



**New Albany Planning Commission**  
Meeting Minutes  
Monday, June 19, 2023

**I. Call to order**

The New Albany Planning Commission met in regular session on June 19, 2023 in Council Chambers of the New Albany Village Hall. Chair Kirby called the meeting to order at 7:04 p.m.

**II. Roll call**

Those answering roll call:

Mr. Kirby	present
Mr. Wallace	present
Mr. Schell	present
Mr. Larsen	present
Ms. Briggs	present
Council Member Brisk	present

Having all voting members present, the commission had a quorum to transact business.

Staff members present: Law Director Ben Albrecht, Planner II Chris Christian, Planner Chelsea Nichols, Planning Manager Steve Mayer, Engineering Manager Cara Denny, Engineer Dave Samuelson, Deputy Clerk Christina Madriguera.

**III. Action on minutes: May 15, 2023**

Chair Kirby asked if there were any additions or corrections to the minutes of the May 15, 2023 meeting.

Hearing none, Commissioner Wallace moved to approve the May 15, 2023 meeting minutes as submitted. Commissioner Larsen seconded the motion.

Chair Kirby asked if there was any discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Mr. Wallace, yes; Mr. Larsen, yes; Mr. Schell, yes; Ms. Briggs, yes; Mr. Kirby, yes. Having 5 yes votes, the May 15, 2023 meeting minutes were approved as submitted.

**1. Additions or corrections to agenda**

Chair Kirby asked if there were any additions or corrections to the agenda.

Planner Nichols answered none from staff.

Chair Kirby administered the oath to all present who wished to address the commission.

**V. Hearing of visitors for items not on tonight's agenda**

Chair Kirby asked whether anyone in the room wanted to be heard for an item not on the agenda. Hearing no response, he observed that it seemed likely that all those present wished to be heard on the rezoning application.

**VI. Case:**

**ZC-07-2023 Rezoning and Preliminary Development Plan**

Rezoning of 63.5+/- acres from Agricultural (AG) to Infill-Planned Unit Development (I-PUD) generally located at the northwest corner of the intersection at Central College Road and Jug Street Rd NW for an area to be known as the “Courtyards at Haines Creek Zoning District” (PIDs:222-005156, 222-005157, 222-005158, 222-005159).

**Applicant: EC New Vision Ohio LLC, c/o Aaron L. Underhill, Esq.**

Chair Kirby provided an explanation of how the commission hears cases and explained how the public hearing would be conducted. He asked that members of the public please address comments and concerns to the commission. He further explained that if the application is favorably recommended by the commission, its next stop is the city council.

Chair Kirby asked to hear the staff report.

Planner Nichols noted that the projector was not working but the presentation would be visible on the big screen behind her. Planner Nichols delivered the staff report.

Chair Kirby asked for comments from engineering.

Engineering Manager Denny delivered the engineering staff report.

Chair Kirby asked to hear from the applicant.

Aaron Underhill, attorney on behalf of the applicant, stated he was present with several professionals who had worked on the application. He discussed the history of the project. He referenced his slide presentation and stated that the homes would be in the mid 500's, would be for empty-nesters, would offer universal lawn care, and featured side outdoor living. He stated that the applicant believes residential use is appropriate in this location but recognized that there were people who disagreed with them. He remarked that density and intensity are 2 different things. A community of empty-nesters means decreased intensity which means decreased utility consumption, and about ½ of the traffic volume. The age restrictions at The Courtyard New Albany were working. He stated that the Rocky Fork Blacklick Accord (RFBA) had recommended approval of this application and he was pleased to see only one condition in the staff report. He discussed the 90% age restriction; and stated that these homes offer side-yard living which is less practical for families with children. He explained that they had worked through many issues while the application was pending before the RFBA and made changes including: repositioning of leisure paths, rearranged street connections, and setbacks that were in excess of R-3 straight zoning.

Chair Kirby mentioned that they were at about 7 to the acre on the minimums.

Mr. Underhill responded and asked – not 3?

Chair Kirby responded that they were at 53-feet wide and 115-feet deep and about 7.147 of them went into 40,000 square feet.

Mr. Underhill acknowledged Chair Kirby's comment and calculation. He continued with the slide presentation and provided an explanation of the setbacks, buffering, and tree preservation

zones. He stated that this would be a highly-amenitized community with pickle ball courts, a pool, and a clubhouse. He displayed renderings of the types of homes that would be offered noting that these homes would have more color than the homes at Courtyard at New Albany.

Chair Kirby asked Mr. Underhill whether he agreed with the engineering comments.

Mr. Underhill responded yes, that he was fine with the condition.

Chair Kirby stated that the application was short on the open space and parkland dedication.

Mr. Underhill agreed and stated that the application was about 3-acres short and that a fee in lieu of the dedication would be paid.

Commissioner Schell asked what the formula for the fee in lieu was and what would be paid to the city.

Mr. Underhill responded that the fee is \$42,000.00 per acre based upon an appraised value.

Chair Kirby asked whether that number was staying current.

Planning Manager Mayer responded that it was calculated using a very recent appraisal and was current figure.

Chair Kirby stated that he had a couple or 3 comments. First, he noted the tree row going east/west located 1/3 way down from the north and observed that it was a rear yard lot line from where the fence row sits and asked whether those trees would be retained.

Linda Menerey, Senior Planner at EMH&T on behalf of the applicant responded that the fence row goes through street 8 and there is a conservation zone to the north and, although they had tried to rearrange the layout to save that tree row, it was not likely that the tree row could be retained.

Chair Kirby indicated a row of houses and asked whether that row of houses could be shifted to save the tree row.

Ms. Menerey responded that drainage - a storm easement, was needed there, she also explained that the pond to the northwest was leaking so extra care needed to be taken when shifting the row of houses.

