Shelby County Zoning

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September 27, 2023

Recording of the Minutes for the Plan Commission

September 21st, 2023 at 6pm

At the Shelby County Courthouse, Courtroom B

**Agenda**

* Process application for a Map Amendment for Troy Coleman.
* Determine the classification of a custom-built residence by Tanner Abendroth.
* Review Preliminary Plat application by David Galvin for proposed Lithia Estates subdivision.

**Call to Order**

Chairman Fred Naber called the meeting to order at 6:33pm. Late start due to clerical errors.

**Roll Call**

Chairman Fred Naber

Tom Horsman

Doug Uphoff

Kris Carlock

Scott McKee

Late admittance by Don Hennings, Jr.

Absent was Darrin Duduit.

Item #1. Zoning Administrator presented the application for a map amendment by Troy Coleman to rezone his property at 1790 N County Highway 42 from Agriculture to General Business to run a Boat and RV Storage facility. Doug Uphoff shared concern about the storage of RV campers outside the storage facilities, but otherwise was in favor of the zoning amendment.

Doug Uphoff made a motion to pass the Zoning Amendment.

Seconded by Tom Horsman.

All members were in favor. Motion passed.

Item #2. Zoning Administrator brought to discussion the classification of a custom-built residence by Tanner Abendroth in the Garden Acres Subdivision. Mr. Abendroth was unaware of the building permit process when he began construction. He had physically, and permanently, mated a garage building to an RV Camper. Zoning Administrator said, “In my opinion, this is no longer an RV, but a custom-built home. But I’m not going to make that decision by myself, so I wanted you guys to be aware, and if you disagree, now is the time to do it.” Doug Uphoff asked if the structure met the minimum square footage. McKee replied with yes.

Doug Uphoff made a motion to approve it.

Seconded by Kris Carlock.

All members were in favor. Motion Passed

Item #3. Zoning Administrator brought forward the Preliminary Plat for the proposed Lithia Estates subdivision located roughly at 2132 E State Highway 16. All current members of the Planning Commission were present when the Preliminary Plat was approved the first time, but the Final Plat was denied by the County Board, due to the fact that the County did not have a States Attorney at that time and there is no option to table the matter.

Doug Uphoff asked if anyone present was dissenting to the approval of this Preliminary Plat. The following is a excerpt from the meeting.

Attorney for Goodwin and Curl - “We had a long discussion in January about it (referring to a previous Board Meeting). Our concern is pretty simple. And I have an affidavit from engineer that we’re using in the court case but it does have relevant information. Our concern is simple. They have drainage issues. One of my clients is here tonight (Karla Goodwin). There’s water standing on their property a lot. With frequency. And all were asking is that before you approve a plat, that they follow through with the health department’s requirement to have a Storm Water Management Plan. We’re not asking you to say that it will be or won’t be adequate, but that they (The Galvins) make some meaningful attempt to deal with the fact that this subdivision when it’s done will change the natural rate and flow of storm water. I want to be clear; we aren’t asking you to weigh in on litigation here, we’re just asking them to do what the health department rules require. The Preliminary Plat that you have does not have that. It has a couple storm water features. It doesn’t say where water is going to be retained. The basic things you’d want to know about how storm water is going to be managed in your subdivision. The engineer does say that this is the health department’s policy on Storm Water Management Plan, and this is all the stuff that isn’t in there. John and his clients are aware of what the nature of what were asking for is because this has obviously been passed around a lot. All we are asking is for you to ask them to provide you with a plan or explain how the plan that they have is sufficient because I don’t think you’ll see a storm water management plan anywhere in what they have submitted.”

Attorney for David and Barb Galvin – “My name is John Barger and I represent Dave and Barbara Galvin. We have submitted the plat. The plat you have is exactly the one that was approved by the Planning Commission earlier. To really get a grasp of this, you have to go back to 2017. It was litigated before Judge Koester. Mr. Curl and the Galvin’s attorneys asked for authority to use our engineering firm, Milano and Grunloh, to come up with a plan. The judge allowed it. The attorney then for Mr. Curl and Goodwins worked with Milano and Grunloh to create the plat that Judge Koester subsequently approved in August of 2017. That’s why we’re here. We question whether she has the authority to approve a plat, but more importantly, she did approve the plat and it conflicts with the existing plat for the Lithia Estates Subdivision, which was approved, I believe in 1974. So, there is a conflict with what she approved and what is on file with the County Clerk here. In order to have a chance of selling any lots, taking out a loan on property in this subdivision, the two need to be consistent. So, what we’re doing is taking the plat that Judge Koester approved and we’ve asked you folks to approve it. So that there is only one plat of the Lithia Estates Subdivision. So essentially, Mr. Curl and the Goodwins are objecting to their own plat. Because it is essentially the same thing. There are a couple of modifications to be in compliance with the subdivision ordinance for Shelby County. That’s it. it’s the same plat. We’ve submitted, with the plats, an affidavit from Michael Tappendorf, who was an engineer with Milano and Grunloh at the time, and he addressed the drainage concerns. I’ve also submitted to Mr. McKee a transcript of Mr. Tappendorf’s testimony where he addresses the concerns related by the attorney by Mr. Curl and the Goodwins. And I think answered all of them sufficiently. Milano and Grunloh did in fact have contact with the Health Department. Mr. Tappendorf testified about that. Subsequently, Mr. Tappendorf has become the County Engineer. So it’s the same person. We don’t believe there are actual and real drainage concerns. We believe Mr. Tappendorf has addressed it. We believe that you should approve this plat again.”

