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September 20, 2017

VIA E-MAIL ONLY

Town of St. John
10955 W. 93rd Avenue
St. John, IN 46373

Attn: Mr. Rick Eberly, Director of Building and Planning

**Re: St. John/Town-Y2017 Miscellaneous
Lantz Development Corp. Zone Map Amendment Application (R-1 to R-2)
Zoning District Classification
Plan Commission Rules and Procedures**

Dear Rick:

This letter will follow-up our review discussion last Friday, September 15th, concerning the request of Lantz Development Corporation to proceed on a new Application for Zone Map Amendment for its 21.73 acre parcel. It is my understanding that a question has arisen on whether the Developer/Petitioner is permitted to apply to the Town for a Zone Map Amendment to the subject parcel from R-1 Zoning District Classification to R-2 Zoning District Classification when an Application making the same request was recently denied by the Town Council. For purposes of this opinion, the following foundation is utilized, namely:

- The Developer/Applicant, Lantz Development Corp. owns 21.73 acres and seeks to develop same into a single family residential community in the Town, after having same annexed early this year;
- Upon completion of annexation, the Developer/Petitioner petitioned the Town Plan Commission for Zone Map Amendment for the entire 21.73 acres from R-1 Zoning District Classification to R-2 Zoning District Classification, with a specific site plan for same, including project layout, lots, roadways, and the like;
- Full process of the Application of Developer/Petitioner was had, including Public Hearing before the Plan Commission and Certification to the Town Council, which, upon consideration of same, denied the Zone Map Amendment Petition;
- That recently, the Developer/Applicant presented a revised site plan reducing the number of lots and providing some reconfiguration of the proposed Development Plan for consideration of filing anew a Zone Map Amendment Petition;
- Whether the Amended Zone Map Amendment Petition proposed by Developer/Application is permitted under applicable law, including Rules and Regulations of the St. John Plan Commission is the issue and question presented.

For consideration of the foregoing described issue, it is our understanding that the Rules of the Plan Commission, recently updated, provide as follows, namely:

“5. RECONSIDERATION

The Commission shall not further consider any Rezoning Petition that is defeated by the Town Council for one (1) year after it is defeated.”

Further, I.C. § 36-7-4-608(h) provides that “the Plan Commission may adopt a rule to limit further consideration, for up to one (1) year after its defeat, of a proposal that is defeated under Subsection (f) (3), (g)(3), or (g)(4).” The present circumstance is to be addressed under I.C. § 36-7-4-608(g), and therefore, is applicable.


Finally, upon review of all of the above, it appears that each of the Indiana Code and Plan Commission Rules specifically relate to “a proposal that is defeated”, or “a Rezoning Petition that is defeated”. The question then becomes whether the current proposal is the same as the proposal that was defeated by the Town Council. That is a question for interpretation for each of the Staff and Plan Commission. An assessment of sameness is advised. In the event that there is change, or the proposals are not the same, then the Plan Commission could consider the latest Petition and proposal. If deemed the same, alternatively, the Plan Commission could stand on its rule and decline to permit further consideration or a new Application until the time period of one (1) year has elapsed from date of defeat by the Town Council. It would be advisable for this to be addressed on the public record and assessment made for the Public record of the parcel, developer applicant, and Town records.

Thank you. I trust this is self-explanatory. If there are questions, please contact the undersigned.

Very truly yours,

AUSTGEN KUIPER JASAITIS P.C.

By:


David M. Austgen

DMA/lma

cc: St. John Town Manager S. Kil
File/Staff; MLM

*Dictated but not read.