

AREA PLAN COMMISSION OF EVANSVILLE AND VANDERBURGH COUNTY

Regular meeting held at 6:00 P.M. in Room 301
Civic Center Complex - Administration Building
Evansville, Indiana

February 2, 2005

ROLL CALL

Mr. Foster: I would like to call the February 2, 2005 meeting of the Area Plan Commission of Evansville and Vanderburgh County to order. Will the secretary please call the roll?

Members Present:

Derek Dunigan, Bill Jeffers, Mike Lockard, Cheryl Musgrave, Phil Offerman, Yvette Payne, Bill Pedtke, Stacy Stevens, Curt Wortman, Mark Foster

Members Absent:

Roger Herrin, Jeff Kniese

Area Commission Staff Present:

Brad Mills, Executive Director; Beverly Behme, Zoning Administrator; Janet Davis, Zoning Enforcement Officer; Joe Harrison, Jr., Counsel

APPROVAL OF MINUTES

Mr. Foster: Is there a motion to approve the January minutes? (Motion was made and seconded.) The minutes of the January meeting are approved.

Mr. Foster: I would like to welcome all of you here this evening on behalf of my fellow Commissioners and the members of the staff of the Area Plan Commission. For those of you who have not been here before and are not familiar with the process, we are generally a recommending body that meets the first Wednesday of each month. We recommend zoning decisions to the City and County legislative bodies. However, the Area Plan Commission is the sole authority on subdivisions.

REZONINGS

Mr. Foster: 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 City rezonings we hear tonight will be heard by the City Council on February 28, 2005, at 5:30 p.m. in Room 301. **PLEASE NOTE A CHANGE IN THE ROOM AND TIME OF COUNTY COMMISSIONERS MEETING.** The County rezonings considered tonight will be heard by the County Commissioners on February 15, 2005, at 5:00 p.m. in Room 301.

Mr. Foster: 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.

Now let's move on to the first rezoning item on the agenda.

Mr. Harrison: Mr. Mills, with respect to all petitions on the agenda this evening, do you swear or affirm that the testimony you are about to give is true and accurate so help you God? (Mr. Mills has been sworn in.)

OLD BUSINESS
COUNTY REZONING

Docket No: 2005-4-PC VC-2-2005 Petitioner: Madisonville West Properties, Inc.

Address: (Complete legal on file.) 601 S. Boehne Camp Road

Nature of Case: Change from an agricultural zone to an R-3 zone.

Mr. Mills: Madisonville West Properties is requesting a change in zoning from Agricultural to R-3 for the property located at 601 S. Boehne Camp Road. This is a 14.19 acre site located west of Boehne Camp Road, south of Pearl Drive & Lloyd Expressway. This petition was continued one month to allow satisfaction of notice requirements. The conceptual site plan submitted with this rezoning request indicates a single proposed access point onto Boehne Camp Road for the \pm 100 residential units planned for the site. This proposed access is immediately south of the planned access drive which aligns with Pearl Drive for a new office building. County Engineer John Stoll states: " 1.) Improvements to the entrance (deceleration lanes, etc.) Will also require INDOT approval since INDOT maintains Boehne Camp from Lloyd to Pearl; 2.) A sight-distance survey may be needed in order to verify if adequate sight distance exists at the proposed entrance location; and 3.) The terrain at this site will necessitate very well planned drainage and erosion control plans in order to ensure that there are no off-site impacts resulting from this development." The acreage is a site with minimal frontage on Boehne Camp Road which is the proposed access point for the development. There is an existing access drive within the frontage which provides access to two residences. Additional land is included for rezoning on an adjacent parcel to the north with frontage on Lloyd Expressway. A 3-acre parcel which was part of this tract has been "cut" from the acreage, creating a non-approved "split" without the required road frontage. Issues of access, traffic, sight visibility and drainage must be addressed by the petitioner. This site is in an area designated by the Comprehensive Plan as an area of residential development. This step up in zoning to R-3 is consistent with the overall plan for the area, and is consistent with the policies in the Plan to encourage "step-down" or "buffer" uses between commercial development and adjacent single-family residential. Multi-family development is considered a residential use. Although consistent with the Comprehensive Plan in one area, it is inconsistent in another area. EUTS has identified a potential area of conflict with the proposed access for the development. Access and traffic are issues which must be addressed prior to rezoning of land for higher-density use. The road improvements necessary to accommodate growth must be in place when needed for our community to meet the goal in the Comprehensive Plan of developing a transportation system which moves people and goods safely and in an efficient manner. EUTS has raised concern that the access for this proposed development is too close to Pearl Drive on the east side of Boehne Camp and to the proposed driveway to the adjacent property to the north.

