

The Council of the City of Vandalia Meeting Minutes

January 4, 2021

MEMBERS PRESENT: Mayor Richard Herbst, Vice Mayor Robert Ahlers, Councilman Michael Blakesly, Councilman Corey M. Follick, Councilwoman Candice Farst Councilwoman Constance Woods, and Councilman David Lewis

OTHERS PRESENT: Jerry McDonald, Chief Althouse, Missy Pruszynski, Harry Hicks, Rob Cron, Amber Holloway, David Marlow, Steve Clark, James Richardson, Darren Davey, Bridgette Leiter, Brian White, Alex Gonter-Dray, Ben Crum, Bob Krohngold, Kimberly Bish, Lucious Plant, Anne Burke, Bob Gehman, Barbara Breisch, Dr. James Breisch, Chief Chad Follick, Dave Krauth, David King, Francine Robinson, Holly Wiggins, John Dolan, Ken Decker, Diane Dolan, Denny Gorman, Jane Gorman, Daniel Wendt, Mary White, Stephanie Richardson, Sterling Johnson, Vanessa Johnson

Mayor Herbst called the regularly scheduled meeting of the Council of the City of Vandalia to order at 7:00 p.m. **Mayor Herbst** called for a moment of reflection followed by the Pledge of Allegiance. There were no previous meeting minutes for Council's review and approval.

Mayor Herbst advised the audience in this evening's Executive Session council discussed the hiring of the City Manager and Council would like to bring forth legislation tonight with respect to said meeting. It was moved by Councilman Follick, seconded by Councilman Blakesly, to amend the agenda accordingly. All in Councilmembers present voted yes. Motion passed 7-0.

Communications, Petitions and Awards: None

Public Hearing: None

Comments from Interested Citizens:

Mayor Herbst kindly requested anyone who will be commenting to state your name and address for the record. He continued by advising the audience if you are on the meeting tonight regarding the Foxfire Preliminary Plat, Council is in receipt of your letters and are all well aware and appreciate the effort the residents are putting forth. He concluded by asking

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the audience, if you plan to comment on this item, please limit your comments to no more than three minutes and please try not to repeat other comments.

Mr. Aaron Burke, 2400 Old Derby Court, explained the concern is not that construction of homes is taking place, but rather the type of home being constructed. He continued by noting this is the same discussion over and over; and, the residents are not against further development. **Mr. Burke** explained Fisher Homes is a much cheaper home than currently exists in Foxfire and thus would be detrimental to the value of the 115 homes that already exist in the plat as it stands.

Mr. Brian White, 2388 Cheviot Hills Lane, expressed an objection to the proposed preliminary plat. He continued by sharing his main concern is the lot size is still too small. **Mr. White** advised he would like to see larger lot sizes, which would encourage larger, more stylish homes that would fit with current character of the neighborhood. He suggested if Fisher Homes had larger lot sizes, they may be looking at something a little bit differently and more comparable to the existing density.

Mrs. Vanessa Johnson, 781 Foxfire Trail, inquired if there is any way Fisher can advise on the price point for the houses in the proposed development. **Mayor Herbst** asked **Mr. Khrongold** if he would like to comment. **Mr. Khrongold** declined noting that he prefers to listen to the comments and then he will deliver a presentation. **Mr. Brian White** shared that the last two postcards he received for homesales in Foxfire were \$360,000 and \$380,000 and he has not seen anything that indicates Fisher Homes will approach these price points.

Mr. Leon Mable, 778 Foxfire Trail, explained the residents understand this was approved for development previously by Council about four or five years ago through McGovern Willoughby custom builders. He continued by suggesting the City of Vandalia try to keep the Foxfire subdivision reserved for custom builders, which will in turn preserve the sale prices of the homes in Foxfire.

Mr. Ken Decker, 801 Foxfire Trail, shared on several occasions the residents have asked if there is a representative from Fisher Homes who is willing to meet with them but to no avail. He claimed the residents have never heard from Fisher Homes and is concerned that the builder may already have changed.

