

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

January 5, 2005

ROLL CALL

Mr. Foster: I would like to call the January 5, 2005 meeting of the Area Plan Commission of Evansville and Vanderburgh County to order. Prior to calling the roll, I would like to welcome our new member, Cheryl Musgrave, the new County Commissioner. Welcome Cheryl. Will the secretary please call the roll?

Members Present:

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

Members Absent:

None

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

ELECTION OF OFFICERS

Mr. Mills: By statute, we are required to elect both a president and vice president at our first meeting of the year. At this time, we will proceed with the election of officers. I will now open the floor for nominations for president.

Mr. Lockard: I would nominate Mark Foster.

Mr. Wortman: I second that.

Mr. Mills: If there are no further nominations, then nominations are closed. (Voice vote.) Upon unanimous voice vote, Mr. Foster is elected president.

Mr. Mills: Next, I will open the floor for nominations for vice president.

Mr. Foster: I would nominate Mr. Dunigan.

Mr. Mills: If there are no other nominations, the nominations are closed. (Voice vote.) Upon unanimous voice vote, Mr. Dunigan is elected vice president.

Mr. Mills: Mr. President, we also need to appoint two members to the Board of Zoning Appeals. Last year, it was Roger Herrin and Derek Dunigan.

Mr. Foster: I have spoken with both of them and I would reappoint both Mr. Herrin and Mr. Dunigan to the BZA.

Mr. Mills: Also, we have had a member that has attended the Subdivision Review Committee on occasion. If you would like, you can appoint a member to that as well.

Mr. Foster: Does anybody want to do Sub Review? Mr. Jeffers, you are already there, right?

INAUDIBLE

Mr. Foster: I will show Mr. Lockard appointed to Sub Review. Obviously, anybody can attend.

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 January 24, 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 January 24, 2005, at 3:00 p.m. in Room 301.

Mr. Mills: Ms. Musgrave is telling me that was incorrect. It is really 4:00 p.m.

Mr. Foster: Okay. 4:00 p.m. It may also be a change of time if you received a notice. 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: VC-2-2005 Madisonville West Properties, Inc. – 601 S. Boehne Camp Road
CONTINUED BECAUSE OF IMPROPER NOTICE

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

Mr. Foster: We have one other item first. That is a request for a one year extension to record Docket No: 29-MS-2002 Palmentor Minor Subdivision. Is there a motion for

approval? (Motion was made and seconded.) Voice vote. Upon unanimous voice vote, the extension is approved.

NEW BUSINESS **COUNTY REZONING**

Docket No: 2005-1-PC VC-1-2005 Petitioner: Dayton Freight Lines

Address: 11601 N. Green River Road

Nature of Case: Change from an agricultural zone to an M-2 zone.

Mr. Mills: Dayton Freight Lines is requesting a change in zoning from Agricultural to M-2 for the property located at 11601 N. Green River Road. This is a 20 acre site located on the east side of Green River Road, just south of Boonville-New Harmony Road. Dayton Freight Lines' conceptual site plan submitted as part of this rezoning petition indicates two proposed access drives are planned onto Green River Road, one that aligns with Proficient Court, the entrance to the industrial subdivision to the west of the site and a second access approximately 200 feet to the south. The projected increase in vehicular traffic generated by this new use will require capacity, safety, and/or operational improvements at the entrance to the development. County Engineer John Stoll states: "1.) This site will likely require auxiliary lanes (passing blisters, deceleration lanes); 2.) The geometrics of the driveways must be designed to accommodate large trucks; and 3.) Slow moving large trucks that leave this site and enter onto Green River Road could result in conflicts with the 50 mph traffic on Green River Road." Access will be addressed by Site Review Committee at the time of submission of plans for the development of the site. This proposed M-2 site is located in an area of very mixed commercial, industrial, agricultural, and residential uses. Adjacent south of the site is a 12+ acre site rezoned to M-2 in 1987 (front half) and 1999 (rear half) for commercial and industrial development. Adjacent north of the site is a C-4 repair shop rezoned in 1968. West across Green River is a 35+ acre site rezoned to M-2 in 1999. Property adjacent to the east remains agricultural. The Comprehensive Plan encourages development in those areas contiguous to existing development and to areas served by public facilities and utilities. The Plan also calls for commitments at the rezoning stage that ensure that the infrastructure improvements needed to accommodate new development will be in place when needed. A commitment to infrastructure improvements is encouraged at the time of rezoning. No commitments have been submitted with this rezoning petition.

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. Evans: My name is John Evans, 937 W. Boonville-New Harmony Road. We selected this site basically for its location and access onto I-164 and also to Highway 57, as major arteries into Evansville and points north and south for our operation. Also, the size of the land is suitable for our needs.

Mr. Foster: Are there any questions?

Mr. Jeffers: You state that the site size is suitable. Are you referring to the 20 acre site size, or the five acres you intend to use for the truck terminal?

Mr. Evans: Basically, we look for 10-15 or more acres with option for future development. But the five acres is what we will be needing now.

Mr. Jeffers: When you say future development, is that future development of the same terminal?

Mr. Evans: Expansion.

Mr. Jeffers: In other words, you have 15 acres left behind the five acres you show to be used. Would that 15 acres ever be developed into other users, or only for you?

Mr. Evans: No, it would just be for Dayton Freight Lines.

Mr. Jeffers: Is there some reason why you didn't center the terminal on the site? You left a sizable chunk over to the north where someone could access the other 15 acres for future development.

Mr. Evans: Those plans were drawn up by our architects and contractors.

Mr. Johnson: Robert Johnson. I am the project architect for Dayton Freight. If you have that site plan, the roadway that lines up with Proficient Drive is an out only. The drive to the south of that is an in only. So the trucks would come in on the south drive, back into the docks, then leave on the north drive.

Mr. Jeffers: What would prohibit anyone from using the accesses either as they wishes or in non-conformance with what you just stated?

Mr. Johnson: I have been involved with 7-8 freights in Ohio, Michigan, Wisconsin and Illinois and this is the flow that I have been involved with. Another question you had, they always buy 10-15 acres because of the expansion of the dock in the back. In all those state, we have purchased 10-15 acres for Dayton Freight's expansion.

Mr. Jeffers: I will pass this around for the other Commissioners to look at. My concern is that the design, you have five acres offset to the south with two access points, not just for trucks, but for public passenger cars and truck access to the front parking lot. I don't see how you are going to control them coming in and out whichever access they wish to use. But because, as you drew them on this site plan, they don't indicate one way, either by signage or by the configuration. Your radiuses are put down there to indicate they could enter and exit as they wish. As you say, one of the access points lines up with Proficient Court directly across the street, which is an industrial development. That is a logical access point. The other one is a poorly planned access point to the south because one, it just provides confusing access for whoever wants to come in and out that way. Your

drawing doesn't depict any decel lanes or other needed infrastructure improvements. Then the entire project is kind of offset to the south indicating that there is a good portion of the property still accessible and there is likely to be a third access over there. If you look across the street, you will see a similar size industrial park, a little over 20 acres. In that case, we asked for and received a single access, all the interior development accesses one cul-de-sac so that all the traffic flows out onto Green River Road from one controlled access only. I am thinking that central access point from your parking lot would be the logical single and only access to this development. But when you fence off your entire property as shown, you are indicating your intention to prohibit access through that parking lot should the rest of the 15 acres be developed in the future to some other use besides a trucking firm. I like full, highest and best use of the piece of property when it is zoned commercial or industrial. That idle land laying there should be developed commercial or industrial to its fullest potential and I think it should have one access point for that purpose.

