

## **HIGHLAND PLAN COMMISSION**

Minutes of the Meeting of  
Wednesday, December 16, 2020

The Highland Plan Commission met in regular session on December 16, 2020 via a Zoom Meeting Format, Meeting ID 951 7833 4523 Password 948431. The Pledge of Allegiance was led by Commissioner Martini. The meeting opened at 7:00 P.M. led by Commissioner Turich.

**ROLL CALL:** Present on roll call: Commissioners Doug Turich, Joseph Grzynski, Mark Kendra, Mario Martini, Bernie Zemen, Vander Woude and James Kisse. Also present Ken Mika, Building Commissioner/Zoning Administrator, Plan Commission Attorney John Reed and Town Engineer Derek Snyder.

**MINUTES:** Commissioner Turich asked if there were any deletions, additions or corrections to the minutes of the November 18, 2020 regular meeting. Hearing none, they stand approved as posted.

**ANNOUNCEMENTS:** The next study session will be held on January 6, 2021 at 6:30 P.M. The next business meeting will be held on January 20, 2021 at 7:00 P.M.

**COMMUNICATION: None**

**OLD BUSINESS: Docket 2020-02 Public Hearing Consideration for Primary Plat Approval** for a proposed Lot Subdivision and consideration of approval of the proposed Indianapolis Blvd. Zoning Overlay District Development Plan for proposed Gas Station and related convenience store at the northeast corner of Indianapolis Blvd. Representing the Petitioner, Carmen Arvia/DVG Team, Inc., 1155 Troutwine Rd., Crown Point, In. for Paramvir Singh of Good Luck LLC, Inc.

Mr. Carmen Arvia of DVG Team, 1155 Troutwine Rd., Crown Point, In was present on behalf of the petitioner, Good Luck LLC, Inc. Mr. Arvia said he was there to request an eight island, 3600 sq. ft. convenience store and fuel station to be located at the northeast corner of Indianapolis Blvd and Hart Rd. He said they have worked with the Town to come up with an acceptable plan regarding vehicle movement throughout the site. He furthered it is a difficult area to work with due to the floodway behind were the proposed gas station would go. He said they would fill the floodway providing a retaining wall system along the floodway. He said they have gone through the Lake County Drainage Board and have received conditional approval pending the Indiana Department of Natural Resources application and approval of construction in the floodway. They have gone through Robinson Engineering to handle that process and he received an email with the preliminary documentation and should have that submitted by the end of the year. He said they will not start construction until spring of 2021 so they have time to finish up that permitting process and get all applicable paperwork completed.

Carmen continued they were a couple of changes to the site plan, landscape wise they have moved some of the trees in the floodway about ten feet away from the retaining wall. He said there were concerns of maintenance along the sea wall and removed a few trees on the Town's

side of the sea wall relative to possible future root damage. They also added eight feet six inches worth of depth embedment all the way across the retaining wall and updated snow load calculations per Nies Engineer's request. He said they are reverting back to the lift station design they had come forward with at the beginning of the proposed project as designed by Gasvoda pertaining to a pump specification and having enough pump pressure.

He said they are asking for the Indianapolis Blvd Zoning Overlay District approval and the (1) Lot Subdivision approval contingent on the Lake County Drainage Board final approval and from the IDNR permit for construction in the floodway.

Commissioner Turich asked for a motion from the Board. Mr. Mika asked Commissioner Turich to open up the Public Hearing. Commissioner Mika said there would be (2) motions as well. One for the Developmental Plan for the Indianapolis Blvd Overlay District and one for the Preliminary Subdivision approval.

Commissioner Turich then opened the Public Hearing. A remonstrator, his name being Michael, spoke that he feels this area for the proposed gas station has flooding issues and he has concerns regarding more concrete and less land being in Highland if the proposed gas station were to be developed.

There were no more remonstrators, so Commissioner Turich closed the Public Hearing.

Commissioner Turich then asked for a motion.

Commissioner Martini motioned to grant approval for the proposed gas station in the Indianapolis Blvd. Zoning Overlay District Development and for Primary Plat approval for a (1) Lot Subdivision, contingent on the petitioner receiving approval from the Lake County Drainage Board and from the IDNR for the construction permit in the watershed floodway.

Mr. Mika said there should be (2) separate motions for the Indianapolis Blvd Zoning Overlay District Development area and the (1) Lot Subdivision. Attorney Reed agreed.

Commissioner Martini motioned to grant approval of the proposed gas station and convenience store in the Indianapolis Blvd. Zoning Overlay District Development Plan. Commissioner Kisse seconded. Commissioner Vander Woude said for the record, he is not in favor of waiving any ordinance/zoning requirements for the gas station/convenience store, so he would not be voting in favor of the proposed petition. There was a roll call with a 6 -1 vote in favor of the proposed gas station and convenience store. Commissioner Vander Woude voted no.

There was lengthy conversation among some of the Commissioners and Commissioner Vander Woude trying to get clarification as to why he voted no. It was discussed this was regarding what he believed to be tree/landscaping requirements that were modified and he was not in favor of waving any requirements. The Commissioners discussed, along with Derek Snyder, the Town's Engineer, that those requirements were being met, that the landscaping, specifically three trees, were still in the plan. They were just moved from the parkway onto the petitioner's property.

There were also concerns about leaving the trees in the parkway as that could cause an issue with the utility lines.

Commissioner Martini motioned to grant approval of Primary Plat Approval for a (1) Lot Subdivision for Good Luck LLC contingent on the petitioner receiving approval from the Lake County Drainage Board and approval from the I.D.N.R for construction in the water shed zone. Commissioner Kendra Seconded. It passed with a roll call vote of 6 – 1. Commissioner Vander Woude voted no.

