

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

July 14, 2005

ROLL CALL

Mr. Foster: I would like to call the July 14, 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, Jeff Kniese, Mike Lockard, Phil Offerman, Yvette Payne, Bill Pedtke, Curt Wortman, Mark Foster

Members Absent:

Tammy Barnett, Roger Herrin, Cheryl Musgrave, Stacy Stevens

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 June minutes? (Motion was made and seconded.) The minutes of the June meeting are approved.

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 second Thursday 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 August 8, 2005, at 5:30 p.m. in Room 301. The County rezonings considered tonight will be heard by the County Commissioners on July 19, 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.

The following petition will not be heard tonight:

Docket No: R-2005-14 Interprop Fund VIII – 2600 Oak Hill Road
CONTINUED ONE MONTH AT THE PETITIONER'S REQUEST TO AMEND USE AND
DEVELOPMENT COMMITMENT AND WORK WITH THE NEIGHBORHOOD
ASSOCIATION ON THESE AMENDMENTS - REQUEST WAIVER OF CONTINUANCE
FEE.

If you are here on this petition, you may wish to leave at this time.

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

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

OLD BUSINESS
COUNTY REZONING

Docket No: 2005-20-PC VC-6-2005 Petitioner: Haas Development
Address: (Complete legal on file.) 7920 Hogue Road
Nature of Case: Change from an R-1 zone to an R-3 zone.

Mr. Mills: Haas Development Inc. is requesting a change in zoning from R-1 to R-3 for a 0.18 acre part of their property located at 7920 Hogue Road. The site is south of Hogue Road, west of Faith Way. This petition was continued from last month's meeting to allow satisfaction of notice requirements. In January, 2003, Haas Development rezoned a 10.91 acre site to R-3 for extension of the Wolf Creek Condominium (multi-family residential) site. This R-3 site is adjacent south of the R-1 zoned Heartland Crossing Subdivision site. Heartland Crossing was approved in August, 2003, as a 59-lot single-family residential subdivision. 24 lots have been recorded within Section 1 and 2 of Heartland Crossing. A new plat has been filed for the remaining acreage – Heartland Crossing Section 3. The new Heartland Crossing plat includes the R-3 acreage adjacent to the south, and a small part of R-3 zoned land, which will link the Heartland Crossing subdivision to the Wolf Creek Condominiums. The R-3 acreage is being divided into 5 lots, with a dedicated right-of-way for a new street that will extend through the site to the Wolf Creek Condominiums. Haas Development is requesting to rezone to R-3 a small, 0.18 acre "triangle" of land which was originally part of the R-1 Heartland Crossing Subdivision. This 0.18 acre site is being added to the adjacent R-3 land, and is a part of Lots 61 and 62 on the new Heartland Crossing Section 3 plat. Access and streets will be addressed by Subdivision Review Committee and by Site Review Committee as part of the review of the Heartland Crossing Section 3 subdivision plat. The Comprehensive Plan Future Land Use Map 2025 recommends this area for residential development. This step up in zoning to R-3 for this small triangle of land is consistent with the residential plan for the area.

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? (Mr. Kincade has been sworn in.)

Mr. Kincade: My name is Kevin Kincade. My address is 123 N.W. Fourth Street, Suite 706 in Evansville. I am here on behalf of Jerry Atkinson, due to a family obligation. I am here on behalf of Haas Development. We are here on a requested adjustment of an internal lot line in a development at the corner of Hogue Road and Faith Way. The development is being carried out in two sections of land with a tract that was rezoned in 2003 as R-1 for the construction of single family residences, and separate parcel of land to the south which was rezoned to R-3 for the multi-family housing. With the preparation of the final design for the plat of R-3 land, it was determined that the

proposed location of the then present road would have been steeper than would be desirable under the circumstances. By relocating that road within that development, it was determined that the grade would be less steep and the likelihood of erosion of the surrounding land would be less than would have been otherwise. The plan was redesigned to provide for the safer roadway and for less potential for erosion. There are some additional benefits. The small triangle by the VC-6-2005 area is the area that we want to have rezoned to R-3. The purpose of it is to allow the relocation of the road and allow the number of condominiums that have not exceeded the original approved plan with the use and development commitment to be reconfigured to coincide with the change in the roadway. This is a very small part of the overall development. The additional benefits in the way that it would allow the plan to be altered is that all of the single family residences and the lots that appear in yellow would permit the homes to face the roadway that is shown. But with the prior plan, the road had come through in a different area to the left, and those two homes would have needed to face that road which would have broken up the continuity of the placement of the homes in the development as envisioned. In addition, some of the condominiums that were planned can now face toward the cul-de-sac. INAUDIBLE...AWAY FROM MIKE... I think the benefits of this change far outweigh any negative implications, and to my knowledge, there are none. Thank you.