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, representing the petitioner. With me this evening is Alan Davis, one of the principals of Madisonville West, and Mr. Danny Leek of Morley and Associates. Just a little background. The applicant currently owns and manages over 300 units in Hopkins County and around the Madisonville, Kentucky area. This particular proposal is to take 14+ acres and create a 100 unit luxury apartment complex where there will be at least one garage per unit. This is rather low density for the amount of acreage involved. To give you an idea, I will start this with Mr. Wortman and Mr. Jeffers. There are three types of units or buildings we are going to incorporate in this complex. The reason I am showing these to you is the second height, and we are showing the floor plans and renderings of how these units will look, because of the topography of the ground, we want to have to move as little dirt as possible, create as little erosion as possible and be able to build in the sides of these hills. So you will see the second rendering is a townhouse style. That would allow the developer to sort of build in the hill without having to move a lot of dirt which we think will not only be aesthetically pleasing, but makes a lot more sense in terms of the dirt and erosion and things of that nature. In regard to the issue concerning the entrance to this proposed project and Pearl Drive, I would first note that Pearl Drive was there beforehand, and the access road we are talking about was actually already dedicated as part of a plan back in 1979 for a residential subdivision in this area, which everything was done, but the plat was never recorded. So it was envisioned to have access there. In fact, those easements in favor of the County, upon development, is to be a public road. It was already of record long before Pearl Drive. It is too bad it came out the way it did, but it is what it is. As Mr. Stoll noted, INDOT has to sign off on this, and they already have. They have no problems. I will pass around a letter we received in December of this effect. We will take all the recommendations from EUTS, the County Highway engineer. There will be two opportunities for their input to be felt in this plan in a meaningful way. One, Site Review. Two, because of the amount of acreage involved, it is the policy of the Plan Commission that this will also have to go to Subdivision Review. So it will be very closely scrutinized and we are a long way from a final plan for the layout, especially for the ingress and egress. This is a rather low density, 100 units on 14 acres. Regarding drainage, because of the amount of acreage, our Drainage Ordinance for Vanderburgh County requires the applicant to go to the County Drainage Board with a drainage plan prepared by a licensed engineer. That will have to be done before we break ground. We met with the Westside Improvement Association on December 7, 2004, specifically Mike Lockard and Fred Padget, who is here this evening. They believe this is consistent with the Comprehensive Plan, in view of the buffer aspects that Mr. Mills talked about in his report. They likewise, expressed concerns that the entrance be designed very carefully and with attention to all the details from the various governmental agencies because of the proximity to Pearl Drive, and we concur with that. We were also asked to meet with the Greenway folks. We did that. What we agreed to do for them is, that part right there, the closest part to Lloyd Expressway, we are going to reserve 15 feet for them to utilize for the Greenway. If they are able to get some easements so they can connect through these other properties we don't own, then we said we would sit down with them and work out something more permanent to connect everything up. But right now they don't have anything over there. So we said we would reserve that 15 feet of area closest to the Lloyd Expressway. That is where they are most concerned. Larry Miller of the Greenway Committee and Shirley

James were happy with that and responded positively at our meeting. Mr. Davis is here, and has worked on similar projects like this where you are close to a highway, you provide a buffer, not only between commercial, but higher priced single family residential. We believe this is a very quality project. It will be exclusive of the land investment. It is going to be a seven million dollar+ project. We would be happy to answer any questions.

Mr. Lockard: Correct me if I am wrong, just north of the red shaded area across from Pearl Drive, that lot is what you brought before us at one of the last meetings where Deaconess is going to be building an office complex.

Mr. Shively: Right. But it is different representatives, different owners.

Mr. Lockard: Understood. The question is, from looking at the preliminary site plans for that one and this site plan, you are proposing two different access points on Boehne Camp? An access point for Deaconess and one for this apartment complex?

Mr. Shively: No. Deaconess is going to use Pearl Drive. Pearl Drive on the west side of Boehne Camp Road, they are not getting another access.

Mr. Lockard: So they won't be accessing Boehne Camp?

Mr. Shively: No. In fact, if you recall when I was here, you drilled me pretty hard on that one and made it very clear that we are going to have to use the Pearl Drive where it comes into the cul-de-sac.

Mr. Lockard: And I wanted to firm that up because I know the preliminary site plan showed the curb cut there where Pearl Drive crosses.

Mr. Shively: I want to clear the record. When I appeared before you for those folks, we never showed that. That was never part of anything we brought to the Plan Commission. When I met with you on December 7, you asked me that question and I made it very clear to you that that is the access there. This applicant is going to have one access only. There is not going to be another access on Boehne Camp Road. The Deaconess Clinic will have to use part of the Pearl Drive west of Boehne Camp Road that ends at that cul-de-sac. That was even incorporated, I'm not sure, in the use and development commitment. But that is what was represented at the meeting.

Mr. Lockard: Maybe my terminology is not totally accurate, but I was just going on the Deaconess site plan where it showed the easement or whatever across and that was what appeared to be a cut on Boehne Camp. I understand you are saying it is not going to be done. But that is the way the drawing appeared.

Mr. Shively: Again, I explained to you. The only thing that you saw that was any access on Boehne Camp Road was a different parcel. I told you then that that applicant didn't own that property, which is the property we are talking about here today. It is different

ownership and it cannot be used for the Deaconess situation. Again, we made it very clear we are going to have to use Pearl Drive.

Mr. Lockard: Just looking at John's comments and staff comments and EUTS comments, and because myself and my entire family live just south of there and travel this road daily, Pearl Drive and Boehne Camp is already a major headache. Just looking at the infrastructure requested here, I wanted to make sure that is somehow built in to this rezoning, that we do it adequately.

Mr. Shively: It is more than built in the rezoning. As I indicated before, we will have to go before Site Review and Sub Review. INDOT has already done their review. They require John Stoll's involvement and no permits can be pulled for anything until, I think John's even asked for a sight distance study. Other things will have to be done before we even do final design. Mr. Leek can give more detail on that. But just because we would get the property rezoned, we are a long way off from being able to doing the project.

Mr. Lockard: Thank you.

Ms. Musgrave: I think you said this and I'm sorry, but what is the dollar value of the proposed investment?

Mr. Shively: Not including land costs, seven million.

Ms. Musgrave: What are the projected rents for these units?

Mr. Davis: My name is Alan Davis. I live in Madisonville, Kentucky. We are looking around \$750 to \$1,000 per month range, depending on the particular unit. Obviously, we will have a market study done and see what are the fair rents for the area. But our preliminary study says it will be under \$1,000 but close to that amount.

Mr. Foster: So I take it, not a whole of students are going to be living here.

Mr. Davis: Unless they are in better shape than I was when I was that age. We had three in a one bedroom apartment.

