

CITY OF FAIRVIEW

BOARD OF COMMISSIONERS SPECIAL-CALLED MEETING

December 17, 2013

Beverly D Totty, Mayor
Stuart L Johnson, Vice-Mayor
Patti L Carroll, Commissioner
Allen Bissell, Commissioner
Toney R Sutton, Commissioner
Wayne Hall, Interim City Manager
Larry Cantrell, City Attorney
Brandy Johnson, City Recorder

Present: Totty, Johnson, Bissell, Carroll, Sutton
Others Present: Hall, Cantrell, Griggs, Daugherty

Mayor Totty opened the meeting at 7:30 pm

First item on the agenda is new business Discuss and/or Take Action on Williamsport Subdivision located at/on Old Franklin Road. Mayor Totty recuses herself for discussion and/or vote due to personal interest in the property and turns meeting over to Vice-Mayor Johnson

Vice-Mayor Johnson states the purpose of this meeting this evening is to discuss and possibly initiate action on the Williamsport Estate Subdivision. It has been reported to several members of this board that there are improprieties in approval and construction surrounding this subdivision. Commissioner Sutton was contacted by several citizens and made inquiries with the Codes Director and was told that there were no violations in this and this was a subdivision in good standing. I believe Commissioner Sutton at this time now has some things he would like to share with us.

City Attorney Cantrell states that he would like to make a statement for the record to reflect that today he was contacted by Jack McCann, an attorney in Brentwood, who informed me he was representing Mayor Totty, who told me that he could not be at the meeting tonight and requested that the meeting be rescheduled to another time. Cantrell replied that he could not schedule meetings nor reschedule meetings but would send his request to Mr. Hall to forward to the Commissioners who had requested the special meeting tonight to make a recommendation that the meeting be rescheduled to a time that we agreed on that he could be here which would be this coming Thursday night the 19th to be held immediately after the dismissal of the regularly scheduled meeting. Cantrell forwarded that on to Mr. Hall with that recommendation. With some time lapse after that Cantrell was advised by Mr. Hall that the board had not accepted the recommendation and would proceed with the meeting as scheduled and he so informed Mr. McCann.

Commissioner Sutton states that this is in response to contact from citizens. Commissioner Bissell and I have made several inquiries into the approval and construction of Williamsport Estates. I first contacted Codes Director Lovvorn a couple of months ago. Mr. Lovvorn confirms. Sutton continues, in regards to some questions about the streets, roads and the subdivision itself. The information I got back was that everything conformed and there was no problems involved. The owners and developers of the subdivision, I will make this real brief and if there's a mistake when you get a chance please correct me, okay. The owners and developers of the subdivision are Walt and Beverly Totty. Both have

extensive experience in real-estate and subdivision development. Mayor Totty has served on the Planning Commission since her election in 2010. Mayor Totty and Mr. Lovvorn attended every meeting of the Planning Commission during the period involved.

- In the June 14, 2011 meeting of the Planning Commission the Totty's petitioned the Commission to rezone the subject property. Mayor Totty did not participate in the vote and the motion was passed.
- In the July 21, 2011 meeting of the Board of Commissioners we passed the first reading of the rezoning ordinance. Mayor Totty did not participate in the vote and the vote was passed.
- In the August 18, 2011 meeting the Board of Commissioners passed the 2nd reading and the property was rezoned from RS-40 to RS-20. Again the Mayor did not participate in the vote.
- The property was divided into 4 lots and the subdivision plat was filed with the Williamson County Recorder of Deeds on December 8, 2011.

Commissioner Bissell requests to make an amendment there – the record needs to show that the original was filed October 11 and an amended, revised was filed December 8. Sutton continues:

- The plat was signed by Matt Beatta as 2nd Secretary on behalf of the Planning Commission.
- Per Mr. Lovvorn's email he instructed Mr. Beatta to sign the document and in doing so told Mr. Beatta the Planning Commission had taken the appropriate action.
- There exists no record of the Planning Commission receiving the plat for approval, reviewing the plat or granting approval. Mr. Lovvorn's email confirms this did not occur. Those were not submitted to the Planning Commission. Myself, Commissioner Carroll and Interim City Manager Wayne Hall were serving on the Planning Commission during the period and have no recollection of the subdivision being brought before the Planning Commission.
- Mr. Lovvorn's email established that the Codes Department determined this to be a major subdivision.
- Under the subdivision regulations, Section 2-102 outlines in detail the approval requirements for subdivisions under the Major classification.
- These regulations require at least 2 submissions to the Planning Commission resulting in approval prior to any building permit being issued.
- It also requires the posting of any appropriate bond or the completion of certain improvements prior to the building permits being issued. I could find no substantiation that this occurred either. Commissioner Sutton indicates to Mr. Lovvorn that this may be where he should check with him later.
- The street is a private street named Williamsport Court.
- According to EOC, the street has not been registered with them. I don't know if that's required or not by it being a private street.

Mr. Lovvorn states that it was approved by them with the filing of the first plat. Their signature appears on the plat.