Chair Kirby asked staff whether rear-yard drainage was required there.

Planning Manager Mayer responded that the drainage does not have to be in the rear-yard, although it typically is, but storm water run-off must be planned for, collected, and stored off-site.

Chair Kirby responded, that, in other words the tree row cannot be saved because of drainage and alignment.

Mr. Underhill stated that was correct and added that there was a commitment to have an arborist study the existing trees on the western property line and would similarly commit to a study on the eastern property line and would agree to that condition.

Chair Kirby asked about the north.

Mr. Underhill responded that the north was already a tree preservation zone.

Chair Kirby asked how deep it was.

Mr. Underhill responded that the entire zone was 250+ feet and they had no plans to disturb that area. He further stated that the condition was that an arborist would study the trees on the east side, north of Jug. The same language that applied to the western side would apply to the eastern side.

Chair Kirby remarked that his understanding from staff was that the street trees would be doubled.

Ms. Menerey responded that she believed that was for the north/south.

Chair Kirby clarified that it was from the main entrance from Central College Road going north, it would be yard trees matching the street trees.

Planner Nichols added that the trees on the main road will be on either side of the path in addition to the yard trees in the front yard.

Chair Kirby asked whether the north/south road had any driveways on one side or both sides.

Ms. Menerey responded that there will be no driveways on the west side because those are lane homes. There would be green spaces on the east side.

Chair Kirby noted then, that those blocks would be about 230 feet long. He stated that he has been bicycling in various areas, including the other Epcon property, and has observed tighter street tree spacing in neighborhoods with driveways. He requested that tighter tree spacing be used, despite the fact that it was possible to plant the trees further apart. He noted that the tighter spacing used in areas such as Byington and Pickett Place really softens the density.

Ms. Menerey asked whether he was only referring to blocks with lane homes.

Chair Kirby responded that he was referring to wherever street trees were required.

Jason Coffee, Epcon 500 Stoneridge PKWY, responded that the development team would need to think that through but he did not think it would be a problem to go from 30 feet apart to 25 feet apart.

Chair Kirby restated that the condition would be that the tree spacing used in the areas where there were driveways would be the same tree spacing in the areas where there were no driveways.

Commissioner Briggs asked, regarding the homes on the west side with no driveways, whether there would be garages.

Ms. Menerey responded that the garages will be behind those homes.

Commissioner Briggs continued by asking whether it would be similar to Windsor.

Ms. Menerey responded yes.

Chair Kirby noted that due to the side-yard concept there were no windows parallel to a neighboring side-yard. The result was a lot of siding, and he asked whether the applicant would commit that the end of a row would not be a blank elevation.

Mr. Coffee answered yes, and explained that the architecture will be enhanced at the end of the row so there will not be a blank wall at the end of a row. Courtyards will face out at the end of the row.

Chair Kirby clarified that he would take architecture detail at the end of a row but not landscaping, and further stated that was one of the mistakes made with a prior application.

Chair Kirby asked whether the dog park would intrude on the preservation zone in the north.

Mr. Underhill responded that it would not, the tree preservation zone was there.

Chair Kirby asked how extensive the tree row was on the north.

Ms. Menerey responded that the canopy extends out 25-30 feet and they were comfortable committing to 30-foot preservation.

Chair Kirby asked for other questions from the commissioners.

Commissioner Larsen asked about the percentage of open space, he noted that he knew it was above 20%, but was wondering about the percentage of open space compared to built space.

Ms. Menerey responded that the code does not permit inclusion of the pond in the calculation. She continued that the percentage was probably over 35% at the site overall, but the calculation made it look like the percentage was small. Epcon projects were challenging because there were more units and they were closer together so the calculation made it look like there was not enough open space but there was actually a lot. She pointed out that there would be no living in the rear and there were no swing-sets so it looked more like a conservation area.

Commissioner Larsen asked for the location of the homes that would not be age-restricted.

Mr. Underhill responded that those homes would be dispersed throughout the development, the development will not be segregated.

Commissioner Larsen pointed out that traditionally .85 was used to calculate student count and noted that in this application .15 was used to calculate student count for the homes that are not age-restricted, and .05 was used to calculate the student count for homes that are age-restricted. He asked how those numbers were selected and observed that it seemed like 0 should have been used for the non-age restricted homes.

Mr. Underhill responded that they probably should have used 0, and in arriving at a calculation for the non-age restricted homes .15 was their best guess.

Commissioner Wallace asked whether the age restriction would be built into the individual deeds.

Mr. Underhill responded yes, there will be a declaration that the development is age-restricted and the declaration will be referenced in the deed and noted in the chain of title. It is intended to put everyone on notice, so if there are 15 homes with kids, then the 16<sup>th</sup> home is out of luck. The same unit will not remain restricted, or unrestricted.

Chair Kirby continued by observing that it [the restricted or un-restricted status] is pooled and does not run with the individual lot.

Mr. Underhill responded that was correct, unit purchasers and sellers would be at the mercy of what was going on in the community at that time.

Commissioner Wallace stated he was unclear how the city would enforce the restriction because which homes were age-restricted and which homes were not age-restricted would shift, and asked Law Director Albrecht how it would be enforced.

Law Director Albrecht stated that generally, the HOA would be sure that the purchaser is compliant and keep track of the records.

Commissioner Wallace observed that the age-restriction was also a zoning requirement, so the city could have an enforcement role.

Planning Manager Mayer agreed and stated that the city would have enforcement authority, that this would be a belt and suspenders approach. There would be a restriction in the deed there would be enforcement via the zoning code. Tracking would be the obligation of the developer and the HOA via annual reporting requirements. And if the city comes to believe the developer or HOA is not meeting reporting requirements, the city can request and review the reports for compliance with the age-restrictions.

