

AREA PLAN COMMISSION OF EVANSVILLE AND VANDERBURGH COUNTY

Regular meeting held at 4:00 P.M. in Room 301
Civic Center Complex - Administration Building
Evansville, Indiana

September 11, 2008

ROLL CALL

Ms. Stevens: I would like to call the September 11, 2008 meeting of the Area Plan Commission of Evansville and Vanderburgh County to order. Will the secretary please call the roll?

Members Present:

Dan Adams, Anthony Brooks, Dewey Colter, Roger Herrin, K.C. Jain, Bill Jeffers, Lynn Lowe, Bill Pedtke, Tom Shetler, Jr., Erika Taylor, Stacy Stevens

Members Absent:

Jeff Korb, Michael Lockard

Area Commission Staff Present:

Bradley G. Mills, Executive Director; Janet Greenwell, Zoning Administrator; Donna Holderfield, Zoning Enforcement Officer; Joe Harrison, Jr., Counsel

APPROVAL OF MINUTES

Ms. Stevens: Is there a motion to approve the August minutes? (Motion was made and seconded.) The minutes of the August meeting are approved.

REZONINGS

Ms. Stevens: For rezonings, it takes seven affirmative votes to recommend approval of a petition or seven negative votes to recommend denial of a petition. In the event that there are not seven votes, it still goes forward to the City Council or County Commission with no recommendation.

The Area Plan Commission has established the following guidelines to be followed for both rezonings and subdivisions. Mr. Mills will begin each presentation. As each case is called, the petitioner and the remonstrators who intend to testify will please stand and be sworn in at the beginning of the process. If your name is not on the petition, those who

plan to testify need to please fill out the sheets in the back of the room. All testimony must begin by stating your name and address for the record.

The petitioner or person appearing for the case being heard will have a maximum of 10 minutes for the presentation of evidence, statements, and arguments in support of the petition. Then there will be a total of 10 minutes for the remonstrators. This testimony will be followed by a five minute rebuttal period for the petitioner as a summation of the case. Any request for additional time must be voted on by the Board. A timer will be used to help enforce the time limits. Both petitioners and remonstrators should organize their testimony to adhere to these guidelines.

When there is a group of individuals remonstrating against a petition, we strongly encourage the group to designate a spokesperson. If it is necessary for more than one remonstrator to speak, the group should meet out in the hall before the Area Plan Commission discussion of the agenda item, to coordinate the information presented, so that each speaker addresses a different issue of concern. In order to expedite the meeting, remonstrators should refrain from repeating the same concerns already expressed by another speaker about a particular development proposal. The Plan Commission appreciates the cooperation of all participants with these guidelines.

If the Commissioners have questions about issues that we feel have not been sufficiently addressed by the applicant, we have the option to request a continuance until the information needed to sufficiently answer our concerns is available or provided by the applicant or technical staff.

The City rezonings considered tonight will be heard by the City Council on October 13, 2008 at 5:30 p.m. in Room 301. The County rezoning considered tonight will be heard by the County Commission on September 16, 2008 at 5:30 p.m. in Room 301.

Now, let's move on to the first rezoning petition on the agenda tonight.

Mr. Harrison: Mr. Mills, do you swear or affirm that the testimony you will give tonight is true and accurate so help you God? (Mr. Mills has been sworn in.)

CITY REZONINGS

Docket No: 2008-23-PC R-2008-12 Petitioner: Larry E. McCrary

Address: (Complete legal on file.) 331 Hunter Drive

Nature of Case: Petitioner requests to rezone from an R-1 zone to a C-4 zone with a use and development commitment.

Mr. Mills: Larry McCrary is requesting to rezone his residence located at 331 Hunter Drive from R-1 to C-4 with a use and development commitment. The use and development commitment included as part of this rezoning petition limits commercial use to breeding of Shih Tzu dogs, with no more than 22 adult dogs at any one time. This petition was continued from last month's meeting to allow amendment of the use and

development commitment. This site is located in a residential subdivision. Mr. McCrary was contacted by staff after complaint(s) of a dog breeding kennel at this address. The zoning code defines a boarding/breeding kennel as a premise on which four or more small animals at least four months old are kept. The kennel requires Special Use #25 approval in the C-4 district. This is a request to rezone the residential lot to bring the current kennel use into compliance with zoning regulations. If approved for the C-4 zoning classification, the existing residence on the site will become a legal nonconforming use subject to restrictions and limitations of legal nonconforming uses. Typically, residences that are non-conforming to current zoning laws often experience difficulty when attempting to secure financing and/or insurance. Many non-conforming residences are being rezoned to residential classifications to facilitate sale of the site. The use and development commitment is included with this rezoning request that limits the breeding kennel for up to 22 dogs for the petitioner's use and operation only, states there will be no additional structures, and states that the petitioner will maintain facilities in compliance with Evansville Animal Care and Control major breeding permit. This site on Hunter Drive is located at the terminus of the cul-de-sac of a residential subdivision. Surrounding the site is a completely residential neighborhood. The only access to the site is from the existing single-wide driveway on the Hunter Drive cul-de-sac. The Comprehensive Plan discourages spot zonings, encouraging development in those areas best suited for commercial development by virtue of their contiguous location and availability and adequacy of public facilities, services, utilities, and parking.

Mr. Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Those persons have been sworn in.)

