

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

June 9, 2005

ROLL CALL

Mr. Foster: I would like to call the June 9, 2005 meeting of the Area Plan Commission of Evansville and Vanderburgh County to order. Will the secretary please call the roll?

Members Present:

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

Members Absent:

Jeff Kniese

Area Commission Staff Present:

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

APPROVAL OF MINUTES

Mr. Foster: Is there a motion to approve the May minutes? (Motion was made and seconded.) The minutes of the May 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 June 20, 2005, at 5:30 p.m. in Room 301. The County rezonings considered tonight will be heard by the County Commissioners on June 21, 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 petitions will not be heard tonight:

Docket No: VC-6-2005 Haas Development 7920 Hogue Road
CONTINUED TO THE JUNE MEETING BECAUSE OF IMPROPER NOTICE

Docket No: 10-S-2005 Heritage Park Phase 2
WITHDRAWN AT THE REQUEST OF THE PETITIONER

If you are here on either of these petitions, you may wish to leave at this time.

Mr. Foster: We have a request for a one-year extension of time to record Theater Drive Commercial Park, Docket No: 14-S-99. Is there a motion to approve the request?

(Motion was made and seconded.) Upon unanimous voice vote, the request is approved.

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 **CITY REZONINGS**

Docket No: 2005-14-PC R-2005-7 Petitioner: Daniel and Florence Townsend
Address: (Complete legal on file.) 14 E. Virginia Street
Nature of Case: Change from an R-2 zone to a C-4 zone.

Mr. Mills: Daniel and Florence Townsend are requesting to rezone their property located at 14 E. Virginia Street from R-2 to C-4. The Townsends' lot is on the north side of Virginia Street, just east of North Main Street. This petition was continued two months to allow satisfaction of notice requirements. This is a small, 25' x 138' lot located between the North Main commercial corridor and a 50' x 138' C-4 zoned site. The two vacant lots at 16-18 E. Virginia Street immediately adjacent east of this site were rezoned to C-4 in 1983 for a car lot. At that time, this proposed C-4 lot at 14 E. Virginia Street was occupied by a legal non-conforming car repair shop "Civic Center Auto Service". All buildings on 14, 16, and 18 E. Virginia Street were razed in 2002. The Townsends own all three lots and plan to combine the three C-4 lots for development as a 75' x 138' commercial site. The 25-foot lot at 14 E. Virginia remains zoned for residential use only. Re-establishment of any commercial use of the 25-foot lot at 14 E. Virginia Street requires rezoning. This infill zoning is consistent with adjacent zoning to the east and west. Alleys are adjacent along both the west and north property lines of the site. Use of the site must be designed to accommodate truck maneuvering for loading and unloading on the site. Compliance with access, parking, and loading will be addressed by Site Review Committee at the time of submission of plans for the development of the site.

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

Mr. Townsend: My name is Daniel Townsend, 3026 Freedom Drive. I was there 27 years and it caught on fire and burned down. I used to sell customized vans there. I had the other rezoned about 25 years ago. So I sold this and they guy is in the trucking business and has about four trucks he wants to warehouse there.

Mr. Foster: My parents bought a van there from you. Are there any questions? Are there any remonstrators? (None.) Motion for approval? (Motion was made and seconded.) Roll call.

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

Nays: None

There being 12 affirmative votes, Docket No: R-2005-7 goes forward with a recommendation for approval.

Docket No: 2005-19-PC R-2005-12 Petitioner: The Kleinknecht Joint Primary Trust
Address: (Complete legal on file.) 4600 Middle Mt. Vernon Road
Request: Change from an R-1 zone to an R-3 zone.

Mr. Mills: The Kleinknecht Joint Primary Trust is requesting a change in zoning from R-1 to R-3 for their property located at 4600 Middle Mount Vernon Road. This 7.45 acre site is located on the south side of Middle Mount Vernon Road, west of Hathaway and Broadway Avenues. The petition was continued from last month's meeting to allow satisfaction of notice requirements. This site is adjacent east of a 32.7 acre site rezoned to R-3 in 2002, and developed as a 156-unit apartment community. This is a request to change the zoning to R-3 for this 7+ acre site to allow construction of apartments on the site. The conceptual site plan indicates 6 buildings with a total of 42 new residential units are planned on the site. The conceptual site plan submitted with this rezoning request indicates one proposed access point onto Mount Vernon Avenue for the planned 42 residential units to be constructed on the site. Access will be determined by Subdivision Review Committee at the time of submission of plans for the development of the site. This site is in an area designated by the Comprehensive Plan as an area of residential development. This step up in zoning to R-3 for this 7.45 acre site is consistent with the Comprehensive Plan. Multi-family development is considered a residential use.