- The street does - I will skip that one.
- Unless approved by the Planning Commission, private streets under 4-108.2(1) shall conform to the provisions of Section 4-106.2.

- Using the Tables under 4-106.2, it appears that the standards were not met in the construction of the road, private drive, correct? Lovvorn indicates yes. Sutton replies so it wouldn't have to conform to that.
- Three of the houses are complete and appear to be inhabited. The fourth house faces Old Franklin Road and it appears its access will be granted from Old Franklin Road not Williamsport Road.

Commissioner Bissell states that in during the research by himself and Mr. Sutton they encountered several questions that he could not find the answer to that just made more questions in their minds. He states that it would be beneficial to the board before we talk about this tonight if we could ask some questions of Mr. Lovvorn and possibly Mr. Griggs, our city engineer. Mr. Hall asks Mr. Lovvorn to go to the podium.

B: How long have you been codes director?

L: 6 ½ years, almost 7 years

B: And have you receive any kind of training in codes administration?

L: I attend at least 8 hours of class per year as required by law

B: The subdivision regulations that we are talking about here – if memory serves, didn't you dramatically write or revise them?

L: Those were adopted in 2007. We have subdivisions that are under old regulations and some that are under new regulations so sometimes things get crossed up in trying to implement the regulations on new things and still maintain the old things. So, the subdivision regulations, I would probably say that this would have been the first one that should have abided by those regulations.

B: Would you consider your working knowledge of the subdivision regulations strong?

L: Not as much in the new ones as the old ones because we haven't repetitively used

B: At any rate, would you consider your knowledge competent?

L: I would think so, yes

B: Are the facts that Commissioner Sutton shared with us, except for the ones that were corrected during his presentation, are they essentially correct to the best of your knowledge?

L: When he first inquired about the project I told him that it was proper with it but I did call him back and advise that I could not find where everything had went through the Planning Commission and told him that was my mistake but assured him that the rezoning had taken the proper procedures and gone through the proper procedures for the rezoning application

B: Along those lines, how long ago was that, I forget?

L: I don't really know, I can't remember exactly for sure, in the last month or so, two months, I didn't write down the date

B: Once you discovered this had not been before the Planning Commission have you done anything to try to correct the issue

L: No, sir I didn't.

B: Do you have any explanation to how a complete subdivision could be built without ever having any Planning Commission approval?

L: I honestly thought we had followed the procedures as set forth in the regulations. We were in the midst of moving things around in our office moving back over to City Hall from the Public Works. Things get misplaced, things get out of order. When I had asked that the plans to be submitted to go before Planning Commission, don't know if I misplaced the file or what happened to it. At that point, I had just assumed in my mind that everything was in order and asked Sharon to call for the secretary to sign off on the plat.

B: Was there a grading permit issued for that land out there?

L: No sir, it wasn't.

B: There are four houses as I understand it on that property so that would mean four building permits have been issued? Who issued those building permits?

L: Mrs. Sharon Hall

B: Does Mrs. Hall, as part of her normal procedures, is she supposed to check to see if there is a plat on file and it's been approved?

L: She asked me if things are proper and of course, like I said, I thought everything was proper. I told everyone that has asked me it was proper. That is my mistake, I admit that as my mistake and take full responsibility for it. I should have made sure that the plat had went to the Planning Commission, should have made sure that everything was approved through the Planning Commission. That was my mistake. It wasn't intentional but tomorrow morning when I get into my office, I will make sure we put internal controls into place and that we have checklists that we go through the checklist before we proceed any further on signings of plats to ensure this does not happen again.

B: In the last three years how many subdivisions would you say that we've had built?

L: Would have to check my files.

B: Would you say Less than 5, more than 5? Less than 10, more than 10?

L: Well, we haven't really had a lot built but we've had a lot that's come back before the Planning Commission to have plats reapproved and things of that nature. Because preliminary plats expire, they have to get reapproval to make sure they can stay under the same subdivision regulations that they are under. They are presented to the Planning Commission as such and they Planning Commission makes a determination whether or not they want to go ahead and approve it under the old regulations or have them go to the new regulations.

B: Can you give me an example of one of those that might have done that?

L: Kyles Creek subdivision was the most recent one

B: So you remember that but you don't remember Williamsport?

L: This was two years ago versus last month.

B: We'll come back to that. We've got four building permits and I guess three of the houses sold, at least it looks that way to me. Three houses are occupied, I don't know whether rental property or sold property. They would be have to have a separate Certificate of Occupancy, correct? Mr. Bledsoe issues those – goes out and inspects and issues those? Do the procedures require for him to check to make sure that everything with codes is correct before he issues that Certificate of Occupancy or is it limited just to the structure?

L: It's just limited to that structure.

B: So who is responsible for checking to see that the construction, the streets, roads, driveways, easements, all of that stuff that is required, who is responsible for ensuring that all of that is complete in accordance with the plat?

L: That is my responsibility.