Mr. Shively: My name is Les Shively. With me here today is INAUDIBLE. I will have to say this is one of the more unusual rezonings I have been involved in. At first blush, it probably seems unusual and odd to you as well. Let me give you some background to put this in context to make more sense. Larry has lived here for 26 years. He has been raising and breeding Shi Tzu puppies. I will start with a picture of what the puppies look like. He hasn't had a problem for 26 years. By the way, he is separately licensed by Animal Control. He has to be licensed and inspected by them on an annual basis. Apparently a complaint has been made to the Plan Commission. That is why we are here today. We wanted to find out how we could bring this site into compliance. Staff told us we needed to bring it to C-4. It is not my client's desire to have a carte blanche C-4, nor I'm sure it is of the neighbors. So we have had a very comprehensive use and development commitment which would limit, if approved, would only allow him to continue what he has been doing for 26 years. That is it. No new buildings or structures. He would have to continued to be monitored by the Animal Control Board. At the time that Larry no longer owns the property or ceases operation, he has to take the affirmative action to rezone it back to the R-1. So this won't continue beyond Larry's ownership or lifetime. If he decides one day that he is not going to do it, he will have to rezone it back. That is one reason we delayed from last time. It was an oversight on my part. That was always Larry's intention. I was out there yesterday. You cannot see the area where the dogs are kept. You can't even hear the dogs. There has been a lot of misinformation about this

application. Let me give you the straight scoop here. INAUDIBLE...AWAY FROM THE MIC. We realize this is an unusual situation, but Larry has gone to great lengths after being contacted by the Area Plan Commission, to do this rezoning petition and to explain to the neighbors what he is doing and the limitations. INAUDIBLE-AWAY FROM MIC. I would be happy to answer any questions you have at this time.

Ms. Stevens: Are there questions for the petitioner?

Mr. Shetler: How much traffic is generated per day?

Mr. Shively: Virtually none. Occasionally someone will come to pick up a pup.

Mr. Shetler: Is he selling them retail or wholesale?

Mr. Shively: Retail. When I was there yesterday on the premises, it is kind of a very personal type business. In some cases, the dogs are delivered to the people who purchase them. He has the reputation of quality dogs.

Ms. Stevens: You said that Mr. McCrary has lived there 26 years. How long has he been breeding?

Mr. Shively: The entire time.

Ms. Stevens: Has he had as many as 22 dogs there?

Mr. Shively: That is his constant number.

Mr. Jeffers: So approximately 22 adult dogs are housed there at this time.

Mr. Shively: I would say.

Mr. Jeffers: How many females? How many puppies does a female normally have?

Mr. McCrary: Five at the most.

Mr. Jeffers: How many adult females are having puppies per year?

Mr. McCrary: INAUDIBLE

Mr. Jeffers: I am just after the breeding females rather than anything else. So you might have 30 additional puppies per year and you move them pretty quickly?

Mr. McCrary: INAUDIBLE

Mr. Jeffers: I have a Shi Tzu. That is about the sweetest dog I have ever had. I am familiar with many Shi Tzus. I want to say, if you just had a few dogs there that you

occasionally bred and sold, I wouldn't have any problem with it at all. I am looking at 18 female dogs, a major breeding operation. I saw a couple of your dogs at the groomers the other day. You breed beautiful dogs. One thing that concerned me, I noticed you were washing cages out in your driveway. While we currently don't have an ordinance regarding dog waste, etc., there are other communities that have passed ordinances about dog parks, kennels, etc., having to be greater than 150 feet from the closest public drainage way. That is to protect the public from E coli. We have IDEM and EPA pushing us to adopt such regulations. I was a little concerned about you washing out your driveway into the sewers.

Ms. Stevens: Thank you Mr. Jeffers. Are there any other questions? Are there any remonstrators? Ideally, keep your comments new and different.

Mr. North: My name is Bob North. I live at 330 Inwood Drive. I am on the back side of Mr. McCrary's property. We have lived there five years. I have a three and half year old daughter. I can tell you 22 barking dogs at 3:00 a.m. is not conducive. I have made complaints to Animal Control. This is not a personal attack on Mr. McCrary. I have no intent to cause him harm. I want to see him do whatever he needs to do, but we don't want barking dogs. Along with that, I will tell you that the spot zoning INAUDIBLE. It will affect the property values. We have traffic in and out. It is not a through street. We feel that if the C-4 were approved, it would be detrimental to the neighborhood.

Mr. Jeffers: You live in the house with the gray roof? The house next to you to the west is for sale.

Mr. North: INAUDIBLE

Mr. Jeffers: Is there any connection with the intended use as far as that house being for sale?

Mr. North: INAUDIBLE

Mr. Jeffers: I am trying to narrow it down. Has the person who owns the house ever told you they couldn't sell it because of the current use there?

Mr. Shetler: You have storm sewers out there?

Mr. North: INAUDIBLE

Mr. Shetler: Open drainage ditches and then it eventually goes down Weaver Road.

Mr. North: INAUDIBLE

Mr. Harl: INAUDIBLE But beyond that, I want to talk about some animal issues. These photos are recent. To me, I wonder about the facilities. If you can't keep the dogs maintained when breeding, what would that lead to?

Ms. Stevens: Are there any questions?

Mr. Kuhne: Larry Kuhne, 331 Inwood. We have lived there 10 years. There are barking dogs constantly. It just goes on and on. Another thing that has been happening, they have been walking these dogs, up to eight of them. INAUDIBLE Also, when they are doing that, they come in our yards to go to the bathroom. We have had dogs running loose in our yards. We have seen six of them at a time.

INAUDIBLE MEMBER: INAUDIBLE Is that plausible, or who regulates that? Let's say 10-15 years from now, they leave that spot. Who would know whether it goes back to R-1?

Mr. Mills: The property owner would have to initiate it to be rezoned back. It won't automatically revert back. It would be up to us to enforce it. We will have it in our records.

Ms. Stevens: It would be difficult to get a mortgage with it being C-4. So that would be a trigger.