Mr. Johnson: I know that there is probably five acres in the back of this parcel that is all in the floodplain that is never going to be developed.

Mr. Jeffers: The entire parcel is in the floodplain. There may be a portion in the back that is in the floodway.

Mr. Johnson: In the floodway that cannot be developed anyway. So I think realistically, we are only looking at 15 acres useable from the start.

Mr. Jeffers: I appreciate your candid response. I still remain extremely concerned about the request for two access points and the potential of three access points when we usually try to restrict those to something more reasonable. Thank you.

Mr. Lockard: On the driveways you have in there, are those going to be curbed or uncurbed?

Mr. Johnson: We have done both. Usually they are curbed.

Mr. Lockard: What is going to be the width and radius on those driveways?

Mr. Johnson: Usually we like to get 50 foot radiuses. Normally we go by whatever the standard curb cut is. A lot of times, we want wider and we can't get wider. We have to go with less than what we want.

Mr. Lockard: I echo Bill's concern on multiple driveways there and as I look at the EUTS transportation manual, you have them 200 feet apart. That is a 50 mph roadway there. The minimum that EUTS asks for is 275. I think, in light of the area that is there, I echo Mr. Jeffers comment. A single access point especially with a wide radius and wide width would be more than sufficient for semi trailer traffic and would be more in line with the aspects of the EUTS transportation manual. The other thing I would like to see done is because of the size of this site, since it is a 20 acre site, and per the transportation

manual, I would like to see a traffic impact study done in this area because you are talking about a 20 acre site, high access to Boonville-New Harmony, State Road 57, 164 with an increase in semi trailer load. The County Engineer has asked for some commitments. Are you willing to meet the commitments that he has proposed?

Mr. Foster: I think those will all be taken up at Site Review. We cannot condition a rezoning.

Mr. Lockard: Okay. I guess the question is, what about the traffic impact study? If you look at the staff report says, it says it has to be done in accordance with the access manual. This site meets the requirements of a traffic impact study. It is over nine acres. The EUTS manual says anything over nine acres can be required to have a traffic impact study. Can we do that?

Mr. Harrison: We can't condition the rezoning on that. I think that is a Site Review issue. It is something that they might be willing to look at.

Mr. Foster: If Site Review says they want a traffic impact study, they can do it. But what we are talking about here is not what is going on there. We are talking about is M-2 appropriate zoning for this land. It is not the specific use. It is the zoning of it.

Mr. Lockard: We have done traffic impact studies for other sites when it required. So if Site Review is to require if, you guys wouldn't have any heartache with that?

Mr. Foster: No.

Mr. Lockard: Thank you.

Mr. Wortman: Would all the trailers that you don't use that are worn out, would they be parked in the back for any reason?

Mr. Evans: We don't normally keep ones that are not in use. We send them back to our corporate office in Dayton in our main terminal. If they are not in use, they aren't on our lot.

Mr. Foster: Any other questions?

Mr. Jeffers: I didn't notice any remonstrators raise their hand so before we rush forward, I do have a question Mr. Foster. You indicated we cannot condition a rezoning.

Mr. Foster: Correct.

Mr. Jeffers: When I am looking at the staff field report, it says "The plan also calls for commitments at the rezoning stage that insure that the infrastructure improvement needed to accommodate new development will be in place when needed." And the very last sentence says "A commitment to infrastructure improvement is encouraged at the time of

rezoning. No commitments have been submitted with this rezoning petition.” Could I have clarification on why those statements appear on our report, but I am hearing that we cannot condition a rezoning?

Mr. Harrison: I presume what they are indicating is that a use and development commitment or a covenant of some sort might have been preferred but it wasn't done in this instance. Is that what you are getting at?

Mr. Jeffers: I think what I am getting at is the staff says commitments at the rezoning stage, that our Comprehensive Plan calls for commitments at the rezoning stage to insure that infrastructure improvements will be in place when needed. Then it goes on to say that a commitment for these infrastructure improvements is encouraged at the time of rezoning.

Mr. Foster: Those are commitments, not conditions. It is a commitment on behalf of the petitioner, not a condition on behalf of the Area Plan Commission.

Mr. Jeffers: Okay. So if those commitments aren't there,...

Mr. Foster: You have the right to vote against it.

Mr. Lockard: Correct me if I am wrong, based on past discussions, a verbal commitment is not enforceable anyway. Unless it is in writing, and specifically a use and development, APC staff and legally, we can't do anything on it.

Mr. Foster: That is correct.

Mr. Jeffers: Thank you for your clarification. I am sorry for my confusion.

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

Mr. Jeffers: (During roll call.) Because it has been clarified to me, and I now understand it completely, I would like to say that it is obvious that a commitment for infrastructure improvements not only is encouraged by APC and the Comprehensive Plan, but has been indicated as necessary by the County Engineer, and is absent from this petition, and therefore, I believe it represents bad planning to vote yes and I am voting no and encourage others to do the same.

Mr. Lockard: (During roll call.) We sound like a broken record here, Bill. I have to echo that. Nothing against Dayton Truck lines because I am very familiar with them because my father spent 30 years at Bristol Myers in transportation. It is a respectable firm. But at the same time, I am tired of seeing in other areas that we ask for commitments and they are not here whenever we vote on the petition and I don't think it is fair to the residents of the County to take the chance that we end up with another traffic nightmare in a highly

traveled area because the commitments were never made and never honored. Therefore, I vote no.

Ayes: Mr. Dunigan, Mr. Herrin, Mr. Kniese, Mr. Offerman, Ms. Payne, Mr. Pedtke, Ms. Stevens, Mr. Wortman, Mr. Foster

Nays: Mr. Jeffers, Mr. Lockard

Abstention: Ms. Musgrave

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

Mr. Foster: I would remind everybody there is a change in time of the County Commission meeting to 4:00.

Mr. Harrison: Ms. Musgrave, does your meeting actually start at 3 and the rezonings start at 4?

Ms. Musgrave: That's right.

Mr. Harrison: So the meeting actually starts at 3, but the rezonings may not be heard until 4.

Mr. Evans: If we need to do some of these commitments in writing prior to that meeting, is there a procedure in place to do that? Because I don't think Dayton Freight is unwilling to do a traffic study or decel lanes because we have done that in other locations. So I don't think it is a problem that we are not willing to commit. We are. We just didn't know we were supposed to commit.

Mr. Harrison: There are two things you can do. One would be to amend your petition and come back with a use and development commitment that had some of these details in it. The other thing is a private covenant that basically said you would do this, this and this and you would submit that to the County Commissioners, not for their enforcement purposes, but it runs with the land. You would record it. Those land owners that live within a certain radius of the land would have the option to enforce that if you are not abiding by those commitments.

Mr. Mills: We did talk to a representative when they filed about doing a use and development commitment, but they didn't say specifically that they needed to have, it was "you might" so they didn't know what to commit to. So those are the two options that you can take. A use and development commitment would require you to come back next month before this board.

Mr. Evans: I guess that is a problem because we are on a schedule for the spring to start.

Mr. Harrison: You might be able to contact Mr. Mills about the possibility of a private covenant. You might get some ideas.

Ms. Stevens: Mark, would a private covenant include the accel/decel lanes?

Mr. Foster: It could include anything you want it to, accel/decel, traffic lights, etc. Also, it could be in favor of the Commissioners.

Ms. Stevens: But at Site Review, they are going to dictate whether or not that is necessary and that becomes part of the deal anyway.

Mr. Lockard: That is what I thought that when we went into site design, those issues would be handled during the site design process.

