in charge by the city to interpret that and move forward for the city. Mr. Carroll continued that Mr. Williams has the same powers in the city as in the planning area under territorial jurisdiction. He added that Mr. Williams's scope is limited by the city's scope which they determine through their counsel (which is himself) how much powers they have in the city and the territorial jurisdiction. Once that has been determined and you have the full limits and scope as the city does and that would involve interpretation of city, sewer codes, electric codes, fire codes, etc. Basically as soon as the city, through

Mr. Carroll, can figure out how far the city can go outside the city, then you have powers up to those limits.

Rick Williams stated that he wanted to make sure that that was a matter of public record and as far as Water and Sewer goes, it is a separate entity by its own Commission, however, he has, does, and will, with all things being said, enforce anything that is, either residential or commercial properties, within the same areas for water or fire protection by the same codes. He asked if Mr. Carroll saw any conflict with that.

JR Carroll replied he did not.

John McClardy – NW AR Regional Planning – went over changes that were discussed in the last sub-committee meeting for the proposed Master Street Plan.

There were many mini-discussions regarding the proposed Master Street Plan.

Motion made by Chuck Savage to adjourn. Seconded by Karen Inlow.

Motion carried with all ayes. Meeting adjourned 9:15 PM.