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

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

Nays: None

There being 9 affirmative votes, Docket No: VC-6-2005 goes forward with a recommendation for approval.

NEW BUSINESS **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 let's move on to the subdivisions.

Docket No: 13-S-2005 Heartland Crossing Section 3
Part of Section 29, NW T6S/R11W Perry Township
Located on Hogue Road, between Eickhoff and Peerless Roads

Mr. Mills: The Heartland Crossing Section 3 subdivision is a proposed 38-lot expansion to the applicant's existing residential development located on 25.1-acres between Hogue Road and Wolf Creek Court. Part of the site is zoned R-1 and a portion was zoned to R-3 with a Use and Development Commitment in 2003. The property is currently undeveloped. The use commitment limits the number of condo buildings, the size of the buildings, and the total number of units and allows for single family homes in the R-3 portion of the site. The Subdivision Review Committee reviewed this plat on June 7, 2005. The plat shows a road connecting Faith Way on the north to Wolf Creek Court on the south, with two cul-de-sacs extending to the west from this road.

County Engineer's comments are as follows: All retaining walls, retention basins, and/or decorative landscaping features must be kept out of the street right-of-way. These items must be placed on private property and maintained by the owners of the private property.

Preliminary drainage plan approval was granted by the County Drainage Board on June 28, 2005 for the Heartland Crossing Section 3 subdivision. Add dimensional arrows to the 100-year floodplain boundary shown on the plat to indicate which side of the line is in the floodplain. A label also needs to be added for the floodplain boundary in the northwest portion of the plat. Add the FPG of 467' on proposed Lot 59 (as recorded on Bateman Minor Subdivision).

Building Commission comments are as follows: Flood Plain: delineate the 100-year flood contour and elevation. Flood Way: delineate areas established as floodway by the Indiana Department of Natural Resources (DNR).

Add the following statement to the subdivision plat: Compaction Certification: Within Flood Zone "A", a Soils Engineer shall certify the compaction, methods, and suitability of

fill in the area of building pads, and shall delineate lot numbers for those building lots being certified on the site grading plan. Further, the Soils Engineer will provide special footing and foundation requirements, if any, based on the soils conditions.

Add FPG's to Lot 46 and 62 (*elevations to be determined*).

Add to the Title and Boundary Description on the plat that this subdivision is also a Replat of Lot 2 in Bateman Minor Subdivision and Lot 6 in Wolf Creek Estates. Water and sewer will need to be extended to the site. Staff recommends that the Heartland Crossing Section 3 plat be approved with the conditions listed in the staff field report as it complies with the Comprehensive Plan and the requirements of 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? (Mr. Yellig has been sworn in.)

Mr. Yellig: My name is Gary Yellig. I am a surveyor and engineer for Haas Development, 1805 Main Street, Mt. Vernon. I think Mr. Mills and Mr. Kincade have explained what's going on with the proposed subdivision. It is a little over 25 acres development. It sort of the continuation of the Haas's development Heartland Crossing. There was a primary plat on file for this property in 2002. We are not changing too much of the configuration of the residential portion of the plat. But we are mirroring the street on the condo portion, the R-3 portion. There will be 18 buildings in the condo portion, with 50 units, which is within the development commitment. Are there any questions?

Mr. Foster: Let's go over the conditions and make sure there are no problems. 1. Add the FPG's to the plat on Lot 46 and 62 (elevations to be determined by the Building Commission) and add the FPG of 467' to Lot 59 on the plat (as recorded in the Bateman Minor plat) prior to recording. 2. Add directional arrows on the plat on the floodplain boundary to indicate which side of the line is the floodplain. 3. Add a label for the floodplain boundary in the northwest portion of the plat. 4. Add the following statement to the subdivision plat: "Compaction Certification: Within Flood Zone "A", a Soils Engineer shall certify the compaction, methods, and suitability of fill in the area of building pads, and shall delineate lot numbers for those building lots being certified on the site grading plan. Further, the Soils Engineer will provide special footing and foundation requirements, if any, based on the soils conditions."

Mr. Yellig: Yes.