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Mr. Alex Gonter-Dray, 751 Foxfire Trail, thanked the residents of Foxfire for their participation with the petition to which 60 out of 113 residents responded. He advised he delivered the petitions to the Deputy Clerk today and hoped the documents were sent to Council for review prior to the meeting. **Mr. Gonter-Dray** thanked Council for taking time to review the concerns and hopes Council will take time to evaluate the requests. He continued by noting, initially and still, the main concerns are about retaining the market value for the homes in Foxfire; however, in reading those letters, you will see some new concerns. First, is a traffic concern at the entrance of Deerhurst. This is the main entrance for the subdivision and he sees Foxfire Trail being used as a construction entrance; additionally, the construction traffic will tear up the streets, specifically, Deerhurst and Bolton Abbey. He continued by noting once the construction is complete, this will bring approximately 50 to 100 additional cars through the neighborhood. Next, **Mr. Gonter-Dray** shared concerns about cars needing acceleration to get up the Brown School Road hill and then stop immediately at Deerhurst, which could potentially result in a back up of vehicles. He indicated crime is also an issue due to some of the homes with the properties abutting Poe Avenue and hopes the new developer or builder will continue to provide a fence there in order to help keep the riff-raff out of the subdivision. **Mr. Gonter-Dray** concluded by expressing his concerns about the builder not being engaged at this stage of the proposed preliminary plat and thanked Council for their time.

Mr. Lucius Plant, 2330 Cheviot Hills Lane, began by thanking Council for hearing everyone's comments. He noted there is nothing like looking at a development up close to tell what it will be like in terms of the value of the homes and the potential loss of value if the proposed development is not carefully planned in such a way as not to diminish value from the existing homes. **Mr. Plant** continued by explaining Foxfire is a great attractor. He said he has nothing against Fisher Homes; he noted all but two of Fisher's seven current developments are stand alone developments and do not impact the value of any other homes. **Mr. Plant** concluded by asking Council to look carefully at this agenda item because we could have the loss of great value and the break-up of a community.

Mayor Herbst asked Mr. Khrongold if he would like to speak. **Mr. Khrongold**, of Landzone Limited, 2880 Losontville Avenue, Cincinnati, Ohio, introduced himself and

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explained tonight he is seeking approval of a preliminary plat. He noted the proposed plan meets and exceeds the allowable zoning guidelines, and the plan has received unanimous approval from the Planning Commission. **Mr. Khrongold** recapped the history on this item and noted he understands the concerns of the residents. He made it clear that these homes will not be custom built homes. **Mr. Khrongold** explained at this point in the process the goal is to get the preliminary plat approved and tonight is not a forum to hear opinions or have arbitrary input on design guidelines, lot sizes or lot usability. He said only one question remains at this point – is the plat compliant with the zoning ordinances. **Mr. Khrongold** continued by noting Fisher Homes is going to be the builder. He concluded by asking Council to follow the ordinances, allow approval, and respect the developer's property rights.

Mrs. Barbara Breisch, 898 Deerhurst, spoke in opposition to the proposed plan noting that if the plan is anything other than what is already in the subdivision it should not be allowed. Next, she advised the audience that traffic has increased greatly and asked Council to take that into consideration. **Dr. James Breisch**, 898 Deerhurst, commented that one-third of the community is listening tonight. He continued by speaking against the size of the lots and what is being proposed right now. **Dr. Breisch** added just because it meets the zoning requirements doesn't mean that the residents of the community are happy with the proposed plan.

Mr. Gonter-Dray advised he is still awaiting a response to the question, "how are smaller homes on smaller lots going to enhance the current property value of the current homes in the neighborhood."

Mr. Leon Mable continued speaking against the proposed plan and noted it would be beneficial to get this quantified by the Montgomery County Auditor and look at what the development will do to the current homes. Next, he explained the importance of builders who have worked with home owners in need of ADA compliant homes. It is his understanding that a production builder will not accommodate a home builder in need of ADA homes. **Mr. Mable** expressed the importance of builders with ADA construction experience and thanked Council for their attention.