B: That is your responsibility. You did conduct those on-site inspections?

L: Well, this being a private drive and not having to conform to the city standard street as I had determined that it wouldn't have to. It's just roughly grading out the driveway and not considered city street wouldn't have to undergo an inspection.

B: When you found out through Commissioner Sutton's inquiry that there was a problem here who else did you tell or did you tell anybody?

L: The only person that knew about it at the time was John because I was sitting in John's office when I was talking to Commissioner Sutton.

B: During this two month period, between the time I contacted you, or Commissioner Sutton contacted you and I contacted you, because I was doing the legwork for him on some of this stuff, I guess the price of being retired, did you talk to anybody about it?

L: No, sir.

B: You didn't take any corrective action?

L: No, sir.

B: You didn't go to Mr. Smith, chairman of the Planning Commission and say we've got to go back and fix this?

L: No, sir.

B: If we had not followed up with you, would you have taken any action?

L: Probably not because I saw that as my mistake and there's really, I don't know what corrective measures we could have taken.

B: So, because you couldn't readily call a corrective measure you would have kept quiet about it?

L: Well, I can't say for sure if I would have or not.

B: The record shows that from October until I contacted you last week you kept quiet about it.

L: For that part, yes I had.

B: Going back to my question about potential subdivisions, how liable is the city here? How many potential situations do we have where you may have made this mistake? Do we have an accurate count? Have you begun a review? I heard you say that tomorrow you would be instituting procedures but have you done any personal review to see if this was done anyplace else, on any other subdivision, where your memory fails you or it got lost or there was some problem?

L: Yes, sir, I looked into some old files of active subdivisions that is going on but, under the same token, they're subdivisions that were created prior to my time here that should not have been approved either. This was my mistake. Predecessors before me make mistakes as well and recorded plats that should not have been recorded. As I said, I take full responsibility for this.

B: I appreciate the fact, Mr. Lovvorn, that you take full responsibility after we called it to your attention. But I want us to be clear, from the time Commissioner Sutton brought up until I followed up with you, you took no action. And so, you did not take full responsibility for your actions until the board brought it up and you didn't really have any other choice, is that correct? I don't have any more questions, Mr. Vice-Mayor, if anyone else does?

Vice Mayor Johnson: Mr. Lovvorn, before you took this job that you currently hold you were a City Commissioner, correct?

L: Yes, sir

J: If you had to, I know it goes back several years, but if you had to just try to remember, how many times did you run for office?

L: It's hard to say, four, five

J: Irregardless, did you ever accept a campaign donation from the Totty's?

L: I can't remember.

J: You can't remember.

L: No, sir.

J: At any time, in any of your campaigns, would Walt Totty have been your campaign treasurer?

L: He possibly could have been but I don't remember that either. I mean, that's several years ago.

J: Just for the record, in 2004 the election commission shows Mr. Walt Totty was campaign treasurer of Donn Lovvorn.

L: Okay, that's what I said that he possibly could be but I didn't really remember.

J: Do you understand what this looks like?

L: Like I said, it's a mistake that I had made.

J: But, do you understand what it looks like to the public. Why you possibly made a mistake.

L: Well, I can say this, Mr. Totty has brought subdivision plats in to me that I told him I will never take to the Planning Commission.

J: Did you tell him that on this one?

L: I didn't tell him that on this one.

J: Because it didn't go to the Planning Commission is what you are telling this board.

L: Because I thought it had went to the Planning Commission. But, when I reviewed it I didn't see anything out of the ordinary that it didn't meet our codes. The subdivision that he wanted to put over on Cumberland Drive did not meet code so I told him we would not bring that to the Planning Commission because it did not meet code and he said okay, that's fine, I will try to figure something else out and redraw it and present it some other time. It's not that I'm showing favoritism to anybody. I try to enforce the codes equally across the board on everybody. This is a mistake on my part and I'm gonna do everything I can do to make sure that this never happens again. It wasn't my intentions on this happening. That's all I can say – is it's my fault.

J: Mr. Bissell asked you a question a moment ago – do you, I guess we'll just let that go. Does anyone else have any questions for Mr. Lovvorn?

Commissioner Carroll: The only thing I would like is maybe just explain to us. One of the big concerns, I didn't even know what this subdivision looked like until the meeting. The roads, you're saying that because it wasn't a major subdivision it didn't have to meet city standards for the road?

L: It's not because it's not a major subdivision, it's because the two lots in the rear was located off an easement, not a city street, it's a private drive. The sub regs as told to me from our previous codes administrator, that two lots off of an easement was all that could locate off an easement. Anything over that would require those roads to be built to city standards. So when I reviewed the plat, in talking to Mr. Totty, that if he was going to do the easement then he wouldn't have to build the city standard street because it was just two lots.

Sutton: I just have one more thing, I'm not going to keep beating on you because anybody can make a mistake. I don't know anybody in this room that hasn't made a mistake before. The only problem I've got is when I first asked you about it a couple months ago and it came back that everything was apparently okay, was there any action on it and could there have been a mistake on it? How many times should that have gone before the Planning Commission?