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. Atkinson: My name is Jerry Atkinson. I represent Goebel Investments, LLC, and the Kleinknecht Joint Primary Trust. The Primary Trust is the current owner of real estate at 4600 Middle Mt. Vernon Road. The developer is Marlin Goebel of Goebel Investments. Mr. Goebel has been here before with regard to some projects that have been approved. He brought you Kenzy Estates on the north side, some condominiums at the Brickyard Apartments, and Hickory Lake, which is on Middle Mt. Vernon Road, which is a rental community for retirement age folks. Next door to Hickory Estates is a tract of land that recently became available for purchase and it has a good deal of woods on that property. It is an ideal spot for condominium development. We anticipate

condominiums of \$160,000 on up in value. We estimate 14 duplex-style buildings. There is an aerial view of the proposed development and Goebel Investments has the right to acquire title to the real estate and do this development upon the rezoning of the property to permit multi-family housing. The proposal is 14 duplex-style condominium units. The developer has in the past, dealt with wooded properties. When he wanted to construct Kenzy Estates, there was a wooded tract of land behind North Park. His goal was to save trees and plant trees and create an aesthetic pleasing development. I brought an aerial photo of what was accomplished within the wooded area of Kenzy Estates. His intention with 4600 Middle Mt Vernon Road is to preserve all the trees he can. If you see the layout of the land, you will notice there is a single family residence that is in the center of the U that this land wraps around. Behind that residence, you will see there is a wooded area being the house. The developer's intention is to preserve as much of that area as is reasonable to provide that natural screening effect for the occupants of that house, and also to plant pine trees along the eastern and western boundary of that property. That property is owned by Judy Hertwick, I think. We have met with the neighbors on several occasions. We have taken into consideration those things that the neighbors have suggested. Mr. Goebel has offered promises or assurances that certain things would happen. As has been his style throughout his developing career, he has delivered performance in every performance he has made and he believes his promises should be in the form of a covenant to allow the neighbors to get whatever is promised to the Plan Commission. I have prepared a draft of a private covenant. This is an evolving document. It contains information that came from the owner of the property in the center of the property owned by Judy Hertwick, 4525 Middle Mt. Vernon Road. Each of those?? are set forth here. We are covenanting that there would be single story, multi-family buildings only. In the event the land could not be developed for the condominiums, we left open the option that single family residences could be constructed on that land. There is no reason to expect that this development won't go forward. But if things do change, we want to have a private covenant in place that will provide some comfort level to the neighbors that they are not going to get something different from what is intended by the development. Mr. Goebel is going to plant five foot tall pine trees along those boundaries. If Ms. Hertwick or successor would prefer to have pine trees along the south or back border as well he would be willing to do that. To maintain those trees and replace any that die within two years, there is a restriction in the covenant against the dwelling units being occupied by college students. We are actively interested in this not being a student housing development. The restriction is that the units can't be sold to, rented to, or occupied by individuals who are either full time or part-time college students with the exception of married students over the age of 35 or students who physically reside within the dwelling unit with their own parents or their guardian. The covenant is a developing document. We may meet further with neighbors. There may be some additional tweaking of that. It will be prepared in a final form and delivered to the City Council and be executed immediately upon the granting of the rezoning. The meetings with the neighbors tended to reveal that the folks would rather have green grass and trees as opposed to another development. A concern with the owners of the Hickory Lake project being constructed next door is if this is not acquired for an upscale development, there could be something else there that could be a lot less desirable. In a sense, for

their own protection, Goebel Investments has taken an interest in developing this in a way that would enhance the neighborhood rather than to detract. There was concern about the traffic on the road out front and the location of the driveway, the proximity to a hill. There is a rise in the terrain at the east edge of the property and at the west edge of the property. We have a representative from Andy Easley Engineering who has studied the placement of the driveway and has interacted with EUTS and they have concluded that it would be safe to locate the driveway as shown on the conceptual drawing and also that that location is the best location for this development. If you have any questions, we would be happy to respond.

Mr. Lockard: The site plan in our packets and the site plan on the aerial photo are different.

Mr. Atkinson: The reason it is different is that we met with the neighbors and determined that it would be better for the neighborhood and for Ms. Hertwick and for the development itself to downsize it and relocate the buildings to create more privacy.

Mr. Foster: I recall, when Mr. Goebel was here and did Kenzy, our local arborist, Mr. Caplan, asked if he was going to employ an arborist on that project. I think he said he would and did. Is he going to do that on this project also?

Mr. Atkinson: I don't know the answer to that question. But I will ask him. But I do want to tell you something. Except for where they put the houses and driveways and parking area, every single tree that they intended to keep except one survived the construction project. They only lost one of the trees because a dump truck backed into it. So it can be done.