Mr. Ken Decker, spoke again in opposition of the proposed plan noting that Mr. Khrongold's surveying company has already been in the neighborhood working and has put

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around six holes in the street that they have yet to fix. He continued expressing his discontent related to the damaged infrastructure.

Mrs. Diane Dolan, 745 Foxfire Trail, inquired as to what the value of the new homes will be and does not understand why the residents have not yet been provided an answer. **Mayor Herbst** asked Mr. Khrongold if he would like to respond. **Mr. Khrongold** explained he does not have a satisfactory answer. He is not the marketing person and is therefore unable to provide a response; he continued by noting this question is not relevant at this point in the process. **Mr. Khrongold** explained he understands the concerns; however, this is not the forum to discuss anything unrelated to the consideration of the approval of the preliminary plan.

Mrs. Kimberly Bish, 792 Foxfire Trail, expressed the pride that many of the residents have in their neighborhood. She explained the many reasons the residents chose to purchase homes in the subdivision. **Mrs. Bish** concluded by noting the residents opinions do matter.

Mr. Denny Gorman, 722 Deerhurst, shared his reasons for opposition to the plan; specifically, indicating he feels that Mr. Khrongold is evasive and he would like to know why Fisher Homes will not show up for a neighborhood meeting. **Mrs. Jane Gorman**, 722 Deerhurst, also expressed her opposition to the proposed plan. She explained why they chose to build a custom home in Foxfire.

Ms. Fran Robinson, 740 Deerhurst Drive, spoke to the developer and noted it appears as if what you presented tonight is a narrow view of what tonight's meeting is about. She added it would be helpful to Foxfire residents if you addressed our concerns or act as if you hear the concerns. **Ms. Robinson** explained to the Foxfire community Mr. Khrongold's presentation is about zoning and he has inadvertently forgotten to advise the residents that he hears their concerns and their concerns will be taken into consideration. She continued explaining why the current residents' comfort level regarding the proposed plan is low. **Mrs. Robinson** concluded by thanking Council for the opportunity to speak. **Mr. Khrongold** responded by thanking Ms. Robinson for taking the tone down. He continued by noting he has heard the residents and they are being taken into account. **Mr. Khrongold** advised through discussion with Fisher Homes, the first model home could be an all brick product in order to dove tail into the existing homes and see how the market reacts to the model home.

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He continued by noting it will be one of the more expensive models; therefore, the builder has heard the concerns, they are a very professional builder, they will do what they can to fit into the neighborhood, and ADA homes can be built by Fisher. **Mr. Khrongold** advised everyone agrees Foxfire is a great neighborhood; however, this land has remained undeveloped for many years. He concluded by noting, if the residents have a committee that would like to meet with Fisher, they will be glad to sit down and discuss any concerns.

Vice Mayor Ahlers inquired if there is exclusivity with Fisher Homes. **Mr. Khrongold** responded in the affirmative. **Vice Mayor Ahlers** explained it is important to sit down with Fisher and agree on some minimum requirements such as a minimum of a two car garage, brick fronts, and minimum square footage. He concluded by noting that he can not commit to anything regarding Fisher's business practices, but he can ask Fisher to meet with residents.

Mayor Herbst thanked everyone for their comments and advised the audience no further comments will be accepted tonight. He called upon Chief Althouse to continue with tonight's Information Items.

CITY MANAGER'S REPORT

Information Items:

City Offices Closed

Chief Althouse advised City offices will be closed Monday, January 18 in observance of Martin Luther King, Jr. Day. The second meeting in January will be held on Tuesday, January 19 at 7:00 p.m.

Christmas Tree Recycling

Chief Althouse explained the Parks and Recreation and Public Works Departments are offering Vandalia residents free recycling of their Christmas trees. Residents can drop off their trees at the Sports Complex until January 20. Regular curb service for disposal of trees will begin the first week of January.