**OLD BUSINESS: Docket 2020-03 Public Hearing** for S.J. Highland LLC represented by Attorney Jim Wieser for a proposed Senior Living Facility on the 19+/- acres, commonly known as the Scheeringa Farm, located between Cline Ave. and Kleinman Rd. The petitioner has filed petitions before the Plan Commission for Rezoning of the property from R1A to R3PUD and for a (2) lot Subdivision. The petitioner is seeking a recommendation by the Plan Commission to the Town Council for the proposed rezoning of the property from R1A to R3PUD, in addition to consideration for Primary Plat Approval for a (2) Lot Subdivision.

Commissioner Turich asked Attorney Reed if the Proofs of Publication were in order. Attorney Reed responded that the Proofs of Publication were in order.

Representative Attorney Wieser of 429 W. Lincoln Highway, Schererville, In was present on behalf of the petitioner. Attorney Wieser wanted to add that besides the Proof of Publication, there was an affidavit filed with Mr. Mika of the Building & Inspection department regarding the posting of the requisite signs. The affidavit states the signs were posted on the property, where the proposed senior living facility would be, on Thursday, December 3, 2020.

Attorney Wieser wanted to clarify a few matters that were discussed at the Study Session of December 2. The first was a change to the site plan along with an additional document that was negotiated with the Town's attorney, John Reed. He continued the change to the plan was regarding a storm water pipe on the north side of the property running to a connection on Cline Ave. He states the pipe was originally put on the plan with hopes of an agreement with the Scheeringa family to benefit their property, but that agreement never came to fruition so the pipe was removed from the plan. He said the plan now reflects the removal of that pipe.

He continued that the bulk of the discussion during the study session revolved around the 11 acres to the west becoming a potential apartment development. He said there was a covenant negotiated that runs with the land, all 20.11 acres that indicates there will be, excluding the senior living facility, there will never be apartments constructed there, that goes with the Town's definition of apartments in the Town's ordinance. He said that covenant is before the Plan Commissioners.

Attorney Wieser said there was concern from Commissioner Turich asking about the covenant not being able to be signed until the petitioner owns the property. He said the petitioner cannot file or record the covenant until the petitioner owns the property, that there cannot be a burden put on property they don't own. He said the document that was before the commissioners is the

one that will be signed and recorded if and when the proposal received a favorable recommendation from the Plan Commission.

Attorney Wieser asked that the minutes from the Plan Commission meeting of July 15, 2020 Public Hearing be made a part of this record which contained Attorney Wieser's full presentation. He asked this because this presentation, project and proposal has not changed the ones proposed in July 15<sup>th</sup> Meeting.

Attorney Wieser brought up a few items he wished to comment on. He said as far as any further presentation goes he would like to use the Findings of Fact that were approved and adopted unanimously from the Plan Commission from the July 15, 2020 Meeting, as those Findings of Fact demonstrated and met all the statutory criteria for Rezoning, Subdivision and all the ordinance requirements for the approval of the R3PUD Development plan.

Attorney Wieser referenced that this proposal has been discussed for a long period of time and was determined by a unanimous vote in July and they are asking for the same consideration this time. He said he would like to reserve, under the Town's rules, the right to respond to any comments that the remonstrators might have and be happy to answer any ones questions.

Commissioner Turich opened the Public Hearing. He asked that the remonstrators raise their hands and they would be allowed 2 minutes to comment. He furthered that the Plan Commissioners would have an opportunity to respond along with Attorney Wieser.

Brandon Dothager of 8021 Glenwood, Highland, IN wanted to seek clarification on what the covenant is.

Attorney Reed responded that the covenant applies to the portion of project that is being developed in the immediate future, the 9 acres to the eastern portion of the property and to the 11 acres to the western portion of the property that would be proposed to be developed at some later date. He said a concern was raised that the undeveloped area could potentially be used as transient apartments. So being applied through the covenant, that will be recorded against the property assuming the approvals are given, and contingent on the recording of that covenant, that the primary occupants and lease holder would have to be 55 or over. They could have potentially an adult child 23 years of age or older to live with them if they need additional care from a family member and they could have people of a younger age or guests, but never for more than 90 days per year. So it takes the normal definition of an apartment and applies generally the senior living standards to it and that would be a covenant that would run with the land. It would not be personal to the developer so that if the developer left the covenant would still apply, it would not be personal to that one entity. He said that is a summation of what the covenant says.

Mr. Dothager asked if this would be a violation to the fair housing act based on age.

Attorney Reed responded the Fair Housing Act has been debated in this genre that it's a quite settled law that senior housing restrictions can be implemented if they are done within certain parameters. He said that these covenants are more and more popular these days. He said there would be an issue in the beginning with some of the juris prudence that there were apartment

complexes that were built that were not senior living facilities complexes, that they would try and impose various rules to keep people out that were not of a certain age and that became a serious problem. He furthered that's why it was best to do this one in the beginning to not violate the Fair Housing Act.

Mr. Dothager said that at tonight's meeting there are 93 participants in a municipality of about 25,000 residents and he said we all know why the participants are here, and that is because just about everybody in this town opposes the Senior Living Facility and supports the Scheeringa Farm, which have been around a long time and one of the founding families.

