

**MINUTES  
ZONING BOARD OF APPEALS  
REGULAR MEETING  
WEDNESDAY, JULY 15, 2015, 4:00 P.M.  
COUNCIL CHAMBERS, CITY HALL  
109 EAST OLIVE ST., BLOOMINGTON, IL**

Members present: Mr. Ireland, Mr. Briggs, Mr. Kearney (arrived at 5:03), Mr. Simeone, Mr. Zimmerman

Members absent: Ms. Meek

Also present: Mr. Tom Dabareiner, Community Development Director  
Mr. George Boyle, Assistant Corporation Counsel  
Mr. Kevin Kothe, City Engineer  
Mr. Mark Woolard, City Planner

Mr. Woolard called the meeting to order at 4:03 p.m. and called the roll. A quorum was present.

PUBLIC COMMENT: None

The Board reviewed the minutes from June 17, 2015 and accepted the minutes as printed.

Chairman Ireland explained the meeting procedures. Mr. Woolard stated the case had been published.

**REGULAR AGENDA:**

**SP-02-15** Public Hearing and Review on the petition submitted by HL Bloomington, LLC and CIP, LLC requesting approval of a special use permit for multiple-family dwellings for the property located at 1021, 1025, 1031, 1037 and 1041 Ekstam Dr. Zoned B-1, Highway Business District.

Chairman Ireland introduced the case and explained it is a continuance from the previous meeting. Mr. Dabareiner and Mr. Boyle suggested the Board wait until Mr. Kearney arrives. Chairman Ireland stated that since they are only advisory and that there is a quorum that we will begin.

Chairman Ireland asked for the findings of the traffic study. Neil Finlen, Farnsworth Group, 2709 McGraw Dr., was sworn in at the previous meeting. He stated he would like to give an overview of the project and these are related to traffic. He said they intend to provide a playground to prevent children from going back and forth across Ekstam to other playground areas. The construction traffic would be done sequentially with the buildings to reduce congestion. They do not see a need to close Ekstam. The street capacity is in line with the land use. The land use steps down the intensity from the single-family uses, condominiums and then to the commercial uses. He said the average daily traffic counts on Ekstam were done for what is there now and in addition projected what this development would produce. Twenty percent was added to account for not being in the school period. They worked with Unit 5 to know what buses came in that area. He said with a street capacity at 12,000 vehicles per day, we are at about 2,800 on Ekstam. They also looked it as at a local street with a capacity at 5,000 vehicles per day

and they would still be well below the capacity for a local or collector street. The developer is fine with eliminating parking on the east side of Ekstam. This will not impede the visibility. It will make Ekstam more of collector than a local street.

Mr. Finlen explained the traffic counts at the three intersections at Route 9, Haeffele, Gerig and at the Ekstam curve. They were well within their capacity even with the same projections. They also assumed that all of the traffic would come to Route 9 even though some would not. The counts were done at the peaks.

Ms. Kathryn Schmitt, 1803 Myra Ridge Ct. Urbana, was sworn in. She stated 20 percent is to be added to the ADT received from the counter of 2,800. The apartment numbers were added which was about 40 cars. This is a picture for the worst case scenario. She explained the difference between a collector and local street and if you classify the street either way it is still well within its capacity. If cars parked on the street the traffic tends to be slower yet visibility for darting kids decreases. Without parked cars on the street there is good visibility yet the traffic tends to go faster. She explained the intersection studies and the queuing. The study showed there is not major queuing problems. The intersections are at a level of service of C up to and A and well within capacity. Mr. Zimmerman stated he has been out there and never seen a substantial problem. Ms. Schmitt stated the peak times of the roadway is not the same for the school buses. They used 20 percent for the school time addition even it may only be between 10 to 20 percent.

Mr. Finlen stated the traffic at the Buffalo Wild Wings intersection was never intended to create a C level of service. People hop the median and it was never the intent. If there is a problem it should be fixed. It would not be fair for this to impact this development review since the apartments are some distance away. The numbers and projections show the intersections function very well and may with a tweak at the Buffalo Wild Wings function a little better.

Mr. Hundman was previously sworn in. He stated if there was three bedrooms there would be less two or one bedrooms but the developer has not made that determination. They understand that they will have to live with the number of units that they have committed to. They are beyond the required amount of parking spaces by the code.

Mr. Finlen stated the Deneen family is willing to dedicate right-of-way for a temporary path. A permanent path would damage a pipe. He thought the park dedication fee could be used and maybe a mulch trail could be put in. Mr. Kothe stated a temporary trail would have to accommodate the drainage and with weather as in the last month it would wash it out. The city does not have resources to build a temporary trail and then try to maintain it. Mulch is not good for all users. A temporary trail would be destroyed when a road is built and it is not realistic at this time. There was discussion on running the street through, who bears the cost and if it should be tied to this development. Mr. Kothe stated there now is parkland on Pamela Drive.

Mr. Briggs asked about the percentage of school age children in the apartments. Mr. Finlen stated they do not know. He said when they worked for the development on the west side of Ekstam, there were not many children there. The people were often gone on the weekends.