Chair Kirby recapped, that if one of the houses qualifies as not age restricted and then a student living in the home graduates, they could lose the unrestricted status because the status does not run with the property. This is by use, not by rights to the land.

Commissioner Wallace stated that what he was hearing was that a certain number of homes could be sold to persons under the age of 55, but they would be deed restricted from having children.

Planner Nichols clarified that the 21+ age restriction only applied to the 90% age-restricted units (requiring at least one resident over the age of 55) only, the remaining 10% of the units had no age restriction at all.

Planning Manager Mayer stated that was correct.

Chair Kirby stated that the age-restriction does not run with the land, it is pooled

Planner Nichols responded, correct, this is similar to Nottingham (but theirs is 80/20).

Council Member Brisk noted that it was similar to Pulte.

Planning Manager Mayer stated that the deed restriction always floats and it is up to the HOA to track the demographics.

Mr. Underhill added that there is a significant penalty for violations and with non-compliance with reporting requirements.

Commissioner Briggs confirmed that the initial responsibility for compliance was on the developer and then it would transfer to the HOA.

Mr. Underhill stated that was correct.

Commissioner Schell appreciated the depth of the school impact study and noted that it was obviously a big win for the schools, he then asked about the side living and whether the commission could anticipate variance requests.

Mr. Underhill responded that they had not had one thus far.

Commissioner Wallace noted that the text regarding garage doors specified that they must have the appearance of individual bay doors but the renderings of the garage doors did not appear to match the text and wanted to be sure that they would at final development.

Planning Manager Mayer responded that as part of the submittal requirements for rezoning was to show general design and intent but by the time of final development a detailed plan to match the text would be presented.

Commissioner Larsen noted that it was similar to the Courtyard at New Albany, they appear like double wide doors, but are single doors.

Planning Manager Mayer stated that was correct and further noted that the garage doors would not be white noting that darker doors appeared to fade into the architecture.

Commissioner Wallace asked staff about the 87.5% score on the RFBA scorecard and asked which points were not met.

Planner Nichols responded that she would look those up and report back.

Planning Manager Mayer recalled that most of the lost points were due to architecture. Like the New Albany City Code, the RFBA called for traditional 4-sided architecture and the structures proposed here were 2-sided architecture. He further stated that in some respects such as tree lawns, the RFBA has more restrictive requirements than city code.

Commissioner Wallace thanked staff.

Council Member Brisk asked whether there are city code requirements for the width and depth of the alley ways and drive ways. She specified that she was asking because the alleys require a 10 point turn to get into the garages at Windsor. And she did not want that to happen here with this development.

Planner Nichols stated that she would look at Windsor and compare it to these proposed dimensions and that the commission could make sufficient width and depth a condition of approval.

Council Member Brisk asked Chair Kirby whether the commission would add that condition tonight.

Chair Kirby asked for a rear-yard setback number, because that would also help.

Mr. Underhill stated that for the lane homes they can make sure that two cars can be parked in the rear driveway and be sure that there is at least one car length in the driveway and asked whether that would take care of it.

Council Member Brisk clarified that would be on the alley side and indicated that she thought so [that it would take care of it]. She restated that there would be a car length between the garage and the alley, and that would absolutely take care of it. She further noted that many of the rear driveways in Windsor were the length of a car's width.

Chair Kirby noted that current text prohibited uplighting on the exterior and asked whether the text could simply prohibit uplighting.

Mr. Underhill answered yes.

Chair Kirby noted that the language regarding skylights was the same language that was typically used. He noted the close proximity of the homes and asked whether the skylight language could be altered to state that they cannot be seen from the front.

(inaudible response from podium)

Chair Kirby asked whether the same treatment could be applied to the text for solar panels, that solar is south-facing not front is permitted.

Commissioner Wallace clarified that the text would be altered to specify that instead of “on the rears of homes,” the language would specify that solar panels would be permitted to be installed on the roof provided they are south-facing, not on the front roof.

Chair Kirby any other comments from the commission, hearing none he opened the public hearing.

Planner Nichols called Tamara Davies to the podium.

Tamara Davies, 8200 Central College Road. Ms. Davies referred to her slide presentation. She explained that her intent was a no vote on the development. Ms. Davies’ slide presentation included specific code provisions and she explained how they applied to this application. More specifically she stated that this does not meet current zoning requirements; it is inconsistent with New Albany’s zoning ordinances; and the deed restrictions do not appear to meet the reasonable accommodation provisions for HUD. She stated that she and her neighbors feel as though they are being run over by the bull dozer of Engage New Albany Strategic Plan’s progress. This development is out of character with surrounding properties and will adversely affect her property which is prohibited by the ordinances of New Albany. It will not preserve native trees and wildlife. She further stated that this development proposes visual pollution and she considers the homes to be attached to each other through use of fencing with the result being a lengthy wall of homes that will abut her property. She noted that the wildlife in the area will no longer be able to cross to adjacent property and explained her view of the increase in traffic as a result of this development. She discussed potential conflicts with Federal rules regarding reasonable accommodations that must be afforded to disabled persons. She asked what would happen to the deed restrictions when they are found to be discriminatory. She noted that the text stated that the restrictions exist to the extent permitted by law. She also displayed a quote from the abstract of the January 2023 article, Familial-Status Discrimination: A New Frontier in Fair Housing Act Litigation from Yale Law Journal stating: “A key provision in the Fair Housing Act (FHA) – the Housing for Older Persons Act (HOPA) exemption – has allowed municipalities to weaponize senior housing to discriminate against families, obstruct affordable housing, and perpetuate race and class segregation.” She posed the question, whether an affordable housing development was proposed for a similar plot of land, would this planning commission approve it with the same concessions?

Chair Kirby clarified that if one resident is 55+ then other residents can be between 21 - 55.

M. Underhill responded that was correct.

Chair Kirby continued, this means a caregiver can be younger than 55.