Mr. Foster: I understand it can be done. But sometimes you need some expert advice to do that.

Mr. Goebel: Yes, I intend to do whatever we need to do in terms of an arborist. That is to my benefit and to the project's benefit.

Mr. Foster: My compliments on Kenzy because that did turn out very well and he saved a lot of the trees. Any other questions?

Ms. Stevens: This is going to be apartments?

Mr. Atkinson: No, we are intended for them to be condominiums.

Mr. Foster: How many bedrooms?

Mr. Goebel: Two bedrooms, possibly three, with a two-car attached garage.

Mr. Jeffers: In proposed covenant #4, it says no dwelling unit within the multi-family housing buildings may be sold to, rented to, or occupied by individuals who are either part-time or full time students. Why did you choose to use the word may?

Mr. Atkinson: I think that is social convention. I can use the word shall and be quite happy with it. The clear intention is we intend for it not to be student housing. The clear intention is to put in writing in a way that can be enforced and I am absolutely receptive to tweaking that in a way that will give people comfort. We are not here to tell you one thing and do something else.

Mr. Jeffers: I wouldn't anticipate that you would be in any way, shape or form. I am not playing semantics. I was looking at covenant #3 and it said if the owner of the Hertwick parcel so requests, the developer shall also plant pine trees. So I just wondered why shall was used immediately above may.

Mr. Atkinson: There was no intention to make the distinction. If I have to tell you the truth about it, the language in #4 came from something I have done before and the language in #3 is something that I composed this afternoon. This is an evolving document and we want to get to the happy place that everybody is comfortable that it will work.

Mr. Foster: Are there any remonstrators? Come forward and state your address.

Mr. Apple: My name is Greg Apple. I live at 4613 Middle Mt. Vernon. We have concerns considering we have a four year old daughter. There are no sidewalks in the area and according to the proposed plan, there would be at least 80-120 people added into the area. The added traffic will be a danger to our daughter as well as other kids in the neighborhood. Up until the last year, it was an older community so there weren't a lot of children running around. Because of that, we wonder about the effect it will have on the value of our property as well as the property taxes in the area. There are no sidewalks for safety and I wonder about my investment. How much money am I going to get back when I choose to sell, if I choose to sell? The legally binding private covenant he spoke of I haven't seen or heard of and I am not familiar with. Unfortunately, the meetings he has held for the neighborhood, I have been unable to attend due to my work schedule.

Mr. Foster: Where do you live in connection with this?

Mr. Apple: Directly across the street. The Hertwick parcel, about two doors down and across the street west. My biggest concern has to do with the safety of my daughter and her being able to run around the area.

Mr. Lockard: I live about three inches up from the top of this screen. My parents have lived up on Jobe's Lane since 1966. So I am real familiar with Middle Mt. Vernon. Middle Mt. Vernon, even in its current format, is not conducive to kids being on. So my worry is that what are the alternatives for what is going to go into that property if he

doesn't develop it. And knowing his history, I am more comfortable with him than I would be anybody else in this county going in there. But I understand your concern with a small child. Middle Mt. Vernon is not conducive to kids being on in any way, shape or form in its current format, especially with Westwood Apartments being up there and speed demons that go up and down there already.

Mr. Apple: That is my concern considering the expansion with USI and the added traffic with the USI students coming down that way. Personally, I am concerned about the number of people they are proposing putting in that small area, the effect it will have on my family as well as the other families that move into the neighborhood. Fewer residents, I would have less of a problem with. Single family residences, I wouldn't have that much of a problem with at all.

Mr. Foster: My guess is, they can probably put more people in single family residences than what they are putting in under this agreement here. I haven't done the math yet, but they very well could.

Mr. Jaquess: My name is David Jaquess, 4501 Middle Mt. Vernon Road, which is the triangular lot cater-corner from the southeast part of the parcel to be rezoned. I speak on behalf of several of the homeowners on that end of Middle Mt. Vernon Road. We are not really anti-development. Of course, it is nice to be able to look at a pasture instead of houses, but the concerns have to do with the fit with this kind of development with that part of the neighborhood. The reason that I am passing around the aerial photos of the area is to show there is a difference between the density of housing on the first page and the second page. The first page is across the road from the previous development by Goebel Investments. The second page is the property to be rezoned and the density of housing across the road from that property. It is apparent from the zoning maps that there is a shift in the feel of the neighborhood that is reflected to some extent by the photos and the end of Middle Mt. Vernon where this development would go has older homes that were built in the 30's and 40's. There are no apartments in that part of the neighborhood at this point. So we feel like this development is out of character with the rest of the neighborhood. That engineering study was based on two observations on one day after USI had been out of spring term classes and does not take into account the 160 units that are still planned for development at Hickory Lake. So it may not be a realistic reflection of how much traffic will be there by the time this is developed.

