

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

August 9, 2007

Ms. Stevens: Before we call the meeting to order, I want to acknowledge Bev, who is behind me today, it is her last Area Plan Commission meeting. She is retiring after over 27 years. She has obviously been a gift to this office. I know she will be missed. Thank you Bev. (Applause.)

ROLL CALL

Ms. Stevens: I would like to call the August 9, 2007 meeting of the Area Plan Commission of Evansville and Vanderburgh County to order. Will the secretary please call the roll?

Members Present:

Derek Dunigan, Roger Herrin, K.C. Jain, Bill Jeffers, Joe Kiefer, Mike Lockard, Lynn Lowe, Bill Pedtke, Tom Shetler, Jr., Stacy Stevens

Members Absent:

Greg Charnes, Jack McNeely

Area Commission Staff Present:

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

APPROVAL OF MINUTES

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

REZONINGS

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

The Area Plan Commission has established the following guidelines to be followed for both rezonings and subdivisions. Mr. Mills will begin each presentation. As each case is called, the petitioner and the remonstrators who intend to testify will please stand and be sworn in at the beginning of the process. If your name is not on the petition, those who plan to testify need to please fill out the sheets in the back of the room. All testimony must begin by stating your name and address for the record.

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

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

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

The City rezonings considered tonight will be heard by the City Council on September 10, 2007 at 5:30 p.m. in Room 301. The County rezonings considered tonight will be heard by the County Commissioners on August 21, 2007 after their regular 3:00 p.m. meeting in Room 301.

Ms. Stevens: The following petitions will not be heard this evening.

Docket No: VC-7-2007 Lofti Hadad 700 and 720 Kimber Lane
CONTINUED TO THE SEPTEMBER 13, 2007 MEETING AT PETITIONER'S REQUEST.

Docket No: VC-13-2007 Three I Properties 601 and 630 E. Boonville-New Harmony
Road and 12900 and 12920 Old State Road
CONTINUED TO THE SEPTEMBER 13, 2007 MEETING AT PETITIONER'S REQUEST.

Docket No: VC-8-2007 Arem Corp. 800 N. Boehne Camp Road
WITHDRAWN BY THE PETITIONER

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

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

Mr. Harrison: Mr. Mills, on all petitions tonight, 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.)

COUNTY ECONOMIC DEVELOPMENT AREAS

Resolution No. 2007-VCRC-4, approving the establishment of the University Parkway Economic Development Area.

Resolution No. 2007-VCRC-5, approving the expansion of the U. S. 41 and Baseline Road Economic Development Area.

Mr. Mills: For the first item we have tonight, there are two County Economic Development Areas that we are being asked to consider to approve and pass on to the County. The County Commissioners are proposing to expand the existing US 41 and Baseline Road area tax increment financing district to the north and south from I-64 to Campbell Road south of Boonville-New Harmony Road. State law requires that part of the process to establish a TIF district requires the approval of the Area Plan Commission. Resolutions have been prepared and distributed to the Plan Commission members as a part of their packets for this meeting that state that the proposed TIF district conform to the Comprehensive Plan. The County Commissioners are asking that the Plan Commission adopt the resolutions so they can proceed with the expanded TIF area. The US 41 TIF district boundaries basically correspond along the planned US 41 N industrial corridor recommended for future development in the Comprehensive Plan. The University Parkway TIF will facilitate the construction in need of road improvements and water and sewer extension prior to the development of this corridor, as called for in the Comprehensive Plan.

Mr. Ziemer: I am Ted Ziemer, Jr. of Ziemer, Stayman, Weitzel and Shoulders. I am the County attorney and here to answer any questions regarding either of these resolutions.

Ms. Stevens: Are there any questions regarding these resolutions?

Mr. Jeffers: I would like to address the proposed US 41 TIF district first and ask is there a reason why Azteca Milling property was left out of the TIF district?

Mr. Ziemer: They are in the original TIF district. We are now asking to expand that.

Mr. Jeffers: So the yellow shaded area is the original TIF district?

Mr. Ziemer: That is correct.

Mr. Jeffers: And the legal description begins at some corner of that TIF district and goes north and back around.

Mr. Ziemer: The blue area is the expanded area. The green area is the existing TIF which does include Azteca.

Mr. Jeffers: Then with regard to the 41 district, is there a reason why the residential and agricultural properties along the west side of Peck Road were included in this TIF district?

Mr. Ziemer: Yes because those could become commercial areas if they are properly rezoned.

Mr. Jeffers: My only concern in that regard is that should the owners of those properties along the west side of Peck Road who are currently enjoying the use of the property as residential or agricultural, who live there, if they are incorporated into a TIF district or redevelopment district, does that give extra powers to the Redevelopment Commission to go through condemnation proceedings and declare their properties to be ...