L: If it followed the procedures, it should have went to the Planning Commission as a Conceptual plat, then gone before as a Preliminary and again as a Final Plat

S: That's three times that we know of. Was there any demolition done on that lot?

L: Yes, there was a house that he got a demolition permit for.

S: He did get a permit for it?

L: Yes, sir.

S: I don't think it's fair to the Totty's or anybody, the people here that we go this far. I mean, this is a done deal, people are living in those houses.

L: Yes, sir, I understand.

S: There was just nothing done about it at the time. That's all I have for you now.

Carroll: John did the home inspection so somebody has been out there four times, to this subdivision, at least. One of them may not be done. I don't know how in today's time, which I'm sure they are nice houses, I'm not saying that, the angling of houses on lots, I just don't know how something like this goes through and doesn't go through the Planning Commission. At some point, I wonder why somebody didn't just go, wait a minute, and go back and check. I feel like when I saw it I was quite surprised that we let anything like this in the City of Fairview after I sat on the Planning Commission when we redid the codes and I have a hard time believing that knowing the process and how many times somebody would have to go inspect the homes that nothing was caught, no one realized? I understand mistakes happen but. I just base it off recently driving to the subdivision, just the placement of the houses, the gravel. I'm really disappointed and don't even know how it could happen, to tell you the truth. I am done.

B: Mr. Vice-Mayor, that is all the questions I have for Mr. Lovvorn.

J: I've got two more real quick if we could. Donn, this should be more recent so maybe you will know this, if not you can look it up, but when you say the last C.O. was issued for someone to occupy the latest lot?

L: It was pretty recent but I would have to check with John, he would know best.

J: Do you think it has it been issued since Commissioner Sutton made his first inquiry to you?

L: Probably so.

J: So you think you issued a C.O. when you knew it was in violation? You're saying it is it possible you could have done that?

L: It is possible but I don't issue the C.O.'s.

J: But you take full responsibility for John issuing the C.O.'s right?

L: He is my employee and I'm the Director of the Department.

J: So, if they came in tomorrow and wanted their final inspection and was wanting their C.O. would they be able to obtain that tomorrow morning?

L: No, sir.

J: Why would you not give it to them now?

L: Because this is certainly a subdivision that should have been approved by the Planning Commission, in trying to rectify the issue that is something I would step forward to do.

J: But you think it is possible that you have issued one since this has been brought to your attention.

L: It is possible, yes, sir.

J: Would you think that would be grave misconduct in your job title? If you knew something was specifically wrong. Even if you didn't know it when Commissioner Sutton first asked you and now you know you made a mistake and then compounded it by issuing them something or telling your employee to do it for you.

L: Well, I don't tell John to issue them. When he does the final inspections and the builder calls for the C.O. if the final inspection is approved then he signs off on the C.O. I don't have really any knowledge of when he does that.

J: Alright, so now, some of the responsibility has shifted from you to John. You're saying that you were in John's office or John was in your office when Commissioner Sutton made this call so that at that point, John knew this subdivision was in violation at some point during this process. Are you now saying John may have issued the C.O. on his own and he knew this was in violation?

L: I'm not going to speculate on what he thinks. That's a question that would have to be asked of him.

J: I will go ahead and ask the other question - Mr. Bissell asked you and you say you contacted no one. Are you going to tell this board tonight that you did you not contact the Mayor or her husband as the developer of this subdivision and tell there was a possibility that this could be brought out in public?

L: No, sir.

J: You never, one time?

L: No, sir.

J: In any of the time since this subdivision has started and you knew about it or didn't know about it, did they ever question you as to why they didn't have to bring this one to the Planning Commission? Why you were letting this one slide? They never asked you that?

L: No, sir.

J: In your time working here, have they (Totty's) built subdivisions every year since you've been employed here or have they had lapses and go a year at a time without building or anything?

L: Don't know if they have built every year. When I first started Braxton Bend was underway. I guess that's the only subdivision that was underway when I first was hired. I don't think they have really done anything else other than that one.

J: Would you say, and not speaking for them but speaking for developers in general that have done business here for the last twenty years, would you say that a developer that does work here in this city would know that if they have a major subdivision it would have to go to the Planning Commission for approval?

L: I can't speculate if they would know that or not. I can't speak for them.

J: That's all I have, Mr. Bissell.

Bissell: Thank you, Vice-Mayor, that's all the questions I have. I think it might be helpful now if we talked with our city engineer, Mr. Griggs. Would you ask Mr. Griggs to come to the podium for us.

Johnson: Thank you, Mr. Griggs. Would you like to start?

B: I'd be happy to.

J: Go right ahead, sir.

B: Mr. Griggs, thank you for coming tonight, I know it was an inconvenience to call you out here and we much appreciate it. I don't have a long list of questions, just kind of a general question to start. City Manager Hall asked you to come out to provide you with a copy of the recorded plats that Mr. Lovvorn had provided to him. Asked you to visually inspect the property and if you wouldn't mind kind of walking us through what you did and what your observations were. And then would you tell us how you think this subdivision is in possible disagreement with our ordinances and regulations.