Action Items:

Mayor Herbst advised, since there are four action items re-appointing members to various committees, he suggested voting by acclamation. Council indicated a preference to vote by acclamation. **Mayor Herbst** asked Chief Althouse to introduce each of the four items.

Appointment of Representatives – 2021 MVRPC/TC

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Chief Althouse announced that Vandalia is required annually to appoint a representative and an alternate representative to the Miami Valley Regional Planning Commission and the Transportation Coordinating Committee. An individual must also be designated to serve as the Technical Committee member. He continued by noting, currently, Mayor Herbst is representative, Miss Amber Holloway is the alternate, and Mr. Rob Cron is the current delegate to the Technical Committee.

Appointment of Representatives – 2021 First Suburbs Consortium

Chief Althouse explained the City of Vandalia is required annually to appoint two representatives and one alternate to the First Suburbs Consortium. He noted the current representatives are Mayor Herbst and Vice Mayor Ahlers; Councilman Lewis is the current alternate member.

Appointment to the Montgomery County Community Improvement Corporation

Chief Althouse advised this committee requires the Mayor of the City of Vandalia to be appointed annually.

Reappointment of A Council Representative - Vandalia Development Corporation

This board requires two councilmember appointments – one Council appointment to be made in even years, currently Councilman Blakesly, and one Council appointment to be made in odd years, currently Councilwoman Woods. Hence, Council will need to appoint a VDC representative for the odd year appointed member.

It was moved by Councilman Follick, seconded by Councilman Blakesly, to reappoint all respective current serving members to continue to serve on their respective committee. All members present voted yes. Motion passed 7-0.

Old Business: None

Resolutions:

21-R-01 A Resolution Approving The Foxfire Preliminary Plat. Mr. McDonald, read Resolution 21-R-01 by title. **Chief Althouse** explained the Applicant, Landzone Limited, is requesting preliminary plat approval for 22.45 acres of land located in the Foxfire Subdivision. This preliminary plat would create 58 single-family residential lots between two zoning districts. The Residential Single Family 4 District occupies 7 acres and is proposed to have 29 lots with an average lot size of 8,352 square feet. The Residential Single Family 2 District

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occupies 15 acres and would also have 29 lots with an average of 14,925 square feet in area. All 58 lots proposed meet the lot development standards. At its meeting on December 8, 2020, the Planning Commission voted 4-0 to recommend approval of the preliminary plat with the following conditions:

1. The Final Plat shows the 34-foot wide access easement connecting to Poplar Creek Road.
2. The portion of the 34-foot wide access easement on the subject property shall be maintained in good condition.

It was moved by **Vice Mayor Ahlers** to deny Resolution 21-R-01. He referenced the zoning code criteria; he specifically referred to 1214.09(d)(1). He continued by noting this item has not been analyzed, nor have citizen concerns been addressed, and further discussion is needed. There was no second.

Next, **Councilman Lewis** asked **Mr. McDonald** to review the criteria upon which Council is required to evaluate the preliminary plat in order to make a decision to approve or not to approve. **Mr. McDonald** reviewed in detail Section 1214.09(d)(1). **Councilman Lewis** explained he asked **Mr. McDonald** to provide an opinion relative to Section G as it relates to “welfare” prior to the meeting, also to Vice Mayor Ahler’s point. He continued by asking Mr. McDonald to provide the definition of “welfare”; he continued noting the primary concern related to this preliminary plat plan is the potential diminuation of value brought upon by the existing residents by the propagation of a new subdivision without the same types of building considerations that existed when their homes were constructed. **Mr. McDonald** advised when you are looking in terms of what constitutes public welfare. Public welfare can not be based upon an injury to private property. He continued by noting it is fundamental that a showing of diminuation of value due to a zoning ordinance taken alone is insufficient to invalidate an existing ordinance. It was moved by Councilman Lewis, seconded by Councilmember Blakesly, to approve Resolution 21-R-01 to include the Planning Commission conditions and