Mr. Adye: My name is Wallace Adye. I live in the house you were discussing for sale. I don't know that the noise the dogs make has made a difference or not. But I have lived there 50 years and there is a lot of noise from those dogs day and night. They get out very frequently. I am trying to sell the house. I would hate to have to tell someone it is being rezoned and there are that many dogs there.

Mr. ?: Has your night sleep been interrupted by this noise?

Mr. Adye: I am deaf, so it doesn't bother me. My wife was there for about two or three months and she could hardly stand it. The dogs barked at night too.

Ms. North: My name is Susan North. I live at 330 Inwood Drive. I thought I should point out that the American Kennel Club suspended Mr. McCrary's AKC privileges in 2006. they told me the details were in the Gazette June 2006 issue. He was suspended because of gross violations and they gave him every opportunity to correct the problem which he did not do. He is not due for reinstatement until 20??

Ms. Stevens: Thank you.

Mr. Colter: You say he is not due for reinstatement, does that mean then that AKC has suspended his license until that time?

Ms. North: They are not a licensing organization from what I understand. They have suspended his privileges and he cannot register any of his dogs as AKC.

Mr. Colter: Does that mean he can or cannot breed?

Ms. North: Well, anybody can breed, but they can't be AKC pups.

Mr. Jain: Do you know the reason they cancelled the privileges?

Ms. North: No, they told me I could read about it in the AKC Gazette, which I have not found yet.

Mr. Jain: So you don't know the reason why they suspended it?

Ms. North: No. But they said they had given him every opportunity to correct them. She said that may be months. Also, I think that you may have noticed I was the one who placed the petition on your desks and that petition has 112 signatures of people in the area that are against the rezoning. On the last page, I marked where those people live in the area.

Mr. Hill: My name is Vince Hill. I live at the corner of Inwood and Stringtown. One of my concerns is the traffic. Inwood is not a maintained street. It is hard for two cars to pass on it. They never clean the streets. That is my main concern.

Ms. White: My name is Brenda White. I do not reside in that neighborhood. But my daughter and grandchildren do and I have stayed overnight in that neighborhood. My address is 624 S. Norman Avenue. I did not plan to speak, but there is something I am concerned about. I am a dog lover. Do any of you know how much care it takes to take of one dog properly? I would like to have a visual from each of you how much time, effort and money it takes to take care of 22 dogs properly? I question if they are being taken care of properly. They have run loose numerous times.

Ms. Wright: My name is Debra Wright. My mother lives to the immediate west of this property. She is in agreeance with most of the concerns that have been stated. There are two that haven't been brought up. You talk about runoff water. There is water that runs off Mr. McClary's property into my mother's back yard and into the northeast corner of her house. So she is getting a lot of that. In the front of the house, Mr. North stated the water runs down the driveway into a ditch. It is not maintained by the County and hasn't been updated for many years. The water has been flowing freely across the street. Her second concern is she does not have a dislike for dogs, but I can tell you from my own experience, having stayed at her home, when the dogs are running the street, they come in her yard, they come up to her front door. She has even started carrying mace with her. If one of these dogs nips her and she falls, that is going to be a problem. My mother's house is in the process of going up for sale. She has lived there for 45 years. The market is in the dumps right now. Having this is not going to help her by any means. Parking was brought up. That is a whole other issue. Mainly I am concerned about the dogs barking and running and the water runoff.

Mr. Shively: I have no idea why we are all here today after 26 years of Mr. McCrary living there. Mr. McCrary has been a good neighbor. The best evidence of that is the petition

we gave you of the people on Hunter Drive closest to this property who know exactly what he does and how he takes care of his property and his dogs. The AKC has to do with pure breeding issues and things of that nature. In terms of safety and care of these animals and cleanliness, they have a permit through 2009. INAUDIBLE...AWAY FROM MIC. I want to show you the notes ...INAUDIBLE He has been there 26 years. He is an older gentleman. It would be very hard for him to relocate and put this somewhere else. This is an unusual rezoning, but after Mr. McCrary moves or sells this property, it is not going to be C-4. It will have to be rezoned to R-1. If you look at the use and development commitment, it says it runs with the land and is binding upon all parties, if somebody buys it, they will have to rezone it. That is the only way we could do that. No one is trying to get a commercial advantage here. He doesn't want to do anything different than what he has done for 26 years. You have heard a lot of speculation about noise. In 26 years, this is the first we have heard about it. Let me show you something, about the dogs running loose, INAUDIBLE-AWAY FROM MIC... This is the home immediately to the north who signed a petition in favor of this rezoning. Is this a perfect situation? No. He is in a tough spot. We tried to find some other way to preserve 26 years and do it in a manner that doesn't affect them negatively. We don't believe this will change anything in the neighborhood. We appeal to you to give this a favorable recommendation.

Ms. Stevens: Are there any questions?

Mr. Jain: How big of a house do you have?

Mr. Shively: 3,000 square feet.

Mr. Jain: Are the dogs kept inside most of the time?

Mr. McCrary: INAUDIBLE I put the dogs in every night. I stay up all night to make sure there is no barking going on. The dogs are in the kitchen with me. I sleep with about seven or eight of them. They are well taken care of.

Ms. Taylor: Are you wanting to put a commercial sign on your property?

Mr. McCrary: No. Nothing will change.

Ms. Taylor: Does it restrict signage in the use and development commitment?

Mr. Shively: Not specifically. INAUDIBLE

Ms. Taylor: He could. Do you have any employees that work with you?

Ms. Stevens: Have you always had 22 dogs?

Mr. McCrary: Yes. I have had two divorces. INAUDIBLE...

