

TO: Raphael Morton
Cory Noland
Diana Hess
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FROM: Larry Magliozzi

DATE: June 20, 2020

SUBJECT: Planning Department

It's unfortunate that we were not able to meet as planned on March 24th. I'm not sure what you wanted to cover, but I suspect that IEC-related issues were foremost on your minds since you all, except for Cory, expressed your views to me before I retired. I initially hesitated on whether I should follow through with what you are about to read. But I would have brought all this up anyway.

I tried to be brief, but perhaps without much success, so please bear with me. I've been in public service for 41 years, beginning my career with the Area Plan Commission in 1979. I worked with three other agencies in that time – in Lake County (Illinois), Fort Wayne and South Bend. I mention this because in all those years I never experienced such a lack of respect and professionalism towards the public, the Planning staff, and me as the Planning Director as in these past two years.

Indiana Enterprise Center (IEC)

From the beginning, this project has been a public relations disaster for the County. This is unfortunate, because the position that the County finds itself in with the IEC was avoidable. The strategy being used by Bill, the Antero Group and Lehman and Lehman is irresponsible, highlighting the mismanagement of the planning process and their insensitivity towards the public. The result is a general mistrust of the County's intentions. Why Bill has been allowed to continue his tactics is inexcusable.

If planning for the IEC had been properly and professionally managed, an amendment to the comprehensive plan - reflecting a community consensus - would have already been approved and the IEC Area Management Plan adopted. In a discussion with a New Carlisle Town Council member, I was told that New Carlisle is not opposed to additional industrial development. They have learned to live with the current development and understand that it has benefited the Town. What they object to is the extent of the acreage proposed and the negative effect that it could have on the Town.

1. Involvement of the planning staff was minimized from the very beginning, excluding the Planning Director as a member of the IEC Executive Committee, and limiting contact with the consultants and their monthly working group meetings.
2. Planning staff was not involved in drafting the Antero or Lehman & Lehman contracts. Although these contracts were approved and paid for by the RDC, they did contain tasks affecting significant land use planning and zoning issues. This is an early indication that the Planning Department was thought to have little value in IEC planning. At several points in the process, Eric Neagu indicated that he should include us in a more meaningful way, but that never occurred.

3. As other consultants were hired to perform specific technical studies, planning staff was not invited to weigh in on what effect infrastructure options would have on future land use in the IEC. This includes initial ideas on land use patterns proposed by Chuck Lehman, first presented at the March 29, 2018 Steering Committee meeting. When Angela and I first found out that Chuck Lehman was contracted, we invited him to work closely with us. He enthusiastically agreed, but that never occurred.
4. On May 10, 2018 planning staff met with Chuck Lehman to discuss the land use concepts presented at the March meeting. We informed him that we were not entirely supportive of them and offered other options. Those options would have to include a specific area for industrial development, limited areas for commercial development and the balance to remain zoned as agricultural. Urban-residential style development would not be an option. Other concepts such as the open space preservation areas were valid and would most likely have to be incorporated as a requirement in the zoning ordinance. Staff informed Mr. Lehman that we were working on revisions to the industrial district.
5. To the above point, Staff offered to work with Chuck Lehman to develop a land use/comprehensive plan for the IEC area. Since New Carlisle was working on its own update to their comprehensive plan, the staff could help ensure compatibility between the two since both would need to be approved by the Area Plan Commission. There was no further communication.
6. The IEC plan was presented to a standing room only crowd at the June 21, 2018 Open House Meeting in New Carlisle. You are already aware of my reaction on the presentation made by Bill and Eric Neagu (email of 6/22/2018). Chuck Lehman presented the same land use concepts from March despite the planning staff's concerns, noted above.
7. From October 2017 through March of 2020, there were monthly Progress Update meetings managed by the Antero Group. Planning staff was not actively invited as a participant. Reports on these meetings are available on the County web site.
8. It became evident that the plan being drafted was a combined redevelopment master plan and a comprehensive plan. A redevelopment plan does not require Area Plan Commission approval. A comprehensive plan does. It's my opinion that Bill's strategy was to have a redevelopment plan with a strong land use component, bypassing the need for a comprehensive plan update.
9. As opposition of the IEC gained prominence, it became evident that this approach was not sustainable. At my request, I met with Bill and Chris Brown on November 15, 2018 to discuss the situation. They agreed that the strategy to incorporate a redevelopment plan and comprehensive plan as one document was not working and that the two should be separated. I offered to take the lead on the comprehensive plan effort and work with Chuck Lehman. Bill agreed, but never set that in motion.
10. The March Progress Update (see Point #7 above) notes a report by Chuck Lehman that he and APC staff were involved in meetings to discuss zoning processing and amendments to the Comprehensive Plan. None of these had occurred except for what was noted in previous points. And none since the beginning of this year.