Mr. Underhill stated that was correct, that was the law.



Commissioner Wallace followed that the federal law ensures that caregivers can assist persons living in an age-restricted community and the Federal law overrides the local zoning text.

Chair Kirby asked for the next speaker.

Planner Nichols called Mr. Carifa, 8154 Central College Road.

Commissioner Wallace then remarked that the quote from the abstract might be saying was that more 55+ developments decrease available space for affordable housing. This illustrates an issue that New Albany is struggling with.

Chair Kirby agreed and added that the price points in New Albany continue to climb and he frequently wonders where our firefighters live.

Ms. Davies returned to the podium and added that her intent was to question whether an affordable housing coalition that purchased a tract, would you afford them the same concessions as this developer. If not, you could subject yourselves to litigation.

Chair Kirby asked about the density of Keswick.

Planning Manager Mayer answered that he did not know offhand.

Chair Kirby observed that New Albany has places with higher density and attached homes but New Albany does not have affordable anything.

Al Carifa, 8154 Central College Road. Mr. Carifa stated that he lives next door to the Davies and Ms. Davies' remarks spoke for themselves, she did a great job. He stated that he would like to know what kind of houses will be built on the west side.

Jason Coffee, applicant on behalf of Epcon, answered that the homes would range from 1400 – 4000 square feet and there were 5 models in the zoning packet. The buyer would be able to choose from the models in the packet.

Mr. Carifa then asked whether the Davies had been given the necessary setbacks.

Mr. Underhill responded that they have given 50 feet which is in excess of what is required.

Commissioner Wallace confirmed whether Mr. Coffee had stated that there could be 4,000 square foot homes.

Mr. Coffee responded yes, that they had added a model with a wider lot and a second story. He noted that there are differing views of the definition of downsizing.

Mr. Carifa stated that the Davies' home is 7,000 square feet and his is 3,200 square feet, and he was concerned about the impact this development would have on his property values. He further noted that other neighbors were upset about the impact this development would have on the wildlife.

Planner Nichols then called Richard Otten to the podium.

Richard Otten, 8383 Clouse Road. Mr. Otten explained that his wife's family goes back 200 years on the property and he has lived there for 26 years. They are very familiar with this land. He noted that there are conservation areas and it is very important that this remain a wild life corridor. He stated that putting a fence across the creek will obstruct the wildlife and that it was

also a dangerous place for children to play unsupervised. He stated that there is an antique barn on the property, and 14 years ago contacted Mr. Whitney (a barn consultant), who said it would be well-worth saving. He stated he was willing to have it moved on to his property and may still be interested but he understands the plan is to knock the barn down. He was unsure whether it was still movable and urged preservation of this historical structure. He stated that Jim Lynch from Franklin County Health Department told Homewood that this property was too wet to be developed and that every spring the houses will be underwater. Mr. Otten stated that is why Homewood did not build on the property in 14 years and instead sold it to Epcon. Now Epcon wants to build on it. He described the remediation efforts of an adjacent landowner to make the adjacent land farmable. He cautioned that prior to construction of a high-density development at this location, the commission and the developer should be aware that there will be a lot of water. He continued that, although he was not sure how much space would be needed, it did not appear there was sufficient width for fire trucks.

Chair Kirby noted the issue and asked whether the applicant could respond to the issue presently.

Trish Brown, EMH&T on behalf of the applicant, responded that the streets all meet the minimum width required for firetrucks.

Mr. Otten responded that was great, it was good to hear that adequate space was available for firetrucks, emergency vehicles, and school buses. He noted that the applicant was requesting an I-PUD zoning classification and observed that such a classification was out of character with the surrounding area, even considering the local development in the area. He also observed that he found it hard to believe that retired people would want to live in New Albany. The taxes are very high because the schools are great. There is nothing in this area that is reachable without a car and this is next to a swamp. It just did not make business sense to him. Finally, he asked what would happen if the houses don't sell

Chair Kirby confirmed that this land was currently zoned agricultural which has a minimum lot size of 5 acres and owning 60+ acres for 12 houses and could present an infrastructure nightmare because they could be running pipes everywhere for not many houses, and without restrictions. The I-PUD zoning gives the city a lot more knobs to twist and a lot more language to access than the straight zoning. The developers are fond of it because it established standards.

Mr. Otten responded that he was surprised that there are not many I-PUD areas in New Albany and further stated that it seemed that the trend was to bypass existing zoning rules.

Chair Kirby responded that it was a question of what the developer wanted to accomplish, straight zoning did not provide for residential over retail. The I-PUD provided standards for mixed-use.

Commissioner Wallace asked whether there been any discussion about trying to save the old barn.

Mr. Coffee stated that they were amenable to having it moved.

Commissioner Briggs made an additional point that it looked like there were 3 other structures on the southeast corner.

Mr. Otten stated that the barn was the only structure.

Commissioner Briggs noted that the text stated there were 3 other structures.

Mr. Coffee responded that if there were other structures, they were amenable to them being moved and they were happy to have discussions.

Chair Kirby asked staff to float it to other parts of the Development Department whether they would consider placing the structure(s) at the Taylor property.

Planning Manager Mayer responded that staff would be are happy to have discussions about that. His sense was that Taylor Farm was planned out, but staff would be happy to have the discussion.

Commissioner Wallace added that he thought it was worth saving these older pieces of New Albany.

Chair Kirby commented that 8 x 8s like that were not common. He then asked about drainage in the north and also asked whether there would be any basements.

Mr. Coffee responded that they were a slab developer, on a site like this there would be a handful of basements if conditions allowed; they could do basements and do them well and while they would not preclude basements in this development it was more than likely that these would be slab homes.

Chair Kirby urged him to go and count sump pumps in Ealy Crossing and Fenway as a cautionary tale. He has heard of as many as 6 sumps in one basement.