Mr. Jeffers: My problem with that is that at Site Review, many of the technicians at Site Review are a little skittish because we are not backing them up at the board. They are put in the position that maybe they need to do this or maybe they don't. Often times, it is not, the commitments that are indicated as being needed, when these reports come to us before this meeting, we get this report that says that infrastructure improvements are needed to insure whatever. And here the County Engineer says this will likely require auxiliary lanes, passing blisters, decel lanes. But then we don't back up, we asked him to send us what he thought we needed. Was that not available in time to tell these folks that is what we would like as a commitment?

Mr. Mills: He states "likely" and "could" result. So if the County Engineer is asking for those things, I think he should ask for them specifically.

Mr. Jeffers: I can see how he is a little skittish though. Over the years of not being backed up. I have talked to these technical people two or three days ago. They are all telling me there is no teeth. EUTS is saying, their report says access will be restricted to one curb cut on Green River Road. That is their recommendation. That is a mis-statement. The staff at EUTS agreed with me. They cannot say that access will be restricted to one curb cut and they admitted at the desk that that should not have been stated that way, that they were just recommending one curb cut. But the person at the desk told me there was no teeth in this system, that they really don't know if they will be able to restrict it to one curb cut at Site Review. That is why we sometimes get wishy washy reports and recommendations from these technicians.

Mr. Mills: I am sure you are aware Bill, EUTS is just a recommending body to us. So they cannot say that anything has to be done. That is a recommendation to the Plan Commission to the County Engineer.

Mr. Foster: The County Engineer can say at Site Review it must be done and it has to be done or there won't be any permits pulled. He has his teeth. If he wants to say no, he can say no. EUTS is in a different position. No, they don't have the teeth.

Mr. Jeffers: They just print this manual here that tells us it should be 275 feet apart.

Mr. Foster: It is a suggestion at best.

Mr. Mills: In the petitioner's defense too, we get all this information and then it is distributed to all the departments for their review. At the time they file, they don't know the comments obviously. They could have included a use and development commitment had they spoke with the County Engineer prior and knew that he had concerns. But at the time of the filing, they did not have that information.

Mr. Jeffers: I understand. I just think there are a lot of chinks in the system that things are falling through. There is a beautiful industrial subdivision right across the street from here that has 10 acres for you ready to go. Curb cuts are in place. Streets are done. Utilities, sewer and water, everything.

Mr. Foster: Maybe we can continue this discussion in our business meeting.

Mr. Jeffers: I think I am finished discussing this kind of thing. It is obvious how the votes are going to go from now on, so that's fine. That's cool.

CITY REZONINGS

Docket No: 2005-2-PC R-2004-38 Petitioner: Debra Bernhardt

Address: 3200 Waggoner Avenue

Nature of Case: Change from an R-1 zone to a CO-1 zone.

Mr. Mills: Debra Bernhardt is requesting a change in zoning from R-1 to CO-1 for her property located at 3200 Waggoner Avenue. This proposed office site is a 0.18 acre lot located at the northeast corner of Waggoner and Vann Avenues. This is a request to rezone the single-family residence on the site to CO-1 to allow its conversion to an office. There is an existing 6-space paved parking lot on the rear of this site, installed as a SU-10 (special use # 10) auxiliary parking area for the tavern adjacent north of the site. Special use approval and variance approval to relax the green space for the parking lot were approved by the Board of Zoning Appeals in December, 1995. This 6-space lot provides the required number of parking spaces to allow conversion of the residence to an office. Any changes to the parking require Site Review approval. The Comprehensive Plan designates this area for residential uses. The site is in a residential neighborhood adjacent to commercial development along Covert Avenue. Adjacent properties to the east and south are R-1 zoned residential uses. C-4 is adjacent to the north and there is a C-4 zoned residence/child care facility to the west. If commercial development is to be permitted within residential areas, office development can be the least intrusive commercial use. The CO-1 classification is often utilized as a "buffer" adjacent to residential development, as it limits the kinds and types of uses, which are permitted. The CO-1 classification limits the size of any office to a maximum 3,000 square feet.

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. Shaw: My name is Toby Shaw, II. My office address is 1911 Lincoln Avenue. As Mr. Mills stated, we are looking to rezoning the property to CO-1 from R-1. As you can tell, the adjacent corridor of Covert Avenue, it is a commercial area. North we have a tavern. Directly across the street to the west, there is a child care center. It is an appropriate space for a buffer for the office. One of the problems is, and one of the complaints we've had from many of the neighbors is it has been rental property. But, at the time the tenants have, there have been some problems with tenants dealing drugs out of it, and other such matters. We feel that it is in an appropriate location to be CO-1. They are looking to make it an office space. The upkeep and traffic in and out may be increased, but there is the six lot parking space so we do meet the requirements there. Further, the owner of the property, Debra Bernhardt, also has interest in the tavern to the north. So any additional parking that they would need is allotted is readily available. At this point, we have one remonstrator. I had not been contacted and I did not believe there was any remonstrators. We are aware of any problems that may arise; but we really feel that an office space here for professional business, since there is one right north abutting the property and directly to the west abutting the property, it is appropriate for this area, and we would just ask the Commission to take that into consideration and approve the rezoning.

Mr. Foster: Are there any remonstrators?

Mr. Schmitt: My name is John Schmitt. I live at 1706 Vann. I own the property directly across the street from 3201 and 3207 Waggoner. They black-topped behind the house about a couple years back and they said it was just for the house. But they have been using it for the bar. They say there is extra parking in the bar if they need it. I don't think so, because they have signs up there, but they have never towed a car out of that back yard. They have a trash area back there for the bar. They have the dumpsters sitting back there. I have been picking their trash up for years and years. This house is the only buffer we have. They rented it out as residential. They think this will be better. But I don't think so. They didn't take care of the residential. How are they going to take care of this? Right now, we have hardly no parking on the street because there are people parked there. They take up all the parking for the neighborhood. Everybody from the bar parks up and down our street. But we need some sort of buffer there and a commercial building is not going to be a good buffer. It is just going to give us more problems because you think we have parking problems now, they put something in there where people are coming in to the office, where are they going to park? They can't get into the bar. There is not an extra parking place there any time. That's all I have to say.

Mr. Foster: This has been rental property in the past?

Mr. Schmitt: It has been rental property for many years.

Mr. Foster: I take it the property you own on Waggoner is also rental property?

Mr. Schmitt: Right. But I take care of it. I keep it clean. I pick up my trash and their trash, all their cigarette butts, beer bottles, whatever. I have been cleaning up down there for 35 years. We don't need any more. I am getting too old to clean it up.

Mr. Foster: Any questions?

Mr. Kniese: Question for Mr. Shaw. What would be the hours of operation for this proposed business on this site?

Mr. Shaw: A normal business operation. We are looking at a law firm, child care, photo lab, something in the realm from 8 in the morning to 5 at night. It is going to be office space. I respect the remonstrator's opinion. But it seems like his problem is more with the tavern than it is with this property. But it will be normal business hours. It will be nothing more than that. We have no intentions to turn it into an extension of the bar or anything like that.

Mr. Kniese: How many people do you anticipate occupying this business? Is it a five office business, two office?

Mr. Shaw: It is less than 1,200 square feet. For CO-1, we can have a maximum of 3,000 square feet.