Mr. Jain: So you are the only one who takes care of all the dogs and you don't sleep at night?

Mr. McCrary: I finally lay down about 8 in the morning when I know everybody else is gone. Those dogs don't bark and keep anybody up.

Mr. Jain: It is amazing you take care of 22 dogs all alone.

Mr. McCrary: They are well taken care of, all up to date on their shots. I wonder what people with more than four dogs are going to do? The rescues are all full.

Mr. Jain: You heard somebody saying, it is hard to take care of one or two dogs. I know some of your neighbors say they are okay with that. But do you walk them around your neighborhood?

Mr. McCrary: About two blocks one way and about six blocks the other way.

Mr. Shetler: How many dogs are kept outside at night?

Mr. McCrary: Five dogs.

Mr. Shetler: We also have a Shih Tzu. I can't say it barks every night or on a regular basis, but I don't live very far from you and it is all wooded. We have raccoons and fox through there. Every time that happens and they get a whiff of that, I have to go downstairs and shut off the rooms and keep it quiet. There is a reason why we have zoning classifications. We try to separate residential from commercial activities. Sometimes it is because traffic, noise, sometimes of lights at night. A lot of reasons we try to separate that. This is solely a residential neighborhood. It sounds to me like the reason we have a zoning ordinance is because we don't need the noise. But I am also concerned about the drainage issue. I live down on Weaver Road. The Weaver ditch goes through our property there. I am concerned about what is going through there. I think that is another reason we have zoning laws out there, to help protect the residents. I am going to be voting no for it. I know you are in a predicament. I am sorry for that. But I don't think it is good zoning.

Ms. Stevens: Is there any more discussion?

Mr. Jain: What happens if the rezoning is denied? Does he have to move or shut down his business?

Mr. Mills: He will have to relocate some of his dogs to be in compliance. He can have three adult dogs. If he does not go into compliance, then we will have to take him to court.

Mr. Jeffers: Is our zoning code right now that anyone with more than three adult dogs on a residential parcel out of compliance?

Mr. Mills: In a residential district, if you have more than three dogs, that is correct.

Mr. Jeffers: How about cats, canaries, parrots, snakes? Is that what you are saying?

Mr. Mills: Small animals. I think we are referring more to dogs and cats.

Mr. Jeffers: What does the code say?

Mr. Mills: It says small animals.

Mr. Pedtke: Do we have anything else like this? Anything like this in the County?

Mr. Mills: We have kennels in the County. But the kennels meet the code requirement for commercial property. Typically they have stalls for the animals and it is ran as an operation. It is not a residence.

Mr. Jeffers: What really concerns me in this case, anybody who has Shih Tzus knows other people with them. They are just about the least offensive dog I have ever known. You almost have to teach them how to bark. They do bark when an animal comes in the yard. That is true. They do not bite. This man obviously is a gentle person who loves his dogs. I am concerned. I am probably going to vote no because I am surprised at the number of dogs being kept at this location without it being zoned commercial. But I am very concerned about what will happen to these dogs when the City Council votes no and they have to be disposed of, either to new homes or however they are disposed of when they are not wanted.

Mr. Herrin: We are talking about zoning in the neighborhood, you are talking about this little dog. What if this person was breeding 18 pit bulls? Would you have a different answer?

Mr. Jeffers: I would have never asked a question tonight if I knew they were raising pit bulls.

Mr. Herrin: So we are talking zoning and animals and kennels, not really about how good the little dog is.

Ms. Stevens: Any other questions? Is there a motion for approval? (Motion was made and seconded.) Call the roll.

Dr. Adams: (During roll call.) I love dogs. I can't conceive that one person could take care of 22 dogs adequately. I have known Dr. Wallace Adye for 25 years. If he says there is noise there, there is noise there. No.

Mr. Jain: (During roll call.) Mr. McCrary is a very gentle man and he takes care of his dogs. But 22, that is too many. So I vote no.

Ms. Stevens: (During roll call.) I also vote no. I am glad you had 26 good years there. I am surprised that nobody filed a complaint before now.

Ayes: None

Nays: Dr. Adams, Mr. Brooks, Mr. Colter, Mr. Herrin, Mr. Jain, Mr. Jeffers, Ms. Lowe, Mr. Pedtke, Mr. Shetler, Ms. Taylor, Ms. Stevens

There being 11 negative votes, Docket No: R-2008-12 goes forward with a recommendation for denial.

Docket No: 2008-27-PC R-2008-16 Petitioner: Ralph E. and Judith A. Koressel
Address: (Complete legal on file.) 114 E. Louisiana Street
Nature of Case: Petitioner requests to rezone from a C-1 zone to a C-4 zone.

Mr. Mills: Ralph and Judith Koressel are requesting to rezone their property located at 114 E. Louisiana Street from C-1 to C-4. This is a 0.1 acre lot located on the north side of Louisiana Street, just west of Heidelberg. Access to this 35-foot lot is through an existing gated commercial access drive immediately east of the site. No additional access should be required for the use of this site as an expanded parking and storage area. No new access should be permitted. Evansville Metropolitan Planning Organization recommends that full access (entrance and exit) be limited to Louisiana Street, the existing access on Heidelberg should be restricted to a one-way, exit-only, and the off-street parking shown on Louisiana Street should be removed and "no parking" signs should be installed. Mr. Koressel was contacted by staff after complaints of violation on this site. The effect of this rezoning petition is to bring the existing use of this site into conformance with zoning code use requirements. The zoning ordinance requires that parking lots for commercial vehicles adjacent to residential districts must provide minimum 10-foot open and unobstructed yard adjacent to the residence and a minimum 8-foot solid screen fence along the property line adjacent to the residence. The existing use is not in compliance with these requirements. The Future Land Use Map of the Comprehensive Plan designates this as an area of residential development. The site is located in an older area of very mixed zonings and uses, predominantly residential with commercial uses generally located at the intersections. Mr. Koressel's existing C-4 zoned electrical contractor shop is located immediately adjacent to this site at the northwest corner of Louisiana Street and Heidelberg Avenue. This rezoning is a request to expand the parking and storage area of this adjacent business.