Mr. Padget: My name is Fred Padget, 2345 Skyline Drive. I represent Westside Improvement Association. We would like to thank the developer and his attorney for meeting with the neighbors on two occasions. One of the major issues we have in that area is traffic concerns. In this instance, as you come west on Middle Mt. Vernon Road coming to Hathaway, there is a dip and that intersection is quite bad. These aren't developer problems. But it points the need for real good infrastructure on Red Bank to the south where Middle Mt. Vernon is, and to the north where Hogue Road is along with Rosenberger and that whole area. That is a little out of context for this meeting. But I needed to say it because we need some review of the infrastructure out there. Ms.

Hertwick is in the middle of this. I think the developer has tried to satisfy her concerns with the trees in back. We agree that Middle Mt. Vernon is not a road for youngsters to be on for sure. With this project, we have a known quantity. We dealt with the developer on two other projects, both of which he did exactly what he said. Kenzy Estates on the north side is a nice looking area. The alternatives that could happen with this area could be considerably detrimental to the area. We talked about single family homes and you said you had not done your math on it. I have not either. But I can tell you that you could put a lot more single family homes in that area at a much lower cost per unit and probably create a much higher population density and that could happen with anyone else. I don't think there is much potential for commercial in that area. But, in putting it all together and considering what we think is best for that area is a project similar to this. We do support the project. The developer has been one that we have worked with. We have had some problems with others. But he has done what he told us he would and we appreciate it. Thank you.

Mr. Foster: And he is willing to put no students in writing, right?

Mr Jeffers: Is Ms. Hertwick the owner of the property? Is she here today? Is she satisfied with the tree language in the private covenants?

Mr. Padget: I have not talked to her about that. I don't know.

Ms. Hertwick: My name is Judith Hertwick. It is kind of interesting because a lot of people in the neighborhood never asked that question that I will ask. Initially, I was very shocked because if you would put yourself standing on that piece of property and that was your home, you wouldn't like it. I have had many conversations with Marlin. I have appreciated all the neighbors coming through and stating their concerns. My biggest concern was that it would devalue my property to be completely surrounded by all this. I had sewer issues, traffic issues. I was thinking about the amount of people that would be driving next to my driveway everyday. I know it will change. It will be sold. I am going to have to bet that Marlin is going to do what he says because have you heard the term of a woman scorned? We had a joking conversation about that. I think we have a basic understanding that he needs to do what he says he will do. I am still a little iffy about what it feels like, but I have the comfort in thinking he will do that. He expressed his concern about the covenant. That was little reassuring to. But basically, I am okay with it. But about the trees, I don't want any trees there.

Mr. Atkinson: I am grateful. I do have, from Andy Easley Engineering, there was an evaluation with regard to traffic on the roadway, interaction with EUTS, results in finding that the proposed site of 32 units does not generate enough daily traffic to warrant a passing blister or accel/decel lane. We would put it in if it was recommended. Please note that the plan is now smaller. It is 28 units. The proposed location of ingress and egress has sufficient stopping distance on wet asphalt conditions on both west and east bound traffic. Comments on the average daily traffic at that location is 2,651 vehicles at peak time, 4,500 vehicles a day based on Easley's evaluation. There is not a

requirement, in the opinion of the engineer, for an auxiliary lane. But that will be taken up at a later time. If it is determined that they are appropriate, they will be there.

Mr. Jeffers: Jerry, you are saying that if the traffic engineer for the County determined that a decel or auxiliary lane was required, the developer will put that in?

Mr. Atkinson: Absolutely.

Mr. Lockard: I notice, Marlin, that you only have one entrance. Any plans to alter that in any way, shape or form? And I assume there are no plans to connect this to the subsequent development to the west?

Mr. Goebel: No.

Mr. Lockard: I didn't think there was with the way you laid it out.

Mr. Foster: Are there any other questions?

Mr. Lockard: One last question. You stated that whoever, whatever says that an accel or decel or whatever is needed, that he agrees to put that in?

Mr. Atkinson: Actually, the private covenant is something that empowers the neighbors to do something about it if there has been a promise made that isn't fulfilled. The Site Review process and requirements of the various government agencies with development of the site determines whether or not there should be one, his intention would be do what needs to be done to accomplish it. I don't know that putting it in the covenant helps anything.

Mr. Foster: Is there a motion for approval? (Motion was made and seconded.) Roll call.

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

Nays: None

There being 12 affirmative votes, Docket No: R-2005-12 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 let's move on to the subdivision.