The next remonstrator was Dan from Meca Engineering of 5655 Broadway in Merrillville, IN. He has been retained by the Scheeringa Farm. He said he was looking at a dated site plan from March of 2020. He said on this plan there was storm sewer and grading shown on the plan and an access road that was proposed to the edge of the property. He said it has been his understanding that from listening to the conversation this plan has been revised. He continued however, it's still a little concerning if the road got pushed further to the south there would be a lot of transition grading that would be needed. He also wondered about the swale that is serving their current property if it's being maintained, and if it is, how that grading from the road would interact from that. And obviously the one thing he doesn't believe got brought up that the current facility has a driveway, not an improved driveway, but it goes across the property in a north south direction, that the Scheeringas use that driveway for many years, and he questions whether there is any prescriptive right to that driveway, because currently it is not being accommodated in the current plan. So he mentioned again, the drainage issues were something they wanted to raise and the storm sewer simply by eliminating the storm sewer does not really take into account that swale that is currently draining their property that needs to be maintained and the grading needs to stay on the current property.

Commissioner Turich asked if Attorney Wieser had any response to Dan from Meca Engineering. Attorney Wieser apologized that the petitioners engineer, Steve Kudwa, was not present at this meeting due to a personal commitment. He continued he could respond and that Derek Snyder, the Town's Engineer could answer anything. Attorney Wieser said that all of the drainage and then some, is going to be properly done pursuant to the Town's ordinance and is going to be handled by the oversized detention pond that would be put in. He said there is going to be no work, no grading, no anything that is going to be done on the Scheeringa property north of the petitioner's property. He continued that was a temporary grading easement proposal he hoped they could have worked out with the Scheeringas, but it did not come to fruition. He said nothing would be done to disturb that. And finally, the roadway that was spoken of, he said there is no right of prescriptive easement to that property at all.

A remonstrator name Michael mentioned the Town's people gave the power to the Plan Commission. He continued he thought people acted like there is nothing on this land and it needs to be developed. He feels, along with other people, that the land is for growing of food. That there are food deserts a couple of miles away and feels the commission wants to turn the land into concrete. He would like the commissioners to think of future generations. He spoke of other buildings around town that are in disrepair and how they should be focused on those buildings before the Town decides to do something else. He would like the farm to stay a farm. He feels

the town needs to stay a community and taking away the farm would take away a part of the community.

The next remonstrator was Sue who said she lives on Ridge Road and wanted to second some other comments that were made from other people regarding the historical nature of the farm. She is professional folklorist and feels the farm is part of the Town's natural history. She feels the Town should be supporting local food production and she is concerned on the cost of the road and that taxpayers are being asked to pay for the road.

The next remonstrator was Jeannine Scheeringa. She said Mr. Wieser has eliminated this drainage pipe because the petitioner can't agree with the Scheeringas. She said the petitioner has the detention pond. If the retention pond can't drain it will overflow and where do they propose the water from the detention pond would go if there is no drainage pipe. Also she feels they should have access to at least the half of the road the petitioner is talking about that is going to on the south side of the Scheeringa's property. She feels that if it were anyone else's property, they would allow them to have a driveway. Currently the Scheeringas have a driveway and she feels it will be taken away from them. She feels there should be some sort of provision in the blue prints that would accommodate for this just because she thinks the petitioner doesn't want a pipe to be there. She spoke of the other 9 acres on the west side of this property that needs to drain somewhere and currently Kleinman Rd can't handle all the water, it has to go to the East. She feels the whole plan has changed and that Attorney Wieser said everything has stayed the same since July, she says that is not true. She said some very crucial infrastructures has changed. She said it is going to rain and that water will have to be dealt with.

Attorney Wieser was asked if he wished to respond to Ms. Scheeringa. Attorney Wieser asked that in the absence of the petitioners engineer, if Derek Snyder, the Town's Engineer could respond. He asked if Mr. Snyder could respond to the comments about the detention pond. Attorney Wieser did talk about the pipe Ms. Scheeringa referenced. He said the petitioner is putting in an additional pipe, they are not removing a pipe that would be utilized for the storm water, they are removing an additional one that is not necessary. He asked for Mr. Snyder to comment on the pipe.

Mr. Snyder referenced the original pipe that was supposed to be on the Scheeringa property that in place of the existing ditch, but by removing that pipe the existing ditch is maintained. He said the detention basin that is proposed for the development, he said the water gets held back in the detention basin that has a controlled outlet that does connect to the Cline Ave storm sewer that ultimately discharges to the Cady Marsh Ditch. He said the overland flow path, in the event you have a storm larger than the design storm, which is a one hundred year duration, the overflow path goes down the fire lane access that is shown on the plan. He said the existing ditch that goes over the property already currently has an existing connection to the Cline Ave storm sewer, so the drainage for that whole area currently ultimately gets to that existing ditch goes to Cline Ave and so they are maintaining the exact same connection points, but they are providing a new pipe.

Councilman Mark Schocke said that if the Scheeringas were nice enough to bring their engineer tonight, then why wasn't the petitioners engineer at the meeting. He also wondered why the

Scheeringa engineer was limited to two minutes and believes their engineer deserved some courtesy with more time available to speak than the two minutes everyone else was allotted. Councilman Schocke referenced a comment by Attorney Wieser that there is no prescriptive easement. Councilman Schocke wondered what made Attorney Wieser the legal authority here. He continued just because he said something doesn't make it right. Mr. Schocke continued that maybe there is a prescriptive easement and perhaps they have been using it for years and there is a prescriptive easement the Scheeringas should have. Then Mr. Schocke brought up the flooding issue and a video Mr. Schocke had shown at the last plan commission study session. He said the video showed flooding in the parking lot in by Stracks and Van tils in July. He said that there was not a lot of rain this year and the Stracks parking lot could not handle the rain. He continued that the counterpoint will be if complied with the storm water ordinance but the key point is that this one piece of property needs to be looked at as a unit and how this particular piece fits into the rest of the pieces. That is not being done here and he guaranteed that there will be water issues. He feels the plan should be taken back to the drawing board and looked at again. He did ask that the Scheeringas engineer receive more time to speak.