Attorney for Goodwin and Curl – “We’re here because my client has standing water on her property.”

Doug Uphoff – “Karla, do you have water on your property?”

Karla – “Not at this moment, but we do have trouble with water.”

Doug Uphoff – “When do you have trouble with your water?”

Karla – “When it rains heavily”

Attorney for Goodwin and Curl – “So this isn’t made up or a fakey issue here. All they’re asking, they’re not asking you to approve a plat or a court case. I think we are way way way confusing the issues here. You have a plat in front of you. Your guy’s job is to look at the plat and see if it conforms to the County Ordinances and guidelines. We’re not asking you to tell us it’s a good idea or not or, I think you do have some discretion there, but I’m not even asking you for that. We’re saying it requires, that the health department requires a Storm Water Management Plan and if you look at what has been submitted, there is no Storm Water Management Plan. I didn’t give you testimony or witnesses and I would bet that if I gave you 50 pages of court transcripts, no offense, but you probably wouldn’t read them anyway. And you definitely wouldn’t understand them because it’s about a bunch of issues which aren’t related to what you guys do as a board (meaning the Planning Commission.) But what you do do, is you look at Plats or proposed plats that are up for consideration and make sure that they conform to what all the rules are and with sound judgment for what would you want for your own property. So instead of taking the word of attorneys and court cases about “Oh there’s not really a water problem on your property.” You just heard from Karla that lives there. I don’t live there. John doesn’t live there. Karla does. They have a storm water problem and as this, as this is going to be built all of you know, it’s going to further impact the soil. It’s going to add concrete and the sheeting of water and things like that. It’s going to further add to these already existing drainage issues. All were asking that they submit a Storm Water Management Plan. And the fact that they think a Storm Water Management Plan is 50 pages of court transcripts or other things like that should tell you all you need to know. Just make them actually submit something you guys can understand and actually consider so when you make a determination, you can say, they asked for a Storm Water Management Plan, the health department rules require it, they submitted one. Why didn’t they submit a Storm Water Management Plan instead of trying to tell you this is all about court cases and their disagreement over the spirit of plats. Just submit a Storm Water Management Plan and I’d ask you guys to do that before you guys put this up before the whole board. And that was one of the reasons. ‘Cuz I want to be clear about this; They did want to table this in January. Definitely in part because there wasn’t a States Attorney but also because I think people understood (the board members at the time) that my clients have real genuine concerns with the property. This isn’t a landowner arm wrestling match over boarders and stuff. This is where these people live and have lived, and they have a real storm water problem, and we are just asking you guys to make sure they comply with the county ordinances. And you do have discretion. The plat review policy isn’t necessarily part of your written board rules, but you definitely do have authority under the zoning code to consider impacts on drainage when you do it. My suggestion is you follow this sound advice of the health department and just require them to submit a Storm Water Management Plan that we can adequately review and have a conversation about. I mean, we’re not asking for the world here. We’re asking them to submit a plan on how to fix this very real problem that exists on this property for my clients. We’re not asking you guys to tell them how to drain the water. There’s not going to be a lawsuit over that. But I would be concerned if you guys let this go. I would implore you to look at what has been submitted for your consideration and tell me where you see a Storm Water Management Plan. If you don’t, you should not approve it tonight. You should require them to submit one before you do it.

Doug Uphoff – To Karla Goodwin “Is there somewhere where this water can be taken Karla? Is there a place to dig a ditch or lay a tile?”

Karla – “Well, he actually built, well not really built a road, but he put a rock drive to the North of our house which kind of is a little higher than our property. So that started the problem there. And then it kind of slopes down to the front of the property.”