Mr. Bugg was previously sworn in. He said he represents the developers and they had tried this before. His clients listened and have done what they needed to show this is a good project. They reduced the footprint, the number of units and looked at ways to deal with parking. They provide

the required parking by code and everything before the Board is well within the code. He said it is not fair to present standards that are not in the code and to say you cannot do this until there is a direct route to the park, all of the traffic problems at the corner by Buffalo Wild Wings are solved. There was a concern about traffic and they did a study and it is not even close to a problem. He said it is about his client's right to do the things that the code allows. Multi-family has already been done across the street and this is in keeping with what has been done and stepping the use down. He hopes these hearings do not become a cheering contest. It is about the rules, laws, and what is fair and right which is to allow the special use.

Renarda Dumas was previously sworn in. She stated this is in their back yard. It is the last piece of land for a park or something sufficient for their children. She asked if this is just a way to sell the land or is it really a need for the city and neighborhood. The other apartments are not 100 percent utilized and if these are also like that we will have a problem. If it is something that they want out of the property would there be some time for neighbors to come up with money to buy the land. The proposed park is small and on the other side of the apartment where they cannot see the kids. What happens when the apartment numbers dwindle? They have nowhere for the kids to play. They can drive to the park but cannot ride the bikes to the park. If she does not get out quickly to the bus stop she is stuck behind the buses. There is a bottleneck. The traffic has gotten heavier since the apartments have been built. She asked what would be offered for the other park by Sapphire Lake. The sidewalk up there is not complete. The numbers will be more than 20 percent. Kids do dart in and out and they do speed. Some do not have parking for their quests. She does not want to move and to put her son in another school. Her mother-in-law from Alabama said we do not need any more apartments. Ms. Dumas said she hopes they will do something for the property owners and people who live there. It would be detrimental to remove the on-street parking.

William Shelton was previously sworn in. He stated according to Unit 5, in the open district 30 students in the apartments are bussed to Glen Elementary, 30 to Colene Hoose, 16 to North Pointe plus 82 from their subdivision. Adding more apartments will add students to the open district. There are almost 200 elementary students and for junior high there will also be a problem. The busses come from Pamela and exit through Haeffele.

Brantley Dumas, 1102 Ekstam Dr. #1, was sworn in. He stated the school has open enrollment because the students were for Benjamin which became overcrowded. He said they put them in open enrollment because they had the most children in one particular area. They would divide the children for different schools. Children who live adjacent to each other could go to different schools. Additional children could lead to a change in schools. The bus stop has congested every morning. The traffic is very fast even with the parked cars. Adding more cars will add to the problem. For them it is about the neighborhood, the people who live there and their quality of life. They were told ten years that there would be access to McGraw Park.

Mr. Shelton stated the families with a single child would get moved around versus those with two children.

Peggy DeHaven was previously sworn in. She asked if the additional apartments can handle the additional water and sewer. She said the count was done over a holiday week and not accurate. There were no sporting events at that time. There are Friday nights when Buffalo Wild Wings is full at 5:00. There was a time when they were going to make two lanes off Route 9 and if it was

that congested will not the additional apartments make it worse. With the existing apartments not being full there are a 100 plus cars that are not being taken in to account. With summer vacation and the apartments not being full she said she does not see how the counts can be accurate. She asked what is the justification for additional apartments when employers are not increasing their work force. Avanti's traffic will have to come out to Gerig and cause further congestion. Ekstam is a short road to handle 3,000 plus cars a day. The existing apartments have just a small area to play with not much to play on. They are playing in the parking lots. The kids could be playing across the street. She said we were told there was too much traffic to add a median and yet this would add more. The Pamela Park may not ever get done. She asked why it should be their problem when we purchased the land knowing it was zoned B-1 and would be for business. She does not want to deal with the busses and has to leave early or wait to later.

Ms. Dumas stated she would want the developer to give the residents some time to purchase the land and know that they are serious.

Mr. Woolard stated the difference between subject site and the land on the south side of the airport is that this land for the apartments is not owned by the airport where the other land is airport property.

Mr. Briggs stated the FAA is requiring the airport to remove the soccer fields on the south side of the airport. He explained his research shows that athletic areas in an emergency situation have a chance of direct impact. High density is also inappropriate in those flight path areas. He said the FAA is very concerned about that and accidents do happen. He said the instruments do fail. He is concerned that we are putting a high density development in an area that we should not. There will be more air traffic over the next 20 years. His other concern is we would exasperate the school situation.

Mr. Bugg stated he thinks we have got way off track. This is a zoning and a land use question and the plane and schools are not an appropriate discussion. It is not the petitioner's job to show that there are not going to be any school problems, plane crashes and natural disasters but to comply with the zoning code which we have. He said it is only 68 units. He said this is all imagined problems. It is important to get to what we have presented and have to approve.

Mr. Briggs stated the finding of fact for the special use is not to be detrimental, or endanger the public health, safety, comfort and general welfare. He said these fall into that finding of fact.

