

MINUTES OF MEETING
INDIAN HILL PLANNING COMMISSION

JANUARY 20, 2009

The regular meeting of the Indian Hill Planning Commission was held on Tuesday, January 20, 2009 at 7:30 p.m. in the Fire Department's Training room at 6475 Drake Road.

Members Present: Paul F. Madden
David T. Ottenjohn
Jane G. Koppenhoefer
Abbot A. Thayer

Members Absent: Richard C. Wiggers

Officials Present: Michael W. Burns, City Manager
David M. Couch, Assistant City Manager

Visitors Present: N. S. Satterwhite, 3527 Glen Edge Lane
Diane Douglas, 7400 Araconea Forest
Sherryl Sommer, 5836 Clearwater Drive
Curtis Satterwhite, 3527 Glen Edge Lane
Douglas Rowe, 431 Highway Avenue
Dr. & Mrs. Jonathan Rosenthal, 7956 Indian Hill Road
Stuart Tobin, Immerman & Tobin
Chung-Yi Niore, 9282 Kempergrove Lane
Jennifer Muench, 723 Indian Hill Road
Eric Muench, 723 Indian Hill Road
Shirin & Sourushe Zandvakili, 7950 Indian Hill Road
Brian Redden, 9133 Stony Creek Court
Christa Redden, 9133 Stony Creek Court

Chairman Madden called the meeting to order and asked for comments or corrections to the December 16, 2008 Planning Commission minutes. There being none, Mr. Thayer made a motion to approve the minutes. Mr. Ottenjohn seconded, and the minutes were approved by a unanimous voice vote.

Mr. Madden asks for anyone planning to speak on behalf of the following case, to please stand, raise their right hand, and be sworn in prior to speaking.

Item Number 1: Continuation – The Planning Commission will continue a request by Dr. & Mrs. Sourushe Zandvakili to appeal an Administrative decision permitting "Home Occupation" of an existing dance studio located at 7956 Indian Hill Road.

Staff Report: Mr. Burns notes that the Commission previously received a packet including the following information:

- 1) The original complaint from Dr. & Mrs. Zandvakili expressing their concerns about the operation and specifically focusing on the impacts of studio generated traffic on their safety and overall enjoyment of their property. The letter is dated June 5, 2008 and was received on June 9, 2008. This letter also included an opinion on the operation by the parents of a former student.
- 2) A June 10, 2008 response to the Zandvakili's explaining the procedural issues involved with an appeal, and advising that he would complete another investigation, and make a ruling, which then could be appealed by either party. This letter also advised that the investigation would be extended into the fall due to the fact that the classes are not held during the summer months. In regards to the appeal, the Zandvakili's letter dated June 5, 2008 indicates that they wanted to appeal at that time. The only thing they could have appealed at that time was an earlier complaint that was acted on in 2003. However, since there is a thirty day window on any appeal in an Administrative decision, there was nothing to appeal. Mr. Burns felt it was prudent to complete another investigation and reopen this matter for consideration.
- 3) A June 18, 2008 letter to the Rosenthal's explaining the complaint and investigation process and requesting specific information regarding the most recent five years of operation.
- 4) A series of letters, emails, and notes from current and former students and their parents written in support of the operation. These were all unsolicited by Village Staff. They were received during the course of the summer months and continuing through December 12, 2008.
- 5) A July 9, 2008 letter to Dr. & Mrs. Rosenthal requesting information that was previously requested on June 18, 2008, but not included in a July 2, 2008 letter submitting some of the requested information. This letter allowed some modification of the requested information in order to protect the identity of students who were minors. It was decided to use the student's initials rather than their name.
- 6) A packet of information filed by the Rosenthal's in response to Mr. Burns's July 9, 2008 letter indicating class levels and things of that nature during the preceding five year period.
- 7) A copy of the August 11, 2008 letter sent to all residences located within 1000 feet of the Rosenthal property on Indian Hill Road soliciting their comments on the studio use and traffic.
- 8) A series of letters and phone message notes received from some of the residents who received the August 11, 2008 letter. The response was limited, but all neighbors who responded indicated that they had no issues with the operation of the dance studio.