Mr. Ziemer: It does not. This does not give any additional power regarding condemnation than already exists on the part of the County.

Mr. Jeffers: On the TIF district along the University Parkway, I notice that the presentation by Mr. Mills was slightly different than the explanation along US 41. I believe along US 41 in his wording essentially was that the area was designated in the Comprehensive Plan for industrial/commercial expansion. We know that in the mid or late 70's, the City administration designated that area for industrial expansion by installing oversize sewers, etc., and encouraging industrial development along there. So I accept that the Comprehensive Plan contemplates heavy industrial and commercial use along the 41 corridor. But I noticed his introductory remarks regarding the University Parkway didn't exactly say that the area proposed for the TIF district is designated by the Comprehensive Plan for the uses that are outlined by the redevelopment plan that accompanies this resolution.

Mr. Ziemer: Mr. Mills, I apologize. I didn't memorize what you said. I don't have a copy of that before me. Can you refresh our recollection as to your comments?

Mr. Mills: What I would like to do is read finding #5 that was distributed along with the information on page 8. It explains a little bit. It is referring to the plan for economic development area conforms to other development and redevelopment plans for the County. It states, "While much of the economic development area is currently used predominantly for agricultural purposes, this location in relation to the University Parkway, as well as SR 62, makes retail, commercial and industrial development possible in the future, the Comprehensive Plan contemplates that portion of economic development area will continue to transition into higher density residential use to the extent that projects in the plan provide for access to retail development within the economic development area. The plan supports the projected residential development and use. In addition, the

Comprehensive Plan already anticipates that the intersections of University Parkway and Diamond Avenue will generate commercial development in the northern portion of the economic development area. Also, the area along the CSX rail line in the southern portion of the economic development area has potential for development for commercial and industrial uses.” Finally, it anticipates that the southern portion of the economic development area near the University Parkway intersection with the Lloyd Expressway will developed for mixed use which may include commercial office space. So I think that kind of expands and clarifies what we believe could happen with the accelerated development of University Parkway which would be afforded by this TIF district.

Mr. Jeffers: Was finding #5 prepared by Area Plan Commission?

Mr. Mills: That is correct.

Mr. Jeffers: Does the current Comprehensive Plan support that the area along CSX rail line in the southern portion of the economic development area has potential for development as commercial and industrial use?

Mr. Mills: The current Comprehensive Plan does not state that.

Mr. Jeffers: And does the current Comprehensive Plan state that the southern portion of the economic development area near University Parkway intersection with Lloyd will have mixed uses that include commercial office space?

Mr. Mills: It does not state that.

Mr. Jeffers: So I guess what my concern is in those two regards is that I understand and support the need for economic development, I understand and support the need for infrastructure to encourage that economic development. But I am slightly apprehensive that the residents, particularly near the intersection of University Parkway and Lloyd Expressway may not have had the opportunity to make comment on the projection that the infrastructure improvements that may be made as a result of this resolution and this action, the creation of a TIF district, will include commercial office spaces behind their current residential uses, particularly Cherry Hill Drive, etc., where they strongly opposed student housing and apartment development recently. So I have a little apprehension about whether or not the folks who will be most impacted by development adjacent to their enjoyed residential use have had opportunity to make comment.

Mr. Ziemer: There was published notice of the meetings of the Redevelopment Commission indicating there would be a hearing before the Redevelopment Commission and no one appeared.

Mr. Jeffers: Those were in the newspaper?

Mr. Ziemer: Yes.

Mr. Jeffers: Back in the want ad section?

Mr. Ziemer: I am not going to be able to say Mr. Jeffers exactly where the notices appeared, but they appeared where legal notices do appear.

Mr. Jeffers: Is there anyone else that understands my apprehension on that particular third point near the intersection of University Parkway and Lloyd Expressway where the Comprehensive Plan does not contemplate commercial office space, but this proposed resolution of the Area Plan Commission, well, basically we are being asked not to approve this. We are being asked to ...

Mr. Ziemer: That is correct. You are being asked....

Mr. Jeffers: To enforce it.

Mr. Ziemer: You are being asked to say that it does comply with the plan.

Mr. Jeffers: We are being asked to say that this plan by the Redevelopment Commission comports with the Comprehensive Plan. I wish that the Comprehensive Plan would be updated to comport with this redevelopment plan because I do support economic development. I am just apprehensive about the reaction we may get from residents, particularly immediately adjacent to the intersection of University Parkway and Lloyd Expressway.