Mr. Bugg said he disagrees with it being code related. The Broadmoor crash is not even close to the site. It is outside the standards for the committee.

Chairman asked about the occupancy rate. Mr. Bugg said his clients would not bring it forward if they did not think it was financially viable. They are hoping for 80 -90 percent and as high as possible. He said they have not been approached to purchase the property but they would entertain a reasonable offer. They are not in the business of providing a community park.

Mr. Kearney explained we have to review the project for the finding of facts. The issues discussed are pretty close to the general welfare. Mr. Bugg stated one cannot just pick whatever issue one wants and say it fits into that code's category. He does not believe it is the code's

structure to say that unless the school district fixes their issue you cannot have the special use. He does not think we should torture the code and say it is all about public welfare and safety.

Mr. Kothe said the capacity is there for water and sewer.

Mr. Finlen said they have tried to facilitate the connection to McGraw Park but staff has indicated that a temporary path would not be able to be used by roller bladers, strollers and similar users. There would be a need for a drainage structure. It did not look as if would be feasible. Parks and Recreation thought it would be better for a permanent path. It will be on the table in the future. He said the airport authority and the FAA have full knowledge of these projects. They are the experts and they say okay. He said they use flight patterns which are better for determinations than crash areas but the truth be told the planes could drop out of anywhere. It is a sad situation and we cannot get out of where they might fall.

Mr. Briggs said he brings it up because Minnesota Transportation is discouraging those situations. He said everything else you have done to accommodate the neighborhood is good. Schools is still an issue but the air traffic is his concern. He said there needs to be dialogue between the schools and the commissions.

Mr. Woolard stated staff has recommended approval conditioned upon the traffic study being provided with verification the traffic volume was acceptable and that has been provided. The standards need to be used in the review.

Mr. Simeone asked for clarification on the general standards for a special use as it applies to general welfare and safety. Mr. Dabareiner stated the standards need to be applied in terms of the immediate neighborhood. There are children in the immediate neighborhood already. School policies are not one of the standards. They can be changed and are completely irrelevant. It is based on what is in the neighborhood and in the district. In the B-1 we can have taverns, restaurants, and all kinds of other things that are allowed without seeing any of you and without a special use. Compared to those apartments are not that impactful. The courts require that we need to make these within the immediate neighborhood, are there similar uses and if children are a concern are there other children in the area. The issues of public health are addressed because it is already there. He explained you do not base the vote only on the general welfare because it is too broad but on the district and what can be found in the B-1 district.

Chairman Ireland explained that this is an advisory vote and the Council makes the decision. He said we appreciate everyone's testimony.

Mr. Kearney invited anyone to put on the record if there was an objection to him voting as he missed the hour of testimony. He did participate in the 2.5 hour hearing last month and did hear 75 minutes today so he personally feels informed enough to vote. But he did want to give anyone the opportunity to object to him voting based on him missing the hour. No one objected.

Mr. Kearney prefaced his vote by stating that all of the testimony he heard is in fact relevant. It may be the case that the standards are vague and he does not know if they are unconstitutionally vague. Nevertheless we are to weigh whether a special use is detrimental or will endanger public health, safety, comfort and general welfare and that is the job we are tasked to. He does not think it is appropriate to rewrite the code but it is our job to simply to do the best we can given the

language that we are given. Much of this if not the entirety is at the feet of the city. He does not fault the developer for the half-built roads, all of the other school issues and a growingly unpleasant area in which to try to raise a family. He has great concerns that there does not seem to be any plan and it is the city's job to either finish roads or not, finish park access or not, and help out. He wanted the developer to do, since the last meeting, what he can do. He cannot create a plan for the area even though it is needed. What he asked him to do was to try very hard to ease one problem that seemed under its control and to work with the nearby property owners to see if we can get these kids to the park. He did that and it was a real good example of good faith on the petitioner's part. He does not blame the petitioner for all of the other problems that are appropriately laid at the feet of the city. So because they answered the job he gave them and the concern that he had thought was in their control and they exercised good faith, his vote is yes.

Mr. Briggs prefaced his vote by stating the petitioner has done an excellent job trying to accommodate concerns from previous cases to this case but for the issues with the soccer field, the high density use and the airport, the City Council needs to take a closer look. He is voting no.

Chairman Ireland said one thing that was offered that still might be something that both sides can consider is the idea that they are working on a plan to get together with the developer. That may shed new light on things and wants to encourage that.

The vote on variance was approved with three (3) voting in favor and two (2) against with the following votes being cast on roll call: Mr. Simeone--No; Mr. Kearney--Yes; Mr. Zimmerman--Yes; Mr. Briggs--No; Mr. Ireland—Yes.

Chairman Ireland stated the recommendation is that this should go forward but concerns have been expressed with not just public safety but with city planning and development which only the City Council can address.

Chairman Ireland thanked everyone for attending.

**OTHER BUSINESS:**

**Any Other Business to Come Before the Board:** None

**NEW BUSINESS:** None

**ADJOURNMENT:** 6:23 p.m.

Respectfully;

Mark Woolard