Mr. Shively: As you can see by the layout, these are not conducive for student housing. They are more of a single family residential look with every unit having at least one garage.

Ms. Musgrave: Well I know the current assess valuation for those two parcels together is \$2,800. So something closer to seven million would be quite attractive to our tax roll.

Mr. Shively: I can't disagree with that. We are not asking for any abatement for anything of that nature.

Ms. Stevens: I know you said it is going to be less dense. About how is it going to be laid out? Closer to the expressway, and again, with the idea that you don't want to move a lot of dirt...

Mr. Shively: We have kind of a conceptual...

Ms. Stevens: On the plan you passed around, there were three different looks. Are those just the three you are looking at now? It would be one of those three?

Mr. Davis: These are things we are working on. We plan to utilize all three plans. The townhouse type, we want to use that plan so we can build into the hillsides. The garage level will be below grade in the rear and open in the front. The main floor of that one should be walkout ground level, and then the top floor would be above that. But that would allow us to do a lot less dirt work. The flatter areas would be the one story units. The area up next to the Lloyd would be the two story where we plan to put the one bedrooms. We want to unify the look. I had a developer I worked with one time and he had the idea that you put different color roof, different color siding or brick on every building and that would make everything look different and it did. But it didn't look good. So we want to unify it with colors and general architectural detail. But since we have three different areas in here, we will have three different structures, and hopefully take advantage of the topography and work with it.

Ms. Stevens: Great. Thank you.

Mr. Foster: I know you have some single floor units. Are any of them supposed to be handicapped accessible or elderly friendly?

Mr. Davis: The one story with the garages in front, we will designate a certain percentage of those, and would be crazy not to, because that is a very good market, those would be the ones that would accommodate people who don't want stairs or who can't negotiate stairs. The other two plans we can't do anything about that. But we are doing as many of those types as we can. But it is going to take some pretty flat ground for that. The only area that is really level is down the center. So that is what will be built in those areas.

Mr. Jeffers: Just to clear up a couple of things in my mind. Mr. Mills, with regard to the clinic that is being proposed north of this project, you recall that was brought to Site Review Monday,

Mr. Mills: Yes.

Mr. Jeffers: And it was approved.

Mr. Mills: Yes.

Mr. Jeffers: Do you recall whether there was an entrance onto Boehne Camp Road?

Mr. Mills: I don't recall.

Mr. Jeffers: Does anyone else from staff that is here remember? I am not disputing what has been said, but in my review, the copy that came to my office had an entrance onto Pearl Drive to the north and Boehne Camp to the east because I was looking at topographic information to make sure the storm water didn't discharge out into Boehne Camp.

Mr. Mills: That's quite possible.

Mr. Jeffers: I may have been looking at it all wrong. But it appeared to me there were two entrances to the site.

Mr. Mills: I think there were, but I don't remember exactly. I would have to pull the file and look at it myself. I have looked at other things.

Mr. Jeffers: Since that seems to be a conflict with what was stated, I just wondered if we could clear that up.

Mr. Shively: It seems to me that if that if that was the case, it would have been reflected in an update in the staff report. There is no mention of that.

Mr. Jeffers: I am not disputing your word, Mr. Shively. It is just that my recollection was there was an entrance onto Boehne Camp and an entrance onto Pearl Drive from the clinic.

Mr. Foster: Beverly is going to go down and pull the file so we know exactly.

Mr. Jeffers: Thank you. And this does go to Sub Review because it is over 16 units. Does that bypass Site Review if it goes to Sub Review?

Mr. Mills: It is eight units or more that is required for Sub Review. You have to go to Sub Review and Site Review.

Mr. Jeffers: Good deal. Thank you.

Mr. Foster: Are there any remonstrators? (None.)

Mr. Padget: My name is Fred Padget with the Westside Improvement Association. First, I would like to thank Mr. Davis and Mr. Shively for bringing Westside Improvement in on this early on in December. We appreciate that. Some of the things that have been talked about, on the access, we were concerned about that too. Our concern is simply with the construction of the Super Walmart at the other end of Pearl Drive, Red Bank will become more crowded. If we have the Sears take over the old Walmart and Kohl's go in eventually, I think we will find more people using Pearl Drive westbound to exit those areas also. So traffic and the access points are very important. I assume that will get

resolved in Site Review. The neighbors that I talked to, for the most part, were quite concerned about drainage. That will also be addressed by the Drainage Board. With the terrain there, soil erosion becomes a problem. We have groups to control that also. But would caution the developer that we will want good control over soil erosion. In some cases along Pearl Drive in the past, it has been less than what I would call acceptable. Couple of things we like about the project is it is higher end. I think that will help the area. More importantly, the area west of Boehne Camp was never considered for commercial in any comprehensive plan that I know of. As you have heard before, the corner was developed commercial and we have argued about that. This helps stop that commercial development in that area and we like that. The higher density residential makes a good buffer between commercial and single family homes. That is part of the Comprehensive Plan and we agreed with that when the plan was developed. The other thing, the developer has talked about trying to keep as much of the terrain as we can. We wish that would have been done on Pearl Drive years ago. But that is one of the attractive things about the west side, it is a hilly and rolling terrain. The more of that we can keep, the more it adds to the quality of life in the area and the more it adds to the beauty of the area. I was going to ask about a commitment to the Greenway. I talked to Shirley James about that. But Mr. Shively said that has already been committed to. We think that's good also. It needs to be in our long range planning. Based on what we know, what we have heard and seen, we support the project.

Mr. Foster: Are there any questions? We are waiting on Janet.