Mr. Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Those persons have been sworn in.)

Mr. Koressel: My name is Ralph Koressel. I own some commercial property at the corner of Louisiana and Heidelberg. I have been associated with that property for 28 years. In 1980, Hardy Electric started a business there. I was president and CEO. In 1987, I left and went to Walnut Center and started Premier Electric. I sold the business in

2001, but I still own the property. When I bought the property from the bank, I was told the property was properly zoned. Last month I received a notice from the Plan Commission that I was out of compliance, that the westernmost lot was zoned C-1. So that is why I am here today.

Ms. Stevens: Are there any questions?

Dr. Adams: If I understand it correctly, this piece of business property is not sectioned off and...INAUDIBLE

Mr. Koressel: No. It is one joint piece of property.

Mr. Colter: When you bought this from the bank in foreclosure, was that lot fenced?

Mr. Koressel: Yes. Just like it is now.

Ms. Stevens: Are there any remonstrators? (None.) Is there a motion for approval? (Motion was made and seconded.) Call the roll.

Ayes: Mr. Brooks, Mr. Colter, Mr. Herrin, Mr. Jain, Mr. Jeffers, Ms. Lowe, Mr. Pedtke, Mr. Shetler, Ms. Taylor, Dr. Adams, Ms. Stevens

Nays: None

There being 11 affirmative votes, Docket No: R-2008-16 goes forward with a recommendation for approval.

Docket No: 2008-28-PC R-2008-17 Petitioner: E. Eugene & Beverly I. Purdue

Address: (Complete legal on file.) 2813 and 2909 Covert Avenue

Nature of Case: Petitioner requests to rezone from an R-1 zone to a C-4 zone with a use and development commitment.

Mr. Mills: Eugene Purdue is requesting to rezone the properties located at 2813 and 2909 Covert Avenue from R-1 to C-4 with a use and development commitment. The two residential lots together create a 0.59 acre site proposed for speculative commercial development. The C-4 classification allows the highest-intensity commercial uses. Many of the uses requiring the C-4 zoning classification are considered inappropriate adjacent to residential. A use and development commitment is included as part of this petition which states that the site will not be utilized for an adult book store, pool hall, night club, tavern, or after hours dance club. These two residences are located on the south side of Covert Avenue, midblock between Hawthorne and McConnell. The site includes two R-1 zoned residences, each with an existing residential driveway. Mr. Purdue's site plan does not detail commercial access or parking. A site plan must be designed and submitted for Site Review approval in compliance with standards established in the Comprehensive Plan and the Evansville MPO Access Standards Manual. The piecemeal development of small lots to commercial use along major streets causes extraordinary pressures on the

transportation system. This site is in an area designated by the Comprehensive Plan as an area of residential development. Since the mid >80's there have been a number of commercial rezonings of properties fronting on Covert Avenue. Adjacent north across Covert is a C-2 zoned McDonalds restaurant and multi-tenant retail buildings. A C-1 zoned residence is adjacent to the west, and properties adjacent to the east and south remain residential. The Comprehensive Plan calls for the preservation of the neighborhood residential environment through maintenance of buffer areas between residential and adjacent commercial uses. If approved for commercial development, adequate buffers and green areas should be maintained to lessen the impact of commercial development on the remaining residential. When commercial development occurs immediately adjacent to residences, a minimum 10-foot open and unobstructed yard must be provided adjacent to the residences (east, west, and south), and a 25-foot green front yard setback along Covert Avenue must be maintained.

Mr. Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Those persons have been sworn in.)

Mr. Purdue: My name is Gene Purdue. I was born and raised at 2909 Covert, but I presently live in Noblesville, Indiana. These properties were resided by my folks. I bought 2813 about 30 years ago. I let my sisters live rent-free while they watched over my mom and dad until they died. My sisters are getting old so I moved them to Noblesville three years ago. Now I have been trying to sell this property for three years all as residential. The last realtor I hired was Woodward and they recommended I rezoned it to commercial. I can tell you that the neighborhood with McDonalds and all the north side going commercial, that was the elimination of that being a residential neighborhood. There was recently a change of 2801 and 2805 Covert which is on the southeast corner of Hawthorne and Covert. It is now rezoned C-4 from R-1. So somebody apparently on this Commission felt that was okay. That is right on top of the house behind it on Hawthorne. That house and the lot it has run behind my property. That is one of the south lots they are talking about. The next house, 2811 Covert, is C-1. It is now empty and there is a for sale sign out there. The next houses, my house, my sisters' house, the house to the east of 2909, is owned by a man in Chandler and he is renting it. I have rented 2813 for some time and it is not conducive to the best people. I can tell you this, I would rather have a commercial building sitting there than the kind of people that end up in these rental homes. The gentleman who owns that house next to mine on the east side is planning to go through the same procedure to rezone. So he recognizes this fact that, as far as residential is concerned, between Hawthorne and McConnell on the south side of Covert, it's over. It can only be improved by commercial development. The two houses on the south, one house faces McConnell Avenue goes behind 2909, that is nothing but lot. If you are looking for buffer, that is a pretty good buffer. The house behind the C-4 plumbing contractor has a lot behind 2913 that is empty except for a garage. So this is basically all the residential that abuts my property. So I feel from that this residential property is past tense. I grew up here. I know this property like the back of my hand.