Griggs: First of all, it is never an inconvenience for us to come speak with our client, we appreciate working for you. We first heard about this subdivision yesterday in the middle of the day, before that we didn't know it existed. Mr. Hall called me and asked me to look at this subdivision, I might be asked to give my opinion so I said well, I need to see it. I went over yesterday afternoon, drove around it, turned around and came back out. Today I spent looking through the subdivision regulations to see how it applied and what not. I saw the plat for the first time about half an hour ago tonight. So we did not have a chance to review anything about the plat, there it is, it's been recorded. So what I did and what I plan to do now is what we normally do with your Planning Commission and every other Planning Commission that we work for. We feel like it's our job to tell you what's in your regulations and how it compares to this design. It is up to the Planning Commission to whether they want to enforce these exact laws or whether they want to give a little here or a little there. Because we recognize and have told the Planning

Commission this repeatedly there is no set of subdivision regulations that are perfect, that can apply perfectly to every situation, every time. It is just a good guide and a good target. And we don't have the authority and we aren't going to take the authority to tell you what you can and can't do. We recognize your Planning Commission is composed of local people. They are going to take the subdivision regulations as a guide and modify them as they think best to serve the City of Fairview to the best of their ability. What we talk about in our office is we're not just trying to protect the people that live there, we're trying to protect the people who will live there next. People ought to be able to buy one of those houses 20 years from now and know everything is good. We don't just think we are working for the people here now, we think we are working for the people who are going to live there in the future. So, in light of that all I can do is tell you how this compares to your regulations and if the Planning Commission could have varied some of this, that's up to them I can't speculate to that. I can just tell you how it compares. It looks to me like the main point of contention is going to be the road so I kind of concentrated on that. I will read, rather than interpret out of your section 1-113.107 and I will just read it verbatim. "Where a permanent easement is used to provide access to a lot or tract of land having been or being separated by deed or plan by other properties shall be at least 50' in width where a permanent easement is proposed to provide access to more than one lot or tract of land an access way may be constructed with an easement which will meet or exceed the standards for design and construction of public ways set forth in these regulations." I take that to mean you can have an easement to serve one lot. I saw the revised plat shows a 30' wide easement to serve lots three and four and when I went out there yesterday lot number one fronts Old Franklin Road but when they built the house they built the driveway to the side so really there's three driveways going on to that side road. The regulations say that if there is an easement it's got to be 50' wide, the plat shows it 30' wide. But you can't have an easement serve more than one lot. That easement is serving either two lots or three lots however you look at it. The way it was built it is serving three – either way it's only supposed to serve one. If there is going to be a drive there it's going to be a private drive. The regulations say the private drive should be constructed to the same standards as a public road. From an engineering point of view it's going to be the same the width, thickness, strength, so forth. I see that as one of the problems. The next is what would be the standards for public roads. That's in Table 4-1, section 4-106.2 and there's a long list of tables and it's based on the lot width. As we read it, that road would need to be 20' wide paved, 3' grass on each side, that's to contrast to the gravel shoulder, be a grass shoulder on each side with 50' right of way paved with curb and gutter, there's other sections in the regulations that require 5' wide sidewalks on both sides and require a 5' wide sidewalk on the portion that fronts Old Franklin Road. There's other regulations that say there's got to be trees, I think they've got to be every 50' and got to be 2 1/2" in diameter. Those are the main deficiencies that we see compared to your regulations. That's not to say, that's not to guarantee the Planning Commission would have required every one of those points. I can't speak to that but that's the regulations.

Bissell: If I could ask you just a couple of follow ups, Mr. Griggs, just to make sure my understanding is correct. Normal procedure as city engineer is that you or Will would have looked at this and given a recommendation to the Planning Commission, is that correct?

Griggs: We point out how it differs from your regulations. If asked for a recommendation would give one but, as I say, we recognize your Planning Commission are good people, experienced people, they can take it and say this really doesn't apply in this situation, this does apply in this situation. So we try to confine ourselves to just showing how it differs from the regulations. If we were asked for a recommendation, we will give it.

B: That was my word, not yours.

Griggs: We don't force it on them.

B: You would have provided that difference, a table of differences.

G: Yes, sir.

B: The Planning Commission is within their authority to grant variances?

G: Yes, sir.

B: And, I guess this is more for our City Attorney than maybe it is for you. While the Planning Commission can grant a variance, the Codes Director cannot grant a variance. That is my reading of the regulations, is that correct, gentlemen? So, in this particular instance we don't know how the Planning Commission would have voted because in the three times it went before the, excuse me, in the three times it didn't go before the Planning Commission, we don't know. Mr. Lovvorn granted the variances so the Planning Commission didn't see them and you, as the city engineering firm, didn't see them either, is that correct?

G: All I can say is we didn't see it, I don't know what the Planning Commission saw or didn't see.