Mr. Shively: Let me address that, no matter what it showed at Site Review. If another cut was approved at Site Review, that is contrary to what the Plan Commission had approved. I would wonder why Site Review did what they did. Notwithstanding that fact, we are here today on land use. Twenty-six years ago, there was an attempt made to do single family residential. It never came to fruition. This property will never be single family residential because of its proximity to commercial. No one is going to buy that and develop it for single family, not only because the proximity to commercial, but because of the topographical things that Mr. Davis has experience in before that he thinks he will come out okay because it is multi-family. You are not going to farm that. So what do you do with it? You use it as the buffer as the Comprehensive Plan calls for. Tonight is just the decision on land use. We have many hoops to still jump through. Site Review, Sub Review, working with the County Engineer and EUTS to design the ingress/egress. If there is a cut on Boehne Camp that was given to that lot, I thought we had some requirements about distance between two cuts on the same side. If one was granted, it would have to be consistent with those requirements. So I would ask you to not hold up on this, knowing we have a long way to go on this, and recognize it is the only thing that makes sense that this property be used for, and that's multi-family. Thank you.

Mr. Jeffers: Mr. Shively, I had no intention of holding up the proceedings in any way or to even contradict what your statement was. I intend to vote yes because it is an ideal buffer between C-4 and R-1. I just wanted to make sure that everyone had clear in their mind if there were any traffic concerns that needed to be addressed at this location where we

cannot deprive access to a County road. Or, whether we should revisit the location of the access to the north. That was my only intent.

Mr. Shively: I understood it was platted in the first place with the cul-de-sac was because it was better to do a subdivision and provide access from that extended Pearl Drive with one cut on Boehne Camp Road and create a new subdivision and right-of-way rather than just doing a minor sub and allowing each one of those lots there to have their own cut on Boehne Camp. That is why it was designed like that. I have to believe there was some language on the recorded plat that made it clear that the access would be in the interior. That is appropriate and legal and is done all the time.

Mr. Lockard: And no insult intended, but just because the engineers drew it out the way it ended up doesn't mean that it has worked very well in real life. I say that because on a personal level, I travel that way daily and just because the engineers laid it out that way doesn't mean it is working out well in real life, especially when you stop to consider how much traffic is increasing in that area. It is nothing against you or your client. I am just saying overall the way the area is laid out, I just have to wonder what they were thinking when they did it.

Mr. Shively: I guess you are talking about Pearl Drive that terminates at the eastern side of....

Mr. Lockard: Pearl Drive is doing this and it just doesn't make sense.

Ms. Musgrave: I would like to make a motion to approve the request.

Mr. Foster: We have a motion and second. Call the roll. Here comes Janet.

Mr. Foster: Site Review does show that there is a drive directly across from Pearl Drive. It looks like it is about 55 feet from this drive.

Mr. Shively: That would be something else we would have to factor in and work through. I don't mean to be pointing fingers at anybody. But I can't believe with this application pending, and the record that was made at the Plan Commission meeting, because we combined two lots together so we have one. I am just totally blown away that that was done. It is another obstacle we are going to have to work through, create some sort of joint access and maybe that will fuel a better solution in the long run. If we can work out something with that access point, we don't need another one.

Mr. Lockard: I am going to ride this horse off in to the sunset. This is part of the problem that I have had for a long time, and again, this is nothing against you or your client or anybody else. But the problem I have had for the last two years now is that we get these petitions in front of us. They come with verbal agreements, but without a firm use and development ahead of time, I have been told by Mark and Joe that they really don't mean a lot and that is a problem I have with the way this process keeps continuing going, that

we get these staff reports saying we need commitments. But if they don't have a use and development filed ahead of time, they don't mean a doggone thing.

Mr. Shively: I would agree with that to an extent. However, I think representations are made and relied upon ultimately by the County Commissioners. They can rescind the decision. That is in the statute. Moreover, I think the real question is, since this is a fairly recent rezoning, I am blown away that when you have a Site Review or Sub Review and you don't have the file in front of you there. INAUDIBLE PORTIONS...and these are things that legitimately, and then the 55 foot, I know that is not consistent with code. I am just flabbergasted.

Mr. Lockard: And, correct me if I'm wrong, it can only be rescinded within 180 days. So knowing a development takes a long time, that 180 day deadline may come and pass before the first shovel of earth.

Mr. Shively: Again, you had the data. You sit down at this Site Review. All those agencies are represented. It's not like it happened 10 years ago. It is something that happened less than 60 days ago. I don't know anywhere where you have ever approved two cuts 55 feet apart.

Mr. Foster: We have a motion and second.

Mr. Jeffers: Since the site plan was approved Monday, could I safely assume the permit has been pulled?

Mr. Mills: Yes.

Mr. Foster: Call the roll.

Ayes: Mr. Dunigan, Mr. Jeffers, Mr. Lockard, Mr. Offerman, Ms. Payne, Mr. Pedtke, Ms. Stevens, Mr. Wortman, Mr. Foster

Nays: None

Abstention: Ms. Musgrave

There being 9 affirmative votes and 1 abstention, Docket No: VC-2-2005 goes forward with a recommendation for approval.

Mr. Foster: Hopefully we can get these two people together and work out that road access.

Mr. Shively: It will start tomorrow.

NEW BUSINESS
CITY REZONING

Docket No: 2005-6-PC R-2005-2 Petitioner: Robert W. Owens

Address: (Complete legal on file.) 25 Dorothy Drive

Nature of Case: Change from a C-4 zone with a use and development commitment to a C-4 zone with an amended use and development commitment.