Mr. Coffee responded that these would be dry enough to support basements but typically their buyers do not want basements

Chair Kirby asked whether there would be sufficient drainage and whether the tiles were going to be a problem.

Ms. Brown stated that when development comes through typically the tiles are removed because they are putting in storm sewers in the streets and rear yards and the water will be routed to new retention basins with an outlet to the appropriate stream.

Chair Kirby asked whether there was a reasonable tile survey of the property.

Ms. Brown answered that they had gone through as many as existed but they were few and far between for those tile records but they were cognizant of them

Chair Kirby stated, as a public service announcement for all the neighbors, to record their current drainage situation because Ohio law precludes a developer from changing adjacent property drainage, but a baseline must be established in order to measure change. He further encouraged residents of the township to get their water tested.

Chair Kirby asked for the next speaker.

Planner Nichols called Catherine Saveson to the podium.

Catherine Saveson, 8383 Clouse Road. Ms. Saveson stated that her property is directly north of the subject property. She asked what would happen if the properties are not sold to persons 55+ could the developer then sell to residents younger than 55?

Chair Kirby answered that a whole new meeting, with neighbor notice requirements, would take place, in order to change the zoning and it would also have to go to council.

Ms. Saveson raised environmental concerns such as the sign on the road warning of flooding at Haines Creek.

Planning Manager Mayer responded that as part of the subdivision improvement requirements, Central College up to Jug Street Road will have to be improved, and will have to be assessed for proper drainage pursuant to staff approval, and further that the City of New Albany adopts Columbus' stormwater management requirements.

Mr. Coffee added that they will perform all improvements as required and it will be part of the final development plan.

Mr. Underhill stated that in the long run there is the thought that the bend will be smoothed out as part of a future project, that they will take care of any conditions today. The Strategic Plan calls for the bend to be smoothed out so in the longer run it will be a much bigger improvement.

Ms. Saveson continued that she was concerned about lawn chemical run off on the north property line. She stated she would like assurances that there would be a no spray no fertilizer zone.

Chair Kirby asked Mr. Underhill what the size of the preservation zone was.

Mr. Underhill responded it was 30-feet and that they would prefer to fertilize the grass.

Chair Kirby responded that Ohio gets plenty of water, so why would fertilizer be needed.

Mr. Coffee responded that typically their residents liked to see lawn areas, and even in a natural area there is an engineering component to making sure there is a drainage swale there so we need grass that lives, survives, and thrives there. To have no spraying there would be a problem.

Chair Kirby asked whether mowing would accomplish that.

Mr. Coffee answered that mowing would keep that down but you need a healthy lawn, and there is a difference between grass and weeds – in appearance. He continued that he did not know what the spray limits were or what the details would be.

Chair Kirby noted he had no issue with the dense part of the development but the preservation zone and dog park would not have perfect turf grass and it seemed as though growth could be controlled with mowing.

Mr. Coffee agreed and stated that they have tried to “low-mow” with other properties, with mixed reviews from residents regarding appearance.

Ms. Saveson suggested native prairie plantings instead of grass.

Mr. Coffee responded that he was not a plant expert, that the area was set aside as a preservation zone but drainage was paramount in this area.

Ms. Brown added that they would need more detail on what the prairie plantings would be.

Planning Manager Mayer stated that his recommendation was to address this issue at the final development hearing. Neighbor notice letters will be sent out prior to the final development plan hearing by the commission. He further noted that the Parks and Trails Advisory Board will also review this issue and they can help steer the parties on what the correct planting should be.

Mr. Coffee added that the correct swale must be there and beyond that they are happy to investigate a no-spray zone.

Ms. Saveson then requested that the commission consider requiring the application to comply with the full parkland requirement. She stated that it will make it a better development, and noted that as currently planned there is nothing that the residents can reach on foot. She stated that she was very happy about the green space on the northern border and appreciated the preservation of the tree line. She continued that she was interested in increasing the tree screenings and would like evergreens to be planted in order to block headlights towards her property.

Chair Kirby asked staff what the typical screening/opacity requirements were.

Planning Manager Mayer answered that where a commercial property abuts a residential property there is a 75% opacity requirement; for parking lots there is no opacity screening but a 3 ½ foot hedge is required. He further stated that this can be evaluated at final development.

Chair Kirby noted that there were two corners where headlights could sweep in.

Planning Manager Mayer agreed and stated that this would be evaluated at final development.

Chair Kirby asked the applicant whether there would be language to address screening at the northern border at final development.

Mr. Underhill responded that they will commit to increased screening at final development.

Ms. Saveson continued that there are several waterways on the property and wanted to understand how sediment will be controlled.

Chair Kirby responded that it was a 2-part thing and requested that staff give the city's phone number for reporting mud. He explained that sediment control is complaint driven and enforcement based.

Planner II Christian stated that the number is 614-939-2254.

Planning Manager Mayer continued that that number is the city's main line for the development department. The city has sediment and erosion control provisions, and developers are subject to mitigation measures when they are developing a property that is larger than 1 acre. He further explained that the city has engineering consultants who develop erosion control plans and also regularly go out and inspect for compliance.

Chair Kirby asked whether the commission could mandate a truck wash as part of the plan.

Planning Manager Mayer clarified that Chair Kirby was referring to wheel washing and continued that he would turn that to the applicant, and noted that it was a regular part of development and was mandated by need.

Ms. Saveson then encouraged to everyone in the room to call the number if they saw mud.

Planner Nichols called Michelle Weber to the podium.

Michelle Weber, 8337 Clouse Road. Ms. Weber stated that she moved to New Albany in 2005 for the lifestyle. The look and feel of the way they live on Clouse Road is rural. She stated that this giant property is very dense does not match anything else or the way they live on Clouse Road. [As it exists today] the entire property is native plants and the developer does not even know what those are which is really disappointing. She stated that she wants to keep everything exactly how it is.