Docket No: 12-S-2005 Shadowlawn
Part of Section 15, NW T6S/R10W Center Township
Located on Maxx Road, south of Lynch Road

Mr. Mills: The Shadowlawn subdivision is a proposed 89-lot residential plat located on a 24.5-acre site between Oak Hill Road and the future extension of Maxx Road. The site was zoned to R-4 with a Use and Development Commitment in 1998 and is currently undeveloped. The Subdivision Review Committee reviewed this plat on April 12, 2005. Following the Subdivision Review meeting, the applicant requested a continuance to the June APC meeting. They have also filed a corresponding rezoning request to revise the Use and Development Commitment. The revised version of this document removes many of the previous commitments with the exception of the access being from Maxx Road only. The plat shows an internal series of cul-de-sacs connecting at one entrance to the proposed extension of Maxx Road, which then would connect to Oak Hill Road.

City Engineer had no comments. A "Future Traffic Signal Covenant" agreement, between the City and the original owner of the property, was entered into December 21, 1998. This agreement, which "will run with the land and be binding upon the parties' successors and assigns", shares the cost of installing a traffic control signal at Maxx Road and Oak Hill Road if a traffic control signal becomes warranted. This agreement will automatically expire ten years from the date of its execution. Access design details and location should be in accordance with the EUTS Access Management Manual. Preliminary drainage plan approval was granted by the Board of Public Works on April 28, 2005 for the Shadowlawn subdivision. The plat should be revised to add arrows indicating the floodplain side of the 100-year flood boundary; and the Owners Certificate

should identify the name and title of person(s) signing the plat. Water and sewer will need to be extended to the site.

This plat currently shows a 50 ft. Vectren transmission line easement extending through the subdivision in a southwest to northeast alignment. The Area Plan Commission has since received a letter from Vectren, stating that they are in the process of relocating the electric transmission line to a new acquired easement. Prior to recording, the plat needs to be revised to show this new easement. Staff recommends that the Shadowlawn 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. If the request to revise the Use and Development Commitment is not approved, the applicant will also be required to meet the current Use and Development Commitments.

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. London: My name is Ron London with Morley and Associates. I am here along with the developers. If anyone has any questions, we will be happy to answer them. But we have basically met the Subdivision Control Ordinance.

Mr. Foster: Is there any expected use along Oak Hill Road, or what is going to be, is that a different owner? What is going to happen with that property?

Mr. London: The property directly adjacent to this to the east on Maxx Road, that is going to be owned by the same developer who came in for the rezoning request. I believe apartments may still be planned for that portion of the development.

Mr. Jeffers: I would draw your attention to the plat, final storm drainage plans were approved by the Vanderburgh County Drainage Board. That should read City Board of Works. Road construction plans were approved by the Vanderburgh County Commissioners. Again, that should read Board of Works. Under General Notes, Storm Drainage Maintenance, #4, the plans will be housed in the City Engineer's office rather than the County Surveyor's office or the County Engineer's office. I don't know whose ordinance they used, but it refers to compliance with the County Drainage Ordinance which has not been adopted by the City. In the same set of notes, #6, there is no repair fund in the City that I know of. I don't believe the developer turns in \$2 a lineal foot outside the City accepted right-of-way rather than as it reads on your plat County accepted right-of-way. So that entire note may be struck unless the City does collect \$2 a lineal foot. Note #7, any alterations within a drainage easement will require written approval from the City Board of Works rather than the County Drainage Board. Under Erosion Control, the plan would have been filed with the City Engineer rather than the County Drainage Board.

Mr. London: We will change the notes.

Mr. Foster: Bill, do you have those numbers of the notes that need to be changed so we can make that a condition?

Mr. Jeffers: Two notes are un-numbered. They just draw attention to when the storm drainage and road plans were approved by the bodies. The other notes are under Storm Drainage Maintenance. It is series of notes 1-7. The notes to which I draw your attention are #4, #6, and #7. Then the erosion control note needs to be changed from County to City. This is nothing unusual. It happens when the use AutoCAD to plot these. It is no big deal. I just don't want to record it that way.

Mr. Foster: Let's go through the other conditions. 1. Revise the Owner's Certificate prior to recording to identify by name and title of person(s) signing the plat. 2. Directional arrows need to be shown on the 100 year floodplain contour line to delineate which side of the line is in the floodplain. 3. Revise the plat to show the relocated Vectren easement prior to recording. 4. Change the notes on the plat for the Board of Works and on the storm drainage #4, #6, and #7, and erosion control from County to City.

Mr. London: Yes.

Mr. Foster: Are there any remonstrators?