Ms. Bernhardt: 15001 Old State Road. The property is large enough for one office space. Or, if you had maybe two insurance agents that wanted to share the property. The parking lot, the tavern, we have been in court with them and they are not to use that parking lot for their employees. Whenever we were renting it as rental for a family, the problem we had was that they would intimidate those people and try to park over there. We think we have that settled now from going to court over it. I do not have anything to do with the tavern business. We own that building. That was not put in there with the intention that they could use that all the time. If you have people in there with children, you don't want their patrons using that parking lot. It is not safe. We decided to go commercial because we were having a problem with people renting it for residential. They weren't taking care of it and we were spending all our profits on repairing the inside of it. Now we have totally gutted the house. We took all the siding off and we sided it and it looks totally different than the pictures we see now. We think it has improved the looks of the area. We felt like it was an asset to all the property owners around.

Mr. Foster: Are there any other questions?

Mr. Lockard: How long has Ms. Bernhardt owned this property?

Mr. Shaw: Approximately 10-12 years.

Mr. Lockard: For the other gentleman, how long have you owned your rental property?

Mr. Schmitt: 25 years. But they said that there was plenty of excess parking at the bar if they needed it. There is not. You need to look.

Mr. Lockard: On the staff report, it says there is a six space pay parking lot installed as a special use #10 auxiliary parking area for the tavern. So does the tavern use this for parking or not?

Mr. Shaw: Well, during the tavern hours, yes the tavern parking does take place in this lot. But later on in the evening. During the day, this would be the office's parking lot and it meets the requirements. The tavern does have the right to park there, or that was the intentions. They do not have it any more, but when it was initially zoned in 1995, there was special use approval for it. But now, as Ms. Bernhardt testified to the Commission, no longer is that allowed. But initially it was.

Mr. Foster: Whenever the parking lot was put in, was there a different ownership of the tavern there?

Mr. Lockard: 1995 is not 10-12 years ago, so I am a little confused on the time frames there.

Ms. Bernhardt: My mother owned that home prior to me owning it, and my sister. We bought that property from her 10-12 years ago. The person who used to own Jenny's Place used to rent that property and during the time she was renting it, we paved that to make it easier to park her and her daughter's vehicles there. She no longer is the owner of that bar and we do not allow but one week out of the year during their Mardi Gras festival, that their employees only may park there as long as it doesn't interfere with whomever is renting the house.

Mr. Lockard: But the special use #10 is still existing and current, correct?

Mr. Mills: Yes.

Mr. Jeffers: This is one of those situations that was handled in Site Review in 1995 when Jenny came in for an enlargement of her tavern and she didn't have enough parking, so Site Review handled this special use deal, suggested that she make arrangements with this property. Of course now, this is another issue that will be handled in Site Review. So when this comes before Site Review when it is rezoned, it will be handled there.

Mr. Wortman: Did you put a fence up there to solve some of that problem?

Mr. Shaw: Well, as we stated, there is a special use still in effect, and also, the one week a year Mardi Gras party they have down there with quite a bit of business and they do need the extra parking. To put up a temporary fence that would be moved, I don't know if that would be a possibility with the expense. It wouldn't be a good investment for my

clients. A fence would be a possibility; but because of the special use, and because of the once a year, it seems that wouldn't be a viable option.

Mr. Schmitt: Ten minutes ago he said there was extra parking at the bar or this place. Now he is saying this is extra parking for the bar. Thank you.

Mr. Foster: Is there a motion for approval? (Motion was made and seconded.) Call the roll.

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

Nays: Mr. Herrin, Ms. Musgrave, Mr. Lockard, Ms. Payne

Abstention: Mr. Kniese

There being 7 affirmative votes, 4 negative votes and 1 abstention, Docket No: R-2004-38 goes forward with a recommendation for approval.

Docket No: 2005-3-PC R-2004-39 Petitioner: Aztar Indiana Gaming Company, LLC
Address: NW First Street; 512, 514 NW First Street; 15, 18 NW Third Avenue; 15, 101, 109, 115 S. Fulton Avenue; 18, 20 Goodsell Street; NW Riverside Drive; 617, 625 NW Riverside Drive
Nature of Case: Change from a C-4, M-1, M-2, and M-3 zones to a C-3 zone.

Mr. Mills: Aztar Indiana Gaming Company, LLC is requesting to rezone all of the parcels and lots currently owned by Aztar Indiana Gaming Company to C-3 within the areas bounded by Fulton Avenue to the west, Ingle & Court Streets to the east, Riverside Drive to the south, and NW Second Street to the north. The common addresses of the properties are NW First Street & 512, 514 NW First Street; 15, 18 NW Third Avenue; 15, 101, 109, 115 S. Fulton Avenue; 18, 20 Goodsell Street; and NW Riverside Drive and 617, 625 NW Riverside Drive. The multiple sites are currently a variety of different zoning classifications from C-4, M-1, M-2, and M-3. This is a request by Casino Aztar to rezone all current holdings to C-3. This proposed zoning area is predominantly parking lots and convention center. The Riverboat and hotel are already zoned C-3. This rezoning will result in a uniform zoning classification on all of the Aztar properties. Site Review Committee approval and Redevelopment Commission approval is required for any new or changed use of the site. All of the lots are within an area designated on the Future Land Use Map - 2015 of Comprehensive Plan for commercial development. The change in zoning to C-3 is consistent with the Comprehensive Plan.

TAPE CHANGE

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

Mr. DeLucio: My name is Marco DeLucio. I am here on behalf of Aztar Indiana Gaming Company. I don't have much to add to Mr. Mills' presentation except to say, the way we identify it, it does include the new conference center that Aztar has, the old Funky's as I refer to it, and then the big parking lot down in that area is the area we are looking at. We are seeking to have the property zoned to C-3, which is downtown commercial. This is important for the parking lot area that is now zoned M-3 and wouldn't allow any type of commercial use and eventually Aztar is going to develop that property. So we are seeking to have the property zoned consistently in that area so that when development plans come forward and are approved by the Redevelopment Commission, that we can proceed quickly with the development of that area. With me tonight is Mick Dwyer and Pam Martin from Casino Aztar and we are happy to answer any questions you may have.

Mr. Foster: Are there any questions?

Mr. Jeffers: Does C-3 allow sports recreational?

Mr. Foster: that's the question I had.

Mr. DeLucio: I don't think we are planning on building a baseball stadium. I am not sure what that allows in C-3.

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

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

Nays: None

There being 12 affirmative votes, Docket No: R-2004-39 goes forward with a recommendation for approval.

Docket No: 2005-5-PC R-2005-1 Petitioner: Pioneer Development Services, Inc.

Address: 1301 Read Street

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

Mr. Mills: Pioneer Development Services, Inc. is requesting a change in zoning from M-3 to R-3 for the property located at 1301 Read Street. This is a 3 acre lot located on the east side of Read Street, north of Louisiana Street. This site is a part of the now abandoned stockyard property, in an older area of very mixed commercial and residential uses. Pioneer Development Services proposes to downzone this vacant industrial site to a high-density residential classification which will allow construction of an apartment community, a residential use otherwise prohibited in the industrial classification. The site has been platted and recorded as a one-lot subdivision: "Minor Replat - Part of Block 1 & Block 2 In Citizens First Addition." This proposed zoning and use is consistent with the overall development plans for the area. The site lies within the Jacobsville Neighborhood

Association boundaries. Jacobsville Neighborhood Improvement Association has submitted a letter in support of this 35-unit apartment development.

Mr. Harrision: 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. DeLucio: My name is Marco DeLucio. To add to Mr. Mills' presentation, I would only state, Terry Keusch, who is the president of Pioneer, is proposing to develop an apartment community, approximately 35 units in four separate units and a community building in this Read Street area. The property is now zoned so we cannot develop it for residential purposes. We are seeking to downzone the property for that purpose. Mr. Keusch has met with Greg Lamar at DMD and I think the City is assisting or is aware of this project and I don't believe has any objections to it and probably is in favor of this type of residential development in the area. I think Mr. Morgan from the Jacobsville Neighborhood Association is here. He signed a letter in support and is also here to speak if you would like to hear from him. Mr. Keusch is in the back of the room and here to answer any questions you might have. Thank you.