Mr. Foster: 5. Add to the Title and Boundary Description on the plat that this subdivision is also a Replat of Lot 2 in Bateman Minor Subdivision (as recorded in book P, page 93) and Lot 6 in Wolf Creek Estates (as recorded in book R, page 9).

Mr. Yellig: Yes.

Mr. Foster: Are there any questions? Are there any remonstrators? (None.) Motion for approval, subject to the condition I just read? (Motion was made and seconded.) Call the roll.

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

Nays: None

There being 9 affirmative votes, Docket No: 13-S-2005 is approved.

Docket No: 14-S-2005 Wm. S. Hirsch Section 2

Part of Section 19, NW T6S/R9W Knight Township

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

Mr. Mills: The William S. Hirsch Section 2 subdivision is a proposed 30-lot expansion to the applicant's proposed commercial development located on 42.5-acres east of Burkhardt Road between Columbia Street and Oak Grove Road. This site was part of an area that was rezoned from Ag to C-4 with a Use and Development Commitment by the County Commissioners in 2004. The property is currently undeveloped. The Subdivision Review Committee reviewed this plat on June 7, 2005. The plat shows eastward extensions of Vogel Road and Columbia Street from Burkhardt Road and a new frontage road extending through the site parallel to and east of Burkhardt Road. In 1998, the County Commissioners accepted the Eastside SR 62 Corridor Plan. This corridor plan recommended the extensions of Vogel Road, Columbia Street and the frontage road as shown on the plat. A revision to the plat is needed to show how the frontage road will tie into Old National Drive, which extends north from Oak Grove Road.

Comments from the County Engineer can be summarized as follows: 1. Construct a right-turn decel lane on Burkhardt at Vogel and on Oak Grove Road at Road #1. 2. To prevent traffic problems at Burkhardt and Vogel Roads, Lots 7 and 8 are recommended to only have access to Road #1. 3. Modify the signal at Burkhardt and Vogel to address project traffic to satisfy the County Engineer. 4. The right-of-way width and radii on the secondary plat must conform to the subdivision road plans to be reviewed and approved by the County Commissioner. 5. Right-of-way for Vogel Road between Burkhardt Road and Road #1 must be sufficient for a five lane cross section. 6. Columbia Street must be constructed to the east plat boundary. 7. In the rezoning of this property, the previous reference to possible curb cuts on Burkhardt Road was based on the fact that, at the time, no other access to this site existed. Since a frontage road is proposed on this plat that can provide access to all the subdivision lots, no access is recommended for any of these lots to Burkhardt.

EUTS comments agree with County Engineer on access to Lots 7 and 8 and on the importance of extending Columbia Street. Preliminary drainage plan approval was granted by the County Drainage Board on May 24, 2005 for the Wm. S. Hirsch Section

2 subdivision. Water and sewer will need to be extended to the site. Utility Department comments are that the capacity of the lift station at Burkhardt Crossing needs to be studied. The Water and Sewer Department must be satisfied with the sewer plans before the plat is recorded. Staff recommends that the Wm. S. Hirsch Section 2 plat be approved with the conditions listed in the staff field report and in the County Engineer's comments as it complies with the Comprehensive Plan and the requirements of 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. Fuchs: My name is Don Fuchs. I am legal counsel for the Hirsch Family Limited Partnership. Also with me is Jim Morley Jr. who has done the engineering on this project. I also have David Hirsch here, one of the general partners of the Hirsch Family Limited Partnership. I am working off of these conditions that I received a copy of. Our client is acceptable to all these conditions. But we would like to have some discussion concerning requesting to pose a requirement to extend Columbia Street to the east property line of the subdivision. We were looking to extend that to the west property line, but not looking to move that past east. But our concern is that we have Sam's that has dedicated right-of-way that has posted a letter of credit. But for the past one and a half years, I have been trying to engage Sam's into some discussion about putting that road in. Today, they have had little, if any, input at this point. So we are curious of the necessity to extend Columbia Street to the east property line. Furthermore, there is a requirement that the developer, Hirsch Family Limited Partnership construct and install that. Well, are we talking about installing that on our half of the right-of-way, which we are willing to dedicate. But other than that condition, we are comfortable with all these.

Mr. Morley: I think you just had one added.

Mr. Foster: The fifth paragraph, the last sentence, "Right-of-way for the Vogel Road segment between Burkhardt Road and Road #1 must be sufficient for five lane cross section." I think previously, it was discussed as a four lane.

Mr. Mills: That was the reason why I was late. I was on the phone with John Stoll. We were trying to hammer out that issue he had a concern with. That is how we phrased that.