- 9) A copy of an interoffice memorandum summarizing verbal reports received from Lt. Dressell and Patrol Officers Cogliano and Schwartz regarding their observations of traffic entering and leaving the property during various class times in September and October, 2008.
- 10) Copies of Mr. Burns's October 15, 2008 letters to the Zandvakili's and Rosenthal's advising them of his Administrative determination that the current use (8-10 student capacity) met the provisions of Section 38.4 and also detailing the Administrative appeal process. Mr. Burns noted that the 28 year history of the operation was also a key element of his decision making process.
- 11) A copy of a letter to Dr. & Mrs. Zandvakili which included all information contained in the file of the subject property. This was a verbal request of Dr. Zandvakili.
- 12) A copy of the Zandvakili appeal received on November 14, 2008 and Mr. Burns's letter acknowledging the receipt of the appeal and setting the hearing for December 16, 2008. This letter also requested any data that former Assistant City Manager, Mr. Don Bisher, compiled during his 2003 investigation of the use. Mr. Burns explained that the file information was limited to Mr. Bisher's findings and letter. If there were any personal notes or data, it was not placed in the file. Unfortunately, Mr. Bisher passed away in early 2008 so there's no way of determining whether that exists anywhere.
- 13) A copy of my November 17, 2008 memo to the Planning Commission transmitting the record file as it existed at the time.
- 14) A packet of unsolicited information submitted by Mrs. Rosenthal for transmittal to the Village's attorney, Mr. Scott Phillips. This information was received on or about December 1, 2008.
- 15) A December 3, 2008 letter from the Rosenthal's requesting that the hearing be postponed to a later date due to their holiday vacation plans. A series of emails and phone calls subsequent to this request culminated in the continuation of the consideration at the December 16, 2008 Planning Commission meeting.
- 16) A December 8, 2008 letter from the parents of a student expressing their perception of the studio and traffic issues. Since this was received after the close of the investigation, this was not taken into consideration in making the Administrative determination.
- 17) A December 17, 2008 letter to Dr. & Mrs. Zandvakili confirming the continuance to January 20, 2009. This was copied to Dr. & Mrs. Rosenthal.
- 18) A CAGIS drawing of the area indicating the driveways and how they connect in that area.

19) Also included is a Staff report prepared by Mr. Couch in advance of this meeting.

Mr. Burns comments on his perception of the course of action the Commission can take on this issue. Mr. Burns states that the Commission, under the ordinance, has the responsibility to hear appeals regarding Administrative decisions made by the City Manager concerning the interpretation and enforcement of the provisions of the Indian Hill Zoning Ordinance. In this role, the Commission should hear both sides and any interested parties. The Commission has the ability to affirm, reverse, or modify the decision.

Mr. Burns details the Commissions options as follows:

- 1) If the Commission agrees with the appellant, the Commission may make a finding that the dance studio does not comply with the Home Occupation provisions of the Zoning Ordinance contained in Section 38.4 of the ordinance. In this case, the Rosenthal's would have the option of appealing the Planning Commission decision to Council, and ultimately to the Court of Common Pleas.
- 2) The Commission may also determine that the Administrative decision was correct. In this case, the appellants could continue their appeal to Council, and ultimately to the Court of Common Pleas.
- 3) The Indian Hill Zoning Ordinance does not specifically limit the scope of the Planning Commission in determining such matters, so it is also conceivable that the Commission could modify the Administrative ruling by placing additional conditions on the use to insure continued compliance with the Home Occupation provision of the ordinance. Any such modifications adopted by the Commission would be subject to appeal by either party.

