

AUSTINTOWN ZONING COMMISSION – AUGUST 30, 2018

PUBLIC HEARING
AUSTINTOWN ZONING COMMISSION
August 30, 2018

In accordance with Section 519.12 of the Ohio Revised Code, the Austintown Township Zoning Commission held a public hearing on Thursday, August 30, 2018, at the Township Hall, 82 Ohltown Road, Austintown, Ohio, for consideration of and recommendation to the Board of Township Trustees proposed Amendment 2018-03-Z.

The following Commission members were in attendance:

Ron Latone – Chairman
Bonnie Sovik
Keith Marsteller
Bruce Shepas - Alternate
Sam Swogger – Alternate

Absent:
Atty. Robert Price - Vice-Chairman
Mark Cole

The Public Hearing was opened at 6:00 P.M. by Mr. Latone leading the Pledge of Allegiance.

Court Reporter in attendance, complete transcript taken of the hearing.

Motion by Mrs. Sovik to **APPROVE** the minutes of the July 26, 2018 public hearing.

Seconded by Mr. Marsellar.

Roll call vote: Mrs. Sovik – Yes; Mr. Marsteller – Yes; Mr. Swogger – Yes; Mr. Shepas – Yes; and Mr. Latone – Yes.

Mr. Latone gave the following statement:

The Public Hearing before the Austintown Township Zoning Commission for August 30, 2018 is now in session. Let the record show that under the provisions of Ohio Revised Code 519.12, notice of this hearing has been given in one newspaper of general circulation in the Township at least ten (10) days before the date of this hearing and notice was given by first class mail to property owners of interest. The mailing list of the property owners will be incorporated into the case record.

After a reading of the legal notice and the recommendation of the Mahoning County Planning Commission, the Zoning Commission will first hear testimony from the applicant, then all testimony in support of the proposed amendment, then all testimony

against the amendment. If testimony is offered against the request, the applicant will be given a short rebuttal opportunity.

When all testimony has been given, the Zoning Commission will act by motion upon the recommendation of the Mahoning County Planning Commission and our recommendation will be forwarded to the Board of Trustees for a future hearing and a final decision.

All testimony and questions are to be directed to the Zoning Commission. We ask that only one person speak at a time as we have a court reporter present. Prior to testifying you must step to the podium and state your name and address.

AMENDMENT 2018-03-Z

Joe Koch Construction, 7068 Mahoning Avenue, Austintown, Ohio, 44515, and Herons Land Company, LLC, 6629 Chestnut Ridge, Hubbard, Ohio, 44425, requests the rezoning of the approximate southerly 7.625 acre portion of a parcel of land containing approximately 8.50 acres, Lot No. 26, Boulder Creek Plat No. 1 Re-Plat, Parcel 48-121-0-032.26, Austintown Township, from a Residence R-1 District to a Planned Unit Development and the rezoning of the northeasterly 0.51 acre portion of a parcel of land containing a total of 30.722 acres, Tract 9, Parcel 48-124-0-005, from a Residence R-1 District to a Planned Unit Development for a combined Planned Unit Development measuring 8.28 acres. The proposed Planned Unit Development will allow for the construction of 15 single-family dwellings on separately platted lots with a minimum of 1,700 square feet of livable space for ranches and 2,000 square feet of livable space for two-story dwellings, full basements, concrete driveways, a private access drive to be constructed to Mahoning County Sub-Division Regulation Type “A” street design specifications, vehicular ingress-egress from Herons Circle only, and a homeowner’s association with an architectural control committee. Lot No. 26, Boulder Creek Plat No. 1 Re-Plat, is located on the south side of the Boulder Creek Drive right-of-way, at the eastern cul-de-sac terminus, and abuts Lot Nos. 8, 10, 12, 14, 16, 18, 20, 22, and 24 of the Boulder Creek Plat No. 1; is irregular in shape, having a frontage of 60 feet on the cul-de-sac, an easterly property measurement of approximately 521 feet and a southerly property line measurement of 1,052.93 feet; and is zoned as a Residence R-1 District within Austintown Township, Mahoning County, State of Ohio. Parcel 48-124-0-005 is located at the northerly terminus of the Herons Circle right-of-way; and is zoned as a Residence R-1 District within Austintown Township, Mahoning County, State of Ohio.