11. The latest lack of judgement is the listing of five members of the Open Space and Agricultural Alliance (OSAA) as members of the Steering Committee of the IEC Area Management Plan. Not one had been approached to be on the Steering Committee. One of the five is Dan Caruso, a member of the Area Plan Commission. This simply defies any logical explanation.

I did not work directly with Bill when he was an economic development planner with South Bend, but I was a planner in the department. He had a reputation for not being a “team player”, working on projects without full supervisory awareness and approval. He skillfully deflects any contact with individuals or groups that would contradict or get in the way of what his goals are. This shows through his handling of the IEC planning process and the negative publicity that continues to be generated by his actions.

Merger - Planning Department, Board of Public Works and Economic Development

During the budgeting process in 2018, the merger was being “marketed” as a means of providing a more efficient “one-stop-shop” environment for the public, placing departments (which originally included Building and Health) that were part of the development review process under one umbrella organization. The first I heard about combining departments is noted below under Item #2, below. Prior to the time noted, there was no attempt to discuss with me the merits of such a fundamental structural change affecting the Planning Department. Neither Commissioner Kostielney or my future co-directors Bill Schalliol and Jessica Clark approached me.

In my opinion, what has transpired over the last two years was clearly an effort to transform and sideline the Planning Department to purely administrative functions, with minimal to no leadership role thereby undermining the authority of the planning staff and diminishing its effectiveness as an organization that would uphold solid planning principles. You now have, effectively, an economic development department, bypassing the County Council’s resistance to add economic development staff and led by four people who are the least forthcoming individuals that I have ever met.

1. Planning staff addressed many efficiency-related issues, instituting ground-braking improvements to the development approval process, all well-received by the development community and staffs of County agencies:
 - a. Assuming administrative responsibility for the Area Board of Zoning Appeals.
 - b. Assuming administrative responsibility of zoning administration (ordinance interpretations and violations).
 - c. Establishing the Project Advisory Team, a bi-monthly meeting for developers to collectively discuss projects with County staff and utility representatives.
 - d. Simplifying filings and associated paperwork to the benefit of petitioners.
 - e. Instituting the combined hearing procedure, where zonings and variances could be heard at the same Area Plan Commission meeting.
 - f. Developing closer ties with APC member jurisdictions.
2. I first became aware of a merger after the Council meeting of March 13, 2018, when a brief discussion between Commissioner Kostielney, Bill Schalliol and Frank Fotia was overheard by me and Angela in the lobby area of the planning office. They were visibly disappointed that an economic development position had not been approved that evening. *They noted that it was probably time to push forward with the merger.*

3. I believe that the Council on at least two occasions denied requests for an additional economic development position. When this failed on 3/13/2018, Jessica Clark filled one of her vacant positions by hiring Chris Brown, an economic development specialist. That position became a new economic development position in IPG.
4. Shortly after 3/13/2018 Commissioners Kostielney called a meeting with Bill, Jessica and me (I don't have a date in my appointment book on when this occurred, since it was not a scheduled appointment). Commissioner Kostielney informed us that the two departments and Bill's position were to be merged and that it was up to us to make it work. He did not elaborate. Upon reflection, Bill and Jessica did not appear to be surprised. I suspect that they knew about it. Evidently Frank Fotia also was privy to the plan since he was present on 3/13/2018.
5. Angela and I were never comfortable with the idea of merging the departments. I called several of my planning contacts and researched the organizational structure of surrounding planning agencies. Consensus was that having the two disciplines of planning and economic development in the same department was not unusual, *but that there is an overall director who has extensive administrative background or is a planner themselves*. The common theme is that economic development staff are not in a lead position:

South Bend - economic development is a part of DCI with a department director (formally James Mueller, Jeff Gibney and John Hunt among others).

Mishawaka - economic development is a part of Community Development with a department director (currently Ken Prince, a planner).

Elkhart County - economic development is a part of County Planning and Development with a department director (currently Chris Godlewski, a planner).

Elkhart City – Economic Development Department (separate from planning and zoning).

LaPorte County – Office of Community and Economic Development (separate from planning commission).

Tippecanoe County (APC) - economic development Commission not a part of the planning department.

Vanderburgh County (APC) - economic development Commission not a part of the planning department.