Gina Miller spoke that she did not feel any of this would benefit the Scheeringa family and would actually be detrimental. She spoke of petitions signed by the Town's people and that the Commissioners among others have ignored this and that the Commissioners are voted in work on the peoples behalf. She feels this is shady. She feels none of the Commissioners care and she would like an answer.

Commissioner Turich replied that for him, he feels the commissioners have challenged the project and reviewed what the engineers have presented the Commissioners to review.

Commissioner Grzymski replied to Ms. Miller. He said he appreciates that she continues to say that everyone in this Town supports keeping the Scheeringa Farm. He pointed out that around 95 people were attending this meeting. He asked how many residents there are in Highland? Ms. Miller responded with how many petitioners have signed a petition. Mr. Grzymski said he has not seen any petitions. Ms. Miller responded there was a petition with more than 95 signatures. Commissioner Grzymski said he appreciates that, he has not seen any petition. He continued that the Scheeringa farm stand will be staying, the farm, which the Scheeringas do not own, is going to potentially sold to a developer. He said the farm stand and the petting zoo and the greenhouse would all stay. So when Ms. Miller states that the farm, does she mean the farm stand? He is in favor of keeping the farm stand. Ms. Miller stated the farm stand will be negatively affected and may have to close in the future. This is because they will have to ship vegetables from another location.

Commissioner Kisse wanted to assure Ms. Miller that he does care about this. He is a 56 year resident of Highland and cares very much about the Town.

Commissioner Turich said that the Commissioners do care. He continued that the last Plan Commission Study Session lasted two and a half hours, there were 8 pages of minutes where different ideas were challenged. He said they would push back and ask for things. He continued that the statement that they don't care is made because people don't understand the level of drive and want to make sure this is the best solution for the Town of Highland. He said maybe people

do not see it from their faces or reactions, but his stomach is in knots sitting here making sure that the Commissioners are doing what is right for the Town. He said there are challenges right and left and they are in their lane regarding this development. He said the statements about taxes and the use of other pieces of property, that is outside of their lane. He said those are topics that should be brought to the Town Council if it gets to that point. He referenced the comment about shady actions from earlier in the meeting and he said he trusts in the Town's Engineer and lawyers. He said for people to say the Commissioners don't care just does not sit well with him.

Commissioner Kisse said one thing that does not sit well with him and he takes offense to, is that any of Commissioners are on the take. He referenced the nominal fees the commissioners get for being on the Plan Commission. He said those comments are just offensive.

Commissioner Turich said he does not get paid for being on the Plan Commission. He has lived in Highland for forty plus years and has been a member of the fire department for almost twenty years. He was born and raised here. He wants to see the Town go in a direction that is going to be better for the Town, not worse. He just wants everybody to understand his position.

Larry Kondrat of 8115 4<sup>th</sup> Pl said he feels Commissioner Turich could trust the engineers and lawyers, but he can also trust the people. He is in opposition to another apartment complex. He brought up misinformation from people thinking there is nefarious behavior transpiring regarding the project. He wanted to remind people there were two secret meetings at Councilman Zemen's house. Councilman Turich paused Mr. Kondrat's time to ask Mr. Kondrat if he was taking the aggression about the secret meetings to the wrong group of individuals. He stated the Commissioners were not at that meeting and did not partake in any "illegal" activity as Mr. Kondrat would infer. Commissioner Turich said the Commissioners have been very transparent with the process. Commissioner Turich said he can respect what Mr. Kondrat was saying, but the Plan Commissioners on this board did not do anything wrong. Mr. Kondrat said he didn't say they did anything illegal, that the meetings were secret. Mr. Kondrat did say he thought the Plan Commissioners do their jobs and do them well. He is asking the Commissioners to vote no. He said the Commissioners are doing harm to a seventy five year old business.

A remonstrator named Stephanie referenced a Town Council meeting she attended previously. She said the people of Highland do not want the senior living facility. She spoke of rally's and how many people attended them and the increase in participants. She said there is a petition with 2000 signatures on it. She asked that the Commission votes no.

Janille Scheeringa said an apartment building is an apartment building and no matter which way you spin it, it will be an apartment building. She said she did a study regarding statistics on senior living facilities in the area and the occupancy rate. She said that everything south of route 30 was at 70 to 72 %. She said everything north of Route 30 was at 40 to 50%. She believes that people who grew up in Highland would move south and they would take their parents with them. She doesn't think the senior loving facility will last long and become an apartment building in the end. She referenced the changes in the blue print and wanted everyone to vote no to have a chance to review the changes and then come back to vote. She asked about what the master plan was for 43<sup>rd</sup> St. She said they are getting 30 feet from Russell Group. She said they would have to take the other 30 ft. from the Scheeringas. She continued that if they can't get the 30 feet from



them, how are they going to get the fire trucks down 43<sup>rd</sup> St to fight a fire in the back of the building. She asked for an answer regarding the blueprint on 43<sup>rd</sup>.

Commissioner Turich said he didn't believe the Plan Commission could answer that question, he felt that question would have to be asked of the Town Council members.

Mr. Mika commented that in reference to 43<sup>rd</sup>, (going back about twenty to twenty five years ago) there were developments along Kleinman that the Town had ask for a dedication of that area for potentially having 43<sup>rd</sup> St go through. He said there has not been any intention from the Town to put it through, but at the time of development, in some cases, there are attempts to get a dedication if in fact there are future plans to put the road through. He said in this particular case, any east/west street that would potentially go through, would go through to 42<sup>nd</sup> St or Place, whichever street it to the north. He said he does not believe there was ever any intention to make 43<sup>rd</sup> a through street.