In any event, the Commission is required to render a decision within thirty (30) days of the close of the hearing. Under this timeline, the Commission could render a decision tonight or defer until the February 17, 2009 meeting to complete the review and render a decision. There may also be a decision to continue the hearing in order to receive additional information on any related issues or evidence the Commission feels is required to make an informed decision.

Mr. Burns announces that Mr. Scott Phillips, legal counsel for the Village, is here to provide any legal opinions on the proceedings, help guide the Commission through the review, and any other questions or concerns of a legal nature.

Dr. Zandvakili comes before the Commission and states that the most important issue concerning this case is the safety of his children. He and his wife have seven and ten year old daughters that get off the bus at the bus stop each school day. Three homes share the drive that leads to Indian Hill Road. He and his wife are very concerned about the increased amount of traffic through the common drive area. He fears for the safety of his children due

to several incidents where drivers have driven recklessly through this area where the children walk after getting off the bus.

There are a number of cars driving to the dance studio including young drivers driving their younger siblings to their classes. There was even an incident where one young student drove her car into the ditch, which is documented by an accident report on file with the Indian Hill Rangers.

The drive area curves and is on a steep hill so it makes it difficult for children to see cars coming and for the drivers to see the children. Mrs. Zandvakili almost always picks the children up from the bus stop for this reason. On one occasion, the Zandvakili's older daughter was almost hit by a car coming down the hill while on her way home from the bus stop. Dr. Zandvakili made Mr. Burns aware of this incident.

On numerous occasions dance studio students take the school bus to attend class. Parents wait for their children to get off the bus and then take them to class, creating even more traffic.

Secondly, Dr. Zandvakili mentions that they moved to Indian Hill for the rural character of the area. Currently, when cars turn around after picking up their children from the dance studio the headlights shine into their upper and lower living room, dining room, and two of the bedrooms.

Dr. Zandvakili states that he was reluctant to come before the Planning Commission for this issue. He tried to resolve the problem by working directly with the Rosenthal's. Dr. Zandvakili wrote a letter to the Rosenthal's dated July 15, 2007 and kindly requested to meet with them to discuss these concerns. The Rosenthal's did come to the Zandvakili's home to discuss these issues. However, nothing was done to resolve the concerns. The Zandvakili's sent a second letter to the Rosenthal's dated August 1, 2007 proposing the following four items:

- 1) The Zandvakili's suggested that classes be held Monday thru Thursday from 5:00 p.m. to 7:00 p.m.
- 2) A recommendation that the Rosenthal's plant some type of greenery to shield the sweeping of headlights onto their property.
- 3) The Zandvakili's feel that the shared driveway should be maintained in proportion to use. He feels that since the Rosenthal's use the drive for business, having as many as twenty students a year, the cost of maintaining the drive should be negotiated according to use and put in writing.
- 4) Should an accident happen, due to the increased traffic generated by the dance studio, the Zandvakili's do not want to be held liable.

Subsequent to the August 1, 2007 letter, Dr. Zandvakili placed a call to Dr. & Mrs. Rosenthal requesting to discuss the matter further. Dr. Rosenthal said that he was watching television and would call him back. After a week or two of not hearing anything back from Dr. Rosenthal, Dr. Zandvakili made a second call to the Rosenthal's stating that he was anticipating a phone call back from Dr. Rosenthal so that they could discuss the issues at hand. Dr. Zandvakili stated that Dr. Rosenthal abruptly hung up the phone.

Dr. Zandvakili comments that with all that has taken place, he and his wife feel that they had no choice but to bring this issue before the Planning Commission.

Mr. Stuart Tobin, attorney for Dr. & Mrs. Rosenthal, comes before the Commission and explains that Mrs. Rosenthal is very passionate about dance and ballet. She started dancing when she was three years old, acquiring her education in France, Egypt, and the United States. When she was eighteen she started teaching and has been ever since.

In 1971 Dr. & Mrs. Rosenthal moved into their current home in Indian Hill. In 1981 Mrs. Rosenthal wanted to start a dance studio. She had a room in her basement that was 23' X 34' that she wanted to remodel and make into a dance studio. She met with the City Manager at the time and received approval to do so. She has been teaching since 1981 with as many as twenty-five students at a time.