Planner Nichols called Becky Burgess to the podium.

Becky Burgess, 8065 Clouse Road. Ms. Burgess addressed the commission about the people who would be living in these homes. She stated that this group would be pretty active; they like to cycle and walk, but all the land around this project is private. The roads are not conducive to cycling because they are busy with construction trucks. She stated that this is not a quiet area; the traffic noise and construction is an existing and ongoing problem with the development of Intel. She further stated that this will be an isolated community and it would be better suited to an area with more amenities. Columbus is inundated with 55+ communities and there are vacancies. The prospective residents deserve more than they are going to get. She also discussed safety. She has horses and has worked with area property owners to finance a fence to prevent access to the horses, but kids are attracted to horses. She was also concerned about the wetlands and the wetland ponds, this is an open and protected area, but it is not a safe play area for children. Safety must be the number one priority.

Planner Nichols called Ray Burgess to the podium.

Ray Burgess, 8065 Clouse Road. Mr. Burgess discussed the location. He stated that this property is not fit for the location. Pursuant to New Albany's codified ordinances, the commission was charged with considering the fitness of the proposed development with the surrounding area. This proposed development had no relationship and is out of place with the surrounding area. The surrounding area is large lots with homes, many of the neighbors are single family homes with lot sized 1 – 10 acres. He further provided details of the wildlife in the area including coyotes and stated that many different types of wildlife are fleeing because of Intel. Mr. Burgess also circulated pictures of the surrounding area.

Chair Kirby asked whether the commission could keep the pictures for inclusion in the record.

Ms. Burgess returned to the podium and stated that there were two horse farms and a new property owner who rescues horses. Ms. Burgess was not sure how many horses the new property owner had. Ms. Burgess stated that she rides a lot in these areas, and it was important for the commission to know that this is not a compatible development.

Planner Nichols called Ronald Davies to the podium.

Ron Davies, 8200 Central College Road. Mr. Davies referred to his slide presentation. He explained that he lives on the western border of the subject property. He stated that the property is surrounded by Plain Twp. and that this property is an island. It creates roads and trails to nowhere. He stated that the Rocky Fork Blacklick Accord Implementation Panel took 2 meetings to consider this application and resulted in a 5-3 recommendation, which is a slim recommendation. The meeting minutes indicate that the primary concern was density. This application is reliant on density exceptions from the Engage New Albany Strategic Plan, which is an aspirational document, not code. He stated that currently there is no water to the site, and it is unclear who would be paying for the provision of water. New Albany's standard is that the city cannot pay for the water to be brought to a site. He wondered whether Intel money or Federal money would be used to bring water to the site. He further stated that the I-PUD zoning classification is being used to circumvent residential zoning code requirements and the result will be continuous requests for waivers and arbitrariness in planning decisions.

Chair Kirby asked whether there was an answer to the question of who will be paying for the water.

Engineering Manager Denny answered that a water line will be installed down Central College Road for the purpose of creating redundancy, to connect dead ends, and to maintain pressure and capacity, and at the current time the city is evaluating who will be paying for it.

Mr. Davies stated that this is an isolated site and should be required to meet the criteria of an isolated site under Section 7 of the Design Guidelines, which includes that the site is at least 75% screened from public roads and adjacent properties. In addition to requiring the project to meet isolated site criteria Mr. Davies stated that he would like a tree preservation zone on the west side of the property. He noted that as currently written the text refers to protection zones on the south, southeast, east, north, and northwest but not on the west. A lot of trees would be lost with this development, the arborist review was helpful but there were multiple instances in the text where retention was permissive. He further noted that the text refers to rear yard setbacks but there are no rear yards.

Kirby called a 10-minute recess at 9:35 p.m.

Kirby called the commission to order at 9:49 p.m.

Mr. Davies resumed his presentation. He stated that this project proposed a ¼ mile uninterrupted strip of homes and may be the longest stretch of homes in New Albany. He requested that the ¼ mile wall of houses be changed. He also stated that the draft plan would require a significant elimination of trees. He presented a changes desired slide which included the following: treat the site as an isolated site per Engage New Albany; 100' tree preservation zone on western border; reduce density to 1 dwelling unit per acre; increase age restriction to 100%; maintain more trees along Central College (in order to avoid the barren appearance similar to Tidewater); reconsider the restriction on homes backing on to open space, this would keep the open space where it needs to be and it would ensure that the applicant meets the parkland requirement; he also mentioned consideration of an option for homes on Central College to tie into the development's water/sewer.

Planner Nichols called Paul Mason to the podium.

Paul Mason, 8293 Central College Road. Mr. Mason noted that today was his birthday.

The commission wished him a happy birthday.

Mr. Mason explained that he lives on the south side of the property. The old barn referenced earlier in the evening is directly across from his driveway. He stated that this development will result in an increase in traffic. He acknowledged that it would be less traffic than traditional single-family homes, but nonetheless it would be more traffic. He also stated that the barn is home to turkey vultures which are federally protected birds.

Chair Kirby whether Mr. Mason was amenable to screening and noted that it would need to be placed on his property.

Mr. Mason answered that he was amenable but was unsure how that could be done. He noted that he would be able to see the clubhouse and parking lot from his bedroom.

Mr. Underhill stated that they were committed to working with Mr. Mason to be sure there would be adequate screening.

Planning Manager Mayer added that the existing parking lot screening requirements were present in the text.

Chair Kirby asked whether there was anyone else from the public who wished to speak.

Commissioner Larsen noted that Epcon's properties typically had a 15-foot rear lot and asked what the applicant's thoughts were on establishing a 30-foot wide tree preservation zone on the western boundary at the tree line.

Mr. Coffee responded that they have increased the setback from 20-feet to 50-feet, and have hired an arborist to determine which trees can be saved. He further stated that they needed to solve for drainage in that area.