Mr. Foster: Is this going to be more low income housing or what kind of housing?

Mr. DeLucio: It is going to be affordable housing. So I don't know that we would call it low income housing. But there are tax credits available to Pioneer Development to assist in developing the project so the rent can be kept at a lower level.

Mr. Foster: Are there any remonstrators?

Mr. Johnson: My name is Richie Johnson. 27 Oak Meadow. I am the owner of Johnson Plastics and Supply. The two facilities to the northeast, that and the smaller one to the south of that, then also the two acres to the south of the small building we own. We came to the facility, we have tax exempt from the City Council. We have spent right at about 1.2 million dollars to build those facilities. We also have in the near future looked at building another facility on the south side. Needless to say, our area is not the most moral and ethical area that we do business in. We consistently have problems there. This year alone, we have had 15 different alarms on our buildings. It is better than it used to be. It is a lot nicer looking since we have spent that money to do that, but we wouldn't have come to that facility if an apartment complex was going to be there. To rezone that, I can't imagine most people thinking that to a point, with low income housing, that it might make our facilities and our land not worth as much money. We are business people. We want to stay there. But we will not build any more facilities there if they put an apartment complex there. That is the reason we came there because of the tax exempts, and the City has been really good to us. We have almost 50 employees because of that. If you put yourself in our position, you have to understand that with that many apartments right next to our building, it will make a difference. I understand the need for low income. But not in commercial areas.

UNIDENTIFIED MEMBER: So you are concerned with potential break-ins and...

Mr. Johnson: The facts are in that area is it is not the highest morality around town. They consistently have trouble with drugs and things of that nature.

UNIDENTIFIED MEMBER: And you don't think a new development such as this would be a positive for the area?

Mr. Johnson: Long term, I can't imagine it being positive at low income. If somebody can show me and I can see that. If that is the case, why don't they do that in other industrial parks? We have two lessees that are in the south building and both of them have already said if that happens, they will move, Fairmont Supply and Specialty Products.

Mr. Foster: Isn't directly across the street all residential too?

Mr. Johnson: Garvin Industrial Park is right behind us. On the other side is Ameriquel, all the other industrial. East of us across the street is an auto body shop. Then there are taverns on Baker Avenue. Then there is another facility that just went on the north of Baker and Morgan. They just built a new commercial. On the north side of us, they are supposed to start construction on a facility that the people in the Garvin Industrial Building now own.

Mr. Foster: But across the street, isn't that whole row of houses?

Mr. Johnson: Yes.

Mr. Lockard: On the map the staff gave us, there a couple of teeny tiny isolated commercial zonings. But you are right, most of it is zoned R-2 on the zoning map.

Mr. Johnson: But these are single location houses. They are not apartment complexes where so many people may be aggravated to that area. That is a lot of families and a lot of people. It is right next to our facility. I understand what they are wanting to do, but this is just not the place to do that. We wouldn't have spent the money that we did if we knew that was going to be there.

Mr. Foster; You knew all those houses were directly across the street from you and within a block. There have to be more people living within a block of you....

Mr. Johnson: There wasn't any more land in the enterprise zone. Most everybody else has built on that land in town.

Mr. Foster: But when you bought your property, everything to the east, other than the few taverns and businesses on Baker, everything to the east was all residential.

Mr. Johnson: For a block or two.

Mr. Foster: And it had been for a hundred years.

Mr. Johnson: But again, when we bought this, that three acres behind us was all used for commercial. That just happened not too long ago. We don't now have anything on that. When we found out what they were doing, decided not to discuss it any more. Again, I am not trying to keep them from doing something that is good, but not better in a commercial area. There are 8-10 companies within spitting distance from that facility. There is probably seven or eight in the Garvin Industrial Park.

Mr. Herrin: Was that parcel up for sale?

Mr. Johnson: I did not know it was up for sale. I never saw any signs.

Mr. Herrin: The people in that commercial area had a chance to buy the property?

Mr. Johnson: As far as I know, I had not ever seen any signs that it was up for sale.

Mr. Herrin: It had a sign on it there they say.

Mr. Johnson: Again, we are on the other side and that is not an area that we drive consistently. So I haven't personally seen that. But it has not been up for sale that long.

Mr. Foster: Are there other remonstrators?

Mr. Neidig: My name is Don Neidig. 707 N. Main for 56 years. Mr. Jeffers mentioned earlier the highest and best use which I thought was interesting because it applies to this plot here. We have industrial land which the people in that area and also on N. Main, because it is centrally located, and it has good access, and a lot of it is in the enterprise zone. So you have quite a few new, those have been built in the last few years. So there is a need for inner city industrial locations and commercial. I am also a member of the Jacobsville Neighborhood Association. Some of the neighbors and landlords I talked to thought the focus in the City was going to be on more rehabbing two and three bedroom homes since there are so many vacant ones now. I don't know if you noticed it, but there is. With the vacancy rate somewhere around 10-12 percent, there are going to be a lot more vacant. So, what you got, you got one side of the ledger, a break on the construction cost, a break on rent, a break on utilities, and I am not sure about tax abatement. On the other side, in order to stabilize an area with older homes, many vacant, these don't have any breaks. So the question is, do we have affordable apartments built on property, or keep it industrial and focus more on rehabbing the vacant older homes and have affordable rents and ownership? I would need to know also to check out the Greenwood location, and I need the address and the site manager because I don't feel like this is the highest and best use at all. That's all I got to say.

Mr. Jeffers: Did you say this entire parcel is the enterprise zone?

Mr. Neidig: That I am not sure of. I did not see the for sale sign.

Mr. Jeffers: So if it were warehousing, then all the inventory would be tax exempt in the enterprise zone?

Mr. Neidig: Yes. I feel I am right with the gentleman on just the wrong place. Thank you.

Ms. Harper: My name is Brenda Harper. I own the home at 207 W. Louisiana, which is right between Read and Baker. We just spent quite a bit of money on our house redoing the inside and out. I know there is maybe one or two empty houses there in that project, but they are being rented out quick. Some of the houses do need some work on it. But the point of putting apartments there, I cannot not see because it would be practically be in my back yard. I just don't see where it would do any good.

Mr. Foster: So you are saying you would rather have an industrial use in your back yard rather than apartments?

Ms. Harper: Not really industrial use.

Mr. Foster: That is what it is zoned for now.

Ms. Harper: I know it is. But I think at 35 apartments that is two to four bedroom apartments, that is quite a lot of people. It is going to affect everybody. But I don't want anything commercial there that is bad or anything. My father worked at the Evansville Stockyards. We have been in that neighborhood for 35 years. My mother died in August in that same house. It is just that I like it the way it is.

Mr. Foster: You understand that as a vacant lot, it may not stay the way it is. There are a whole lot of things that could go into M-3. And you are saying you would rather have that in your back yard rather than apartments?

Ms. Harper: I would rather have maybe apartments if there wasn't so many. Like the man said there, it is not one of the best neighborhoods. But it is our home. There would be no way I could sell the house and move because I just don't want to. I have been there too long. It seems like a lot of people in one small place.