Ms. Harp: My name is Susan Harp, president of Oak Hill Neighborhood Association. We are very pleased with this subdivision because 89 homes is much better than 400 apartments. We just hope the other 200 apartments, maybe they can make arrangement to put more homes there. We did go through a lengthy process with the use and development commitment. I still have concerns about that. Our last meeting in March, we met with Rose Zigenfus and we affirmed that we did not want to see that connected. I talked to the developer. I feel like that is a lot of traffic coming in there behind those homes until we get Morgan and Oak Hill upgraded. The police have a hard enough time patrolling Oak Hill Road. So that would be two roads at 3:30 that they would have to patrol. Mr. Foster knows that because of his business. Now that Mr. Mills is the EUTS director, that is an issue we need to discuss. We are meeting with Mr. Shively and Mr. Neville to discuss rezoning issues, so we will bring it up at that time. But we are very pleased to have 89 homes.

Mr. Foster: Any other remonstrators? Is there a motion for approval? (Motion was made and seconded, subject to the following conditions: 1. Revise the Owner's Certificate prior to recording to identify by name and title of person(s) signing the plat. 2. Directional arrows need to be shown on the 100 year floodplain contour line to delineate which side of the line is in the floodplain. 3. Revise the plat to show the relocated Vectren easement prior to recording. 4. Change the notes on the plat for the Board of Works and on the storm drainage #4, #6, and #7, and erosion control from County to City. (Motion was made and seconded.) Roll call.

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

Nays: None

There being 12 affirmative votes, Docket No: 12-S-2005 is approved.

TAPE CHANGE

BUSINESS MEETING

Ordinance amending Chapter 15.152 of the Municipal Code of the City of Evansville, Indiana regarding Chapter 15.152.16 (extension of time to record subdivisions)

AND

Ordinance amending Chapter 16.08 of the Vanderburgh County Code of Ordinances regarding Chapter 16.08.070 (extension of time to record subdivisions)

Mr. Foster: Included in your packets were proposals to change the City and County ordinances to extend the time period to record subdivisions from the current 18 months to five years. These two ordinances are identical. Are there any comments?

Mr. Harrison: This is just a procedure that has to start here. We will need to separate votes. But it allows five years to file the secondary plat for a subdivision, and also those particular plats that have been approved this year would be grandfathered in so they would have until 2010 to record. Those plats that aren't recorded by such date will be null and void, or the Area Plan Commission may extend, upon written request.

Mr. Foster: It would also include those that were approved last year, they would go to 2010 automatically.

Mr. Jeffers: On behalf of the committee, we appreciate what the staff did to clean the language up and what Mr. Harrison did to put it in legal form.

Mr. Foster: We do appreciate the committee taking their time to look at this. Hopefully it will alleviate a lot of work on the part of the engineers and developers and the staff as well. Is there a motion to recommend changing the Subdivision Control Ordinance for the City to adopt the ordinance? (Motion was made and seconded.) Voice vote.

Upon unanimous voice vote, the recommendation for the City ordinance change is approved.

Mr. Foster: Is there a motion to recommend changing the Subdivision Control Ordinance for the County to adopt the ordinance? (Motion was made and seconded.) Voice vote.

Upon unanimous voice vote, the recommendation for the County ordinance change is approved.

DISCUSSION REGARDING COVENANTS

Mr. Lockard: In front of you, you have two documents. One of them is a letter from United Neighborhoods of Evansville. It is in reference to the document entitled "Covenant". One of the things I have been kind of involved with land use for almost 10 years now, and one of the things that has continually frustrated me is when we have entities getting up here, be it developers or homeowners or whatever, they will make promises that they will do certain things in honor of a rezoning. Then, later on, things change for whatever reason. I have been instructed by numerous people. Joe met with me to go over this and I appreciate his advice. Other than a use and development, there is not a lot that can be done with a developer that promises something if it is not in writing. So an idea came about that, would there be a way to have a developer simply agree to put it in writing. It cannot be a requirement of the rezoning, I have been told by legal counsel. But it can be a simple request that they agree that whatever they promise, they will put in writing. If Bill Pedtke or Jeff Hatfield came before me and said they were going to do something, I have no trouble taking them at their word because I feel confident they would do what they say. The problem is, how do we deal with all developers? So this is a suggestion that, if a developer makes a promise, we can ask them if they are willing to put it in writing? It is not a requirement. I don't suggest it as a requirement in any way, shape or form. This was just sample language that I drew up from what different attorneys have used in the past. I even told her on the phone the other day that most of this covenant came from stuff that Krista Lockyear has used in the past. So this was something that was suggested. I throw it out for your wisdom and discussion in that maybe this would be a way that a developer could be held accountable for any promises they make.

Mr. Foster: The covenant is entered into with either the City or the County legislative bodies and not us.