Ms. Scheeringa said 43<sup>rd</sup> St is on the blueprint. Mr. Mika responded yes, but that as far as the developer potentially dedicating it on the developer's side. It said on the farm side, it was being shown on the drawing, but it was not being dedicated, because that property is not included in this development. Ms. Scheeringa said on the blueprint it says future 43<sup>rd</sup> St. Mr. Mika said yes, that is what is on there, but there are no plans to put 43<sup>rd</sup> St through. He referenced various areas around Town where dedications were made with a thought that in the future they may go through, and they don't or the subdivision changes. He said which in the Scheeringas case on the farm side, if in fact the Scheeringas did want to sell their property, if there was development to the north of this development, then potentially, the Town may ask that developer to dedicate 30 feet to make that happen. He said that is not part of what is being proposed now.

Ms. Scheeringa again asked the Commissioners to take a step back and review the new blue print that was proposed to them tonight because she said no one has looked at it yet. She asked why the is such a hurry to throw this through when she believes things just need to be looked at.

Mr. Mika asked the Town's engineer if he wanted to offer up any comment. Mr. Snyder referenced the fire truck access. He said that on the developers property, the northern 30 feet that borders the Scheeringas property, is currently already a utility easement that benefits NIPSCO and AT&T. He said they are going to put their fire access road, which is a 25-foot wide road, to allow their fire trucks access to fight fires. He said, but the road they are putting in is not 43<sup>rd</sup> St. He said that on this plan they were not going to dedicate an actual right of way at this time. He said as far as the 30-foot wide easement in that location, that in the future, if the Scheeringas decided to develop their property, then that 30 feet could be dedicated on the developer's property, but at this time, they are proposing to leave just a fire road for their developments at that spot.

Ms. Scheeringa asked if all the Commissioners have looked at the new blue print. Mr. Snyder replied he believes the Commissioners received it last week.

Ms. Scheeringa said she believes the Russell Group and Attorney Wieser are trying to push this through and she believes there is a reason why. She said it doesn't feel right to any bodies' bones.

The next remonstrator was Megan Faba of 9004 Cottage Grove PL in Highland. She questioned the viability of the business of the senior living facility and how long it could stay viable. She asked what is the plan if the senior living facility doesn't make it in twenty years. She referenced the Scheeringas being there for 75 years and kicking them off of the property. She had concerns with the Town being stuck with another area like Ultra.

Attorney Wieser responded that before Russell Group started the petition process, there was a market analysis done and he has seen other market analysis done in other part of the area. He took issue with Ms. Scheeringas statistical survey, specifically that Deer Creek has a waiting list. He continued the market analysis for Northwest Indiana indicates that there is a strong market for this type of development, that it is needed, and particularly needed in Highland because the comprehensive plan says specifically that they desire this for the Town's community. He continued based on the comprehensive plan, which is a requirement that must be meet under the statute, and based on the market analysis, it demonstrates there is a great need for this business and that it would succeed and be around for many years.

Ms. Faba brought up the road regarding the fire trucks and wondered if it was correct the Town would have to purchase another fire truck to meet the requirements of the senior living center.

Mr. Mika answered on behalf of the fire department, as he is the Operations Chief of the Fire Department and he has approximately 37 years as a member of the Fire Department. He said the fire department would not need to purchase a new aerial device to facilitate being able to accommodate the senior facility. He said at one point in time the development included a four-story structure and there was concern about that. He said the current aerial tower is 85 feet in height. He said generally most new trucks that are purchased by Fire Departments are 100 plus in feet. He said even under the previous scenario, the ISO (Insurance Service Office), would give credit for a neighboring Dept. having apparatus that meets the length requirements due to their proximity geographically to the proposed development at this location. Even though in this particular case, the Town would not have to purchase a new aerial tower. He said the truck that the Town has, is getting up in age and in the next few years the Town will have to replace it with a truck of greater height. Ms. Faba thanked the responders with their answers.

Aaron Straker said he was not against anyone on the Plan Commission, he is a union leader and he understands what is like to be attacked for something you have no control over. He said he is not directing comments to anyone in a bad way. He said he has only been involved in this for about five months. He asked why the Commission feels the public is allowed to ask questions.

Commissioner Turich responded it is so the Commission can hear the people's opinions and ideas and thoughts before making an informed and educated decision. Mr. Straker said that was a great answer. He continued, that being said, just because someone meets a criteria that says we are changing A to B doesn't mean there has to be a yes vote. He said if the neighborhood is against it, the representatives can still say no.

Mr. Straker asked Attorney Wieser if the owners of this corporation have been involved in previous meetings and did they ever go through the neighborhood and ask the neighbors what they wanted.

Attorney Wieser responded that yes, absolutely that they have been involved longer than Mr. Straker has been involved. Attorney Wieser said that there was a meeting held at the developers cost at the Lincoln Center. The neighborhood was invited to listen to what their program and project proposal was. They could take a look at renderings and conceptual plans and have a conversation about what the Town believed. He said there were a number of people that attended the meeting and the meeting lasted for several hours, along with several Public Meetings the developer and Attorney Wieser attended. He said that in exception to Ms. Scheeringa who feels they are trying to rush this through, this project in various forms has been in front of the Town and the Plan Commission for over two years and is hardly rushing anything through. He said the neighborhood meeting was conducted because they felt it was important. He said nobody wants anything rushed through where they are not wanted. He thanked Mr. Straker for the question.