Mr. Tobin expresses that Mrs. Rosenthal teaches students that want to take ballet to the next level. The University of Cincinnati has a dance program that students must audition to be accepted into. In one year, three of Mrs. Rosenthal's students were accepted into this program. Mrs. Rosenthal also had one of her students go to Butler University on a full dancing scholarship. Her students compete in competitions throughout the year. In twenty-five years, her studio has received two thousand two hundred ninety-seven trophies, one thousand sixty-six grand champion gold awards, three hundred seventy-eight choreography awards, and in 2006 Mrs. Rosenthal was awarded the National Teacher's Award of the year.

Mr. Tobin states that when Dr. Zandvakili requested that the times be changed for the start of the dance classes, the Rosenthal's did change the starting time from 4:00 p.m. to 4:15 p.m. Mr. Tobin notes that the busses drop off the students at 3:45 p.m., allowing them thirty minutes to walk from the bus stop to their house. In addition, Mrs. Rosenthal consistently stresses safety on flyers that are passed out to parents of her students.

Mr. Tobin comments that in 2003 there was a complaint regarding the dance studio. However, the investigation by Staff resulted in favor of the Rosenthal's. Mr. Tobin mentions that no other residents in the area have a problem with the dance studio.

Dr. Jonathan Rosenthal comes before the Commission. Dr. Rosenthal states that, for safety issues, the dance studio adheres to whatever schedule/guidelines the school system follows. For example, if school is closed due to bad weather, the dance studio is also closed.

Dr. Rosenthal also mentions that the dance studio hours were changed as requested by the Zandvakili's. He does not feel that the hours should have to be changed to even later due to the fact that it would cause even more of an inconvenience to students and parents. If practice does not start until 5:00 p.m., parents would possibly have to drive around from the time the students get off the bus until the time practice starts, students would have less study time, and dinner for the students would be much later in the evening. Dr. Rosenthal feels this would not be in the best interest of the students.

Mrs. Rosenthal, director of The Ballet and Modern Jazz Studio, notes that she has cut her hours of operation from 4:00 p.m. to 8:30 p.m. Monday – Thursday to only two hours on each of those days. Mrs. Rosenthal also notes that she currently only has ten students.

Renting a studio away from her home is not an option due to the cost. Mrs. Rosenthal states that she does not have enough income from the dance studio to rent another place. She mentions that some of her students pay less due to not being able to afford to pay the full rate. She states that she keeps teaching them because she loves what she does and wants to teach her students all she can and give back to the community by providing this service.

Mrs. Rosenthal points out that there have never been traffic problems, accidents, or a case of a child getting hurt in all of the twenty-eight years that the dance studio has been in operation. She also mentions that if she had family in town, she would have far more cars entering and exiting her property than the amount of traffic the dance studio generates.

Mr. Douglas Rowe, of Northern Kentucky, comes before the Commission and states that he has a twenty-seven year old daughter that teaches ballet. He states that many years ago his daughter attended the College of Conservatory Music and was not receiving what he feels is the proper training. He asked around the city for the name of a more reputable instructor and Mrs. Rosenthal's name consistently was mentioned. His daughter studied under Mrs. Rosenthal for about three and a half years. During this time, she received individual attention, was treated with dignity and respect, and learned the discipline needed to become a great dancer. Later, Mr. Rowe's daughter attended the Cincinnati Ballet School and auditioned for the Governor's School for the Arts and was one of only thirteen girls out of three hundred seventy-five accepted. After graduating, she was offered eight college scholarships. She ended up attending Steven's College which is rated number seven in the world of dance. Mr. Rowe credits Mrs. Rosenthal's instruction for his daughter's accomplishments. Mr. Rowe adds that when his daughter attended Mrs. Rosenthal's classes, safety was always stressed both in person and on written material the parents received.