Mr. Lockard: It seems like looking at the planned development, you are increasing the buffer between you and the existing commercial development and I just have a hard time grasping why that would not necessarily be a positive aspect for this type of development. Right now, with what it is, they can pretty well move anything they want in there. There would be nothing you could do about it. With a new development, many times new developments add to the value of the neighborhood. Since Mr. DeLucio is involved, I am going to assume this is will be a respectable outfit. I think you could potentially add to what you have in the neighborhood.

Ms. Harper: We always hope for respectable people. But when there's that many and the units, there is usually always something that goes wrong.

Mr. Lockard: Usually with apartment complexes, especially with the one outlined here, I am going to make the leap of faith that you will have probably an on-site manager whereas, when you have rental units, you have absentee landlords. So I am going to assume there will be some kind of an on-site manager, so you will have better control than you do with a rental property and the land lord lives somewhere else. So you should take that into consideration.

Ms. Musgrave: Is this a for profit or not for profit development?

Mr. DeLucio: For profit. Just to address a couple of the concerns. I apologize to the Commission. We sent out the notices. We met with the Jacobsville Neighborhood Association. If we had known that there were any remonstrators, we would have talked to them before the meeting to see if we could have resolved it. Secondly, I have been coming to this Commission for about 20 years now. One of the concerns has always been urban sprawl, taking these types of projects and moving them out in the farm land. Here is a project where we are proposing to redevelop property that was formerly a stockyard that is now vacant and not being used for any purpose, and despite what one of the remonstrators said, the property has been for sale for quite some time. So we are trying to develop inner city property for residential uses and somebody noted that the location map showed that a lot of the area around there is currently zoned for residential use. As far as the investment that is going to be made, Pioneer will probably be spending in excess of three million dollars to develop this property. So it has an interest in making sure this is a quality development. It will have an on-site manager that will run criminal background checks and try to make sure things run as smoothly as possible. But I think he has numerous developments around the state and I don't think they have experienced problems with any of those. Finally, I will pass around a copy of some pictures of their properties and what this property will look like when it is finished.

Ms. Musgrave: What are the projected rents for the apartments?

Mr. Keish: 3405 Oakton Circle, Greenwood. The rents range from \$237-\$690. There are one, two, three and four bedroom apartments.

Ms. Musgrave: Have you analyzed the neighborhood to find out what the rents are for rental property, whether it is a single family stand alone, or a multi-unit?

Mr. DeLucio: A market study has been commissioned.

Ms. Musgrave: Do you have a range at this point?

Mr. DeLucio: No, not at this point. The market study should be done within the next 30 days or so.

Mr. Lockard: Will this be a facility where you will be accepting Section 8 housing funds?

Mr. Keusch: We can accept Section 8 individual voucher holders. It is not a project based Section 8. But if an individual comes in with a Section 8 certificate, then we can accept it.

Mr. Lockard: Do you have any plans on occupancy in terms of Section 8 that you would have, or is that something that you hadn't really looked at?

Mr. Keish: Legally, that is something we can't discriminate against.

Ms. Stevens: Will there be a fence around the property?

Mr. Keusch: We can put, I guess my thought was a buffer of pine trees.

Ms. Stevens: I was just thinking in terms of containing people out of the industrial area so it is harder for kids to wander east. They would have to go all the way out and around to get to the industrial buildings.

Mr. Keusch: It is a three acre parcel. So it would be small enough. But that would be given some consideration. One of the reasons for this location, this place is residential in the midst of very close to where the jobs are. So that is one reason why this location was selected.

Mr. Morgan: My name is Jim Morgan. 2009 N. Heidelbach. I am the president elect for Jacobsville. Bernadine Jones is the president and couldn't be here this evening. But she and I have worked from the outset with the company that is developing this. It is the first time we have had a company come in and talk to the neighborhood before they decided what they are going to do. It is the first time in many years we have had anyone come in and want to develop a decent facility that is new. I think it would really help the area to appreciate. It would be helpful to the area. We took the plans and information they gave us and the pictures of their other developments to our neighborhood Christmas party. We had a lot of people there and majority of the people felt this would help to improve the area and would not be a detriment to the industrial people around it. In talking with them, we talked about the possibility of a fence. We also talked about the possibility of landscaping, trees and shrubs. They also have a playground on the area. They have good parking. From what we can see, we would like to back this project because it is the first good thing that has happened in the area in quite some time. We feel it will be a positive instead of a detriment to the area. The gentleman was talking about the commercial parts around there. One of the problems we have had in the neighborhoods, and have had to call in several times last year about debris, grass and weeds in this whole area. It has been that way for years. Ever since they tore the stockyard down, you had big trucks pull in there and park and that is not a very good thing to have backed up to housing. We think this would be a big improvement to the housing. But they came to us before they decided what they were going to do and worked with us from the very start.

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

Mr. Lockard: (During roll call.) I just want to say thank you to Mr. Keusch and Pioneer Development because I think what you are doing and the way you handled it is very laudable and I wish you the best and I vote yes.

Mr. Jeffers: (During roll call.) I think that warehousing would have been the highest and best use only because it is in the enterprise zone. But that is a nasty piece of real estate that has been an eyesore for a long time. It looks like it is infill development that will bring a lot of green space with it. I am glad to vote yes.

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

Nays: Ms. Payne

Abstention: Mr. Kniese

There being 10 affirmative votes, 1 negative vote and 1 abstention, Docket No: R-2005-1 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: 1-S-2005 Knight Shire Estates

Part of Section 10, SW T6S/R11W German Township Map CO-97

Located south of New Harmony Road on Robin Hood Drive, located with the Sherwood Park Subdivision

Mr. Mills: The Knight Shire Estates subdivision is located south of New Harmony Road and west of Robin Hood Drive. The developer proposes a 3-lot residential subdivision on this 16-acre site. The current zoning is agricultural and most of the site is wooded except for the existing home on Lot 3. The Subdivision Review Committee reviewed this plat on December 14, 2004. A revised plat was filed on December 17, 2004 to address concerns of the Committee. Access and frontage to Lots 1 and 2, and the remaining parent parcel will be from an extension of Robin Hood Drive to the south which will turn west and terminate in a cul-de-sac. Access to Lot 3 will be from a new cul-de-sac on Woodland Drive. County Engineer's comments that have not been addressed by the revised plat are as follows:

- 1) Clarify which portions of the 60 ft. roadway easement were dedicated through the document recorded in DR 472 Page 329 and which portions were dedicated by subdivision plat
- 2) The street plans will have to show how the existing concrete drive will be dealt with in regard to the street extension. Will the driveway be removed? Has the adjacent property owner been contacted regarding the possible changes to this driveway?

On December 20, 2004, preliminary drainage approval was granted by the County Drainage Board for Knight Shire Estates. Comments from the County Surveyor recommend that all channels must be in easements that can be located in the field with bearings and dimensions on the plat. Water service will require line extensions. Septic systems will be used, since sewer is not available in this area. The Health Department states that a soils analysis has been done for Lots 1 and 2. The home on Lot 3 will need to be dye tested. Staff recommends that Knight Shire Estates be approved with the conditions that any channels on the site be placed within easements that can be found in the field using bearings and dimensions on the plat, and documentation be provided for Health Department approval of Lot 3 septic.

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. Nicholson has been sworn in.)

Mr. Nicholson: My name is Bill Nicholson. I am here to represent Jerry and Janice Knight for the development of this property. We have covered about everything that was in question in the staff report, in preliminary form. Street plans have been submitted to John Stoll's office for approval. Mr. Knight has contacted his neighbor there with the concrete drive and explained to him what we are going to do with that. It will have to be removed in order to put the street in. It was constructed within that 60 foot right-of-way from the end of the black top on Robin Hood Drive down to his house. So we will have to remove that portion of it and reconstruct him an entrance off the new roadway. That's

about all I have to add. I will be glad to answer any questions. Mr. Knight is here to answer any questions.