Chair Kirby remarked that the applicant had gone from 20-feet to 50-feet, and added the arborist review language. And he asked whether the first 30-feet of trees could be fully protected and the remaining 20-feet subject to review.

Mr. Coffee remarked that normally they would have the 20-feet worked out, but added that the drainage and grading in that area was not yet understood, so they did not know how everything would fit.

Commissioner Larsen remarked that they would be able to figure it out if the property line was 30 feet closer to the east or west.

Commissioner Briggs clarified that what the Chair and Commissioner Larsen were saying was that if the applicant only owned 20 feet, and not the additional 30-feet, they would be able to figure out how to make that work.

Mr. Coffee responded that unfortunately they did not have complete information at this time. Until the tree survey was completed, they would not know, but their intention was that the more trees they could save, the better.

Chair Kirby asked staff whether it would be feasible for tree removal in the first 30-feet subject to engineering staff approval on the Village side, that way if there was a way to save the first 30-feet, they would.

Planning Manager Mayer responded that similar language regulating tree removal in preservation zones has been used in other subdivisions. There are a variety of language models available.

Chair Kirby continued and asked whether a reasonable condition would be to make tree removal in the first 30-feet subject to engineering review and approval (on the west), and that the trees in next 20-feet should be saved.

Mr. Coffee stated that it was reasonable, the first 30 feet on the west was subject to staff approval and that the rest should be saved if possible.

Commissioner Wallace asked whether establishing a tree preservation zone on the west would impact the ability to employ screening.

Planning Manager Mayer responded that canopy cover could hinder new growth depending on the age of the wooded area and the new plantings, but staff has worked with landscape architects and consultants to sort through those issues.

Chair Kirby remarked that if it was a natural preservation zone the understory would remain.



Commissioner Wallace continued that that was his question, whether the commission was making a tree preservation zone or whether the commission was ensuring a commitment to preserve trees because it struck him that there is a difference.

Chair Kirby responded that he was going to have the condition say that they leave the understory in the first 30-feet which gives natural screening, if it is there.

Commissioner Wallace asked whether Mr. Underhill would be willing to commit to discuss screening on the western border as well.

Mr. Underhill responded yes.

Chair Kirby remarked that it would be his 12<sup>th</sup> condition.

Commissioner Wallace responded that he stopped counting at 11.

Commissioner Larsen stated that the 1200-foot row of houses seemed excessive. It seemed like there should be some limitation. It did not feel like the right community fit and wanted to open that up.

Chair Kirby noted there were limitations on block lengths in the Village Center.

Planning Manager Mayer responded that was correct, there were limits on block lengths in the Village Center, but there were no limitations in other residential areas.

Commissioner Larsen agreed and noted that the apartments in the Village Center have limits and forced breaks, and so does the Hamlet, but this development has more of a commercial feel not residential. He thought breaks were important visually.

Planning Manager Mayer responded that he was not sure what the longest stretch was. And, as far as design, staff did not see this as an issue, he further noted that it does not present traffic concerns.

Commissioner Larsen remarked that he was not concerned about traffic, but he found this to be out of character for the area and that it was longer than Courtyards at New Albany.

Chair Kirby asked staff whether, if the west stub connector was in the middle of the row, was there a preference for it to be that far north or could the stub to the west be a break.

Planning Manager Mayer explained the stub location was in part of the overall circulation plan for the division, that moving the west stub connector would thwart connectivity to the north, as planned it sets up right of way for connectivity for the future. He continued that he did not foresee an issue if an additional connector was added.

Chair Kirby stated that the developer would not lose any units if the break was traded and so that it was in the middle of the row.

Planning Manager Mayer responded that the only thing was that it would connect to a different private property on the north today.

Chair Kirby remarked that his experience with the Clouse Road residents was that there was zero appetite for connectivity. He further remarked that the south road could actually be the swapped with the same result. He stated that it would give one break for free, with no loss of houses.

Mr. Underhill responded that he was unsure how the breaks could be accomplished without losing a home.

Chair Kirby explained how the break would work.

Ms. Menerey remarked that the only problem with that was that it would be creating 2 corner lots. And corner lots required additional space, so it was unclear where the additional space on the row would come from without removing a house.

Chair Kirby asked what the width of the corner lots was.

Ms. Menerey responded 68-feet and acknowledged that it seemed like an easy task to move the connection, but it presented challenges.

Commissioner Schell asked whether all of this effort was to achieve one break.

Planning Manager Mayer added that even if there was a break, that did not necessarily mean it would be a controlled break as far as traffic went.

Chair Kirby stated the break is visual more than for traffic.

Commissioner Larsen agreed, the break was intended to be visual.

Commissioner Schell asked why the commission was going to such an effort to get one break.

Chair Kirby responded because the row was really, really long.

Commissioner Schell continued and questioned whether the break would be substantial enough to make a difference.

Mr. Underhill responded that he had another idea. There are 23 lots proposed in this row, perhaps they could supplement plantings so that there will be enhanced landscaping and screening for Mr. Davies' property.

Commissioner Larsen remarked that that solution would not address the front side, the houses are very similar in appearance and the run from the front is too long. Loss of 1 or 2 houses in order to accommodate a break would greatly improve the community appearance.

Planning Manager Mayer wonder whether prior to final development, landscape and streetscape planners can design another streetscape amenity to provide a visual break and improve the appearance.

Chair Kirby remarked that lot trees and the street trees go a long way to accomplish that. He noted that Pickett Place and Head of Pond were good examples.

Mr. Coffee responded that they had a 6-foot privacy fence, and that they also have decorative fencing and would be willing to use that in order to break up the back. He further noted that the homes are of varying depths.

Commissioner Schell stated that he would rather not give up the connectivity.