6. Under what management theory is a public agency run with more than one director? And then that agency is overseen by a three-member executive structure (Commissioners)? How efficient is that? I never saw an organization chart, or any analysis on how such a department would function relative to staffing, tasks and more importantly the rolls of the co-directors.
7. Following are highlights of the disrespect and unprofessionalism directed towards and experienced by the planning staff:
 - a. As noted above, the lack of professional courtesy by Commissioner Kostielney to discuss the merits of a merger or that a merger was being contemplated.
 - b. As noted above under the IEC heading, the lack of professional courtesy by Bill to integrate the planning staff in the IEC project. The Planning Director is not a member of the Executive Committee and has systematically been left out of most aspects of IEC planning.
 - c. At a November 2018 Home Builder's Association meeting, Bill informed those present that he would be the prime contact in the new department for development projects.

Representatives from two surveying/engineering firms that I talked to understood it to mean that it included subdivision and zoning petitions. APC staff has a long association with the HBA.

- d. There was a subsequent meeting of the HBA shortly after the merger where Jessica Clark also made a presentation on the new department and the various roles of the divisions. I was not aware that either of these meetings were to occur. It is understood that the HBA may invite who they wish, and that County staff may request a presence at HBA meetings. What is noted here is that the new department was to be managed by Bill, Jessica and me. One would think that such a meeting with the HBA would have been coordinated between the three of us. In my opinion, Bill and Jessica undermined my authority and value, sending a clear message to the development community that planning staff were no longer a viable part of the development process.
- e. In January of 2019, Bill recommended to the Town Board of North Liberty that Velvet Canada, a resident of South Bend and a member of the County RDC, be appointed to fill the Town's vacant position on the APC. I had no indication from Bill that he was going to propose that. In fact, Vicki Kitchen and I had a number of conversations about the vacancy, hoping to find either a Town or Township resident. She was pursuing one or two local residents to gauge their interest.
- f. At a Plat Committee meeting in February of 2019, Bill spoke in favor for approval of a final plat by the Bradford Shores developer. Not only did Planning staff not support approval of the plat, but prior discussions with the developer and their representative, Abonmarche, had made it clear that staff would not support it. The plat was approved by the Plat Committee and Staff appealed to the Plan Commission, where it was denied, I believe unanimously. Bill and Jessica, my fellow "co-directors", did not have the professional courtesy to discuss this in advance with me. When I questioned them a few days later, their response was that the plat was an economic development project and therefore merited approval. The fact that the plat violated several platting principles seemed of no concern to them.
- g. Bill attempted to get a variance on an agenda of the ABZA by talking directly to the administrative staff. This was weeks after the deadline and less than half an hour before the legal was to be submitted for the upcoming meeting. I had already informed Bill several days earlier that it was too late. It was put on the following month's agenda with no complaint by the petitioner. The variance was passed but the project has yet to move forward.
- h. Jan Fye was hired to assist in the organization of the new department. As a co-director, I was not informed of this, nor was I given a copy of her contract which would have identified the full scope of her tasks. As a business consultant, she never addressed the challenges of a department having co-directors.
- i. Bill contracted with Abonmarche to draft a development and land use plan for the 933 Corridor. I was not consulted on the scope of the RFP nor told of the hiring. In my opinion, the scope of the RFP could have been narrowed resulting in far less cost. A rough draft was presented to the planning staff shortly before I left. Generally, like the IEC plan, it was a redevelopment plan masquerading as a comprehensive plan.
- j. Bill contracted Lehman & Lehman to draft a comprehensive plan for the Town of New Carlisle. I was not consulted on the scope of the RFP. Shortly before I retired, I was informed by Town representatives that the Town was disappointed on the progress, scope, complexity and cost of the plan. In my opinion, the Town's current plan could have been updated at far less cost.

These tactics represent a basic lack of respect for those placed in positions of authority, disregard for teamwork, a complete lack of care for due process and good planning and a general insensitivity towards the public.

Thoughts Going Forward

I appreciate the fact that a number of people were disappointed to hear of my retirement. That meant a lot to me. Several years ago I determined that my target year for retirement was either 2020 or 2021 depending on when Angela and I completed our own organizational goals. But once the merger occurred, losing two experienced staff in Angela and Jenny, and facing the issues noted above, it pretty much took the spirit and energy out of me.