B: If the Planning Commission had not granted a variance and this private drive was held to the standards of a public street, do you have an estimate as to how much monetary value was not spent based under the current conditions?

G: Yes, sir, and we're lucky that we just did a bid down here on Bowie Road, Bowie Lake so we took those bid prices and measure off. This is sort of worst case, all sidewalks, all trees, worst case,

Sutton: Without any variance

G: Yes, sir, without any variance. Your regulations say, based on the cost estimate plus 25%. And the cost estimate plus 25% amounted to \$106,000.

Johnson: A hundred and how much?

G: One-O-Six.

B: I have one last question and then I will cede the floor who else might want to – you said that you had not had any knowledge of this subdivision even existed until Mr. Hall contacted you yesterday.

G: That is correct

B: I assume that meant Will didn't either.

G: That is what he told me today.

B: Is it normal or not normal that when y'all are in rendering this table for the Planning Commission that you have some contact with the subdivisions engineer, that Will would have some contact with the subdivisions engineer or not?

G: Yes, it is common. What we've found is that most engineers want to work with the City Commission because they want it to go through. What most engineers don't want to do is miss something and we've found one or two issues and they've got to resubmit and take it back and they're frustrated because the Planning Commission only meets monthly or less. Its common practice for us and your regulations say you got to submit within 15 days before the Planning Commission meets. That gives us time to review it if there's a question. For example, if there's a question about a culvert size, we can call the engineer and say, you're showing a 15" culvert, our calculations show an 18" culvert, let's work this out. What number are you using, what number are we using. If they can prove to us a 15 is fine we can say good, fine, our mistake or if we can prove to them 18 is better they say fine, good, our mistake. We are good working with engineers cause engineers generally want to get it right and so that gives us a chance to work with them and try to cut down on the back and forth and that's kind of standard practice.

B: So is it a fair assumption for this Board that because of your statement that you did not have any knowledge and that Will told you that he did not have any knowledge that that process did not occur on this subdivision?

G: Correct

B: That's all I have Vice-Mayor, thank you.

Johnson: Anybody have a question for Mr. Griggs? Since you just saw this plat before the meeting, do you think there's more issues that you could find, if you had time to study it, go out there, whether it be setbacks, how close houses are built together, or

G: That went through my mind today. Without a accurate drawing of what is out there now, I don't know. I can't answer that question. Cause I don't know where the houses are now located in respective to the lines and so forth.

J: Let me make sure I got this correct from you. You said that there is a possibility of up to \$106,000 that has been diverted?

G: If they were... The bond would have been \$106,000. The construction cost was \$85,000. When you add the 25% to it required for the bond by the regulation that gets the bond up to \$106,000. And that's to fully comply.

Bissell: And then if gutters had been added to that it there would have been an additional \$18-\$19,000 is that correct?

G: As I read the regulations, the gutters on this one there's a little bit of gray area. If the Planning Commission had required curb and gutters that would have been an additional \$19,000 but this is such a small, short road, I'm not sure that would have been required to be honest with you, that's why I didn't include it in that first figure.

J: Does the \$106,000 include a sidewalk on either side?

G: Yes, sir, it includes sidewalks on both sides and a sidewalk on along Old Franklin Road, but again, one of those sidewalks was along the edge of the property and I think the Planning Commission probably would have said we don't need a sidewalk on that side. So, that's why I want to emphasize that this is the big number.

J: Absolutely, thank you. You can be seated, Mr. Griggs. Mr. Lovvorn, you can just stay where you are. He brought up the point of a bond. Did the Mayor and/or her husband get a bond for this subdivision?

L: No, sir.

J: They did not, okay. You said they were issued a grading permit or was not?

L: I don't believe they were.

J: Did you require them to sign a development contract like every other developer for a subdivision?

L: Well, the only time we have a development agreement signed is when there's infrastructure and like I said, we had determined that there wasn't a necessity for a road to be built at my assessment of the plat, so therefore, the development agreement wouldn't have had to have been signed because at that point you wouldn't have required a bond either.

Sutton: So what's the difference between him saying it should have been a road that should have followed and you saying it's not. What's the difference?

L: Well, I had assessed it as just being a private drive and not having to conform to the city standards but as he's brought out, it should have been.

Johnson: So, you're saying you made that decision on your own, you weren't even going to give the Planning Commission the chance to decide?

L: Like I said, I thought the plats had went to the Planning Commission so once the Planning Commission approves them the Planning Commission doesn't see the development agreements. I prepare the development agreements and I get those signed

by the developers and by the Mayor. At that time, I was...I mean all I can say is what I've been saying all along, it was a mistake that I have made.

J: Are there any fees associated to the grading permits that should have been issued?

L: The way those grading permits are in increments. It starts at \$25 up to a maximum of \$100 depending on how much soil you're moving

J: So that would be, if we did not issue those, that's would be more fees for the developer that they did not pay and the city did not collect.

L: Yes, sir.