Chair Kirby asked staff to comment on the isolated sites comment and whether the subject meets the definition.

Planning Manager Mayer responded the Design Guidelines and Requirements are the city's architectural requirements and they have various requirements depending on the location of the site. Isolated sites are an existing condition that have a 75% opacity existing today. It is not a requirement. It is not a created condition, but if the condition exists and the building cannot be seen from the street or by neighbors then you do not have to use New Albany's traditional American architectural style.

Commissioner Wallace asked whether this site met the standard that Planning Manager Mayer just described.

Planning Manager Mayer answered no, it does not because the condition is assessed on a parcel by parcel basis. When the lots in this application are developed all of the homes will be visible to each other and from the street.

Chair Kirby noted a signal from a member of the public indicating he wished to address the commission.

Jeff Lewis, attorney representing Ron and Tamara Davies. He stated that the Davies had this matter well in hand, and he further remarked that he typically represents developers. He stated that this zoning would dictate its own regulation, rather than a straight zoning text. He remarked that this application does not meet the parkland requirement, and he suggested the removal of 8 homes in order to gain another 40 feet of setback. He stated the removal of 8 homes as suggested would improve the project, would remedy the parkland shortfall, would improve his clients' view, and would ameliorate many of the concerns presented in the testimony offered during the public hearing.

Chair Kirby invited applicant rebuttal.

Mr. Underhill stated that they were not trying to play games and they needed this many units to make the development work, they would continue to be as flexible as possible.

Hearing no further comments, Chair Kirby moved for acceptance of the staff reports and related documents into the record for ZC-07-2023. Commissioner Wallace seconded the motion.

Chair Kirby asked if there was any discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Mr. Kirby, yes; Mr. Wallace, yes; Mr. Schell, yes; Ms. Briggs, yes; Mr. Larsen, yes. Having 5 yes votes; 0 no votes; and 0 abstentions, the staff reports and related documents were accepted into the record.

Chair Kirby, Commissioner Wallace, the other commissioners and staff discussed and reviewed the list of conditions.

There was discussion regarding inclusion of a condition regarding wheel washing for construction trucks. However, the commission did not include this condition because, the applicant, Mr. Underhill, stated that such a condition was unusual with a residential application.

Chair Kirby asked whether staff was clear on the conditions. At staff request, Chair Kirby read the following conditions into the record:

1. Condition listed in the staff report.

2. That the east side has the same Tree Preservation Zone and arborist review, and especially the north of Jug Street Road to the lot line section. Commissioner Wallace added that it was VI regarding the arborist.
3. That there be 24-feet of spacing between the trees, even where there is room for it to be more. Not dictated by the driveways
4. That no blank wall faces out, at the end of a row.
5. That the rear driveways for lane homes, the parking apron between the garage and the lane is at least 18-20 feet long suitable for parking 2 cars side by side.
6. There will be no uplighting.
7. That use of solar is permitted provided it is south-facing and not on the front.
8. That use of skylights is permitted provided they are not visible from the front.
9. That there will be no fencing on the east lot line in the northeast corner.
10. That the barn can be moved.
11. Language about the northern boundary final development plan concerning chemical free and prairie grass – north of the swale.
12. North and west border screening at final development plan.
13. That use of decorative fencing is permitted in the rear of the residences.
14. The first 30-feet on the west, any tree removal is subject to staff approval, leave the understory if there is one present and add any necessary screening.

Commissioner Wallace moved, and Commissioner Briggs seconded the motion, for approval of application ZC-07-2023 based on the findings in the staff report with the forgoing conditions, subject to staff approval.

Chair Kirby asked whether there was any discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Mr. Wallace, yes; Ms. Briggs, yes; Mr. Larsen, no; Mr. Kirby, no; Mr. Schell, yes. Having 3 yes votes; 2 no votes; and 0 abstentions, application ZC-07-2023 was approved.

Chair Kirby stated that it did not meet the criteria. He stated that this is a great plan but it is in the wrong spot. He explained that he voted no because, considering the adjacent land use under Codified Ordinance Chapter 1111.06(a) and the adjacent zoning under Codified Ordinance 1111.06 (d), he did not find that this change was appropriate for this location.

Commissioner Larsen agreed with Chair Kirby's explanation. He praised the plan and the applicant but he did not find that this change was appropriate for this location considering the adjacent land use under Codified Ordinance 1111.06(a) and the adjacent land use under Codified Ordinance 1111.06(d).

Chair Kirby stated that he looked forward to reviewing a great final development plan.

Chair Kirby and the commission wished the applicant good luck.

## **VII. Other business**

- Drive-thru Menu Board Sign Code Workshop

Planning Manager Mayer introduced Planner II Christian and stated that this was just a workshop and would be brief. This presentation would consist of initial findings in anticipation of code updates.

Planner II Christian delivered the staff report.

Commissioner Wallace asked how screening would be handled.

Planner II Christian responded that screening would still be handled on a case by case basis.

Planning Manager Mayer added that the commission would still have the authority to impose additional screening requirements, if needed.

Commissioner Larsen remarked that these cases would not come before the commission because they are permitted.

Planning Manager Mayer responded that was correct.

Chair Kirby remarked that it was an issue to communicate to permit seekers, that they could anticipate a condition requiring additional screening.

Commissioner Wallace added that could be a reason to add screening to the code, because the commission would likely require additional in each case.

**VIII. Poll members for comment**

Chair Kirby polled the members for comment.

Commissioner Wallace stated that this was one of the longer meetings, but by no means the longest.

The commissioners wished each other and staff a good night.

**IX. Adjournment**

Having no further business, Chair Kirby adjourned the meeting at 11:06 p.m.

Submitted by Christina Madriguera, Esq., Deputy Clerk

**Appendix**

**ZC-07-2023**

**Staff Report**

**Record of Action**