Attorney for Goodwin and Curl – “So here’s my kind of concern about it. There have been other engineers that have come out and looked at this stuff. Right. Other people who know more about this than any of us in here. Let them give you their plan for managing storm water. Because they’re the ones who come up with it, but it needs to be in there. The health department requires it. Let them do it. They should do it. And there’s lots of ways to solve it. They could have a retention pond. All sorts of things they could do but they should take it into consideration before you guys approve it. That’s all we’re asking for.”

Scott McKee – “At this time, I’d like to read from the ordinance. Title II, subdivision control. Article 4, subsection 5, Storm drainage. The subdivider shall provide the subdivision with an adequate storm water sewage system whenever curb and gutter is installed and whenever the evidence to the Commission indicates that the natural surface drainage is inadequate. When the surface drainage is adequate, easements for such surface drainage shall be provided. Deep open ditches for drainage are not permitted in the street, but where curb and gutter are not provided, a shallow swale with its low point at least 3 inches below the elevation of the subgrade of the pavement may be permitted. In a subdivision where curbs and gutter are not provided, the subdivision shall furnish the following type of improvements to facilitate roadside drainage and to assure suitable entrances for private driveways which are proposed to intersect the roadway: A Concrete or corrugated iron pipe, at least ten inches in diameter and fourteen feet in length to be place where required for each driveway.

Scott McKee - To Karla Goodwin; “When you purchased this property, was it a part of that subdivision?”

Karla – “Yeah, it was platted as a subdivision in 1975. It’s never been built. I mean the two houses were…”

Scott McKee - “But it’s technically a part of the subdivision.”

Karla – “Yes.”

Scott McKee – “If your drainage is not adequate, you’re allowed to file a complaint in the zoning office and that can be addressed. It doesn’t have to be a part of what we do tonight.”

Attorney for Goodwin and Curl – “I think that’s a different issue though. With all do respect, issues with the existing drainage, yeah, you could file a complaint and everyone knows the natural, you can’t impede the natural flow of drainage. Everybody knows that. Most farm people know that. Maybe in Chicago they don’t, but I think around here they do. What you’re describing is that they failed to build to spec.”

Scott McKee – “Correct.”

Attorney for Goodwin and Curl – “There is no spec right now because yeah, there is a court case, where the court told them they have to re-do a plat, but that’s not your guys’ concern. Right now, they have to have a plat re-done for consideration. So you’re not here to consider a zoning complaint, you’re here to consider a plat that is up for consideration. And the plat has a separate requirement from what you just read. The Health Department has interpreted that rule in regards to the platting process, the approval of the plat, to mean that a Storm Water Management Plan should be provided so that when you go to enforce it, you can look at the plan that is on file. So we’re asking them to provide a plan and put it on file because they failed to properly construct the subdivision in the first place. You can’t punish my client because there is this litigation over a subdivision. You have to look at what’s in front of you guys right now. Which is a plat that’s up for proposal. It’s not a zoning complaint. But believe me, we gotta have a plan to say they violated it. Right now, there’s not even a plan that they’ve provided you. They’ve just provided you with a preliminary drawing.”

Scott McKee – “The point of the complaint is to have evidence that there is an issue.”

Attorney for Goodwin and Curl – “I guess if you’re looking for evidence, Karla just gave it to you as testimony and an affidavit from an engineer saying he went out after a heavy rainfall and observed standing water. That’s your evidence. All we’re asking for you to do, the enforcement remedy, is to submit a Storm Water Management Plan. We’re not asking you to decide the lawsuit or cure cancer or anything. We’re only asking you to require them to submit this plan. Because we need that, because if we have to enforce, to file a complaint later, what are we going to say they violated?”

Scott McKee – “This Ordinance.”

Attorney for Goodwin and Curl – “There’s nothing there right now.”

Scott McKee – “There is, I just read it to you.”

Attorney for Goodwin and Curl – “It’s a piece of land right now.”

Scott McKee – “No, there’s two houses and a subdivision.”

Attorney for Goodwin and Curl – “That is not a subdivision right now. There’s no plat.”

John Barger – “There is a plat. 1974 plat. According to the County Clerk’s office.”

Scott McKee – “Well according to our subdivision regulations, they are required to provide drainage.”

Attorney for Goodwin and Curl – “And a Storm Water Management Plan.”

Scott McKee – “No. There’s no ordinance for Storm Water Management Plans. Now the Health Department may require that, but that’s not who this committee is.”

