

LiveTranscript of the Biltmore Discussion, 3-2-2016

Northfield Township Planning Commission

Agenda item 9.A Biltmore request to amend Master Plan (Attachment 1)

Dignan:

The first item on the Agenda is A. Biltmore request to amend Master Plan, Attachment 1. Um, Before we get into this, what I'd like to do is ask Mr. Fink to discuss how this item happened to make it back to the Agenda through his, I had a discussion with him and Mr. Fink, could you please elaborate on that?

Fink:

Sure. Um. So uh, previously, uh, probably four months ago, five months ago, the Planning Commission voted to send a letter to uh Biltmore Development Company LLC or whatever their name of the company is uh it's Biltmore but whatever the rest of it is, to indicate that uh they would uh uh welcome uh i'm quoting i'm trying to remember the letter uh don't quote me on this they'd welcome a proposal [cough] in conformance with the master plan.

Um, and uh that was passed by the Planning Commission 5 to 2. Um I have had conversations with uh legal counsel um and legal counsel uh has uh previously and currently is indicating uh and communicating that the Master Plan request, the formal master plan request from Biltmore, uh, which was um, uh, uhhhhh, requested roughly two years ago, uh, needs to be acted upon. Uh, That letter does not respond uh to that master plan request.

Um and uh the uh the action has to be taken by this Planning Commission. Um and that action has to be taken uh after review by the Township's experts,

Um in order to provide uh or to assist the planning commission in providing a factual basis uh for their decision. Um, so I understand and I respect the comments that were made um but the letter that was sent by the

planning commission is not sufficient in a um in a determination or decision of the request that it's still on the table. There's a formal master plan request and as such there has to be a formal decision made by the planning commission on that master plan request and counsel, uh, counsel is recommending that that be acted upon again after a review by consultants um to provide a factual basis to help the planning commission create a factual basis for whatever their determination is. So, um, that's why it's on the agenda [looks around]

Dignan: Thank you Mr Fink

Fink: I hope that ... Did I answer everyone's questions?

Dignan: Yes. Mr Stanalajczo?

Stanalajczo: I was not here last meeting for any of those discussions that took place but um in listening to your explanation and uh I take you for your word on that do we have a formal opinion letter from the attorney?

Fink: We do not have anything in writing. I spoke with him again today going over exactly this issue um and that opinion does come from Mr. Burns himself.

Stanalajczo: You know we went through this for our bylaws which actually ends up being a much simpler matter and the majority of the people on the planning commission decided to have our bylaws sent off for a formal written opinion from our attorney, which I didn't think needed to be done which is why I voted against it. But I believe that if we're gonna act upon anything we should have a formal written opinion from our attorney stating exactly what we need to act upon.

I think that's just the basis for us before we even

address this on our agenda. I think that's the minimum we should have.

Dignan: Thank you Mr. Stanalajczo. Mr Iaquinto, did you have a question?

Iaquinto: Mr Stanalajczo addressed it.

Dignan: Alright. Thank you. Yes, Miss Chockley.

Chockley: Um Would Miss Hodges know how to deal with one these? Does it really need to go before the attorney? Uh, to deal with the request for the master plan amendment.

Hodges: [inaudible off microphone] Thank you. I'll get used to it. Yeah, we went through this last time. I'm not sure I fully understand your question. Yes, I know how to review request for a master plan amendment. And to bring you back an analysis and facts that then would be before you for making a decision. In terms of having a factual basis it's not unlike when we have a ZBA matter on the ZBA. The ZBA takes testimony and facts are compiled and you have facts as a basis or in a rezoning where you give reasons for a basis. So I would anticipate that they, if requested to do so or directed to do so we would review the implications of the request in the context of your master plan and evaluate it.

Chockley: Ok. So, is that what we're gonna get from the attorney, the next steps on how we're gonna turn this down?

Dignan: That - Well I don't know if it would be that, because we'd be waiting for factual basis; I don't know. It depends on if we ask the attorney for something and if we

do, what we ask him for.

Chockley: Because this body asked, requested from Biltmore, quite a few things at one point, several studies, and they responded with nothing. And they didn't respond to the letter. Seems like they're not interested anymore, which, why should we jump through a whole bunch of hoops for a company that's not interested, um, when we could just say no.