Mr. Straker said he was only involved in the last five months and perhaps there are a lot of people who have not been involved that long. He asked Attorney Wieser if the developer was aware of the 2000 signature petition and that the neighborhood does not want to look at the senior facility every morning. He doesn't believe the developer will be a good neighbor.

Commissioner Turich asked if Attorney Wieser would like to mention the changes that were made to accommodate the neighborhood requests.

Attorney Wieser responded that the Plan Commission has made the developer jump through many hoops appropriately. He referenced a comment earlier regarding the height of the senior living facility and how it was changed from four stories to three at the request of the Plan Commission among other Town officials. Mr. Wieser said this is a senior living facility, it includes assisted living and a one-story memory care facility. He continued this is not a traditional, or what we think of as apartments. He said this is a facility designed to meet the needs of the community.

A remonstrator named Barb wanted to mention the Plan Commission represents the residents of Highland and they are telling the Plan Commission that they do not want the senior living facility. She believes the Scheeringas provide a need to the community, which is food and that will never diminish. She asked the Commission to vote no.

The next remonstrator was Linda. She said she is a senior and she was raised in Highland. She said her mother lived to be 98 years old and lived in her own home. She said she would not rent an apartment. She asked how many apartments would there be in comparison to assisted living and memory care rooms, because she believes all this is, is really just an apartment. She asked how many seniors are moving out of Highland and how many seniors were at the meeting at the Lincoln Center.

Attorney Wieser responded there would be 60 independent living units, 55 assisted living units and 21 memory care units for a total of 136 units. Linda asked what was going to be built first, the apartments. Attorney Wieser responded it would all be built simultaneously. She said that as you get older, she knows, because she cared for her mother, that seniors don't like elevators. She saw the three floors of the facility as an issue. She asked where the assisted living would be. Attorney Wieser responded it would be in between the independent living facility and the memory care. Linda asked about the height and how many stories it would be. Attorney Wieser said he thinks the memory care unit is one floor and wasn't completely sure about the other. Linda said she would hire someone to come into her home.

A remonstrator named Steve, who lives on 42nd St. He mentioned the nursing home that was located on 5<sup>th</sup> St in Highland that has been vacant, so he believes that if there is a need for a senior center, why is that out of business. His other concerns, since he lives across the street from the Farm, is that this will hurt his property value.

Mike Maloney of Prairie Ave in Highland commented that he thought this project was not going on for two years, that this project was pulled in November by the developer, came back to the Plan Commission in the spring, meet just two times and passed it on to the Town Council and the Town Council approved it on August 31. He feels this project is moving quickly.

Commissioner Turich responded that the Plan Commission pushed the developer to make changes and come back to them. He said it has been eight straight months going back and forth regarding changes that were requested and made. He said there have been several renditions come before them for review, and to say it has only been a couple of times is only telling part of the story

Mr. Maloney applauded the Plan Commission, that they were viewing his comments wrong. He said the Plan Commission was representing the community. He mentioned the petitioner having to pull the plug on the project and come back in May and he felt the Plan Commission moved in record time. He continued the petitioner resubmitted the plan and it was the wrong plan, had the wrong space. He continued that the next meeting they didn't have a sign up and requested more time. He brought up the fact the petitioners engineer was not at the meeting and that he felt the Town's engineer was doing the petitioners work. He also thought that due to the pandemic that there would probably have been more people attending the Lincoln Center meeting but couldn't. He said there are over 1400 people on the Save the Farm website.

Katheryn Kepchar feels the facility will cause a traffic concern. She prefers the farm and does not want to lose the green space.

Commissioner Kendra asked Janille Scheeringa how many acres they farm right now. She replied that currently they farm the 20 acres in Highland. On their property they have 7 acres and probably 5 acres is flood, which is directly behind the barn, the greenhouse and her father's home. She said all of that is under water. She said they had an 80 acre farm in Merrillville which they sold. She said they having nothing left. Commissioner Kendra asked if there was any land south, towards Demotte, that they own or can farm. She replied no, that they don't have any farm land south ever. She said if they did, they are in the same boat where they would have to take the

trucks and the guys to and from for lunch and bring them back, they would probably have to build a building. She said there is a large cost that comes with farming. She did say she hoped to keep farming the rest of her life.

Commissioner Turich commented about not having any farm land, she replied they sold the acreage in Merrillville with hopes of buying the land in Highland.

Commissioner Kendra wondered if they could lease land around the Crown Point area. Ms. Scheeringa replied there would have to be more money to be able to run that. She said they are farming for their Town and the people in it. She doesn't want to see the land go to apartment buildings or whatever it might be in 20 years.

Commissioner Turich wanted to clarify that if the senior living facility is approved, the Scheeringas would not have any vegetables for their farm stand because they won't have anywhere to till. Ms. Scheeringa replied they would have to try to make their 7 acres tillable.

Jeannine Scheeringa asked to let their engineer speak again since he was not able to speak but 2 minutes previously.

Commissioner Kisse commented that the developer was at a meeting along with Attorney Wieser, and the developer said the Scheeringa family could farm the back half of the property (Phase 2) until it was developed. Commissioner Kisse referenced the pipe that was spoke of before, and that pipe was going to fix the issue with flooding on the Scheeringas property.

Jeannine Scheeringa said that if they allowed them to do excavating on their ground, if they signed a temporary easement which they have been shown by two lawyers and one engineer to be false, that there was nothing temporary about the easement they asked the Scheeringa's to sign. She said they could farm the property (Phase 2) for 3 to 5 years if they signed the paper that said they would shut up and let them do their thing on their ground.