Zoning Inspector Crivelli read the applicant’s letter of request dated August 6, 2018 into the case record, referenced a 24” x 36” site plan entitled “The Landings at Boulder Creek”, the case mailing list, and four plat maps prepared by the zoning office. Also referenced was an e-mail approval from Captain Rick Milliron of the Austintown Fire Department regarding fire safety access. Also read into the case record was a letter of permission from Dan Alvarez allowing Mr. Koch to represent the Herons Land Company, LLC interests at the public hearing.

Zoning Inspector Crivelli read the following recommendation into the case record: **MAHONING COUNTY PLANNING COMMISSION:** Recommended **APPROVAL** of the request per the agenda at their meeting held on August 28, 2018.

Joe Koch Construction, 7068 Mahoning Avenue, Austintown, Ohio, 44515, stated the information was contained in the application letter and he would answer any questions the Board may have. Mr. Latone inquired about traffic and construction vehicles and how it would affect residents in the area. Mr. Koch stated no one would be affected any differently than when Herons was first developed. The intent was for this property to be developed into the Herons sub-division when it was purchased by Rick Salata. Mr. Koch submitted Exhibit “A” with the area of the proposed PUD highlighted within the northerly portion of the Herons development. Mr. Koch also submitted an 8’x11” color drawing of the preliminary Herons Development marked as Exhibit “B”. He stated the road will terminate unlike the original design wherein the road circled around. He described the differences from the original design of Herons and the proposed PUD as “innocuous”.

Mr. Latone inquired about sewer and water lines. Mr. Koch stated the water department will require the water line to be looped thru Boulder Creek. The line currently terminates at the top of the cul-de-sac. He described looping as circulating water from two sources. Electric is there. Sewer will be provided via gravity without the need for a lift station as originally planned for Herons which will alleviate future maintenance requirements on the sanitary system. Access will be from Herons as based on the original design with no cut-thru from Boulder Creek.

Mr. Marstellar inquired about future development. Mr. Koch advised Herons Phase 5 was approved. Zoning Inspector Crivelli advised preliminary approval has been given by the Mahoning County Planning Commission for 25 lots for “Herons Phase 5” associated with another developer for the extension of Herons Circle and the proposed Swan Drive cul-de-sac street and Mr. Koch’s PUD is proposed to tie into Phase 5 at the north end.

Kerry Cross, 120 Edgewater Drive, stated this area has PUD’s and referenced the condos and villas at the entrance of Herons Landing, Pine Willow to the north of Boulder Creek along with Lilac Lane and Cross Creek in the general area. This PUD will enhance the area and not be a negative. The PUD is more restrictive than most developments. This is a positive for Austintown.

No one else in attendance to speak in favor of the request.

Kimberly Smrek, 515 Crimson Court, gave the following statement:

I am addressing the Zoning Commission as the president of Heron’s Landing Master Home Owner’s Association. The residents of Heron’s Landing implore this commission to reject proposed Amendment 2018-03-Z in order to preserve the design of Heron’s Landing Development and prohibit Joe Koch Construction access to his planned unit

development district which is directly south of his previous designed Boulder Creek subdivision.

Per the Mahoning County Auditor's website, the property parcel referenced and owned by Joe Koch Construction has a property address listed at Boulder Creek Drive, not Heron's Landing. Further, this parcel is not landlocked preventing access and development of the proposed "Landings at Boulder Creek" via Boulder Creek Drive. The name itself suggests access from the well-known established development of Boulder Creek.

Also, according to the Mahoning County Auditor's website, Herons Land Company LLC, owner of the other referenced parcel in the amendment has not paid real estate taxes on that parcel since 2015. How can this developer request any type of amendment with unpaid monies due our county, township, and school district? Can this Commission be confident that the developer will have the financial means to develop this parcel and not leave our community with a road for the sole purpose of accessing Landings at Boulder Creek?

In closing, our community members are not opposed to the development of "Landings of Boulder Creek", we think it is a great sign the home market is rebounding and there is a need for new homes. We reject the proposed access to the property via Heron's Landing. The Heron's Landing future development according the developers I have talked to never included that parcel. We take great pride in our development as evident in our well-maintained boulevard, clubhouse, and enforced restrictions through our Home Owner's Association. They will not be part of our homeowners association and it has been made clear they want no part of it.