Mr. Foster: Are there any questions? Are there any remonstrators? (None.) There are two conditions. 1. Provide documentation prior to recording that the Health Department has approved the results of a dye test for the home and septic system on Lot 3.

Mr. Nicholson: That has not been done yet, but it is in the process.

Mr. Foster: 2. Drainage easements should be added to the plat for any existing channels on the site along with the proper bearings and dimensions to help locate any such easement in the field.

Mr. Nicholson: I have done that on the revised plat.

Mr. Foster: So that is done and there will only be the one condition. (Motion was made and seconded.) Call the roll.

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

Nays: None

There being 11 affirmative votes, Docket No: 1-S-2005 is approved.

Docket No: 2-S-2005 Metro Centre East, Section 9
Part of Section 24, SE T6S/R10W Knight Township Map CO-233
Located north of Virginia Street between Royal Avenue and Metro Avenue

Mr. Mills: The Metro Centre East subdivision is located north of Virginia Street and East of Royal Avenue. The developer proposes a 10-lot commercial subdivision on this 14-acre site. The current zoning is C-4 and most of the site is undeveloped except for the new indoor soccer facility on Lot 7. A portion of the site was parcelized in September 2004. The Subdivision Review Committee reviewed this plat on December 14, 2004.

Access to the proposed lots will be from an extension of Metro Avenue to the north which will turn west and connect with Royal Avenue. This road was created as an easement prior to approval of the parcelizations for a portion of the site in 2004. The proposed plat dedicates the road for public right-of-way. EUTS's comments recommend that Lots 2 and 10 should have access to Metro Centre Drive only. On December 20, 2004, preliminary drainage approval was granted by the County Drainage Board for Metro Centre East Section 9. The site lies within the 500-year (Zone B) floodplain. Building Commission comments are as follows:

Add the following statement to the subdivision plat:

“The subject property is not located in Special Flood Hazard Zone “A” as scaled from the Flood Insurance Rate Map (FIRM) No. 180256-0050 B, dated 3-19-82. However, buildings placed on the lots within this subdivision will be subject to Minimum First Floor (MFF) elevations to be determined by the Building Commissioner of Vanderburgh County according to the Floodplain Management Ordinance.

The Building Commissioner has determined the MFF elevation on the site to be 390' MSL. Prior to the placement of any structures on lots within this subdivision, the Building Commissioner's Office must be contacted to confirm that the MFF shown has not been modified based on new or updated hydraulic information. Actual first floor elevations may need to be higher in order to provide proper drainage around the structure.”

Water and sewer service will require line extensions. Staff recommends that Metro Centre East Section 9 be approved with the conditions that a note be placed on the plat restricting the access for Lots 2 and 10 to Metro Centre Drive only, add the note recommended by the Building Commission concerning minimum finished floor elevations and add the MFF elevation of 390' to each lot on the plat.

Mr. Harrison: All those 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. Wallace: My name is Matt Wallace. I am an engineer with Morley and Associates. The attorney who was up here that has been here for 20 years, this is my first time up here. I am here to represent Spurling Properties for this subdivision. I think it pretty much speaks for itself. It is a simple layout for a commercial area. This is a replat of an expired subdivision. We addressed in the Sub Review meeting EUTS comments to have the four lots that front Royal Avenue, they requested those to access to the Metro Centre Drive, which is the extension of Metro. We discussed that and it was my understanding that they were not going to request that those lots be conditioned for access. It was discussed that the Metro Centre Drive and Royal are both the same classification of roadway and that there would not be a need to restrict access for two lots which have double frontage on Royal and Metro Centre Drive.

Mr. Foster: My understanding is they want Lots 2 and 10 to access Metro Centre Drive. But not Lots 1 and 9.

Mr. Wallace: Yes. That was brought up. They discussed that at the Sub Review meeting that the four of those would have to have an access only to Metro Centre Drive and the discussion was that it was not going to be a recommendation, that none of them would need to have a restriction on access for that because both Royal Avenue and Metro Centre Drive are the same classification of street.

Mr. Foster: How wide are those lots? 141 and 135. You got the turning radius. How much room do you have to put an access onto Royal for Lots 2 and 10? By the time you get around the turn...

Mr. Wallace: As far as that goes, if a user came in and wanted to buy both of those lots and have a big square piece of property, what does that condition on the plat do?

Mr. Foster: It would still access the other Lot 9 or 1 off of Royal.

Mr. Wallace: As with any land developer, I believe when they want to plat a subdivision and sell lots, the least amount of restrictions on the plat is generally what a developer is looking for.

Mr. Foster: I understand that. But you are going to have two driveways. It could be the fact that you could have double entrances on both Metro and Royal with an access on Royal very near that intersection, particularly on Lot 10. If you combine 9 and 10, you could get away with it. There was the comment about the flood management, add the MFF elevation of 390 to each lot and the following floodplain management note. Do you have any problem amending the plat to state that?

Mr. Wallace: The existence of the note, I do not. The elevation I have question about. I did the development south of here, which is Metro Shops One and Two. The minimum finished floor elevation for those buildings was 389.5, a half foot lower than what the Commissioner is asking for here. The new build that is being constructed on the one of the new lots, if the indoor soccer facility. At that time when it came through Site Review, they had requested it to be 390. I called them back and asked if they could verify it was not 389.50. They said that was fine to leave it at 389.5, and that building has been built. We have done an elevation certificate for it. I am just questioning the elevation. I don't have a problem about the note being on there. I am just curious as to how they arrived at that elevation.

Mr. Foster: We will work on this language. But it will actually be 390 or whatever the Building Commissioner recommends. If they will agree to the 390.5, that is fine.

Mr. Wallace: I am not saying they are wrong. But the other buildings in that area were built a half foot lower, and if a person does not need to fill a lot another half foot, I don't want to see them have to do that.

Mr. Foster: The other condition we have, and it is a recommendation from EUTS, is that Lots 2 and 10 must access Metro Centre Drive only.

Mr. Leek: My name is Danny Leek with Morley and Associates. We discussed this at length at Sub Review. John Stoll, and I have his comment sheet here, he didn't have any further comments that restricted our drive cuts onto those lots after the discussion with EUTS and their comments initially. When we got back, I had written Mr. Mills a letter to this effect. After Sub Review, we got comment sheets back from EUTS that all of a

sudden this became a condition. It wasn't discussed at Sub Review at the time at all. The streets have the same classification for commercial development. I think that the recommending body I would listen to, Mr. Stoll, has no comments with what we were doing. I don't feel it is fair for EUTS to be able to make those kinds of comments and hold us up at this point, after it has been thoroughly discussed at Sub Review.

Mr. Lockard: My question is, can anybody, don't take this the wrong way, does anybody agree that this is what happened at Sub Review, that it wasn't discussed at Sub Review and these guys are getting blind-sided by a condition that they weren't able to discuss at Sub Review.

Mr. Foster: Maybe we can solve this if there is a dispute to what Mr. Stoll has agreed to. What if we had the note that says Lots 2 and 10 must access Metro Centre Drive only; or, as approved by John Stoll.

Mr. Harrison: Just say "if required by the County Engineer."

Mr. Foster: That way, it is still up to Mr. Stoll to say. I am like you. I would rather put my faith in Mr. Stoll. If he is going to require it, have him require it.