Attorney Wieser spoke and said that was so false he did not even know how to respond. He said that was just an outright lie. Jeannine Scheeringa asked Attorney Wieser to say that he didn't come to the Scheeringa's Farm and tell them that we would be nice enough to let the Scheeringa's farm it if the Scheeringas signed this contract for 10 dollars, so don't call her a liar.

Attorney Wieser said he is calling her a liar because that's not true. He said it is totally false. He said he brought the temporary grading easement agreement because it needed to be done for a variety of reasons, but primarily to benefit the Scheeringa's directly so it would help them alleviate their drainage problem, and that the developer had no obligation at all to do it. The developer thought it was an appropriate thing to do under the circumstances. He said that when he presented them with the temporary grading agreement, it was explained to them that there would have to be a dollar amount consideration. He said anybody who drafts an easement or reviews easements, know that it will always say in it, for one dollar or ten dollars or five dollars or other valuable consideration, because that statement is obligated and required by the law. He said there was going to be money paid, fair and reasonable money paid, that they never got to that discussion because the Scheeringa's did not want to do it. He never said, hey we'll be nice to

you and then you could go ahead and farm. He continued those were independent issues and told them they could continue to farm the undeveloped portion of the property so long as it remained undeveloped. Jeanine Scheeringa replied that as long as they allow them to come on the Scheeringa land. She said that was the carrot that was dangled in front of the Scheeringa's. She said that after Attorney Wieser left, her exact words were you just dangled a carrot in front of us. Attorney Wieser said he didn't want to get into a debate because the Scheeringa's continue to say things that aren't true. Jeannine replied he can say things that aren't true and then she said he told her she isn't being truthful. She said she is speaking the truth. She said it doesn't affect his livelihood, it affects hers.

Commissioner Kendra asked if she had a copy of the document that she could present to Commissioner Turich. She said she sure did along with a couple of other documents she could present. Attorney Wieser said he could make the documents available as he has the same documents. Commissioner Turich asked how they could be presented to the Commissioners, as it's on the agenda tonight, could it be emailed tonight. Attorney Wieser said that in all honesty, it is irrelevant for the consideration that they are here on. This is about the possibility based on a suggestion by Tom Vander Woude early on in the process, that perhaps we could take a look at some additional issues and one was to see what they could do on the north side and look at the ditch, to perhaps straighten the ditch out and help the Scheeringa's with the development of their flood problems. So they did that. It's irrelevant to the consideration tonight, just irrelevant. Jeannine Scheeringa said it is not irrelevant. Attorney Wieser said it is irrelevant because it doesn't affect the development. It doesn't impact what the Commissioners are considering tonight. It was a collateral issue, that they had hoped to address. It didn't work out, and they moved on. He said it is totally irrelevant to the Commissioners consideration as to whether or not this Rezoning should be Favorably or Unfavorably recommended because it does not impact this parcel of property. Jeannine Scheeringa said it impacts the drainage. She said they eliminated the only pipe there was. Attorney Wieser replied they did not. She said they took out the pipe. Attorney Wieser said they took out the additional pipe.

Commissioner Turich asked the Town's engineer, Derek Snyder, to elaborate on the pipe. Commissioner Turich said that's not what happened, he said the pipe was going to be added to drain the seven acres, but it's not going to affect the diversion of water away from the property.

Mr. Snyder said that on the boundary of the existing properties there is a ditch, and basically under the initial plan of 43<sup>rd</sup> going up to the property so 43<sup>rd</sup> could be used if it ever got developed, and to make the grading work the ditch would have to be filled in, so pipe was proposed to take the place of the existing ditch. However, without being able to get a temporary grading easement, then they were going back to the original plan of leaving the ditch as it is. The only thing they were going to be grading is the south bank of it, which is on the developer's property.

Jeannine Scheeringa asked if she could have her engineer speak, his name is Dan.

Ms. Scheeringa's engineer said he looked at the plan, showing the filling of the ditch and showed the storm sewer. He said the discussion revolved around altering that. He said he still has concerns about how the grading is going to work out on the access road, because they are raising

the grade by two or three feet, on the road and it's still very close to that ditch. He said he is not sure how that grading will work out.

Mr. Snyder responded to the issue on the grading. He said the proposed grading they are doing is a three to one slope on the back of the curve to the existing south side of the ditch, basically the portion that is the highest on the West end and once it gets towards the East closer to Cline the curve is basically at the existing top of the ditch.

The Scheeringa's engineer said that what he was looking at was an old plan and he thought generally looking at the plan, everything is generally sloping, existing, down to Cline Ave, to the storm sewer on Cline Ave., but all the detentions in the back, so there is concern there as well. He said he brings this up because other people are going to be looking at this from a storm water ordinance stand point, but obviously there is concern about it overall, the front half of the development. He asked how does that get things back to the detention of the rear. He said he was not trying to question any ones review of these plans, he said just looking at the grading plan it just came up as he was trying to look at and look at all the grades, there was a little bit of a concern.

Janille Scheeringa brought up Attorney Wieser's comment that this is irrelevant, that it is in front of Commissioner Turich today. She said it is relevant because Commissioner Turich lives in the same Town that the Scheeringas do and Attorney Wieser does not.

While hoping to get Mr. Snyder back to respond, another remonstrator spoke.

Christine Magli of 10019 4<sup>th</sup> St asked if the meeting could be postponed because they didn't have the developer at the meeting to answer questions, to get the document that Attorney Wieser needs to produce. She asked Mr. Mika if there have been any permits pulled for when they start to build and the last thing she wanted to say to Attorney Wieser is that her mother has lived in Deer Creek for the last nine months of her life and she was there on a daily basis and they do not have a waiting list.

Mr. Mika responded there have been no permits issued, that there cannot be until the necessary approvals are granted.