I have for your review the following documents to support our opposition to this amendment:

- 1) Petition requesting the Austintown Township Zoning Commission decline the Amendment in order to preserve the Heron's Landing development signed by the majority of our development;
- 2) A Heron's Landing development map;
- 3) Mahoning County Auditor record of Parcel No. 48-121-0-032.26-0 owned by Joe Koch Construction Inc. showing they are not landlocked but are able to access the parcel thru Boulder Creek Drive; and
- 4) Mahoning County Auditor record of Parcel No. 48-124-0-005.00-0 owned by Herons Land Company LLC depicting their outstanding real estates taxes.

Thank you for your time and consideration of our opposition to this amendment.

Zoning Inspector Crivelli marked the documents as Exhibit "C" and noted they contained 11 pages.

Mike Stelluto, 6054 Herons Circle, states we need more houses in the market two to three times our current median house price of \$95,000.00. He is not totally against increasing neighborhoods with elevated retail generating higher tax dollars for the community. He is against a parcel of land in Boulder Creek that can be made to attach to our development. It is confusing with the name. People will look at homes and wonder why they can't be part of our community. Its Herons Landing but technically its Boulder Creek. It looks confusing as if no one planned it and it looks a little crazy. The plot of land left empty on Boulder Creek was too loop around into this area, but we will have to wait for Mr. Koch's rebuttal. This will add more homes to Herons Landing where we have too many as it is. The other area that was part of Herons Landing was not part of the original Herons Landing and should be easily added to Boulder Creek, not Herons Landing.

Tom Stellars, 5900 Herons Boulevard, stated when Herons Landing was first a concept they asked to be allowed to enter thru College Park. The request was denied, thus, there was only one entrance into Herons Landing. This is a similar situation so the application should be denied.

Mathew Hoskins, 6001 Herons Circle, stated he is opposed to have the entrance thru Herons Landing.

Pat Julian, 5918 Herons Boulevard, stated he is opposed as he has been in Herons for 16 years. For 15 years he has listened to trucks coming in and out and every one leaks oil. There are spots and cracks all over the road. We expected this when we moved in. This is now a surprise to hear there will be trucks using the road. He is against the noise, the dirt, and the mud tis will cause.

Angela Ciarniello, 6066 Herons Circle, stated she built her house five years ago and choose Herons Landing because of the HOA and beautiful neighborhood. She is not opposed to Joe Koch building houses but is opposed to it not being part of the HOA. She is opposed to access from the neighborhood that all pay to keep beautiful. They have the ability to go thru there but are not paying for anything. She wants the record to know she is totally against it.

Dennis Hohas, 5860 Boulder Creek Drive, inquired about the effect the development would have on storm and sanitary sewer and inquired of the original plan for Herons Landing. He asked if the land would be used as a temporary access road for not just the storm and sewer lines but also for the development of housing. He has been at Boulder Creek for 17 years and during that time a PUD was developed behind him and he had to litigate and argue with the developer as they built a home directly behind him that was six feet higher than his property and every time it rained he received rain water. The owner eventually put in a retaiton pond and he wanted to know if that was going to happen to his neighbors across the street.

Steve Fish, 505 Crimson Court, stated he was against the request. It will dramatically change the integrity and character of Herons Landing. He asked the Board to ask Mr.

Koch why he is not willing to sit down with the HOA and address any of their concerns. Mr. Koch is circumventing it and working around it.

Celina Williams, 5861 Boulder Creek Drive, stated she is not against the construction of homes behind her but asked how much room will be left between her back yard and the start of the new property. One of the reasons they moved there was because of the beautiful woods behind their house. They moved there in 2015 and this is a shock and huge change from what they originally expected. She is completely against any type of cut thru from the cul-de-sac on Boulder Creek. She has four small children and they moved to their house because of the cul-de-sac and that would completely change what a cul-de-sac is.

Traci Stephens, 6001 Boulder Creek, stated she moved to Boulder Creek last year and always wanted a home with a creek in the back and woods. She is an outdoor girl who likes to be in the woods and the creek with her kids. She is not against building in Herons Landing. She asked if there would be a separate HOA. Zoning Inspector Crivelli advised that was what Mr. Koch was proposing. She advised Boulder Creek did not have an HOA and doesn't agree with changing the cul-de-sac but she loves her neighborhood the way it is.

Rich Kalosky, stated he lives in the villas and was at the meeting on Sunday and he opposes having people in an association behind us using lighting and so forth and it will be dangerous with no lighting. He does not know why Mr. Koch does not want to get on board and do the things we do in our community and we shouldn't have to put up with it because it will make our community far less safe.