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an additional condition that a Home Owners Association is formed to maintain the three open space lots. **Councilman Lewis** shared his sympathy with everybody in the Foxfire Subdivision and agrees with their concerns, but when we read the review the very specific criteria related to the scope of Council's review for a preliminary plat, the law does not allow us to take into consideration the fundamental issue of diminution of value. He continued if Council did not follow the criteria, this would give the Applicant standing to take the City to court and therefore would not be in the best interest of the residents. **Councilman Lewis** commented that he lives in Woodland Meadows, a custom built subdivision, which is directly connected to another subdivision wherein the homes are older and more limited. He continued by noting, in the last twenty years he has not noticed any diminution of value based on the proximity of that group of homes to the other group of homes. Based on that and specifically, the rules before Council, unfortunately, there is no other option than to approve the preliminary plat. **Councilman Blakesly** concurred with Councilman Lewis. He noted he grew up in a custom home and the area had developed out in a similar situation. He noted he too understands the concerns from the Foxfire residents; however, the preliminary plan presented does meet and is compliant with the zoning code. **Councilman Blakesly** concluded by noting he wishes there were other options. **Councilman Follick** thanked Councilman Lewis for his explanation on this item, agrees with his rationale, and his motion this evening. He continued by thanking the residents of Foxfire. **Councilman Follick** explained he has spoken with some residents individually over the past several months. **Councilman Follick** explained that he shares some of the same concerns about the proposed development; however, as the Applicant pointed out this evening, what is in front of Council tonight is a process that we have to look at from what is permitted by our zoning code and we can not deviate from that or else we could have other issues down the road. He continued by noting, Council did take action to stop the rezoning that would have allowed that entire development to be a higher density development than what it is now. **Councilman Follick** advised the zoning that is in place now is the same zoning that was requested by McGovern Willoughby, which he believes was last updated and approved in 2014; therefore, the zoning in question has been in place for six years. The plan obviously was for McGovern Willoughby to continue building custom homes on that land because he owned that development. He

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believes that is what everyone in Foxfire wanted to happen. **Councilman Follick** commented, unfortunately, over the past several years because of market factors custom homes have not been built at the rate the builder, developer, and residents would have liked. He reminded the audience there are three remaining lots plotted for custom building that remain unsold. As well, there is nothing currently in place that requires a custom home to be built on those lots; therefore, a Planned Unit Development is probably a better option for that development so that there is not an issue of developers or builders changing hands in the future, and there is more control on the City's end to control the design elements of that development. The other option would have been to have established an HOA years ago, which would have set covenants and restrictions on property development. **Councilman Follick** is hoping that the developer and builder, moving forward, have heard and will take into consideration the concerns of the established residents. He is glad to hear that Fisher is considering a higher end model home. **Councilman Follick** commented that he still has concerns with the substantial development restrictions that are on three lots, but with that being said they meet our zoning code. He continued, in the final plan, he hopes that when that comes before staff review and Planning Commission review, that any of those concerns are eliminated. These are all concerns he has previously expressed of which the Applicant is aware. **Councilman Follick** advised the audience, even though he empathizes with the residents and has some of the same concerns, based on the criteria that Council is required to consider the preliminary plat this evening, he will have to support that decision tonight. Councilwoman Farst voted yes, Councilman Lewis voted yes, Councilwoman Woods voted yes, Councilman Blakesly voted yes, Councilman Follick voted yes, Vice Mayor Ahlers voted no, and Mayor Herbst voted yes. Resolution 21-R-01 passed 6-1.

Ordinances – First Reading: None

Ordinances – Second Reading: None

Ordinances – Emergency:

21-01 An Ordinance Authorizing A Contract Regarding The Position Of City Manager; Setting The Salary Of The City Manager And Declaring An Emergency. **Mr. McDonald** read Ordinance 21-01 by title in an emergency reading. It was moved by Councilman Follick, seconded by Councilman Blakesly to approve Ordinance 21-01 as read. There were no

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comments or questions during the public hearing. **Mayor Herbst** advised the audience he is currently working with Mr. Wendt and his family to find a home in Vandalia. The City Attorney has indicated assisting Mr. Wendt is not likely to be a direct conflict or any type of an ethical issue; however, he indicated he will abstain from voting tonight merely to avoid the appearance of any impropriety. Councilman Lewis voted yes, Councilwoman Woods voted yes, Councilman Blakesly voted yes, Councilman Follick voted yes, Councilwoman Farst voted yes, Vice Mayor Ahlers voted yes, and Mayor Herbst abstained. Ordinance 21-01 approved 6-0-1 in an emergency reading. Mr. Wendt was welcomed by Mr. McDonald and several Councilmembers.