Carroll: I have a question if I could. You said the Mayor would sign, I mean in this case, she wouldn't have signed. When you were just talking about the plats, you just said

L: The Development Agreement

C: Okay, the development agreement. You said the Mayor would sign it. But if she had a personal interest you wouldn't have her sign it.

L: No.

C: Who would sign it?

L: It would have to be the Vice-Mayor.

Johnson: did she sign the plats?

L: Yes, sir, as owner.

Bissell: I have a question - Isn't there a fee when you bring something before the Planning Commission?

L: Yes, sir.

B: Was that fee paid by them?

L: I would have to go back and look, I'm sure that I received some fee from them for review of the plats but I would have to go back through my files and look.

B: This is a very important question - Is it the fee for you reviewing the plats, or is it the fee for sending it to the Planning Commission, or is it the fee for going to the Planning Commission?

L: It's a fee in general that is charged for all plats even plats that are two lot subdivisions that can be approved administratively. Those fees are assessed on all plats.in general are any fees assessed on all plats.

B: Are the assessed every time the plat changes or just the original?

L: Yes, sir, they would have to submit fees for revision but if the revision didn't change anything on plat everything, other than not adding any lots or anything it would remain the same.

B: But in this case, there had to be a revision filed, so there had to be two fees paid, the Totty's would have had to pay two fees.

L: Yes, sir.

B: So, you made a mistake, according to your testimony, you made a mistake one time and forgot. Then, two months later you had to do it again. You forgot again?

L: Well, the revision on this plat wouldn't have had to go through Planning Commission because it was just changing the easement size from a 20' to 30'.

J: If the easements are incorrect, shouldn't it have to go to the Planning Commission?

L: What do you mean if it is incorrect?

J: Well, Mr. Griggs stated 50' but what you had recorded on the plat was a 30' easement. So wouldn't you have to take that to the Planning Commission to decide if a 30' easement versus a 50' easement as required by the code?

L: Well, that's what I'm saying, I don't really know why I didn't have the plats taken to Planning Commission

J: That wasn't the question.

L: I know, but I'm saying, I don't know why I didn't take the plats to the Planning Commission. All I know that it was a mistake on my part, that's two years ago and I can't remember everything that went on since two years ago.

Bissell: Vice-Mayor, I think it would be helpful, though we cannot compel him to do so, it would be helpful if we could talk to Mr. Totty. I see him in the audience tonight.

Johnson: Mr. Totty, if you're willing to come up.

B: Thank you Mr. Totty. Just a couple of background questions and then we'll get to a couple of questions that are a part of the issue. You have been doing this a long time, right?

Mr. Totty: Pretty much.

B: And this was not your first subdivision, for sure?

T: That is correct.

B: I know that there are many of those around town. Would you say that you are you generally familiar with the approval process and what goes on and how you get a subdivision approved?

T: I would say generally. I don't know all of the specifics about every thing, some things tend to change and I don't probably follow up as close as I should to know what the changes are.

B: Do you have an explanation as to how this occurred? I mean, you built four houses out there, put a street in, did some other stuff. I mean you've done this before, didn't it strike you as odd that you didn't ever have to go before the Planning Commission? Had you ever built a subdivision before without going before the Planning Commission?

T: No, we have always went before a Planning Commission and we was usually doing bigger stuff. This with being on the easement, it was really my understanding that it was doable. Like I say, I didn't know exact particulars about it. It was my understanding it could be done on a gravel easement if the easement was substantial size.

B: It just didn't strike you odd that you didn't have to go before the Planning Commission?

T: Well, it probably crossed my mind later on but being busy, I mean it's a passing thought and I roll on and I may not have had time like others to dwell on it.

B: When you started building and so forth and so on and got your certificates, who gave you back your copy? Did Mr. Lovvorn present it to you or give it to your engineer or do you even remember?

T: I couldn't tell you.

B: Okay. Do you remember having, during the construction phase of any of these houses, do you ever remember having a conversation with Lovvorn about the houses and asking if he had any concern or anything or did you just rock and roll?

T: Just normal build house, pull the permits, have inspections and roll on. I didn't know there was a problem

B: I don't have any more questions, thank you for answering my questions.

Johnson: Does anyone have any other questions for Mr. Totty? Thank you, sir.

Bissell: Well, I don't have any more questions for Mr. Lovvorn, but I guess I would summarize where I see it at this point. I think this is a pretty severe mistake and I'm not sure what the appropriate action for taking to try and fix but think the city has to begin action to try to fix it. I think that some of what I heard provided insight tonight as to how it could occur. Some of what I heard was very disturbing - lack of controls in the codes office, multiple opportunities that this mistake could have been caught, most damaging to what I heard tonight was that once our Codes Director was notified by Commissioner Sutton, he took no action at all even when knew, responded back to Commissioner Did not notify anybody, according to the testimony of Mr. Totty, he wasn't notified. No one