Mr. Mills: As you know, the Comprehensive Plan gets updated every four or five years. If this TIF district is approved, that would be modified in the Comprehensive Plan to reflect that. In addition, the property, it is currently zoned agricultural, it would obviously have to be rezoned to allow either commercial/industrial/office uses that might go out there at that time. The residents definitely will have the opportunity to state their objections to any uses that that might be objectionable to them. The County Commissioners would have the time that they could deny a rezoning if it was something that the community did not desire.

Mr. Lockard: As somebody who worked with the neighbors out there and spoke with many of them, during some of the rezonings that have happened out there, all of them have basically said they understood that there is going to be some inevitable development along the University Parkway. I think that is even mentioned in here that this is a thing that is going to happen out there. I don't think most of them are necessarily against development as a whole, just concerns over what type and what sort of developments are going to go in out there. I reviewed this proposal in detail and I like, in addition to finding #5 that Brad mentioned, I also like finding #2 that says that this is not going to be properly developed without this type of development plan because of just waiting on whoever moves in out there to improve the road and intersection, the water and sewers, and it puts an undue burden on them. I like the fact that the focused aspects of the TIF districts will be oriented just on the development area. And I will not try to speak for the neighbors other than to say that if the TIF district improves the infrastructure and it is focused on that

general area, I think they will be more amenable to that than to any other means where it may be a scattered development, because once it is through all the way up to Diamond Avenue, that area is going to take off like a rocket and I would rather see the TIF district go toward a complete infrastructure improvement than a little improvement here and there. So I think this is going to focus that a lot better.

Mr. Ziemer: Thank you Mr. Lockard. Then further, Mr. Jeffers, the Redevelopment Commission has in its file a letter from the Westside Improvement Association indicating that they are supportive of the establishment of this TIF.

Mr. Jeffers: I appreciate your additional information that I did not have before and like Mr. Lockard, I have friends in the immediate area I am concerned about.

Ms. Stevens: Are there any other questions? We are discussing both resolutions right now, but we are going to vote on them separately. Are there any public comments? Seeing none, is there a motion for approval of Resolution #2007-VCRC-4 approving the establishment of the University Parkway Economic Development Area. (Motion was made and seconded.) Call the roll.

Ayes: Mr. Dunigan, Mr. Herrin, Mr. Jain, Mr. Jeffers, Mr. Kiefer, Mr. Lockard, Mr. Pedtke, Mr. Shetler, Ms. Stevens

Nays: None

There being 9 affirmative votes, Resolution #2007-VCRC-4 is approved.

Ms. Stevens: Now for Resolution #2007-VCRC-5 approving the expansion of the US 41 and Baseline Road Economic Development Area. (Motion was made and seconded.) Call the roll.

Ayes: Mr. Herrin, Mr. Jain, Mr. Jeffers, Mr. Kiefer, Mr. Lockard, Mr. Pedtke, Mr. Shetler, Mr. Dunigan, Ms. Stevens

Nays: None

There being 9 affirmative votes, Docket No: #2007-VCRC-5 is approved.

CITY REZONINGS

Docket No: 2006-28-PC R-2006-16 Petitioner: HK Partners

Address: (Complete legal on file.) 1212 Lincoln Avenue

Nature of Case: Petitioner requests to rezone from a CO-2 zone to a C-2 zone with a use and development commitment.

Mr. Mills: HK Partners is requesting to rezone the property located at 1212 Lincoln Avenue from CO-2 to C-2 with a use and development commitment. This is a 0.72 acre

site located on the north side of Lincoln Avenue, between Lewis Avenue & Highway 41 North. This petition was heard at the December 14, 2006 Area Plan Commission hearing as a request to rezone from CO-2 to C-4 with a use and development commitment; the petition was sent forward to City Council with no recommendation, receiving 6 yes & 2 no votes. The petition was continued at the petitioner's request at the January 8, 2007 City Council hearing to allow further amendment. The rezoning request was then amended to a petition to rezone the site from CO-2 to C-2 with a use and development commitment which identified 26 uses to be prohibited on the site. This petition was heard at the March 8, 2007 Area Plan Commission hearing as a request to rezone from CO-2 to C-2 with a use and development commitment; the petition was sent forward to City Council with no recommendation, receiving 6 yes, 3 no & 2 abstention votes. The petition was again amended by the petitioner on May 14, 2007, and was to be heard again by the Area Plan Commission as a petition to rezone from CO-2 to C-2 with an amended use and development commitment. This petition was continued from the July Area Plan Commission hearing at the petitioner's request. The Comprehensive Plan Future Land Use map designates a commercial strip along the east side of Highway 41 between Lincoln Avenue and Walnut Street. This proposed C-2 site was rezoned to CO-2 to accommodate an office building. The Evansville Surgery Center was constructed on the site in 1984, and expanded with an addition in 1994. When the addition was made to the office building, two new parking lots were added to the site within the existing C-4 zoned strip west of Fares Avenue. The office building was razed in 2004, leaving all existing paved parking lots intact. The site has been vacant since that time. Site Review Committee reviewed preliminary plans on May 29, 2007 for the new Donut Bank bakery to be located on the adjacent C-4 lot. Access and parking for the Donut Bank site is planned in conjunction with the future commercial or commercial office use of this site. Both businesses will share access. Final plans for the new use proposed on this new site will be determined by site Review 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 that the testimony you will give is true and accurate so help me God? (Those persons have been sworn in.)