Mr. Leek: I don't really have a problem with that. I think the purpose of Subdivision Review is so we can thoroughly discuss these issues, which we thought we did. The idea that we are getting hit with a different approach after the meeting is very upsetting to us and our client both, because our client was sitting there at the time and expressed his feelings about the access onto Royal Avenue and onto Metro Avenue.

Mr. Harrison: Are you okay with that modification?

Mr. Leek: Yes.

Mr. Pedtke: I still have a question about the access plan. I know we just went through it. But isn't EUTS comment here about different classifications? Are you saying the classifications are the same?

Mr. Leek: The roadways are classified the same.

Mr. Lockard: The staff report says that Royal is a collector and Metro is a local.

Mr. Leek: Again, that was discussed at Sub Review and the individual from EUTS wasn't clear at the time about the classifications of the road and Mr. Stoll corrected her that they were classified the same. I hate to keep speaking for John on his behalf because he is not here.

Mr. Foster: I have more of a problem with the frontage and where that access is going to be in relation to the intersection, than I do with the classification of the road. Particularly

on Lot 10. That is pretty narrow to put an access there between the northern line and the intersection, with that turning radius and the curve.

Mr. Jeffers: Wouldn't that be an issue that would be handled in Site Review?

UNIDENTIFIED MEMBER: That is clearly addressed in the EUTS manual to have a 50 foot separation from the face of curb on the street to the face of curb on the entrance drive and if there is not the physical space,

TAPE ENDS / TAPE RESUMES

Mr. Wallace: ...as a site planner. I have never been here before because I don't do a lot of subdivision work. I do mostly site planning for commercial businesses. I would strongly urge the client not to try to put an entrance onto Royal, that it is not a good place for a drive. But I am engaged by my client to ask for the least restrictions possible.

Mr. Foster: Is there a motion to approve, subject to these two conditions: 1. Add MFF elevation as required by the Building Commissioners to each lot and the following floodplain management note that states: "The subject property is not located in special flood hazard zone A as scaled from the flood insurance rate map #180256-0050B dated 3/19/82. However, buildings placed on lots within the subdivision will be subject to minimum first floor MMF elevations to be determined by the Building Commissioner of Vanderburgh County in accordance with the Floodplain Management Ordinance. At the time of the recording of this plat, the Building Commissioner will determine the MFF elevation to be required. Prior to the placement of any structures on the lots within the subdivision, the Building Commissioner's office must be contacted to confirm that the MFF shown has not been modified based on new or updated hydraulic information. Actual first floor elevations may need to be higher in order to provide proper drainage around the structure." 2. Add an access note that states: "Lots 2 and 10 must access Metro Centre Drive only; or, as approved by the County Engineer." (Motion was made and seconded.) Call the roll.

Mr. Harrison: Is that "or" or "if"?

Mr. Pedtke: My motion was with "if".

Mr. Foster: Call the roll.

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

Nays: None

There being 11 affirmative votes, Docket No: 2-S-2005 is approved.

BUSINESS MEETING

Mr. Lockard: Mr. Foster, I have a question. This may be a question for Mr. Mills. After all the discussion tonight, exactly who makes up or how makes up Site Review? Or is that a big question? Is it made up of statutorily required bodies or is it this loose collection of people that look at this stuff?

Mr. Mills: It is by ordinance.

Mr. Lockard: Is it local or state ordinance?

Mr. Mills: It is by ordinance, but there are members on Site Review Committee that aren't in the ordinance.

Mr. Jeffers: There are members of Site Review that make decisions that are not included in the ordinance.

Mr. Foster: Yes. There are only like five people on Site Review. We end up with eight or nine.

Mr. Lockard: I think, going over this, because we keep talking about the Site Review stuff and it seems like there is a lot of stuff going on with Site Review that we talk about and go back and forth with. But as Bill reiterated, is there teeth made up in this body so that some of the things we discuss, they can make these developers do what is in the best interest for the community.

Mr. Mills: Yes. The code specifically states the director of Area Plan, the executive director of the Board of Public Works, Traffic Engineer, City Engineer, for the City Code. So the people that make all the decisions for the development of the property are there. We also have the Fire Department there, the Water and Sewer Department, the County Surveyor, the County Engineer, they are there as well. It is basically set up to be a one stop so that they can get all of their questions answered at one time so they can produce and proceed at a quick rate. So we are trying to assist them in doing their job and having one place they can come and get all their questions answered.

Mr. Jeffers: Who enacted that ordinance for Site Review?

Mr. Harrison: City Council.

Mr. Mills: The City and County both have this.

Mr. Jeffers: The County Commissioners adopted an ordinance specifically naming members of Site Review?

Ms. Behme: They are basically the same. I think it was redone in 1989.

Mr. Lockard: The ones that are on there as required by ordinance, I understand those completely. It is the additional people. I am kind of wondering how they ended up on there.

Mr. Harrison: They are on there for one-stop shopping.

Mr. Foster: That is sort of the way Sub Review expanded. You have Vectren and...

Mr. Mills: I have an additional item. There has been some discussion about changing the time of our meeting to earlier in the day. Is there any discussion by Board members? We have looked at the first Wednesday. County Council is in here earlier so we couldn't do it earlier on the first Wednesday. It appears from looking at the room availability for this room, that possibly the first Tuesday could be available if we wanted to meet earlier in the day to try to reduce overtime for staff and also try to get you home earlier in the evening.

Mr. Foster: Suggest it possibly starting at 4:00?

Mr. Mills: We do that for Board of Zoning Appeals now on the third Thursday.

Mr. Herrin: I would be very much in favor of that.

Ms. Stevens: I am personally in favor of that. But what does that do for people, remonstrators who might not be able to get here?

Mr. Herrin: I have been on Board of Zoning Appeals for years and they maybe do that once in a life time, attorneys, professionals, I see that would be an advantage to them.

Ms. Stevens: I am just thinking about the general public, the tax payers.

Mr. Foster: We are here every meeting. The attorneys and engineers are here quite often, but we can kind of poll a few of them. But I think they would be for it for the most part.

Mr. Mills: Thursday, the day after EUTS has a meeting and Board of Public Works has a meeting at 1:30 and 4:00 so that could be a conflict. I am concerned about pushing it to the next week because as close as we get to the City Council and County Commissioners then that wouldn't get the applicants much time to respond or put together something their petition.

Mr. Foster: Is there a problem with the first Tuesday?

Mr. Dunigan: I am in Indianapolis every Tuesday.

Mr. Foster: The third Tuesday is bad for me because I have another board meeting.

Mr. Lockard: On Tuesday, I have philharmonic course.

Mr. Jeffers: What about 4:30 or 5:00 on the first Wednesday?

Mr. Mills: It depends on how long County Council lasts.

Mr. Wortman: Until 5:00 or sometimes later.

Mr. Foster: We could keep it the first Wednesday and move it up to 5:00.

Mr. Mills: Thursday EUTS meets in here at 4:00 and Board of Public Works is in there at 1:30.

Mr. Pedtke: I like the 4:00 idea, but I don't want to put somebody in a jam.

Mr. Foster: It is nice to get in the groove of the first Wednesday too.

Mr. Mills: Thursday somebody meets in here at 4:00.

Mr. Harrison: What about 5:00 on Wednesday?

Mr. Foster: The same date, just move it up an hour.

Mr. Mills: we can just shoot for that.

Ms. Stevens: When would that go into effect?

Mr. Foster: Probably March because everything has gone out for February. We need a motion to move our meetings beginning in March to the first Wednesday at 5:00. (Motion was made and seconded.) Voice vote. Upon unanimous voice vote, the meeting time and date is approved.

Mr. Mills: Thank you.

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