Mr. Mills: Robert Owens is requesting to rezone his property located at 25 Dorothy Drive from C-4 with a use and development commitment to C-4 with an amended use and development commitment. This is the 1.68 acres site located at the northwest corner of Dorothy Drive & Lloyd Expressway. The 1.68 acre site was rezoned to C-4 in 2002 with a use and development commitment which limited use of the site to a construction storage building/office only. The 19.6 acres adjacent north and west of this site were rezoned to C-4 by Dennis Owens later in 2002 with a private covenant with the West Side Improvement Association which limited the uses to be permitted on the site and addressed access, utilities and lighting. The adjacent 10.3 acres to the south and the 3.6 acres adjacent to the west were rezoned to C-4 in 2003 and 2004 with use and development commitments at the time of rezoning which similarly addressed uses, utilities, and lighting. This petition seeks to amend the original use and development commitment from 2002 (contractor warehouse/office only) with a new commitment which is similar to adjacent properties' commitments addressing uses, lighting, and utilities. The commitment for this site also addresses ingress and egress for the site. Properties to the east remain residential. This petition to rezone to C-4 with an amended use and development commitment is consistent with surrounding zoning and use and development commitments. This site is adjacent to Lloyd Expressway, west of Rosenberger Avenue. No direct access onto the state right-of-way will be allowed. The use and development commitment included as part of this rezoning includes a provision that states that Dorothy Drive will not be utilized for commercial ingress and egress to and from State Road 62 (Lloyd Expressway.) A Minor Subdivision Plat "Carpentier Creek Pavilion 2" (2-MS-2005) has been filed with the Area Plan Commission for this site. A note on this minor subdivision plat indicates that an access easement is to be dedicated in the Carpentier Creek Pavilion Plat for this site; this proposed access easement provides entry to both Rosenberger Avenue and Hogue Road. That was recorded today I believe. The effect of this rezoning would be to amend the use and development commitment to allow retail development of the site. A use and development commitment is included as part of this petition which identifies a number of uses to be prohibited on the site, places restrictions on lighting for the site, requires that all utilities installed on the site shall be underground, and prohibits commercial access to Lloyd Expressway. A copy of the use and development commitment was included with the staff field report in the meeting packets. Site Review and Subdivision Review Committees will address compliance with all code requirements upon submission of plans for the development of the site.

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. Mueller: My name is Bart Mueller. I reside in Evansville, Indiana. I am here on behalf of the petitioner, Robert Owens. I would also like to add that Robert's father, Dennis is also here to answer any questions you might have. Basically, Mr. Owens is requesting to amend his use and development for this parcel. As stated in the first rezoning, the intended use for that parcel was to be for construction storage and office building. Since then, we have had the ongoing development adjacent to the north and west there for Carpentier Creek Pavilion shopping center area. With this intended change to amend the use and development commitment, two things: One the private covenant that was mentioned earlier by Mr. Mills, the same language that was in that particular covenant has now been transferred to this use and development commitment. The other thing is, it is more consistent now from its original standpoint in the fact that it is one in the same with the same limited uses that was filed with the Carpentier Creek Pavilion area. A big concern was the access to Dorothy Drive. There is specific language on the Carpentier Creek Pavilion plat, as well as stated in this amended use and development commitment this evening which prohibits the use of any commercial ingress and egress on Dorothy Drive from this proposed development. I will take any questions.

Mr. Jeffers: The parcel immediately to the west was rezoned in 2004, about the same size as this parcel. It has a use and development commitment, R-2000-16. Is this use and development commitment that you offer tonight identical to the commitment attached to that rezoning, other than the access issue?

Mr. Mueller: Yes. I am fairly confident it is very close. There might be a minor, slight change. But yes, in general it is identical to that with the exception of the prohibition of the ingress and egress to Dorothy Drive.

Mr. Jeffers: Are there any uses that are prohibited from the previous rezoning that are allowed on this rezoning?

Mr. Mueller: Not to my knowledge. Those prohibitive uses that were put into that commitment was what was utilized for this commitment.

Mr. Jeffers: We could verify that because we have that on file. The 19.5 acres to the north on which you are doing your major development has a private covenant between the developer and Westside Improvement Association. We do not have access to that language. So I can only ask you, are there any uses that are prohibited in that private covenant, is there any difference between the uses?

Mr. Mueller: Not to my knowledge.

Mr. Jeffers: So this use and development commitment is uniform with the other use and development commitments, private and public on all three parcels?

Mr. Mueller: Yes.

Mr. Lockard: You guys don't have any plans to seal off Dorothy Drive, is that correct?

Mr. Mueller: There are no plans. I am not sure we have authority to seal off Dorothy Drive.

Mr. Lockard: I know that was one of the concerns of the neighbors, that Dorothy Drive would be blocked off and emergency vehicles would have a hard time finding an access to Dorothy by going through Carpentier Creek Pavilion. I believe you have met with the neighbors and tried to work out their concerns to the best of your ability?

Mr. Mueller: Yes.

Mr. Foster: How many neighbors still live down there?

Mr. Mueller: Currently, there are three residential property owners still in place there on Dorothy Drive.

Mr. Lockard: And I guess a question on those lines. If this rezoning is successful and the Dorothy Drive property is developed, you will have to extend water and sewer from across Carpentier Creek Pavilion to Dorothy Drive?

Mr. Mueller: Yes. That was committed to in the first rezoning process.

Mr. Lockard: If and when that occurs, the neighbors will have the ability to take advantage of that new utility that comes through there, right? So once that is extended across, it will be closer to their homes. Correct?

Mr. Mueller: That's correct. That was what was agreed to in the beginning.

Mr. Jeffers: But you are asking to amend that agreement. Did you now include that previous commitment in this agreement, the access to utility, I am assuming you are talking water and sewer?

Mr. Mueller: That was not specifically spelled out in this amended use and development commitment and I don't think it needs to be.

Mr. Lockard: It was always verbal that once it came across, they would have access, but it was never written out.