Mr. Shively: My name is Les Shively. I am representing H and K Partners. H and K is Gene Hahn and Paul Kite. Paul is a developer from Indianapolis who has been involved in some projects here in Evansville. The request is the CO-2 to C-2 with a use and development commitment. We asked for the continuance last time because we wanted to be in a position where we could say publicly who is the intended user of this tract. I brought the site plan with me. H and K actually owns this property and the property to the west that was already zoned C-4. That is the site for the new Donut Bank. Site Review has already reviewed the plans for that. We have tweaked our use and development commitment to tailor it to the intended buyer and that is Pearl Laundry. Pearl Laundry wants to buy this property. Their intention is to put a laundry/dry cleaning/pickup facility there. It will not be a dry cleaning plant. They feel that would be a nice match for them. Many years ago they were in this neighborhood a little further to the east on the south side of Lincoln Avenue. So they are sort of coming back to the neighborhood and they think

this will compliment Donut Bank. This originally was a CO-2 with a C-4. We then amended it to a CO-2 with C-4 with a use and development commitment. We are now here with a C-2 with an amended use and development commitment. We have already sold the C-4 tract to Donut Bank. We have obtained variances to remove a billboard that was on site to make it function better. We have also vacated certain unused public right-of-way so that we can have a better free-flowing parking and ingress/egress plan. That has all been done. Brad mentioned the use and development commitment. I won't read it to you. But let me hit the highlights. He noted we have eliminated 26 uses under the C-2. Most notable are retail liquor sales would be prohibited. We also have a provision for landscaping, appropriate shielded and directed lighting. And in regard to ingress/egress, we put a provision in here that when we go to Site Review, we will notify the adjacent land owners when we will go to Site Review so they can participate and give their input. We have also put in the use and development commitment the ingress/egress will be determined by the City Engineer and the MPO based upon the interphasing of the traffic situation in that area, and to make sure it works with the ingress/egress plan that was approved for the Donut Bank. Basically that is it in terms of what we are doing here. We have presented this to you in many forms. We have gone from a very general plan to a very specific plan. Two Evansville businesses will have an opportunity to locate here with new facilities. We think it is a good use of the land. I would be happy to answer any questions.

Ms. Stevens: Are there any questions?

Mr. Jeffers: Are you saying that for sure it is going to be a dry cleaning pickup and drop facility, that's it?

Mr. Shively: If we rezone it, they are going to buy the property. If we don't rezone it, they won't buy the property. We have been working real hard. This is a buyer that the Donut Bank people put us on to and they thought it would be a good fit with their property. Having made an investment in this corner, they want to have something that will be compatible with their operation. So it is a good fit. That is the plan.

Mr. Jeffers: So knowing that if it is rezoned to C-2, it will be nothing but a dry cleaning pickup and drop off facility, is there a need to have the commitment read as it does? Can it simply say that that will be the only use?

Mr. Shively: I guess it could. We tried to tailor this. We eliminated 26 uses. Pearl Laundry is the one that is going to buy it.

Mr. Jeffers: But what I am saying is if this use and development commitment goes forward and it is rezoned C-2, it could still be a restaurant with liquor sales. Is that correct?

Mr. Shively: It could be. But if they put their drop off center there, there is not going to be much room for parking area. They won't have enough room for a building.

Mr. Jeffers: No, I mean if the rezoning goes forward with this use and development commitment and some time between now and construction starts, someone changes their mind, it could become a restaurant with liquor sales under this particular petition.

Mr. Shively: In theory. But I can tell you practically, early on there were efforts to present this to those types of establishments. There was really no interest. In fact, this is the first entity that has shown some interest in this location. They were brought to us by the Kempf family. I think it is very unlikely that such a facility would locate there. If this rezoning is approved, we are going to move forward on a fast tract because Pearl is really chomping at the bit. They have been wanting this site for some time.

Mr. Jeffers: I understand what you are saying. I have no reason to doubt what you are saying or anyone else involved. I just wonder that if it is absolute that is going to be a dry cleaning drop off and pickup station, why the commitment could have simply prohibited all uses except.

Mr. Shively: I guess it could have. We presented this commitment to those folks that appeared before you before in the neighborhood and asked for input and additional provisions. To my best recollection, no one had suggested that. It that is something that comes to pass...