John Barger – “This plat that we have submitted to you was prepared by Mr. Curl and the Goodwins at their direction. So they’re objecting to their own plat. And we have simply taken that because we got through with the Appeals process with the judge on August 21st 2017. We’re stuck with them. So we’re trying to bring the matter to conclusion. By having a plat. Virtually identical. Of the one judge Koester approved. We’ve got an engineer on site. Mr. Smallhorn had a telling comment. The most important people are the engineers. We’ve got Micheal Tappendorf signing an Affidavit, that’s been submitted to you, that he believes from a drainage standpoint, the subdivision complies. I’ve also submitted his testimony from a hearing. He addressed all this. He talked about contacting the Health Department. Milano and Grunloh talked with the Health Department to work out these issues. I think you have to accept Mr. Tappendorf’s testimony at this point that addresses directly, squarely, the issue at hand. We don’t believe there’s a drainage issue.”

Karla – “The Galvin’s had submitted three different plats to the judge and she had denied them because the weren’t even close to the spirit of the original plat. Our attorney had asked that we could have an opportunity to put in an opinion of what we thought it would look like. She (the judge) gave us that ability to do that. We said, well here’s kind of what we’d like it to look like. Grunloh re-did this plat. The payment was made from the Galvins, from us, the Curls, and the County. All paid for that plat. And then she took it and changed whatever or did whatever and that was her fault.”

Attorney for Goodwin and Curl – “I agree that engineers opinions are important.”

Doug Uphoff – “Not as important as the people who are living there.”

Attorney for Goodwin and Curl – “That’s what I was going to say. The engineers opinion is important in regards to how to fix the problem. I’ll do an analogy; I’ve got a wall in my office that has to be rebuilt. And I’ve got to call a structural engineer and pay him a bunch of money and tell me how to rebuild it. I’m not asking him whether the wall needs fixed. I’m asking him how to fix it, and his opinion is important in regards to how to fix the problem because he’s the one who’s supposed to be able to do the math and the load calculations. Or in this regard, you’re talking about the increase of rate and flow of water due to the compaction of soil and those things. But the opinion that is important, that you (Doug Uphoff) pointed out, regarding the existence of the problem, are the people that live there. And I agree. There’s a problem here and to say, there’s an engineer, who doesn’t live there, said there’s no problem. He’s not here tonight, and he’s not there on a regular basis. I think in his testimony he said, He'd been there like 3 times or something like that. They (The Goodwins and Curls) live there every day. They wouldn’t be fighting over this stuff if it wasn’t a real problem with the way this exists. And again, I agree. There’s enforcement. There are rules. But they have to submit this plat that’s in front of you whether we want to argue about old plats or stuff. I think that’s irrelevant and probably dangerous to think about in this context. I think you guys have to look at exactly what’s in front of you and we are telling you, the board rules, which I did point out in January if you remember. They do, the zoning portion of your rules do say that you can take into consideration impacts on storm water and drainage. So, while you, yes, maybe you can say maybe we don’t have to follow the health department rules. Which, they’re the ones who are supposed to have to deal with this, and I don’t know why you wouldn’t, but that sounds like a problem for the board to deal with in its entirety to fix your rules. But it doesn’t mean that when you, when an issue is brought to your attention, you can’t say, now it’s in front of us. You took the time to be here tonight that there is a storm water problem and require them to submit the Storm Water Management Plan that the health department says is a good idea. And to take the word of even the engineer from the County now, what kind of conflict or problem is that. I don’t know. Not my problem. But I would say, I would caution you in that regard. This isn’t about his opinion about what he thinks is the sufficiency of it. I ask you to look at the document itself and tell me where they submitted a plan and follow the guidelines provided by the Health Department about storm water problems. And I will say this, I think the whole court case, the board decision back in January, all these things are relevant to one issue. That you should think about when you make a decision tonight. They’ve known about this for a long time. They could’ve solved this simple problem by submitting a Storm Water Management Plan. Literally. I would’ve told Karla; I’m going to stay home tonight and pick my son up from football practice if they had just done that. That’s all we’re asking to be done. And thank you guys for listening to us about this.”

Doug Uphoff – “Didn’t we meet with the health department, and they were saying something about a Perc test problem out there anyway? With like, septic? Like if they wanted to put this in, they wouldn’t be able to run septic because the water table is so high. So evidently there is a water problem. It sounds like they need a plan in place before we approve it, to me.”

After studying the preliminary plat, specifically focusing on the storm water drainage, Doug Uphoff made a motion to reject that plan and that it should be re-submitted to have a clear Storm Water Management Plan put in place before it is approved.

Kris Carlock Seconded the motion.

All members were in favor. Motion passed.

Kris Carlock made a motion to adjourn.

Tom Horsman seconded the motion.

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Secretary, Scott McKee, Zoning Administrator