Mr. Mueller: It can easily be verified and I will offer this up for some piece of mind. It can be easily verified by the current site development plans that are now 100 percent complete for the Carpentier Creek Pavilion area. Those specific drawings are also available not only in those site drawings, but in drawings that were submitted to INDOT for the extension and tie-in for the trunk line for the sanitary sewer line as well as IDEM for the actual permit in order to place the new sanitary sewer line.

Mr. Jeffers: My only concern is their access to it would have to be made through easements and if those easements didn't extend all the way to the property line of this rezoning, they would have to come back and acquire easements from a subsequent owner to get to the utilities. Utility companies are not going to allow taps through property without an easement. I don't want misleading conversation to enter into the discussion, to say that utilities are accessible when they are only accessible through easements.

Mr. Mueller: In answer to that, there was an agreement when this first went through that those people would have the ability to hook on to those improvements.

Mr. Jeffers: Was that agreement in writing?

Mr. Mueller: No, it was not.

Mr. Mills: You have easements for utilities just to the left of that existing house on the parcel you are asking for the rezoning.

Mr. Mueller: That's correct.

Mr. Foster: And there are easements that run to that property line right there in the subdivision.

Mr. Mills: So it is basically at the end of Dorothy Drive, there are easements that exist there that were recorded with part of the Kohl's Pavilion I. So they do exist.

Mr. Jeffers: That was recorded today or yesterday? And it did show an easement around the periphery of the property that was recorded. I just couldn't recall if those were utility or access easements?

Mr. Mills: He had a couple different drawings and they tried to break it out for ease of reading. But there were separate drawings that showed ingress-egress easements and easements that showed for utilities and storm drainage.

Mr. Jeffers: That resolves the issue that we were discussing. Thank you.

Mr. Foster: Are there any remonstrators?

Mr. Padget: I am still Fred Padget and still with Westside Improvement Association. You mentioned the three residential homes. They deserve consideration. I think that needs to be considered heavily and whatever the developer does and whatever goes on here tonight. I think there needs to be buffering from whatever kind of commercial goes on. We have talked about that in the past. That is a need that still needs to happen. I was going to talk about access to sewers and water, but that has been pretty well covered. A concern I have is, they are making an agreement that there will be no commercial use of Dorothy Drive. If 25 Dorothy Drive becomes commercial, I need to know a little more about how that is going to happen. How is the developer going to control commercial

traffic on a road that accesses the expressway? I need an answer on that. Mr. Lockard talked about the safety concern of not having ingress/egress at Dorothy Drive and we won't get into that. The most important thing I wanted to talk about, and I think it has been ruled by the Commission attorney that it doesn't pertain to the Plan Commission, but on 25 Dorothy Drive, there still is a covenant with the neighbors. That needs to be resolved, regardless of what happens with use and development, because it is a legal document. It is recorded. It goes with the land. We talked with the developer and Mr. Mueller about it. They know that. But I wanted to make that point that it needs to be resolved between the parties. Basically that is what I wanted to talk about. We don't have any real objection to the amended use and development. Thank you.

Mr. Foster: Are there any questions?

Mr. Grisham: My name is Jack Grisham. I live at 22 Dorothy Drive. I opposed Dennis all the way with everything he has been trying to do here. We are down to three residents on Dorothy Drive. We had originally six residents and bought out three of them. Their homes are no longer there. It looks like a disaster area. I am sure you would all appreciate living in a place like that, no matter what the value of your home, if it was just baron land. We do have a lot of concerns. Yes, we oppose having a restaurant in front of our house, right across the street. I don't think we will be able to stop that because it looks like usually the people here are in favor of progress. Progress doesn't help the residents because the residents lose. We are all well aware of that. We had a concern and I brought it up. I am just repeating what somebody else said. Pat Keepes gave me a call and asked about shutting off Dorothy Drive to the Lloyd Expressway. He said the City, County or the developers would have to put some kind of a road. I didn't like the terminology "some kind". So we would have access. It took a long time for the paramedics and emergency groups to learn that there was a Dorothy Drive. If we close it off and they start trying to find Dorothy Drive, if my life's in question, I know I would be dead before they would get there because it has taken as much as 30 minutes for the paramedics to find Dorothy Drive. Now we don't have that problem. But we have that concern. We definitely don't want Dorothy Drive closed off. Pat had mentioned possible solutions to the problem. I don't know if he spoke to Dennis about it. He said put a barricade up at the end of Dorothy Drive where no one could go beyond the residents. Maybe that is an answer. The developer might want to consider, since there are only three homes there, go ahead and buy everybody out, do away with Dorothy Drive, and move his development all the way over to the railroad tracks and do whatever he wants to. It is just three homes. We would like to see something happen because everybody is in turmoil on Dorothy Drive about how long are we going to live here? What can we plan for our future? Do we even have a future where we are at now? I am 60 years old. I am the youngest residents. The others are in their 70's. They really are torn up. One of them was going to try to make it here, but her health didn't let her make it tonight. So they asked that I speak on their behalf. We have a covenant. The covenant spelled out a lot of things. If they go back and check, there wouldn't be any fast foods. There is a Culvers Restaurant supposed to have been going in. But I think they backed out. The only use that they could use that land for was to put up a warehouse, an office. In that office, the owner would have to operate it. Now that they have changed, and I know he is trying to

get a different use and development for all the land, but the covenant did spell out the only use is for his business, for a warehouse, an office. He had to put up a green area, a fence and put trees and all in front of it for sound barrier. So we are concerned. What do we do when they put it in? Are we still going to have our sound barrier? Are we going to have any kind of privacy in our little location if we stay there? We have a lot of concerns about Dorothy Drive and the future of the residents of Dorothy Drive. So I hope when you make your decisions, if you don't do anything else, you go back and look at this covenant and be sure that some of these things are adhered to like the fence, the sound barrier of trees or shrubs. It might even kind of beautify the area instead of looking like a war zone. Right now, it looks terrible. If the developer would just come through and make a decent offer to the residents and buy them out, then he do what he wants to and close Dorothy Drive.