Mr. Jeffers: The petitioner could have taken a proactive approach and not waited for a suggestion.

Mr. Shively: The petitioner has made a substantial concession here, eliminated 26 uses. You always have to be in a position of what could happen. In fact, if the input we would have received from the neighborhood would have been that they are really concerned about restaurants that serve alcoholic beverages, that is something that we would have given hard consideration. But there was no specific concern raised regarding that. To do a one use rezoning is usually not a prudent thing to do. But if that was something that we would have heard from the neighbors, I think the owners would have given serious consideration to. We are being upfront here. That's why I continued the July meeting. I wanted to be able to say publicly who the buyer is going to be. Pearl Laundry is going to own it. We are certainly willing to explore that. We can always do it by private covenant if there is enough concern. But we have not received that type of concern along those lines.

Ms. Stevens: Are there any other questions? Are there any remonstrators?

Mr. Bitz: My name is Paul Bitz. I live at 4908 Cross Creek Blvd. I still have the house at 514 Lewis Avenue that is up for sale. On top of that, I am the committeeman for that precinct for 47 years. All I can say is that we have presented all our arguments we can present to you. The one thing I want to remind everybody of is that we have enough liquor stores in town. He says there won't be one. But we would like to see a covenant in there that there will be no alcoholic beverages sold. Unless I am mistaken Mr. Shively, I

just got a letter from you that stated possibly a restaurant that would sell beer or booze. Did your letter not say that?

Mr. Shively: You are right. You are mistaken. You didn't get a letter like that.

Mr. Bitz: I guess I better get my glasses changed. We would like to see a covenant put in there that there can be no liquor sold, not just a package store, but also a restaurant. We got all those school kids up and down there all the way down. If all they want to do is put those two things there, we have no objections in doing that. But I know how all that works and how that operates. There will be some realtor come along and he'll convince somebody in saying that is a good place for a restaurant and that's where it will go once they get the zoning. If there is no conditions, all you people have sat on these boards a long time. You know what happens. The neighbors don't want anything to do with booze in there. We are willing to accept what they want to put in there as is now. That goes for St. Ben's, the University of Evansville, Memorial High School, Methodist Temple, everybody up and down there. I appreciate you taking the time to listen to us.

Mr. Lockard: How many of the neighbors have you talked to in the general area, because you said you talked to a lot of them?

Mr. Bitz: You know what a precinct committeeman does? He goes up and down and talks to every neighborhood. My kids have babysitted with everybody in that neighborhood. I have seven children. I know the neighborhood.

Mr. Lockard: I am just trying to get a feel for it. About how many do you think you have talked to about this issue?

Mr. Bitz: I talked to everybody along Lewis Avenue on this issue. I represent that neighborhood. I am the first elected official in a political organization.

Mr. Lockard: You mentioned St. Ben's and Memorial...did you actually talk to them?

Mr. Bitz: I talked to Memorial High School.

Mr. Lockard: And did they give you any specific opinions on this?

Mr. Bitz: You don't have to be a rocket scientist to know we don't need kids drinking and driving.

Mr. Jeffers: Paul, do you or your neighbors oppose a dry cleaning pick up and drop off facility?

Mr. Bitz: We don't oppose anything he plans to do right now, as long as they stick to that. But I know how that sticking to it means. I have been in the real estate business 50-some years. I may have been guilty of it myself.

Mr. Wallace: My name is Paul Wallace. I represent myself and my wife who have the house at 1414 Lincoln for 20 years. I have seen the neighborhood evolve and stayed as a residential neighborhood and some offices and very limited commercial. I have talked to 10 or 12 neighbors. I have talked with Father Gregory at St. Ben's and I believe the consensus is, I can only speak for myself, but we have no objection to Pearl Laundry going in. The concern we have is the one expressed by Mr. Jeffers. If this covenant says you can make this a C-2 for Pearl and as long as it is a dry cleaning drop off and pick up, it is fine. If it is ever not, you will rezone it back to CO-2 or whatever the appropriate is at that time. We have no objection to that. That way they get what they say they want. And we have some protection that down the road, this won't change. That is fine. If you do that, we are all for it. If we continue with this covenant, we are opposed to it because this allows those other things you brought up. It still allows operation 23 hours and 59 minutes a day.

Mr. Lockard: To make sure I understand you, the use and development commitment, as written, the primary objection you have is the fact that it allows restaurants that serve alcohol. Out of respect for Mr. Shively and his client, going back and doing another commitment would delay it again. Would you be amenable to a written private covenant that would restrict restaurants without alcohol use? I should say eliminate.