Ms. Sherryl Sommer, a Cincinnati resident, states that her daughter attended classes taught by Mrs. Rosenthal many years ago. Ms. Sommer notes that her daughter attended classes when there were twenty or more students at the studio. Mrs. Rosenthal would have parents wait at the top of the hill until the younger class cleared the area so that the street didn't become so congested. Ms. Sommer closes by stating that her daughter graduated from the

University of Akron, majoring in dance. She credits Mrs. Rosenthal with much of her daughter's success.

Ms. Diane Douglas, of Amberley Village, states that her daughter danced with Mrs. Rosenthal in the 1990's when the larger groups of students attended class. She and her husband drove their daughter to and from class and never found traffic to be a problem.

Mrs. Naomi Satterwhite, of Cincinnati, informs the Commission that her daughter studied with Mrs. Rosenthal for ten years. Mrs. Satterwhite notes that she drove her daughter to and from class four days a week for ten years. Safety was a part of Mrs. Rosenthal's orientation, and was stressed throughout the year. Parents worked together to ensure that safety was a top priority.

Ms. Chung-Yi Niore states that her daughter is a current student of Mrs. Rosenthal's, and is in her fifth year of instruction. Ms. Niore recalls one occasion that she had to drop her daughter off early. The school bus was letting children off the bus at the time. Ms. Niore simply stopped and waited for the children to get to their driveways before starting down the hill. She feels other parents are just as cautious when children are involved.

Mrs. Jennifer Muench, residing on Indian Hill Road, states that her two daughters have been with Mrs. Rosenthal for two and a half years. Mrs. Muench feels that Mrs. Rosenthal's school offers a very unique, intense, study of ballet that they couldn't get from other studios.

Mr. Muench adds that he does appreciate the concern for the safety of the children. In addition, he wants to show appreciation not just to the dance studio but also to Indian Hill for allowing this dance studio to continue to positively impact the lives of young girls in the community.

Mr. Brian Redden comments that he has grown up in the area, and he and his family are very active in the community. Mr. Redden also has a daughter that is currently a student of Mrs. Rosenthal's and has been for the past six months. His daughter previously attended dance classes at Valley Tech Ohio for several years. When he and his wife decided to move their daughter to another school, they investigated several programs all throughout the city. Mrs. Rosenthal's dance studio was recommended to them over and over again.

Mr. Redden adds that he has a unique perspective in that he is a practicing attorney in the area. Knowing that this case was coming up, he has taken the time to look at the issues that affect this case. Mr. Redden feels that the only conclusion is to affirm Mr. Burns's findings that Mrs. Rosenthal's current operation is within the regulations.

Mr. Redden comments that his daughter has progressed in her ability far more during the time that she has been with Mrs. Rosenthal than she did in the past several years in a so called "pre-professional" program.

Mr. Redden also mentions that Mrs. Rosenthal has always stressed safety when going in and out of the driveway. The most cars Mr. Redden has seen while picking up his daughter on any given night is about five. Most nights there are only two or three cars in the area.

Mrs. Christa Redden states that her daughter was attending a school that put her under severe pressure. Since starting with Mrs. Rosenthal, she has been reassured and has developed far beyond what her parents expected.

Mr. Burns points out that there has been change in this neighborhood, and that was a factor in his decision. In 2003 an elderly couple lived where the Zandvakili's now live. At that time, there were not the same issues with the driveway as there are now. This is why Mr. Burns feels the current capacity of eight to ten students is reasonable given the situation in the neighborhood. Twenty-five students probably would not be reasonable at this time given the fact that the Zandvakili's have young children.

Dr. Zandvakili asks that Mr. Burns check with the Indian Hill School Transportation Department to confirm what time the bus arrives at their drive. Dr. Zandvakili notes that he has a letter stating that the bus arrives between 3:55 p.m. and 4:05 p.m. If it's raining or the bus is delayed for some other reason, this time could be even later.