Ms. Stevens: Are there any questions?

Mr. Colter: Why were you requesting C-4 versus the other commercial classifications?

Mr. Purdue: I was going C-2 because I know McDonalds and the restaurants are C-2. I think the proper sale of that property, I am looking at maybe a Wendy's or something like that. But Woodward suggested I go C-4. They are trying to sell it. And the property on the southeast corner of McConnell and Covert is C-4. That is a plumbing contractor's building. It doesn't look all that bad. But if I had that, there would be no buildings or houses behind it.

Mr. Jeffers: First of all, I have a statement. I don't believe you can expect someone else's green space in their back yard to serve as your buffer.

Mr. Purdue: I don't understand that much about what you say a buffer is. I looked at that property on the southeast corner of Hawthorne and Covert. There is probably 10 feet of grass between the back of that plumbing shop and the house. If that is the buffer, there is certainly plenty of room on my property to do the same thing.

Mr. Jeffers: That is the code, 10 foot buffer. I was just asking you to consider your comment that someone else's backyard, you said if you want a buffer, whatever. I just assume you were wound up in your presentation. So that leads me to my next question. Do you intend to develop this yourself, or simply rezone it for sale?

Mr. Purdue: For sale.

Mr. Jeffers: So you won't be submitting a site plan?

Mr. Purdue: Well, I don't know what comes first, the chicken or the egg?

Mr. Jeffers: The chicken is getting it rezoned and the egg is the site plan. I want to see a site plan with a required 10 foot buffer. We have the opportunity to go through Board of Zoning Appeals like so many of them do. They come in here and say they intend everything the best, bushes and fences in front of our drug store parking lots and the lights won't shine in someone's front door. Then they come to the Board of Zoning Appeals and get their variance and there is no fence, no shrubs, no separation. So I would truly like to see your use and development commitment say that if you are granted this rezoning to C-4, this property will not come back with a site plan to go through the Board of Zoning Appeals.

Mr. Purdue: I tried to do everything. I spent lot of time at the Plan Commission asking questions. I didn't want to do this. I want to sell that property and have been trying to for three years.

Mr. Jeffers: And the person behind you with the large green space, they are entitled to the same right to the highest and best use of their property. I think that is protected by our zoning code.

Mr. Purdue: I accept that and I think it is a very fair question.

Ms. Stevens: Are there any remonstrators?

Mr. Arvin: My name is Victor Arvin. I live at 1617 McConnell. I am the one that owns the green zone behind him. I am concerned about the noise and development there. He has approached me and offered to buy it. INAUDIBLE... But I am concerned about the noise.

Ms. Stevens: Are there questions for Mr. Arvin?

Mr. Purdue: I expected that Mr. Arvin would be here. I did talk to him one time when he was cutting his grass. I did pose the question because one of the reasons why it probably does not have a Wendy's on it right now is that the depth of the lot is only 128 feet. So the two lots behind this piece of property would be very valuable for that. I know Mr. Arvin and the gentleman on Hawthorne several years ago tried to put together something. Apparently my sisters didn't go along with it. That is all past. I talked to him and he said he wouldn't sell the lot without selling the whole property. That doesn't seem like a big problem. We have discussed with Woodward that if they had a client like CVS or one of those big chains who wanted that property, they would offer a pretty good chunk of money for it. You start adding up the property around it, and already there is a lot to the west for sale. I would say that they would probably be very happy to get together with a good developer and go with this whole situation because it is the only future for that area. Mr. Arvin is like I am. We are not getting any younger. I don't think he is really looking to resell that property to any of his children. I respect his suggestions and I am glad he brought them up.

Mr. Colter: This is a question about what Mr. Jeffers brought up about site plans prior to rezoning. I understand your comment on that, you are in favor of seeing some development plan prior to rezoning of property so it is beneficial for all the owners in the area.

Mr. Jeffers: Not necessarily. I don't think that is a requirement of the code. I guess what I was really after was a written commitment that we wouldn't see a site plan taken to the Board of Zoning Appeals asking for a relaxation of the required green space. I would like to see the green space specified as remaining as the code required green space. I think that is what I was shooting for. I don't want to tag a specified plan onto a rezoning that might affect the ability of the property owner to make the sale because the market changed.

Mr. Colter: I am new to the board but I have seen this on some previous applications. Because of the magnitude of certain classifications, the impact on neighboring properties like with the dog issue, is the effect on the property values. Going from R-1 directly to a C-4 is a fairly harsh impact on the area. I also understand that Covert has changed. I drove out there and looked at it. I am just concerned about the C-4 versus the area residents that are close by.

Mr. Jeffers: I guess everyone knows when McDonalds locates somewhere, they have already done the market study. Then everybody follows McDonalds. McDonalds is the market study.

Ms. Taylor: Is the remonstrator, would they object if it was a C-1 or C-2, would that lessen your objection, or it just any commercial activity?

Mr. Arvin: INAUDIBLE

Ms. Taylor: Then I have a question for Joe. So mechanically, how do we get there? Can we restrict what Board of Zoning Appeals has on their docket two years from now?

Mr. Mills: The only thing you could do is modify the use and development commitment to say they will keep a minimum green space, as per the code. Then we would be able to enforce that.

Mr. Harrison: I guess you could file a covenant.

Mr. Mills: We would prefer a use and development commitment, because we wouldn't enforce a covenant.

Mr. Jeffers: I would not want to make it a binding commitment forever because as Mr. Pedtke was saying, you can't bind the hands of the future. Then we would have this green strip between two commercial pieces, then you are not exercising your highest and fullest use. But if you would make some kind of commitment that Mr. Harrison was referring to that wouldn't be binding on that property forever, it might be more palatable to me.