Richard Rielly, 5833B Herons Boulevard, stated they moved to Herons 11 years ago and appreciated the self-contained community and original layout. He expressed concerns regarding an increase in volume of traffic with cars, vehicles, and construction equipment not mixing will with kids on bikes and scooters. There is another option available by using access thru Boulder Creek.

Dennis Hohns, 1377 Mulberry Run, approached the Commission holding his five-year old daughter in his arms and stated he is purchasing a home on Boulder Creek and is against access from Boulder Creek. If it becomes an access road he will probably move to Canfield. Don't ruin the neighborhood with an access road to the villas. That would jeopardize old people driving thru who can't see well and little kids on the street. Maintain the cul-de-sac on Boulder Creek.

Brad Bezot, 1613 Herons Circle, asked why Mr. Koch is choosing to add a longer length of road thru Herons Circle to the new development versus access via Boulder Creek. He further stated this will add 15 homes to Dave Hill's 25 new lots and add to the 65 homes we already have. He asked why Mr. Koch didn't he show any initiative to buy Herons properties that were in bankruptcy years ago?

Lori Stewart, 115 Covington Cove, stated she stands behind everything Kimberly Smrek stated and also in regards to access and the property being behind on taxes. She expressed concern for the safety of families and stated the Landings at Boulder Creek should be tied into Boulder Creek. There are many families and young children in our community and we have only one pool house with recent renovations paid from our HOA fees, which will likely be going up. Having new individuals using our boulevard which already gets littered, and it is amongst community members to clean it up occasionally, any extra traffic thru there is going to grow exponentially with litter, potholes, and everything, we are supposed to maintain. If he wants to build there it should absolutely go thru the established Boulder Creek.

Ms. Stewart advised her father was a well know builder and she visited construction sites watching him put in basements. From an economy standpoint, when the market pulled back it was felt in 2003 and 2004 well before 2008. With the things happening with GM and TJ Maxx it is something everyone needs to look at from an economic stand point. Can we truly sustain putting another 41 homes with a minimum price of \$200,000.00? I don't know if I can necessarily see the growth. That means empty lots sitting there becoming a nuisance. We pay too much money in our HOA fees to see the area go down. Let him build his last 15 houses with access coming from Boulder Creek.

Mr. Stewart stated the other builder should be required to join the HOA. Zoning Inspector Crivelli advised the township has no jurisdiction over HOA's. Ms. Stewart stated this should have never been worked between these two builders. With hardly any one knowing about it as they pushed it underneath or through a crack so none of us would know. I have a huge issue with that as I have grown up here and I have seen most of these houses being built and the basements going in and the Board, Joe Koch, and Dave Hill need to revisit and review this.

Zoning Inspector Crivelli spoke on the importance of homeowner associations and the problem with them fading away over the years and the lack of township jurisdiction to require them. He reviewed problems with other neighborhoods with retention ponds that have no homeowner's association to maintain them.

Ms. Stewart stated we need to look at the feasibility of building 41 more homes, and when they will be built, and if our economy can sustain it as well.

Vincent Smith, 141 Covington Cove, stated he offered no disrespect to Mr. Koch. He is a life-long resident and lives and breathes for Austintown and has four kids. He had the original plan for Herons which was an oval that cannot be connected due to wetlands. There is one way in and one way out which is appealing. Kids play on the street and everyone knows each other. Herons was designed for one neighborhood and one association. The entrance and landscaping are paid by the HOA. It is named Herons Landing. Herons is all one. The request equates to changing the neighborhood. If by example a PUD is associated with Eastwind, then the entrance should come from Eastwind, not Victory Hill. He has no problem with beautiful homes being built. If they are going to be associated with Boulder Creek then access should not come thru Herons Landing.

The original intent of Herons never included another association or another neighborhood.

No one else in attendance to speak against the request.

Zoning Inspector Crivelli asked Mr. Koch to address questions regarding storm water, sanitary sewer capacity, and the homeowner's association. Mr. Koch stated the sewer was installed around 1994 for the exclusive reason to access the property to allow for a gravity sewer. The wetland became jurisdictional by the Army Corps which changed the overall plan and landscape of all involved. The stormwater all flows downhill away from the Boulder Creek Subdivision. The high spot is across the street from Mr. Hohas house and then it all flows down. The wetlands are part of the storm water management and retaining it and draining off slowly to the bottom of Boulder Creek. There is a 40-foot drop from one end of the subdivision to the other. Drainage will not be an issue unlike Herons where there is wetlands for the residents bordering the property. Retention ponds will be required by Mahoning County to account for rooftops and pavement. The project will be designed and engineered to the specification of Mahoning County sanitary and stormwater regulations.