Mr. Wallace: We would rather this was all staying office. What we are trying to do here is make a reasonable compromise. Why we should have to compromise isn't clear. But we are trying to do that just because the developer says he wants to up develop something, I don't understand why the neighbors suddenly have to agree to compromise. You have said what the zoning is. Why do we have to compromise anyway? Having said that, I think the consensus in the neighborhood is the least damming thing for the neighborhood and there and the least damaging thing we can think of. We are not for it, but at least we can live with it. If there is a private covenant properly written that is enforceable by anyone within a mile or two, and provides for attorneys' fees paid to those who privately enforce that covenant so it isn't at their expense to make them do what they agreed to do, yes we can support that.

Mr. Lockard: I am just trying to focus on, it seems the central theme I am hearing from everybody is anything dealing with alcohol.

Mr. Wallace: Actually, anything that is not a laundry drop off and pick up.

Mr. Lockard: It could be written that way as well.

Mr. Wallace: We are being asked to compromise. The few people I have talked to say alright, but they don't like it. But they don't have the energy to keep coming down here and keep taking off work and doing this. So if they are going to put a dry cleaner in there, we can live with it.

Mr. Lockard: So rather than focus on the alcohol, you would just say to make the private covenant say laundry, that's it.

Mr. Wallace: They said publicly that is what it is going to be after swearing. So make the documents match. If you want to avoid delay and want to go with a private covenant properly written, we can live with that. Preferable, the use and development commitment should be rewritten. But we understand there has been enough delay. We have been down here enough.

Mr. LaPlante: My name is Steve LaPlante. I live at 631 College Highway. I represent Marge Slaughter who is across the street from me. The big concern we have with regard to this zoning is public safety. I am not sure, I understand you are going to have the ingress and egress plan heard later on. But I would remind you that when this was first filed there were grave concerns raised by your traffic department with regard to where ingress/egress of these properties was going to be. Currently, we are talking about a rezoning with a three-quarters of an acre property. There are on the two properties on your site plan in excess of 100 parking places. The property to the north is Lewis Avenue, which accesses from Walnut Lane. Lewis Avenue has a great deal of off-street parking. In the evenings when people are not working, it is a one lane road. So there is going to be traffic that is incapable of passing. It happens to me quite a bit. It happens to other people. I don't think this is going to improve the situation. I would also remind you that the ingress/egress from Lincoln is very near Highway 41. I am not sure that it complies with code with regard to the distance from the highway. But I have not done any measurements. There is going to be a cloverleaf at the Lloyd and 41 that was announced in the last month. So we are going to go from two traffic lights on the Lloyd to zero. It will be limited access. It will all exit onto Walnut. The Donut Bank is a great bakery. They are going to be there. But their market they are seeking is the traffic that is coming from 41. They have a nice neighborhood bakery over at Weinbach and Washington. It is convenient. But they are seeking the traffic off of 41. There is going to be a bottleneck there at Lincoln. I agree with Mr. Wallace. What is being proposed is the least awful thing I could think of. But it is not a good situation. I think there will be traffic problems. I think the traffic planners are going to have their work cut out for them. I can answer any questions.

Mr. Lockard: This question is for Brad and Joe both. I notice in the covenant, ingress and egress is specifically mentioned and it says that it is going to be determined by the City Engineer and the EMPO. I notice in the document from the EMPO, it specifically says no access to Lincoln. Lewis and Fares only. It has several recommendations in there. If the City Engineer and EMPO says no access to Lincoln, does that mean that H and K can't do anything about it if you guys say no access to Lincoln, that's it, case closed?

Mr. Mills: If you look at the drawing on the wall over there, you can see north is to the right side of the page and Lewis Avenue is on the bottom. Lincoln Avenue would be on the left side of that page. The site plan that came in for Donut Bank and was approved has the entrance coming in off the north part of that lot so you would come up Lewis Avenue, take a left on the northern part of the lot, go in to the development and go to the Donut Bank or the Pearl Laundry, then come back out on the southern exit and take a

right or left. There is not access onto Lincoln Avenue with this plan. None was approved and none would be approved.

Mr. Lockard: Thank you.

Ms. Stevens: Are there any other questions?

Mr. Folz: My name is Fred Folz. I live at 631 S. Willow. My speech has mostly been given. I just want to say that the Kempfs are good people. We like them. We like local business. We like what they do. The Korbs are too. This is the sort of thing that if there is any way to bend and accommodate, that is what we are trying to do. But good plans among good people fall apart. Mr. Jeffers is right. It is not just the liquor. It is the Kwik Piks. It is this neighborhood trying to create any use and then trying to block it. The single use covenant is the answer to that. I am fine with the private covenant to be privately enforced on the terms that Mr. Wallace spoke of. I know that won't necessarily make the people right on top of it happy because without this, the CO-2 was a buffer. It was why you don't have the next guy. It is there. The private use covenant is that buffer. It is perfectly reasonable.