Ms. Stevens: Any other discussion? Is there a motion for approval? (Motion was made and seconded.) Call the roll.

Ayes: Mr. Herrin, Mr. Jain, Mr. Pedtke, Mr. Shetler, Ms. Taylor, Dr. Adams, Mr. Brooks, Ms. Stevens

Nays: Mr. Colter, Mr. Jeffers, Ms. Lowe

There being 8 affirmative votes and 3 negative votes, Docket No: R-2008-17 goes forward with a recommendation for approval.

COUNTY REZONING

Docket No: 2008-29-PC VC-8-2008 Petitioner: William G. Greif – Virginia Development Group, LLC Address: (Complete legal on file.) 508 Kimber Lane

Nature of Case: Petitioner requests to rezone from an agricultural zone to a C-4 zone with a use and development commitment.

Mr. Mills: Virginia Development Group, LLC is requesting to rezone the 2 acres at the northwest corner of Kimber Lane and Virginia Street from Agricultural to C-4 with a use and development commitment. The address of the site is 508 Kimber Lane. The use and development commitment included as part of this petition addresses the uses to be allowed on the site. Kimber Lane currently connects Lloyd Expressway with Columbia Street. The approved SR 62 East Side Corridor Plan shows Kimber Lane extended north to Vogel Road. The City part of Kimber Lane (between Lloyd Expressway and Virginia Street) has been paved and in use since the mid 80's. It was widened to commercial width at the time of the Super K-Mart (now East Lloyd Commons) development. Kimber Lane north of Virginia to Columbia Street has been improved and paved, but is a very narrow street varying in width from 18 feet to 30 feet, substandard and inadequate for commercial truck traffic. Kimber affords easy access to both Burkhardt Road and Lloyd Expressway, and because of this has great development potential for commercial use. Considering this anticipated growth, Kimber Lane will carry significantly higher traffic volumes in the future, and will become an important alternate route to help distribute traffic in this area. County Engineer John Stoll states: "Kimber Lane is not wide enough to accommodate commercial traffic, and Vanderburgh County has no current plans to widen Kimber Lane." Evansville Metropolitan Planning Organization recommends that access on Virginia Street should be located as far from the Virginia-Kimber intersection as possible and should align with an interior north-south aisle. The Comprehensive Plan projects this area between Lloyd and Morgan as an area of commercial development. This change in zoning from Agricultural to C-4 with a use and development commitment is consistent with the overall development plan for the area. Although the Comprehensive Plan projects the Burkhardt Road corridor between Lloyd and Morgan as an area of commercial development, the Plan notes that it is essential for development proposals to be accompanied with commitments to construct the infrastructure improvements necessary to accommodate site generated traffic. Other developers in this area have constructed both on-site and off-site infrastructure improvements with similar projects they have proposed over the last several years. The road improvements necessary to accommodate growth must be in place when needed for our community to meet the goal in the plan of developing a transportation system which moves people and goods safely and in an efficient manner.

Mr. Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Those persons have been sworn in.)

Mr. Shofstall: Justin Shofstall with Easley Engineering. INAUDIBLE PORTIONS... It is currently zoned agricultural. We are looking to rezone it to C-4 with what we think is a

very appropriate use and development commitment. INAUDIBLE Mr. Mills with MPO concerning some of the access concerns along Virginia. I also spoke with Mr. Jeffers concerning drainage on the west end. That is shown on the use and development commitment on #2 as far as INAUDIBLE... and #4 is all construction activities within the right-of-way shall be coordinated with the Vanderburgh County Engineer prior to, during and after the roadway has been constructed to insure County specifications have been met and accepted by the County. That is in conjunction with our discussions in the past with the County Engineer's office. INAUDIBLE... And as far as the existing site plan, it is in the rezoning exhibit as far as what would happen if we did maximize the entire lot.

Ms. Stevens: I don't seem to have that number two in my packet. Do you have a copy?

Mr. Shofstall: Yes.

Mr. Mills: Was that part of the use and development commitment for Area Plan or did you say it was in a drainage meeting?

Ms. Stevens: I think it is in the use and development commitment.

Mr. Shofstall: It was filed. It was an initial oversight. I contacted Janet after that. The date on that is July 21st.

Mr. Mills: We don't seem to have a copy of that, Justin.

Mr. Harrison: It appears to be filed July 21st with Area Plan.

Mr. Mills: This is Janet Greenwell sitting here and she says she doesn't have it.

Mr. Shofstall: I cleared that prior to, to make sure make sure that would not be an amendment. As far as this goes, it was an oversight.

Mr. Harrison: It looks as if your original use and development commitment, you missed number 2.

Mr. Shofstall: That is correct.

Mr. Harrison: Then you added number 2. It looks like you forgot to include it with it, right.

Mr. Shofstall: Right. Then that was filed with the original 12 copies with APC and the Auditor which has been file stamped.

Mr. Harrison: When did you file it when you went back and refilled it?

Mr. Shofstall: On July 21, and the initial filing was July 14.

Ms. Stevens: Are there any questions?

Mr. Colter: Just a clarification. Mr. Stoll talked about the width of Kimber narrowing down. Looking at your engineering drawing here, it looks like your development may not allow Kimber to be widened further to the north?

Mr. Shofstall: No, that is not correct because the easterly property line is the centerline of Kimber Lane, and we are allowing a 25 foot front road right-of-way for Kimber Lane, and that portion, just last year, they finished some improvement work along Kimber, as far as resurfacing. INAUDIBLE... I met with the assistant County Engineer and John Stoll. INAUDIBLE PORTIONS.. and there is sufficient room for any additional improvements along Kimber Lane to be done within the right-of-way.