Dignan: My only question would be is, did we address the original request? Did we deny it? Did we approve it? Or did we do something in between? And I guess that was the question, that, and speaking with Mr. Fink, that's the question. Yes Miss Chick,

Chick: I guess that's what it comes down to, I mean, yes, they, they were obligated to respond to our communications but as a planning commission we were also obligated to respond to their requests and we've had no discussion on it whatsoever. We've not had any discussion. I understand they didn't give us much but we've not discussed it at all and I guess asking for an opinion from the attorney on the what we need to do I mean in normally when someone comes before the Planning Commission and asks for an amendment change is that something that, Sally, that normally happens that you have to get I guess I don't understand why they're asking for a legal opinion when that's something the Planning Commission should be acting on anyway

Hodges: [shakes head, off microphone]

Dignan: Mr Iaquinto

Iaquinto: I'm just gonna make a motion. I move to ask our Planner to review the request for amendment of Master Plan map dated May 29th 2014, from Biltmore Land LLC addressed to Mr. Howard Fink, Township Manager of Northfield Township

Dignan: There's a Motion by Iaquinto. Is there any support?

Chick: [?]

Fink [interrupting the board]: If I may...

Dignan: If there's no support

Fink [interrupting the board]: If I may...

Dignan: the motion dies for lack of support. Yes Miss Chick

Chick: I guess I'm... I wanted to make an amendment or add to it or do we have to have support first?

Dignan: Well before we discuss it, but

Chick: Alright

Dignan: Would you like to offer a motion?

Chick: I'll support it and then

Dignan: Ok, there's a motion by Iaquinto supported by Chick. discussion on the motion. yes Miss Chick

Chick: I'd like to make a friendly amendment that we also ask for an opinion from our engineer, uh, Brian Rubel, uh, and probably from the public safety director to see what actually um give us an opinion from him on what it would be like to be have a subdivision if they needed a fire over there or extra police, just something that we can look at as opposed to having the planner, not opposed to in addition to what the Planner has to add.

[Iaquinto:](#) Uh yes, very well accepted, thank you, I forgot to add that as part of it.

[Dignan:](#) Yes Miss Chockley

Chockley: So we've gone down this road once already and we have like Mr. Warburton said over six thousand dollars worth of work done by Carlisle-Wortman on this, and so I'm wondering now we're gonna go down this road again, and have the same outlay here for an evaluation that was - it wasn't completed but it was a lot of stuff there.

Dignan: Thank you Miss Chockley.

[Dignan:](#) Mr Stanalajczo

Stanalajczo: I would think that since the Mr Fink brought up the subject that our attorney is suggesting that we take some action on it that before anything goes off to the planner again and we start the circle of this all over again that we actually find out from our attorney exactly what it is that they're saying that we need to act upon and why so we have a better explanation on what we're asking for and get that information in writing so that we do have something to review and look at.

Iaquinto:

I believe what; I know what my motion stated but then I also believe what the attorney's referring to is the letter that I stated from Biltmore, May 29th, 2014, their request for amendment of Master Plan Map, they detail one two three four five six, six different items specifically in there and so in sending that to our planner for review of their, per their request is what we need to act on either to approve, deny, or table the, this request, this official request because understanding the explanation from Mr. Fink, we truly have not acted on this in a proper way and according to what I'm understanding Mr Fink, the letter that we did submit to Biltmore didn't adequately address their request for amendment of master plan map. Is that correct?

Fink:

That is correct.

Iaquinto:

Ok

Fink:

That, it was not you know any, as I indicated previously, I have had a conversation, multiple conversations with counsel, and the conversations, I'm trying to explain as plainly as I can, is the conversation in fact there is an official request on the table, and that request has to be acted upon by the Planning Commission, uh, responded to by the Planning Commission, uh uh and um that has not happened. Uh, and in order to do that the uh counsel is recommending uh which is appropriate and typical in communities that the township experts provide their analysis in order to assist the Planning Commission in creating findings of fact, creating a factual basis for their determination which in this case would be Mrs. Sally Hodges at McKenna. Sewer would certainly be as well. um. That's,

Dignan:

Thank you Mr Fink.

Fink: That is the, that was the communication from Mr. Burns directly.