Derek Snyder got his internet back and Dan, the Scheeringa's engineer posed his questions again regarding the plan he was looking at, how the drainage from the front half of the development make it back to the detention. Mr. Snyder responded there is a storm sewer network that goes on the east side of the building so the most upstream storm sewer inlet is right by their driveway entrance off of Cline. Dan asked about the grading standpoint, if the storm sewer is not operating how does a hundred year event get to a detention basin. Mr. Snyder responded there are some overland floor paths within the development, but the majority is going through the storm sewers. He said there are a few key areas that are not detained so basically the storm sewer calculations they look at the whole development and in the hundred year-twenty four hour storm, the existing sight releases 5.22 cfs as their peak release rate and the storm water calculations, there are some areas they weren't able to detain, but overall they only had to meet .2 cfs per acre so that when you add together everything that they do detain, plus the portion that is un-detained, the net of that had to be under that .2 cfs breaker for the entire site. The Scheeringas engineer said it would

be nice to see a new plan just from the fact that the Scheeringas are impacted by what he is looking at now. He said he understands that the driveway had been pulled back. He said the ditch is pretty flat as anybody can see. He said that storm sewer was proposed only because they were filling that ditch in and that would not really help any type of drainage on the farm field itself because that ditch is dug as deep as it can be. Mr. Snyder said the only way that could benefit the farm is if the farm did some storm sewer improvement so their site. He said basically they are maintaining that existing outlet.

Mr. Mika said he thought the proposed assistance to help relieve some of the drainage problems that occurred in the gravel parking lot next to one of the out buildings, not so much the field behind the current set up. Jeannine Scheeringa said the water goes to the north, not to the south.

A remonstrator named Julie Stiver said she lives on 42<sup>nd</sup> Pl right off Kleinman. She asked the Plan Commission members to vote no. She doesn't want the senior living facility being developed. She asked if any of the Plan Commissioners had to put anyone in senior living and said it isn't pretty. She continued that when you get older you are not needed and what means the most to them is their home. She also referenced flooding in the parking lot at Stracks.

Commissioner Turich closed the Public Hearing.

Commissioner Turich asked if there were any additional comments from the Commissioners. He then asked if there were any motions to be made.

Commissioner Kisse wanted to make a motion to allow the plat approval

Mr. Mika stated there would need to be two motions. He said the first would be for a recommendation for the Town Council for approval of the Preliminary PUD Plan and the second motion would be for approval of the Primary Plat for the (2) Lot Subdivision.

Commissioner Vander Woude asked about the plat approval and should it be made contingent upon the Town Council approving the PUD. Mr. Mika, Attorney Reed and Wieser all agreed that was correct.

Commissioner Martini asked Attorney Reed if they should refer to this covenant as was discussed earlier, in the motion.

Attorney Reed responded that in the motion, if it were to be changed from R1A to R3PUD, that is when it would be contingent upon the proper signing and recording of the covenant.

Commissioner Martini asked if that would be sufficient, did they need to sign it or date it as Exhibit A or something. Commissioner Martini said he would just say covenant scribed by John Reed in todays meeting. He asked if that was sufficient. Attorney reed said yes. He continued he emailed to the entire group just before 5:00 today in the afternoon, the final version.

Commissioner Martini made a motion regarding the zoning of the subject property, known as SJ Highland LLC from an R1A to a R3PUD and contingent on getting the approval of the Covenant



described by Attorney John Reed this evening covering the residents that will be in those buildings. Commissioner Grzymiski seconded. The motion passed with a roll call vote of (5) in favor (1) abstention and (1) no vote. Commissioner Kendra abstained and Commissioner Vander Woude voted no.

Commissioner Martini made a second motion for a (2) Lot Subdivision and Primary Plat Approval for the property commonly known as SJ Highland, LLC. Commissioner Kisse seconded. The motion passed with a roll call vote of (5) in favor (1) abstention and (1) no vote. Commissioner Kendra abstained and Commissioner Vander Woude voted no.

Commissioner Turich asked if there was business from the floor.

Attorney Wieser asked if there needed to be a Motion for the Preliminary PUD Plan approval as well. Attorney Reed believed that to be correct. He said the PUD Plan that was submitted with the details of the Phase 1 portion of the development, the PUD Plan itself also requires a separate motion. He said that was discussed the last time it went through. He said that was when they had to stamp the set of plans with a particular writing so they know the right set they had.

Commissioner Martini asked that before he makes the motion is there a referral instead of just saying PUD, is there a number or a date regarding this PUD document. Attorney Wieser said it's the SJ Highland LLC PUD Preliminary Development Plan.

Commissioner Martini motioned regarding the PUD SJ Highland, LLC Preliminary Plan. Commissioner Martini asked if this was a sufficient motion.

Attorney Reed believed the motion should be to approve or deny with a favorable or unfavorable recommendation.

Commissioner Martini made a motion to approve the PUD SJ Highland, LLC Preliminary Plan.

Commissioner Vander Woude wanted to make it clear that this motion and the previous motion was a condition upon the Town Council approval of that initial PUD Ordinance. There were two responses that he was correct.

Commissioner Kisse seconded Commissioner Martinis third motion and it passed with a roll call vote of (5) in favor, (1) abstention and (1) no vote. Commissioner Kendra abstained and Commissioner Vander Woude voted no.

Attorney Wieser thanked everyone with their efforts and time.

**BUSINESS FROM THE FLOOR:** None

**ADJOURNMENT:** There being no further business to come before the Board, Commissioner Martini moved to adjourn. Commissioner Grzymiski seconded the motion and it passed by a roll call vote of 7 – 0. Meeting adjourned at 9:20 P.M.