that was involved who could have assisted him in how to correct the mistake was contacted. That to me is not acceptable and quite frankly I believe the most truthful thing that was said this evening is he would not have told a soul if it hadn't been brought to his attention. In respect to how I think about the relationship between the Mayor and Mr. Totty and Mr. Lovvorn, I think there are several things here that could possibly need a little more conversation. That part of it I do not believe was on the agenda tonight and I don't believe would be appropriate to have any discussion about tonight. What I would like to do is make a motion that we have a second hearing that the Mayor, if she so wishes, can bring her attorney, we can find a mutually acceptable date between the Board. I understand Thursday night we might consider having it Thursday night after the regular meeting. We can discuss with her and Mr. Totty at that time in more detail just what they knew and didn't know. Just like I said it was not part of the agenda tonight and I know the Mayor was just coming back off of a trip and I don't really think it was in our area to be going down that road tonight. I think I would like to set a motion for a second hearing with the Mayor to discuss what her level of involvement was and put that to rest one way or the other, so I move for Thursday night following our regular meeting.

Commissioner Sutton seconds. Vice-Mayor Johnson asks for any further discussion. Commissioner Sutton asks what direction need to give Planning Commission, chairperson is here tonight, Mr. Smith, but it needs to be address these issues as soon as possible with possibility for corrections being made through the engineer suggesting to them, we need to address as soon as possible in all fairness to every body involved – the Totty's, the homeowners, the builders and contractors inside this city. Mr. Hall, can you direct that?

Griggs asks Thursday night?

Sutton responds that is just so we can fix the problem. That is not how it happened, it's just how to fix it.

Johnson: You are not requiring him to have that for Thursday night is what you're saying.

Bissell: I just think it should be the Mayor and Mr. Totty if he chooses, Mr. Griggs

Sutton: That is fine, this is just a sidebar.

Vice-Mayor Johnson calls for a vote. All were in favor.

Johnson: One last thing, I guess, before we turn the meeting back over to the Mayor Larry, is there anything you have heard this evening and the possibility of over \$100,000 being averted by a board member, at what point in our charter and oath of office are we required to turn over to the state comptroller or any other thing to report as obligated?

Cantrell: Well, you have to, the amount is not the thing that would determine whether you do it or not. The statute says that when it becomes obvious or should know if something has been done that's illegal. Now, if it's a mistake, mistakes aren't illegal so you would not be required to turn that over to the comptroller. What the purpose of the comptroller is to see that any public official, whether an elected official or whether they work for the public, is that they are not doing something borders on giving funds illegally. Now, if a mistake was made, you correct mistakes, mistakes are not covered under the statute that talks about reporting to the comptroller.

Johnson: Okay, and with that being said, with what Mr. Lovvorn said about nobody knowing about this, at what point would we have reported it? If we never decided to have this and people knew about it and wanted to do anything about it, would we turn it over at that time?

C: If the board knew about it and didn't take any action taken to correct it, it would be covered under. You could possibly get into some sort of thing on a cover up and those would have to be reported. Once you report 'em, it's up to the comptroller to decide if

they want to investigate or they don't investigate it, that's not your decision. But you can't start to correct something until you know about it. That's the reason that statutes don't run until you know about it, statute of limitations don't run against the city correcting mistakes and this kind of stuff. But as far as having to report to the comptroller, very obviously, I haven't heard anything that sounds of a conspiracy nature to get out of something. That type of thing you would have to be report as soon as you knew about it. But again, for the record, so that every body hears me I have not heard anything that speaks to that or sounds of that nature.

Sutton: Just to confirm, it is the responsibility of the board to take action correct things that are wrong but not to report them to comptroller.

C: It's your responsibility, once you know that something is amiss, like this, whether it's a mistake or not, when it's brought before the Board, or before the sub-board, brought before the Planning Commission, so they can say yes, we want to recommend this and it goes up for a recommendation. Wouldn't necessarily be this Board, it could be any.

S: but it is the responsibility of the board to

C: You have a responsibility to correct things that are wrong, yes. But you don't have the responsibility to report mistakes to the comptroller unless it's a mistake in your budget or a mistake in your accounts, or something that you can't account for.

J: Who officially decides whether it is a mistake or not?

C: Well, that is going to be up to the Board. I mean, everybody has an idea of what's a mistake or intention. You're not doing any harm if the Board instructs the comptroller be notified. They look at it and the comptroller makes the decision on am I going to investigate am I not going to investigate, then they make a report.

Johnson: Asks for any other questions.

C: Just for clarification, if the Planning Commission is looking at a drawing and they approve something that is not in accordance to our standards, then they have granted a variance and that's the only time they can grant a variance. If it comes out later that there's something that someone needs a variance on or desires a variance on, then they file a petition to be heard by Board of Zoning Appeals.

Vice-Mayor Johnson yields the floor back the Mayor.

Mayor Totty asks for a motion for adjournment. Commissioner Sutton makes a motion for adjournment. Commissioner Bissell seconds. All were in favor.

- **Mayor Totty called the meeting closed at 8:30 pm**

Brandy Johnson
City Recorder