1. When South Bend announced its departure from the Area Plan Commission (and with that the Area Board of Zoning Appeals) questions were raised on whether there would be an over-capacity in the planning staff. This was most likely based on my response that South Bend-related tasks amounted to roughly 50% of the workload, measured against the published agenda items. The response to that is noted below in items 2 and 3.
2. Staff was already struggling with our ability to keep up with zoning violations, which we took over from the Building Department in January of 2018. Zoning violations were a lot more labor intensive than anticipated and require a lot of individual attention. As a result, violations were not being processed as they should have been. At the beginning of 2019, we were able to dedicate more time towards processing violations. We still had the challenges of developing a workable database and dealing with the effects of the merger.
3. I had also expressed that the planning staff would now have the capacity to work on long range planning projects such as revisiting the 2002 Comprehensive Plan and the 2005 Zoning Ordinance, both in need of major updates.
4. After Jordan Wyatt resigned, I was not permitted to fill his position. Commissioner Kostielney directed that the new AP Director would be in a better position to find a good fit. I found this insulting since the only person around the table at the time that had the depth of experience to hire Jordan's replacement was me, assisted by Ryan Fellows. Based on a list of IPG staffing needs developed by Bill and Jessica (again, I was left out of that initial discussion), I believe that Jordan's position will not be filled by a planner, based on the decision of Commissioner Kostielney noted above.
5. The Department of IPG cannot be led by or in any way overseen by an economic development professional, regardless of who he or she is. The current organizational structure is flawed, and most likely intentionally so. I encourage you to look at the inside cover of the initial draft of the IEC Plan. Bill is listed as the Executive Director of the Department of IPG. I don't believe that this is a typo and that it was the full intention of the architects of the merger to create a department run solely on the principles of economic development.

I strongly believe that the planning department, as currently identified in the County Code, needs to be reactivated and returned to its full independence. Planning, economic development and public works are certainly complementary professions, but neither one should have undue influence over the other,

which the current structure promotes. Although it is hard to argue that State law does not require a stand-alone planning department in order to meet the requirements of an Area Plan Commission, when the entirety of the law is taken into consideration, it is hard not to imagine that the law strongly suggests an independent planning department, and for some of the very reasons I've mentioned above.

In my humble opinion, the following should be considered:

1. Refund Department 32 as the County's planning department;
2. To perform the current five major tasks of the planning department (subdivision reviews, zoning reviews, variance reviews, zoning administration/violations and the daily contact with the public) a staff of **four planners is essential**;
3. Abolish the Department of Infrastructure, Planning and Growth;
4. Return public works to its former status as a separate department. There is no precedence to have public works as a part of a larger department or have a county engineer beholden to either a land use or economic development planner. It's a mystery to me why Jessica supported the merger;
5. Abolish the position of the Executive Director of Economic Development, transferring tasks to the position(s) noted below;
6. Planning department staffing:
 - a. Executive Director (manages all staff noted below)
 - b. Assistant Director (currently Senior Planner)
 - c. Planners – 2 (see item 2, above)
 - d. Planner, economic development – 1 or 2
 - e. GIS staff – 2 or 3
 - f. Code enforcement – 1 (part time)
 - g. Administrative staff – 1 or 2

Code/Zoning Enforcement

There has been considerable discussion on how to proceed with a code enforcement program. I've been involved in some of those with the following four challenges being of most concern:

- a. staffing
- b. cost, using the South Bend model
- c. what to enforce
- d. where to enforce

Violations typically fall under these categories:

- a. Junk and/or unlicensed vehicles – addressed with difficulty by the zoning ordinance
- b. General junk – consisting of "hoarding" situations and active buying and selling, and addressed with difficulty by the zoning ordinance
- c. Contractor yards – consisting of small-business contractors using their residential property to store vehicles and material, with more out there than reported.
- d. RVs, trailers and boats stored on residential property - addressed with difficulty by the zoning ordinance
- e. General property cleanliness – not addressed by zoning ordinance

On March 25th, I was in the office wrapping up some loose ends that I had planned on completing through my last day, March 27th. I had approximately 20 outstanding zoning violation files. In the scope

of 2 hours, I was able to bring all of them up-to-date and ready for the next step. My thoughts on when this discussion is picked up again:

1. A code enforcement program could be started with one, part-time position, maybe 24 hours per week. Limited office time would be required if the necessary technology is in place. You need one vehicle, one laptop and the software to connect to the County server.
2. Limit the environmental code violations. Start with South Bend's and Mishawaka's Code, and delete from there. The existing data base can help identify the most common violations as noted above.
3. Limit the geography to areas not zoned A Agriculture.
4. Residential properties have the majority of the violations. Violations on commercial, business or industrial properties are mainly zoning ordinance violations.

Aside from what I should described above, I still have competing thoughts on enforcement in general. Splitting enforcement between the four planning positions will take a lot of management discipline, and when one of those positions become vacant, enforcement will lag. That's why a part time person should be a part of the discussion.

I am open to still meet with you, if you so desire. It was a pleasure working for the County under your leadership and I appreciated your confidence in my leadership of the Planning Department.