Reports from Boards and Commissions:

Variance: Wall – 4300 Little York Road

Chief Althouse explained the Applicants, Mr. and Mrs. Richardson, are requesting approval to allow a 10-foot in height privacy wall at 4300 Little York Road. The Code limits fences and walls in residential zoning districts to 6 feet in height. The Applicants intend to construct the privacy wall along the rear property line for a span of 170 lineal feet to act as a visual buffer from the proposed Redwood development. The Board of Zoning Appeals voted 5-0 to recommend approval. It was moved by Councilman Blakesly, seconded by Councilwoman Farst, to approve the variance at 4300 Little York Road. All members present voted yes. Motion passed 7-0.

Variance: Nonconforming Use Expansion – 405 Kenbrook Dr.

Chief Althouse explained the Applicant, Muffler Brothers, is requesting approval to allow the expansion of a nonconforming automotive repair and service use at 405 Kenbrook Drive. Muffler Brothers currently occupies 2,100 square feet of the 4,500 square foot building. Muffler Brothers has requested to expand their automotive repair and service use into the remaining 2,400 square feet of vacant space. The Board of Zoning Appeals voted 4-1 to recommend approval subject to conditions. It was moved by Councilwoman Farst, seconded by Councilman Blakesly, to approve the variance request at 405 Kenbrook Drive. All members present voted yes. Motion passed 7-0.

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Council Comments:

Mr. McDonald applauded Council as this was a difficult meeting and explained, as elected officials, sometimes you have to follow legal provisions in order to protect the City. He continued noting Councilman Lewis and Councilman Follick did an excellent job of expressing the reasoning behind Council's decision.

Councilman Follick advised he has been notified the City of Vandalia has, again, been awarded a 2020 Tree City U.S.A. designation. He recognized the Parks and Recreation staff for their efforts in attaining the designation. **Councilman Follick** congratulated and welcomed Mr. Wendt our new city manager. He concluded by noting that he is looking forward to Mr. Wendt joining us in a couple weeks.

Councilwoman Farst wished everyone a Happy New Year. She also congratulated Mr. Wendt noting that Council is looking forward to working with him in 2021.

Councilman Lewis congratulated and welcomed Mr. Wendt.

Councilman Blakesly congratulated and welcomed Mr. Wendt. He concluded by noting you can see that we all work well together and we will all be a good team.

Mayor Herbst wished everyone a Happy New Year from City Council shared we are all looking forward to a prosperous 2021. He recognized Mrs. Julie Trick and her efforts in recruiting our new City Manager. Mrs. Trick made the process smooth and she had an excellent understanding of what Council was searching for. **Mayor Herbst** noted Council is thrilled to have Mr. Wendt joining us as our City Manager. He knows Mr. Wendt is going to take the City of Vandalia to the next level. **Mayor Herbst** formally welcomed Mr. Wendt to the City of Vandalia and shared that Council is looking forward to making this one of the best communities around. He also recognized Mr. Richardson and the Redwood Development for moving forward and working in harmony to keep the development on track. **Mayor Herbst** mentioned to the audience, if your New Year's resolutions are to get in shape

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and shed a few pounds, the Rec Center is offering 19% discounts on VRC memberships and gift cards; so, this might be a good opportunity to save a few dollars and get in a little bit better shape.

No executive session was held during the Council Meeting.

The regular Council Meeting was then adjourned at 8:20 p.m.

APPROVED:

Richard Herbst, Mayor

ATTEST:

Missy Pruszynski, Deputy Clerk of Council

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