Mr. Mills: I want to clarify that we did just find this in our record. It wasn't distributed to our Plan Commission members, but it was as he described, referring to widening Kimber Lane and the restrictions and commitments they would make as far as improving that to County standards.

Ms. Stevens: So it is making it more restrictive. Are there any other questions? Are there remonstrators? (None.) Is there a motion for approval? (Motion was made and seconded.) Call the roll.

Ayes: Mr. Herrin, Mr. Jain, Mr. Jeffers, Ms. Lowe, Mr. Pedtke, Ms. Taylor, Dr. Adams, Mr. Brooks, Mr. Colter, Ms. Stevens

Nays: None

There being 10 affirmative votes, Docket No: VC-8-2008 goes forward with a recommendation for approval.

SUBDIVISIONS

Ms. Stevens: The rezoning portion of the meeting is now over and we will now hear the proposed subdivisions that are on our agenda. As stated earlier, the Area Plan Commission is the sole authority on subdivisions. State law and our Subdivision Control Ordinance dictate the issues the Plan Commission can consider when reviewing a subdivision application. Unlike a rezoning, consideration of a subdivision is limited to whether it complies with the standards and requirements in the local Subdivision Control Ordinance. If a subdivision application meets the requirements set forth in the Subdivision Control Ordinance, the Area Plan Commission must approve the primary plat. Indiana Courts have indicated that Plan Commissions have no discretion in this regard, and that our role in reviewing and acting on subdivisions is purely ministerial. Seven affirmative votes are needed to approve a subdivision plat and conversely, seven negative votes are required to deny a plat. In the event that there are not seven votes for or against, this is considered a no action vote and the plat returns to the next APC meeting for consideration.

The guidelines for testimony on subdivisions will be the same as those explained at the onset of this meeting. Petitioners and remonstrators should remember that the only testimony the APC can consider are facts that prove whether the plat complies with the specific standards in the Subdivision Control Ordinance. Copies of the Subdivision Control Ordinance are available in the Area Plan Commission office in Room 312 or on our website at evansvilleapc.com.

Now let's move on to the subdivision.

11-S-2008 Hirsch Estates

Section 35 T4S/R10W Scott Township Map CO-218 Lot(s): 4

Located at 4440 E. Baseline Road, approximately 0.5 miles west of Old Petersburg Road.

Mr. Mills: The Hirsch Estates plat is a 4-lot residential subdivision on a 20.1-acre site located north of Base Line Road between Volkmann and Petersburg Road. The property currently has residence on Lot 1 and the remainder of the site is undeveloped. The plat shows three proposed residential lots and an outlot, which is predominantly floodplain. The Subdivision Review Committee reviewed this plat on August 20, 2008. The proposed plat shows a new cul-de-sac extending north from Base Line Road. Sidewalks are required unless waived by the County. County Engineer's comments are as follows: Add note stating that all lots must access internal streets only. Add a note stating that the road is privately maintained. The County's rock road standards only apply to three lots or less. City water will need to be extended to the site. Sewer is not available. Comments from the Water and Sewer Department request that the applicant provide water easements. The applicant should provide documentation that the Water and Sewer Department is satisfied with the plans to service the project prior to recording. On August 5, 2008, the County Drainage Board granted preliminary drainage plan approval for the Hirsch Estates subdivision. The label for Outlot "A" should indicate that it is a non-buildable lot. A note should be added to the plat identifying the party who is responsible for maintaining the Outlot. In the Owners Certificate on the plat, add the standard statement for dedicating the public right-of-way for the new cul-de-sac extending north into the property from Base Line Road. Staff recommends that the Hirsch Estates plat be granted primary approval with the conditions listed in the staff field report, as it otherwise complies with the Comprehensive Plan and the Subdivision Code.

Mr. Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Those persons have been sworn in.)

Mr. Biggerstaff: James H. Biggerstaff.

Mr. Hirsch: Mike Hirsch. INAUDIBLE

Ms. Stevens: Do you have anything to add to the comments? Are there any questions?

Mr. Harrison: I have one question. Are you thinking about extending the sewer to that location?

Mr. Biggerstaff: No. We had percolation tests done by the Health Department.

Ms. Stevens: Are there any remonstrators? (None.) Is there a motion for approval, subject to the following conditions: 1. Revise the plat by adding under General Notes: A) Access: All lots must access internal streets only. B) Road Maintenance: The road is privately maintained. C) Outlot A: Will be maintained by the Lot Owner's Association. D) In the Owners Certificate: Add the standard right-of-way dedication statement for the planned cul-del-sac. E) In the label for Outlot A: Indicate that this lot is "Non-Buildable." 1. Prior to recording the plat: A) Provide documentation that the Health Department approved the results of the dye and soils tests. B) Provide documentation that the Water and Sewer Department is satisfied with the public utility easements on the plat. (Motion was made and seconded.) Call the roll.

Ayes: Mr. Jain, Mr. Jeffers, Ms. Lowe, Mr. Pedtke, Mr. Shetler, Ms. Taylor, Dr. Adams, Mr. Brooks, Mr. Colter, Mr. Herrin, Ms. Stevens

Nays: None

There being 11 affirmative votes, Docket No: 11-S-2008 is approved.

Meeting adjourned.

Stacy Stevens, President

Attest:

The undersigned secretary certifies that the foregoing are minutes and not intended to be a verbatim transcript. Audio tapes of the proceedings are on file in the Area Plan Commission office or can be heard or viewed on our website at www.evansvilleapc.com.

Bradley G. Mills, Executive Director

Karen Yokel, Transcriber