Ms. Stevens: Are there any questions?

Mr. Shively: I want to let you know that this use and development commitment was sent out long ago to Mr. Folz and Mr. Wallace and others, Mr. Bitz. This is the first I am hearing of these comments. If this Board would say that you want this matter continued, we would approach the current owner and the perspective owner about a one use use and development commitment, I would certainly approach them on that. I am gathering from the folks that have spoken, a one C-2 use, they are not trying to prohibit anything that could presently be there under the present classification. So CO-2 uses would still be allowed and the only C-2 use would be, I am more than happy if this board would say you want us to continue this and us to explore it and see if it works. That is entirely up to you. But I want to take a moment to put this into perspective. I have taken a lot of heat from people that I thought were my friends. But some times friends don't get all their facts right. INAUDIBLE ...This is an aerial photo starting with the subject property and goes all the way to Weinbach. Pearl Laundry, when I came back in 1980, it was located in the 1500 block of Lincoln Avenue, three blocks farther east than this location. The area where Mr. Wallace lives is .2 of a mile from this location, this has been a mixed use area as long as I can remember. I want you to take a look at this. We are talking about an area right next to a C-4 zoned property on Highway 41 and Lincoln Avenue, a major intersection. We are locked in to what the MPO and City Engineer, and Site Review, that will go on the improvement location permit that then accompanies the building permit. We are locked into that. INDOT has already vetted this project and they say it will have no impact on the planned improvements at 41 and Lloyd. As far as the liquor situation, I understand, but there are liquor laws. You have to be 21 the last time I looked to be able to consume alcoholic beverages on premises to places properly licensed. Be that as it may, if this board would feel more comfortable with that approach and go back for a single use, but I do want to remind you this, a CO-2, it may have been a surgical center before,

but multi family can go here. I will tell you something right now. Multi family in many respects can create just as many neighborhood issues regarding traffic than a laundry pick up and drop off center or a bakery. I am more than happy to do whatever the Plan Commission directs. I think this is good zoning. You have two Evansville businesses, well established and well respected businesses that would go here. We have pared this down considerably over many months. We have sought input from the neighbors. We are finally hearing something here today. Better late than never. But I would rather take direction from you. I will have to go back to my owner and respective buyer and make sure they are on board because I don't want to represent anything up here that I can't say to you that is true and accurate.

Mr. Lockard: Trying to help out so that it doesn't have to go back through sending out notice to everybody, do you think your client would be agreeable to a private covenant which you wouldn't have to send out notice, or legal notice and all that other stuff just continuing it to do a private covenant which would technically accomplish the same thing and from listening to the neighbors, it would appear to meet what they are asking for.

Mr. Shively: The only problem is the confusion is we would still have this use and development commitment with the certain language and the covenant would create ambiguities with the change of title. I agree with Mr. Wallace. I think the best way to do this, private covenants are not really favored. They create some other problems. They have unintended consequences. It is best to do it in a use and development commitment. That is what the tool is there for. I learned this lesson about 15 years ago. I have a private covenant in one situation. It was supposed to piggyback on the use and development commitment. They didn't quite line up. It created a lot of headaches. I think if we are going to do something like this, we are going to have to look at amending this. We probably would have to do that anyway because how can we put this of record if we are also going to have this private covenant? It will create some problems down the road. That would be my suggestion. The other thing with private covenants, you all don't have the enforcement. The use and development commitment, the neighbors do, as you all do as the enforcement agency.

Mr. Pedtke: Brad, did you tell us that Site Review has given final approval for the no access on Lincoln?

Mr. Mills: Yes that is correct. The drawing that is up on the screen again shows the access that was approved by Site Review. This access would not be demolished and reconstructed with the building. The building would go in the vacant rectangle that is on the bottom part of the page there.

Mr. Pedtke: Les, just to make it clear about the purchase of this by Pearl. Is there an agreement in place with the rezoning as a contingency?

Mr. Shively: Yes. If it is not rezoned, they are not going to buy it.

Mr. Pedtke: Rezoned period, or rezoned at this meeting?

Mr. Shively: I don't know that for certain. If there is a suggestion that comes from you, that may be helpful, given the fact that I don't have anybody to bounce that off of. So I don't know what the time line is on there.

Ms. Stevens: Well, hearing your comments that you really can't speak for your client and neither of them are here to ask. The deadline for the next meeting is Monday. Everything you said about the use and development versus the private covenant, ...

Mr. Shively: Let's say we get something up to you on Monday. We are still....