Regarding the homeowner's association, Mr. Koch stated this is America and it is a democracy and it will be up to the individual homeowners as the development evolves. It will be up to the new clientele to decide and he is not going to impose a homeowner's association. He stated he was never approached by anyone there and he did not want to impose what our concept is on a residential subdivision. He stated he was not aware of the total HOA other than they have one and he thought it was more associated with the villas and condos versus the single-family homes. If the new neighbors are welcomed at the bottom of the street then he sees no reason why they would not want to be part of it. That will be up to the individual home owners.

Ms. Smerk stated they have had several conversations regarding Dave Hill and Joe Koch becoming part of the homeowner's association. They can govern the homeowner's association due to deed restricted lots as initially created from the original plan. The HOA applies the resolutions and Herons Landing is one of the nicest HOA's in Austintown because we are active. We can't govern and restrict a property owner if they are not on a deeded restricted lot or part of the homeowner's association. She described the workings of the villa and condos associations which fall under the master association. It is important that everybody follows the guidelines.

Mr. Koch stated it would be up to the homeowners at a given time when the population would be suited to vote to decide if they wish to join. Mr. Smrek stated the homes would need to be constructed on deeded restricted lots like Herons Landing. Mr. Koch stated the warm and fuzzy feeling he gets does not lend one to want to be part of the existing association.

Mr. Latone stated the Commission would take a recess.

The Austintown Township Zoning Commission adjourned at 7:02 P.M.

The Austintown Township Zoning Commission reconvened at 7:14 P.M.

Mr. Latone inquired of Mr. Koch the reasoning of not wanting access from Boulder Creek. Mr. Koch stated the deal with the other developer provides sanitary sewer and coming thru Herons is the path of least resistance for developing. He acknowledged they can come thru from Boulder Creek but you will have the same objections from a different group of neighbors who don't want that and will state they moved into a neighborhood with a cul-de-sac. Mr. Koch referenced the subdivision regulations that will allow access from either sub-division and noted no hearings are required if your meet sub-division and zoning regulations versus a hearing for a PUD. He acknowledged there may be an argument for joining the homeowner's association but that is not the purpose of this hearing.

Mr. Latone asked if he would agree to a continuance to allow for a meeting to see if there is a happy medium on both sides. Mr. Latone acknowledged both Mr. Koch as being an excellent builder and the homeowner's association desire to preserve what they have.

Mr. Koch asked the objective of the meeting. Zoning Inspector Crivelli advised the Commission would like a meeting to occur with Joe Koch, Dave Hill, and Kim Smrek to see if there is any common ground regarding the homeowner's association issue. He referenced Phase 5 as not being part of the current homeowner's association and suggested a meeting of the parties may lead to the possibility that the new phase can join and the proposed PUD could eventually fall under the umbrella of the existing homeowner's association similar to the villa and duplexes at the entrance of Herons Landing.

Mr. Koch agreed to ask for a continuance as long as ultimately this is not part of a condition of approval. Ms. Smrek agreed to meet with Mr. Koch.

Zoning Inspector Crivelli reviewed the process for notice of the continued hearing and suggested anyone who did not receive a notice if he public hearing request one by e-mail or by contacting the zoning office. He also stated all the case documents are public record.

2018-03-Z-Koch: Motion by Mrs. Sovik to continue the case for Amendment 2018-03-Z.

Seconded by Mr. Marstellar.

Roll call vote: Mrs. Sovik – Yes; Mr. Marstellar – Yes; Mr. Swogger – Yes; Mr. Shepas – Yes; and Mr. Latone – Yes.

Zoning Inspector Crivelli advised that when the applicant is ready to move forward a continued hearing will be scheduled.

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Motion by Mr. Marsteller to adjourn the public hearing.

Seconded by Mrs. Sovik.

Roll call vote: Mrs. Sovik – Yes; Mr. Marsteller – Yes; Mr. Swogger – Yes; Mr. Shepas – Yes; and Mr. Latone – Yes.

There being nothing further to come before the Commission, the hearing was adjourned at 7:25 P.M.

AUSTINTOWN ZONING COMMISSION

Darren L. Crivelli, Zoning Inspector

APPROVED: _____
Ron Latone, Chairman

DATE: _____