Dignan: Thank you Mr Fink

Fink: It's not in writing but that's what he said

Dignan: Thank you Mr Fink. Mr Cousino

Cousino: All right. So we have a letter that went out there that was inappropriately said apparently but has the sentiment of the Planning Commission changed from the verbiage of that letter? Have we changed our opinion - we basically stated that it was not meeting current zoning and/or future, yeah, current zoning and the master plan. Correct? We haven't. Has that changed at all? Have we changed our opinion on that? That's what we need to ask ourselves. We have I don't know how many pages of documentation from Wortman here. I don't think that it necessarily requires that we go to our planning consultant to give us her opinion if we've already gotten sufficient information from our previous consultant and our sentiment hasn't changed. We just need to state clearly, denied because it does not is not consistent with current master plan or the future land use plan, or we say Okay, give us more information; we've already asked for more information they haven't given us any more as it is. I don't, I don't see the need for...

Dignan: Thank you Mr Cousino. Is there any other discussion on the motion that's on the table right now?

Dignan: Yes, Mr Stanalajczo

Stanalajczo: When this whole process started off in 2014 I was not on the Planning Commission at the time but I did sit out in the audience and there was a lot of discussion on both, at both the Planning Commission and the Township Board about directions to be taken and I know that this Board voted to or this Commission voted to send out a letter of intent to amend the Master Plan and then subsequent to me coming on here we spent a lot of time talking about different directions that we could end up taking on it. So I don't think that we haven't done anything. I just don't know exactly what we need to respond to and that's the reason I was asking for the legal opinion, what do we really have to do to basically make this an official response from the Planning Commission as an official capacity. Exactly what it is that we need to do to fulfill our legal obligation. Is it a request of approval or is it approval? Is it a request for more information? Is it a denial? What is it exactly that we're supposed to be doing?

[Fink:](#) [interrupting] The Planning Commission

Dignan: Mr. Fink

Fink: Sorry.

Dignan: No []

Fink: I'm not an attorney but everything I know, in all the conversations I've had with counsel, the planning commission has to determine their decision. They've gotta make a decision. You have to say yes, no, yes in part, no in part. They have to decide. It's the Planning Commission's function, when a request is presented in front of them, at some point, is to make a determination. You either approve the master plan request, You deny the master plan request, You approve in part, You deny in

part. Now hold on one second. I have another uh set of comments.

[Fink:](#) Is that correct, Sally?

Hodges: You have to close the action. Their, their, the packet that they submitted said we re, y'know, we ask you to amend the master plan to a certain category and they, you ca, it needs to be answered, it needs to be, there needs to be a thumbs up or thumbs down

Fink: [interrupting] Now, in, in,

Hodges: [speaking louder, over Fink] for reason.

Fink: [interrupts again] Now, in and now in typical, and please, correct me if I'm wrong, when that happens, the Planning Commission looks to the consultants and their experts to provide them an analysis, to help them make that determination? And I

Dignan: And so Mr Fink

Fink: what

Dignan: And

Fink: [talking over Dignan] is being asked for

Dignan: I understand this discussion we're having here but we do have a motion and the motion that's on the table is to send it to the planner

Fink: [sputtering] uh uh uh

Dignan: so can we deal with that motion and have a discussion have

Stanalajczo: This is part of this whole thing for me...

Dignan: Go ahead Mr Stanalajczo.

Stanalajczo: So my question comes down to this then. This is two years now we're going on dealing with this. Why didn't the lawyer speak up a year and a half ago or longer to give us some direction like this? What what now took this long to get us and that we need to take some action on this from the attorney and I'm just asking that just as a general question because that's that's going to make a determination on how I'm gonna vote on this motion.

Dignan: Uh, I, I will state that I addressed to Mr. Fink our, uh, is the item of Biltmore closed? Because we have had that conversation and that's when Mr. Fink I believe checked in with legal counsel and reported back that there was some ambiguity in knowing was it closed or not and brought back this recog, you know, the recognition that we that we have to take action. Uh,

Yes, Mr. Iaquinto:

Iaquinto: So then apparently the letter that was submitted by our board did not truly address their request properly?

Dignan: My understanding is it did not deny them, it did not approve them, and it did not give them something in between. It it simply stated that if they wanted to come if if they were coming here to develop they need to comply with our master plan.

Iaquinto: Thank you

Dignan: So Yes. Miss Chick

Chick: So um in order for us to make a decision one way or another because this issue has to be closed one way or another, we have to do our due diligence so we are disappointed but how anybody's feeling about it on the commission with they want to make a decision or not if we don't have the information all the information that we need to make a good decision which would require the input from our experts that then we're not doing our due diligence and legally where does that put us if we make a decision that they can argue with?
Thank you miss chick. Mister Roman and then Mr. Iaquinto

Roman: Uh, yeah, although I'm prepared tonight to make a decision. Through the chair to Mr. Fink, Did the attorney wish that the current plan planning consultant review this? Was... legally was it was a suggestion of his that our current planning consultant look at this again?