Mr. Lockard: The reason behind that is that, in the past, we see many covenants that have been in favor of the neighbors and the problem we come into is that it is an extreme burden for a neighbor to initiate legal proceedings against a potential multi-million dollar developer. By having the weight of the City or County government behind it, maybe it will give some easier enforceability. Bill Pedtke and I talked about this. One of his suggestions, there are a couple places in here that says the County or City shall go after enforcement. He suggested that it should probably read "may". That way we don't back them into a corner on that. I think that is a good suggestion.

Mr. Harrison: You are still going to have private covenant that may be more palatable for the situation, similar to what we had today. That may be something that is a better situation. It depends on what the issue is. There may be a situation that would be best

with a use and development commitment or modify what you have done, or just start over again. But that is up to each body as they so determine on a case by case basis.

Mr. Lockard: The thought process was that forcing a developer to go back to the beginning to do a use and development may be a timely misburden on the developer that if he is trying to move forward with the project, it would delay that project up to 90 days. This is just a tool to give him the ability to assure... Developers come down here and end up with a room full of neighbors that they didn't know was coming. This is a way for them to alleviate the neighbors' fears and allow them to enter into something that would get rid of some of the remonstrance.

Mr. Foster: I think everybody needs to review this and address it at our next meeting in more detail. Question for staff. I know on a number of occasions when people come in, we advise them of the possibility of a use and development. Do we provide them with samples of use and development commitments?

Mr. Mills: We can. I would say 99 percent of the time we tell them that a use and development is available and that they should consider that if there are some situations that may be objectionable to the community or neighbors. So we try to 100 percent of the time to do that, to let them know that tool is available because it makes it more palatable.

Mr. Foster: It's kind of like Jerry said, not everything is appropriate for a covenant, and not everything is appropriate for a use and development commitment. Here is another tool that we could provide petitioners.

Mr. Lockard: That was in no way, shape or form ever intended. It was just intended to give the ability for the developer to address concerns that they may not know come up until this meeting. They may have other concerns that come up before City Council or County Commission, and this is the way for the developer to address that in order to meet the needs of the legislature body. It is a way for them to say that what they are telling you, they are willing to put it in writing. And if they are not, then they are the mercy of whatever the vote may be.

Mr. Harrison: I think it would be best to hold off on this and ...INAUDIBLE PORTIONS...

Mr. Lockard: This was a sample based on covenants I have already seen. I have a pile of them at home. I would welcome seeing what people have to say next meeting. I think it is a timely suggestion and something that is worth looking into.

Mr. Harrison: I think it is more for after they appear before this body instead of before.

Mr. Mills: Absolutely. Only use and development commitments are what we should consider. Covenants are only for the legislative bodies.

Mr. Lockard: Thank you for looking at this and letting me talk.

Mr. Jeffers: Having just listened to the comments, what Brad and Joe seem to be saying is this would be a tool to be used after they come before APC and filed a use and development commitment. What Mr. Lockard is saying is they may have other concerns when it comes before the legislative body. So I draw your attention to #10: This covenant constitutes the entire agreement and covenant of the petitioner and any prior or contemporaneous understanding or representation of any kind preceding the execution of this covenant shall not be binding.

Mr. Harrison: Typically, these things are not signed until the zoning is approval.

Mr. Jeffers: Well typically, I think that #10 should be taken out because it negates the use and development commitment.

Mr. Harrison: It wouldn't negate the zoning.

Ms. Musgrave: Because the parties here are the neighbors, right?

Mr. Jeffers: No, the parties here are the County Commissioners.

Mr. Harrison: INAUDIBLE

Mr. Jeffers: This documents specifically empowers the County Commissioners with enforcement.

Ms. Stevens: Bill, the way I heard it was they may make a promise here, then they may make a promise at the next place, but the promise they made here may or may not end up in this covenant.

Mr. Harrison: This relates just to the covenant.

Mr. Jeffers: What I am saying is they stand before us and swear, which they do not do in front of the legislative bodies. Then, they make a use and development in front of this body after being sworn in. Then they go to the County Commission with a recommendation from this body to rezone and something else comes up. So that is incorporated into this document empowering the legislative bodies to enforce this covenant; and, #10 says this covenant negates any prior understanding or representation of any kind preceding the execution of this covenant.

Mr. Foster: That is why I think we want to look at it and tweak it to say however, this does not void any use and development commitment ...

Mr. Jeffers: That makes it more confusing in my mind. It enforces what? What prevails? The use and development commitment that was sworn to here? Or this covenant?

Mr. Foster: They are signed. They are part of the zoning.

Mr. Harrison: Area Plan Commission will enforce the use and development commitment. But Area Plan will not ever enforce a covenant. That is either the City or County or the homeowners.