TAPE CHANGE

Mr. Foster:in negotiations with Dennis or anybody about selling out to them?

Mr. Grisham: All the residents at one time or another have been contacted by Dennis, yes. I think I was the thorn in the side that was the hold out; in fact, I know I am. But the other neighbors have talked about it. If they get a fair offer, it would have to be something where they could move and pay for wherever they are going to go to. They can't start making payments at 75 years old. They are looking to be treated fairly if this was to happen. I have been there for 37 years. The Fitzgeralds have lived there since the 1950's. They are not just newcomers to the neighborhood. The newcomers would be the Postons. Mary Ann Poston, her parents lived there and she lived with her parents for a long time. So it is going to be heart-breaking if it happens. We would like to have some safety.

Mr. Foster: You mentioned the covenant. Of course, the covenant is with the land owners and not the Area Plan Commission. You can enforce the covenant. Whatever we do here tonight doesn't change your covenant that runs with the land, and you can still enforce that. If it is in opposition to what we do, you still have that legal right to protect your interest under that covenant. That is your option.

Mr. Jeffers: Mr. Foster, in that regard, the covenant he was talking about, did you say sir that your covenant with this property prohibited a restaurant?

Mr. Grisham: If you go back and check, I believe...

Mr. Jeffers: I can't check because it is a private covenant.

Mr. Lockard: I can speak to that. What it did was, the original covenant limited the property to a single three uses, which was warehouse, construction, it wasn't so much as a denial of certain uses as it was, it only allowed three uses.

Mr. Jeffers: So is that the same covenant that you enjoy privately with this property?

Mr. Grisham: Yes.

Mr. Jeffers: So it didn't specifically say no restaurant. It just said office use, storage use, and warehouse use.

Mr. Lockard: You're right, there were three single uses for it.

Mr. Grisham: It had a whole listing of things they could not put there. That was in there. I could be wrong. But I am almost certain it said something about fast foods. I'm sure that was there.

Mr. Jeffers: That's confusing with what we have in front of us. We have that the covenant simply restricted it to contractor/warehouse/office only. Is that the covenant the Plan Commission has with this property?

Mr. Harrison: We are talking about the use and development commitment. The private covenant has nothing to do with this.

Mr. Jeffers: I understand that and that is why I am trying to clarify that. This gentleman keeps saying we can check on it, but I can't because it is not on file. It is recorded somewhere between the property owner and the other property owners. The thing about the trees and sound screen, that is in some other covenant that you apparently enjoy with this property owner. That is not a part of ours either. So if one party goes away, is that covenant applicable? If the property owner, if the C-4 goes away and there is a new property owner, a restaurant

Mr. Foster: It runs with the land.

Mr. Jeffers: That covenant runs with the land and he can still enforce it...

Mr. Foster: If the residential property owner becomes the same individual as the commercial owner, he may agree with himself that he doesn't want that covenant to exist any more.

Mr. Jeffers: We don't really know because we don't have a copy of that covenant to see if it is passed on to the heirs and assigns.

Mr. Lockard: Trust me, it is.

Mr. Jeffers: So this man can enforce that covenant at any time.

Mr. Foster: Right.

Ms. Musgrave: Are there two households still living there, three total people or three households?

Mr. Grisham: There are three households.

Ms. Musgrave: You mentioned how the residents are worried about their future. If we fail to rezone this land, would their future be any more secure?

Mr. Grisham: If you go ahead and pass it, you probably will, and let's say that put a restaurant there or a business, but they no longer, let's say they do not put some type of barrier between the residents and that. We have never had any problems on Dorothy Drive. Now you are going to move conditions closer. We just had a robbery the other day. A man was shot. It happened to be at a Laundromat. You put some kind of fast food there, you put something else there. Now you are dragging that right to our doorstep. I don't know of anybody here that would want that at their doorstep. It doesn't mean it is going to happen, but I would be willing to bet. You get somebody getting sloppy about their business and there will be somebody dumb enough to try to rob them. So then we might be looking at something else. The nice part about 22 Dorothy Drive, where I live, I pay City and County taxes. The City/County line runs right through my house. When I have a problem and call for the law, I had a man who threatened to burn my house down over a labor problem. So I called the law because he was outside my window when I called. The City Police asked if he was in the City or County. I said he is half and half right now, who is going to come out? They said I should call the County. The County said if he was in my front yard, they can't come out. Four hours later they came out. So I asked them if I shoot this individual with a shotgun right now, they said they would be out there in a minute. We don't have the luxury services like most people would because we are in a unique positions on the Westside.

Mr. Jeffers: I read the newspaper and they are going to annex soon.

Mr. Lockard: Since that is a commercial property, is there something in the code that requires them to have fencing between the commercial and residential, this opaque fence thing? Or is that just certain uses?

Mr. Mills: Certain uses.

Mr. Pedtke: Do you have any plans to hook up to the water and sewer utilities?

Mr. Grisham: It would be nice. Since the landfill took place, which we opposed, since some of the other areas have had additional fill put in, our sewers, but you don't want to use the toilet too often right now with all the rains recently. Before, it seemed like the drainage worked fine. But now we are having more problems with retention of water in the ground. It doesn't leave as quickly.

Mr. Pedtke: Are you saying you did or did not take advantage of it?

Mr. Grisham: We would take advantage if they had sewers there.

Mr. Jeffers: Are you saying that your septic tank leaks out onto the surface of the ground?