Mr. Morley: I talked with John this morning. I helped him with some data and I have not heard back from him. One of the comments he made, he was going to study it. One suggestion he threw out was a perhaps a four lane section be built at this time, but the right-of-way be granted if a fifth lane were to be built. Is that correct?

Mr. Mills: What the statement says is we need enough right-of-way for five lanes, but we are not telling you what you have to build. That's going to be a County Commissioners' decision. So we are not asking you to build a five lane section, just

sufficient right-of-way for a five lane section. So that will be between you and the County Engineer and the County Commissioners on what needs to be constructed in that area.

Mr. Fuchs: We are comfortable with that.

Mr. Foster: In reference to Columbia, I understand you may not want to construct or install it at this time. But if Sam's has a letter of credit posted and dedicated right-of-way, do you have a problem posting a letter of credit for at least your share of that road and dedicating the right-of-way?

Mr. Fuchs: We have no problems with dedicating that right-of-way. The Hirsches are desirous to put that road in. We are willing to discuss putting that road in even further east of that. We can't seem to get Sam's to get to the table. Mr. Morley, they have asked for road design plans. Mr. Morley provided that to them but got no response. I am somewhat agitated after a year and a half with these folks not wanting to do what I feel they are legally obligated to do. So, are we willing to dedicate the right-of-way? Absolutely. Are we willing to post some type of letter of credit to show that we can do our half of that? I don't see that as a problem.

Mr. Foster: Okay.

Mr. Fuchs: I just have concerns we are going to be responsible for putting in the whole road when these folks got up...

Mr. Foster: Well, if they have a letter of credit up, maybe we can help you with having the other half of that road built, or the County Commissioners can help you.

Mr. Harrison: Where is the right-of-way dedicated for Sam's to what point?

Mr. Foster: Does it go all the way to the east, the line of your property that Sam's has dedicated? Or, do they stop somewhere along there?

Mr. Mills: Sam's goes all the way to what was called Lot 7, which, if I had to guess, it goes to where that dark vertical line is. (referring to overhead map) It goes well beyond what they show as their east right-of-way. If you know the area over there, there is a new apartment complex and it is built where you see what is to be road right-of-way above this lot. So really, the road goes past that. It is supposed to be all the way to the east line of those apartments that are just behind Sam's. That is what they had a commitment for.

Mr. Foster: Don, what if we change the last paragraph..."The developer shall construct or install or post a letter of credit..." and then insert "their share of the cost of the following improvements..." with the intent being that you will dedicate the right-of-way and construct that one-half of the roadway which is on your property, or post a letter of credit. Any problem with that?

Mr. Fuchs: No.

INAUDIBLE CONVERSATION

Mr. Foster: That's why we want the letter of credit posted for your share of it. That way, you are not on the hook for the whole thing. But neither is the County.

Mr. Jeffers: In the wonderful likelihood that Sam's goes out there and builds their half tomorrow, that you will build your half the next day.

Mr. Foster: My guess is, you will build it as far as they want to build it. Are there any remonstrators? (None.)

Mr. Jeffers: I move to approve the plat with the conditions as shall be read by Mr. Foster.

Mr. Foster: Motion was made and seconded, subject to these conditions: 1. Document that the Water and Sewer Department is satisfied with the plans for extending sewer to the site prior to recording. 2. Show on the plat how the proposed Road #1 will tie into the existing Old National Drive which extends north from Oak Grove Road. 3. Revise Access Note #2 under the General Notes to read: "2. All lots shall access interior streets only." 4. Add under the General Notes for Access to read: "3. Lots 7 and 8 shall access Road #1 only." 5. The right-of-way widths and radii on the secondary plat shall reflect the road plans as approved by the County Commissioners for this subdivision. Right-of-way for the Vogel Road segment between Burkhardt Road and Road #1 must be sufficient for a five lane cross section. 6. The developer shall construct or post a letter of credit for their share of the cost of the following improvements prior to recording: a. Extend Columbia Street to the east property line of this subdivision; b. Provide a right turn deceleration lane on Burkhardt Road at Vogel Road and on Oak Grove Road at Road #1; and c. Modify the traffic signal at the Burkhardt-Vogel intersection as recommended by the County Engineer. Call the roll.

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

Nays: None

There being 9 affirmative votes, Docket No: 14-S-2005 is approved.

BUSINESS MEETING

Mr. Mills: I have one other statement to make. I wanted to inform the members that both the City Council and County Commissioners have approved the Subdivision Ordinance, which increases the time to record subdivisions.

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