Dr. Zandvakili states that it gets dark soon after 5:00 p.m. Therefore sweeping of headlights is an issue. He asks that the Commission visit his property on a night that class is taking place at the dance studio to see how his property is affected by these lights.

Dr. Zandvakili comments that he appreciates the passion that Mrs. Rosenthal and her students/parents have for dance. He mentions that his family is very passionate about dance also. Both of his younger daughters currently take dance lessons, and his older daughter auditioned and was accepted at CCM.

Dr. Zandvakili feels that the Rosenthal's dance studio does not comply with the Home Occupation provisions of Section 38.4 of the Indian Hill Zoning Ordinance. He also feels that the notion of risk and reward is extremely important. He states that it's not right for Mrs. Rosenthal to be rewarded for excellent instruction and passion for dance while he and his family pick up all the risk.

Dr. Zandvakili comments that items are sold through the dance studio. UPS delivers goods on a regular basis. Section 38.4 of the Zoning Ordinance makes it very clear that no merchandise is to be sold on the premises.

Mr. Douglas Rowe again addresses the Commission stating that Mrs. Rosenthal is an artist. She is not in this for the money. She does this because it is what keeps her whole. Mr. Rowe comments that if this studio is taken away from Mrs. Rosenthal, it will be a tragic loss to her and to the children.

Mr. Ottenjohn asks the Rosenthal's how many bedrooms they have in their home. Mrs. Rosenthal replies that they have four.

Mr. Madden explains that there's no question that the instruction offered by Mrs. Rosenthal is a quality service. However, the Commission needs to focus on the Home Occupation and the review that Mr. Burns has already done on the property.

Mr. Ottenjohn addresses Section 38.4, specifically the statement, "No traffic shall be generated by such Home Occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by conduct of such Home Occupation shall be met off the street and other than in a required front yard." Mr. Ottenjohn notes that typically a home with four bedrooms could have five occupants driving vehicles. He feels there should be a limitation on the number of cars that are visiting the site due to the Home Occupation.

Mrs. Koppenhoefer asked if the Rangers had a standard that they used while doing the review of the traffic as far as how many cars are acceptable for three homes on a shared driveway. Mr. Burns replies that the Ranger's were not using any certain standard. The Ranger's were asked to observe the property and see if there were any unsafe conditions generated by the traffic. They were also asked to see if there was any excess traffic in comparison with other properties. It was their opinion that this property did not generate any more traffic than the average residence in the Village.

Mr. Madden comments that the facts that hold the most weight for him are the following:

- The Ranger's have reviewed the site and found no traffic or safety issues.
- The dance studio was approved twenty-eight years ago and has been in operation since then.
- The 2003 letter of review showed no issues. However, there was a complaint filed, resulting in a total of two complaints being filed up to this date.
- Mr. Madden states that the number of cars is not a concern to him at this time.
- Mr. Madden notes that he does have concerns about the sweeping of headlights onto the Zandvakili's property.
- There is also a concern for the safety of children.

Mr. Burns comments that it is important to note that the 2003 complaint is different than the complaint before the Commission now. The complaint in 2003 came from an upset parent whose child was rejected from the class. This child/parent did not live in the neighborhood or even in the Village.

Mrs. Rosenthal offers to change the starting time of the classes to 4:30 p.m. However, she does not want to go any later than that due to interfering with the children's homework, dinner, etc.

After further discussion, Mrs. Koppenhoefer made a motion to reaffirm the City Manager's decision which includes a maximum capacity of 8-10 students. Mr. Thayer seconded, and the motion was approved by a roll call vote with all members in agreement.

Mr. Burns points out that the decision can be appealed by either party.

There being no further business to come before the Commission, Mr. Thayer made a motion to adjourn. Mrs. Koppenhoefer seconded, and the motion was approved by a unanimous voice vote.

Respectfully submitted,

Paul F. Madden, Chairman

ATTEST:

Michael W. Burns, Secretary