Fink: That was his opinion yes.

Roman: Thank you.

Fink: Is that, is that legally required? I can't answer that

Roman: That's a ve

Fink: but that was his opinion.

Roman: Thank you. That's a very

Fink: Yes he wanted... he wanted...

Roman: important point that I didn't get from five minutes of prior conversation

Dignan: Thank you Mr Roman

Roman: Although I'm ready to act on it tonight and then in that case I agree with the motion

Dignan: Thank you Mr. Roman.

Roman: Thank you.

Dignan: Are there any other questions on the said motion?

Dignan: Yes, Mr Iaquinto

Iaquinto: That was part of my question that I had and I thank you for asking that. The other part is, so legal counsel felt that if we didn't have due diligence follow through now by our present professionals which again is not only the planning consultant but the township engineers, then we would be open for ambiguity and potential lawsuit, is that correct Mr Fink?

Fink: Sam I can't, I can't say that. That's

Iaquinto: ok

Fink: You're, you're, you're asking me to interpret um the the advice I was given, the advice that I was given was to, um, the advice that I was given uh was that uh he would like uh our experts uh and in particular I believe that he was he was thinking about uh the planning commission, the planning consultant and our engineer uh to provide their expertise um for the Planning Commission prior to making that decision.

Iaquinto: Thank you.

Fink: Yes, So I can't, I can't say why.

Dignan: Anyone else?

Dignan: Miss Chockley:

Chockley: I'd appreciate a letter from the attorney. I mean you get off the phone and after a while you wonder what you talked about it especially if it's a long long conversation. Um, I would appreciate seeing exactly, in writing, what the attorney had to say about this whole thing. We've been through the sewer study. Mr Lewan did a lot of analysis. We talked about traffic and perhaps it needs to be laid out in a, you know, a more specific ways for the understanding of all of those things and in which case if we have to do that I'm ok with that. But I would really like to know step by step, if it's that much of a legal deal, step by step what we need to do to put this to rest.

Dignan: Thank you. Any other questions?

Dignan: Hearing none we have two issues before us. The first that we're going to address is the amendment to the

original motion made by Miss Chick to, and that amendment was to add the engineers and public safety director to review the original motion of the planner. So the first thing we're going to vote on is the amendment and then we will vote on the original motion. Ok? Is there any questions on that?

So the first thing we're voting on is whether to amend the original motion. All those in favor. [?] Yeah, let's do a roll call.

Stanalajczo:

Mr Roman [yes]
Mr Cousino [no]
Miss Chockley [yes]
I vote [yes]
Mr Iaquinto [yes]
Mr Chick [yes]
Mr Dignan [yes]

Dignan:

Now before us is the original motion made by Mr Iaquinto with the amendment. Does anyone need that clarified?

Chockley: yes

Recording Secretary: [he made a very long statement]

Dignan: you want to give it a try Mr. Iaquinto.

Dignan: [addressing the Recording Secretary] Or, you wanna do it?
Recording Secretary: [off microphone]

Dignan: Can you please state the original motion?

Recording Secretary: [off microphone] The original motion was to ask the Township Planning Consultant to review the request for amendment of the master plan

Dignan: And that motion is

Iaquinto: It was also, I did state request for amendment of Master Plan

Dignan: and that also carries with it the amendment of adding the engineer and the public safety director to it

Recording Secretary: [off microphone]

Dignan: Does everybody have an understanding? [?]
Ok, Roll Call please:

Stanalajczo:

Mr Roman [yes]
Mr Cousino [no]
Miss Chockley [yes]
I vote [yes]
Mr Iaquinto [yes]
Miss Chick [yes]
Mr Dignan [yes]

Iaquinto: Mr Chair

Dignan: Yes

Iaquinto: We're moving on to 9-B?

Dignan: We will be in one second

Iaquinto: Ok

Dignan: I would disclose to the public that Mr Stollman did call me today I explained to Mr Stollman that we need to address things here at the board. He simply asked if he should be present tonight. I told them that I could not advise them as to whether he should be present but that was a decision he have to make but we notified him anytime he'd be on the agenda so just so the public knows that conversation did take place earlier.

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