Mr. Pedtke: I think the problems that were discussed this week are of the smallest fraction of the development that happens in this county. I don't know that we want to take drastic steps to squish a bug with an atom bomb, if you will. So I am happy to see that something like this could be used on a voluntary basis. But since it is a voluntary basis, as a mechanism that could be used between the developer and the legislative bodies, why are we even discussing it? It is what it is and it will be changed whatever it gets agreed to. We won't play a role in it. I commend Michael and all his people that went to work with it. I think it is a good document to use for some circumstances and it will get changed no matter what for that specific circumstance. But I don't think there is any action to be taken here.

Mr Harrison: Relevant to this body in that we are going to hear the concerns first. It may be a suggestion by someone on this body that maybe you consider it a covenant before you go to the legislative body.

Mr. Pedtke: Right. But it can't help us with our voting.

Mr. Lockard: The question I have was, can we ask a petitioner if he is willing to put that in writing. Mr. Foster's feeling was there is nothing wrong with asking if they are willing to put in writing. In the past, we have not asked petitioners if they are willing to put it in writing. We ask them if they are willing to promise. They all say yes.

Mr. Foster: We do it all the time when we say we will continue the petition for a month so they can do a use and development commitment and come back.

Mr. Lockard: I went back and reviewed past minutes and the number of times we take it back for use and development have been fairly low. We usually say we will address that at Site Review. I agree with you that we don't want to swat a fly with something huge. But this is thrown out for posterity to say here is a sample they can use. Then let the City and County decide.

Mr. Pedtke: I think the attorney approves the language in something like this. Can the applicant sign it and put it in writing and use it that very night and not have to go back?

Mr. Herrin: You are saying, are you willing to put that in writing, and he says no. So that is going to influence us to vote no. But if it is still good land use, it is just something personally that an association doesn't like, we cannot, because he refuses to put it in a covenant, we can't vote no.

Mr. Lockard: Why can't I?

Mr. Herrin: Because if it is good land use...

Mr. Lockard: Well, at that point, if there is an egregious part of the land use that we don't agree with, then I think we can...

Mr. Herrin: I am saying if it is good land use, you have got to leave the personal part out of it and go with what is good land use.

Mr. Harrison: Keep in mind, we are just a recommending body here.

Ms. Musgrave: Can we move on to discussing the pamphlet, the wonderful pamphlet that Area Plan has drawn up?

Mr. Jeffers: Well, we can discuss that after we are finished discussing this, I guess. Should we even be discussing this, or should we just say thanks for the information and pass it to the County Commission?

Mr. Foster: I think that's what we should do.

Mr Harrison: INAUDIBLE....

Mr. Jeffers: I can't recommend to somebody to sign a covenant that I don't agree with the language in that covenant. Explain to me one last time, why do we have to wait a month if someone is standing at that podium and willing to agree to an additional commitment....

Mr. Harrison: It is a development issue. It is the same as changing the petition.

Mr. Mills: You can't add anything. You can only take things away.

Mr. Jeffers: Cheryl, I know you are excited about this pamphlet. I'm going to tear it up too.

Ms. Musgrave: Oh, Mr. Jeffers, I think you are going to have to tear it up without me. I would love to talk about it before I go. I wonder if we could defer the rest of your conversation until after we say a few words about the pamphlet.

Mr. Foster: Okay. Go ahead.

Mr. Mills: You have in front of you a pamphlet which is in a draft form that we would appreciate you taking a look at. This came as a result of meetings we had with the manufactured home committee that we created. We met with members of this body, developers, manufactured homes sales persons, and we had a difficult time coming up with language and items we could do to address that concern. What we came up with

was this pamphlet. It is basically to try to give the public some information about covenants and restrictions and how we can enforce those. This pamphlet talks about numerous subdivisions will come in and we approve them because they meet our ordinance, but the developers will sometimes develop a thick set of covenants and restrictions that addresses how much brick you have on the home, what color your home might be, different things that could happen, that you won't park in the street, etc. This basically tries to inform the public on the process to find the restrictions and take methods to try to enforce those. I would appreciate any suggestions. It would eventually be put on our web site. Are there any questions? Thank you.

Mr. Jeffers: On this pamphlet, you are encouraging neighbors to hire an attorney. Can they be renting neighbors, or do they have to be property owners?

Mr. Mills: They would have to be property owners. If you would like to mark that up and give it back to me,...

Mr. Jeffers: I marked it up and e-mailed it back to you a week ago and never got a reply. I marked this whole thing up.

Mr. Mills: Thank you, Bill. I must have missed that.

Mr. Jeffers: Then I sent another e-mail asking if you received it and whether it was going to be brought to tonight's meeting and I didn't get a reply to that either.

Mr. Mills: Thank you, Bill.

Mr. Foster: Is there a motion to adjourn? (Motion was made and seconded.)

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