Mr. Grisham: No I'm not. You can come out and check all you want.

Mr. Foster: Are there any other questions or remonstrators?

Mr. Owens: I am Dennis Owens. I am the father of Rob. This is not the first time we have been here over this. I know the covenant doesn't have anything to do with this, but I will start off with that. I do have a copy of it. It says very plainly that it can be amended with 51% of the property owners. In checking with Mr. Harrison, this means Mr. Lockard wrote this, copied off a normal thing when we first came down here, and 51 percent of the property owners can amend or get rid of the covenant. So I went to everybody and told them what I wanted to do and talked to them about amending this thing. I got 51 percent of the land owners anyway. But I went and talked to each one of them individually. I told them I had an opportunity and Culvers came and looked at the thing. They made a bid on it. The owners of Culvers came out on Christmas Eve and decided on another site next to Kohl's. When we first came down here with this, we had no idea this was all going to happen. We were fully content with filling that in because we had a job to get rid of the material which was good material on 25 Dorothy Drive. We filled it in. When we came to you guys, we were fully prepared to do a pole barn and office and we have an office in town. We were prepared to move everything out there and have a storage place for our equipment. Well, as it went on and Kohl's came into the picture and has been in there for a year and a half, and all the while I have worked diligently with Westside Improvement and Shirley James and everybody else to do what we could do to make this a first class development. Now, whenever I found out about this thing here and got all these complaints, I bought 25 Dorothy Drive, 29 Dorothy Drive, the one across the street, 30 Dorothy Drive. Every one of those houses I bought, I told the people when they got ready to sell, get it appraised and I would give them 10% more than the appraised value. Well, that worked for the one at the end of Dorothy Drive. I bought the Fickas property next door. I cleared that woods out of there because Kohl's wanted it for a sight thing from the road. I purchased the one across the street. Now there are only three of them left. My son owns the two over there. We own lots of lots. But we only own four separate owners, which overcomes the three. But getting back to the story Mr. Grisham was telling you, like we have been mean to these people or made a big mess, I went to them and got an offer from the Postons, which they said they were ready to go in the morning. The other ones down there, the Fitzgeralds, they told me they didn't want to leave till summer. They didn't want to move in the winter. So I fooled around and waited and had all my money tied up and what is the use of buying those people out unless I get my permit from the Corps and everybody else and get this deal closed with Kohl's? So I went and made a deal with the Fitzgeralds and we arrived at a price. Now comes along, it carried out over this period of time and I went to Mr. Grisham and Mr. Poston. Poston and I got a deal. I shook his hand, told him I would pay him what he wants, which is a whole lot more than 10 percent over. I paid \$77,000 from Connie Russell for a house that was worth \$45,000. I am paying for that little 800 square foot house of the Fitzgeralds, I've offered them, they don't want a house, so I went and made arrangements to buy acreage for them, a lot in the City

with utilities, and let her go out and pick out a brand new modular home which was going to cost me a total of \$100,000. Well, I haven't got that done yet, but we got an agreement. Now I go to Mr. Grisham. He said he wanted to go too. He said he would go find him a house and I would buy it and we trade. He went and found a house alright. He said there wasn't an outbuilding on the house and would build that himself. He said the house was in Perry-out. He wants a \$475,000 house. So I am the bad guy here? Then the Fitzgeralds, In the mean time, two times in the last month, their sewer runs across my property, dumps in a ditch behind my house and stopped up over the holidays. I took a backhoe and men out there and fixed it. I had no idea it ran across my property and dumps in the back of my property. Did I call the Health Department? No. I went down to the Health Department, told them.I don't know what more I can do. But I do have this covenant here if you want to read it. I have the State as an adjoiner and they have signed off on this covenant. I have it notarized. This covenant will not exist any longer. But I have been more than fair to everybody. This traffic thing on the ingress/egress, when I first came in here, that was everybody in this room's big concern. They wanted it fixed. I made an agreement which still exists today to give them an entrance on Hogue Road and on Rosenberger. They have to give that access. These people will never have to go out Dorothy Drive again. The City won't have to fool with it. INAUDIBLE PORTIONS.....Anybody got any questions?

Mr. Lockard: I am very familiar with the covenant and I know the language in there says greater than 51 percent of the owners vote to amend it, it can be amended or terminated. From what you said earlier, there are seven property owners. You are stating that you have four of them that will agree to terminate it.

Mr. Owens: Yes.

Mr. Foster: Any other questions? Motion for approval? (Motion was made and seconded.)

UNIDENTIFIED PERSON: INAUDIBLE

Mr. Foster: I don't know. I haven't seen the covenant. I don't know who it was in favor of and that would be listed in the covenant. My suggestion is, if you have a covenant and a question, take it to an attorney, let them look at it and give you some legal advice.

Ayes: Mr. Jeffers, Mr. Lockard, Ms. Musgrave Mr. Offerman, Ms. Payne, Mr. Pedtke, Ms. Stevens, Mr. Wortman, Mr. Dunigan, Mr. Foster

Nays: None

There being 10 affirmative votes, Docket No: R-2005-2 goes forward with a recommendation for approval.

SUBDIVISIONS

Mr. Foster: 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 for the subdivisions.

Docket No: 5-S-2005 Wm. S. Hirsch Subdivision Part of Section 19, NW T6S/R9W Knight Township

Located on the northeast corner of the intersection of Burkhardt Road and Columbia Street

Docket No: 6-S-2005 CMH Subdivision Part of Section 20, SW T4S/R10W Scott Township

Located on Highway 41 at the intersection with Schroeder Road

Meeting adjourned.

Mark Foster, 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.

Bradley G. Mills, Executive Director

Karen Yokel, Transcriber