Ms. Stevens: You would still be in time for the September meeting. I appreciate that you don't want to create all the ambiguity because that's not what the neighbors want either. I think that makes the most sense.

Mr. Kiefer: You said the next meeting is September 13th that is could be vote on.

Mr. Mills: If they do an amended use and development commitment, it would have to come back to this body and that would be the September 13th meeting.

Mr. Kiefer: I didn't know if it would be in time for City Council.

Mr. Harrison: City Council wouldn't be until October 8th.

Mr. Pedtke: When did the use and development commitment get made public the way it is right now?

Mr. Shively: It was filed May 14th.

Mr. Pedtke: With the 26 prohibited uses, when did that become open to the public?

Ms. Stevens: They continued this a couple times.

Mr. Pedtke: When did the use and development commitment discussions happen with the people who remonstrated tonight?

Mr. Shively: They started back when we had the C-4. It was a blanket C-4. We had some discussion. We put together one use and development commitment. Then we changed it to C-2 and added some more restrictions based on some discussions and input, mainly things that I had heard from Mr. Bitz. Then it ended up in its present form.

Mr. Pedtke: The reason I ask that is because it seems like, I wouldn't have a problem with this going to next month's meeting for that one issue that you and the remonstrators are discussing tonight. But I would hate for one more thing to blindside you at that meeting too.

Mr. Shively: I agree with that. The other concern I have too, if I was going back to my client and the perspective buyer and said we put this single C-2 use in here, there is not going to be any opposition, nobody lobbying City Council members to vote against it, that would really be helpful if I knew those kinds of things. If we do this and we come back, not only have we lost time, but Pearl is out of the picture.

Mr. Pedtke: Can we hear from one or two of the remonstrators again about what they have to say about that?

Mr. Wallace: Can I read this to you? It is very short. "Dear Les, thank you for your letter of April 2nd received in our office on April 5th. INAUDIBLE... While we do not believe there is any reason why the property at 1212 Lincoln should be rezoned to C-2, in order to decide whether to oppose Pearl Laundry, will Pearl agree that if they stop utilizing the premises as a Pearl Laundry drop off/pick up that Pearl will rezone the property back to CO? Because businesses are constantly purchased and sold in this current age, we must have some certainty that this is not just a short term use which would then open up other C-2 uses. Please advise if you would prior to the meeting Monday?" So there is no blindside. Thank you.

Ms. Stevens: Does that answer your question, Mr. Pedtke?

Mr. Pedtke: Yes.

Mr. Shively: INAUDIBLE....is that no one wants to have that additional cost of having to rezone when there was never a proposal made about a single use use and development commitment. That is a horse of a different color. That is not splitting hairs. To say to the perspective buyer, oh, by the way, when you go to sell this property to somebody else, you are going to have to incur the expense to do these things,and you are in the business Ms. Stevens....but this is the first I am hearing about a single use.

Mr. Lockard: Joe, correct me if I am wrong. You can't do those conditional rezonings anyway can you? You can't say you are going to rezone something, but if you change your mind, you have to rezone it. So they can't do that anyway?

Mr. Harrison: Right.

Mr. Lockard: And I don't know how to ask this one, but my only confusion, if this was filed in May, I have a hard time understanding how, with all the discussions that should have happened between your clients and the neighbors, how 90 days later that use and development commitment never appears to have changed. If all these discussions are going on and they are discussing things, why is it three months later it is still in the same form? I would have thought somebody along the way would have said something about that. I am confused on that part.

Mr. Shively: We are today. I don't want to make this more contentious than it has to be. There was a lot of discussion between the first commitment and the second one. This is

the second one. Most of it was included in information Mr. Bitz provided me. It actually started when we were vacating some of the right-of-way.

Mr. Lockard: So there was a first one when it first came through. This was the second one.

Mr. Shively: INAUDIBLE

Ms. Stevens: Is there a motion to continue this? (Motion was made and seconded and the fees are waived.) Voice vote.

Upon unanimous voice vote, Docket No: R-2006-16 is continued to the September meeting.

Docket No: 2007-25-PC R-2007-13 Petitioner: Sherry Fetters

Address: (Complete legal on file.) 2708 Claremont Avenue

Nature of Case: Petitioner requests to rezone from an M-2 zone to an R-2 zone.

Mr. Mills: Sherry Fetters (Snodgrass) is requesting to downzone her residence located at Claremont Avenue from M-2 to R-2. This is a 0.15 acre residence located on the south side of Claremont Avenue, east of Barker Avenue. This site is within an older area of mixed zonings. The surrounding area is a predominantly residential neighborhood. Commercial development within the area is located along Barker Avenue and the area south of the Ray Becker Parkway. This downzoning to R-2 is consistent with adjacent residential properties to the north, east, and west. This is a request to downzone this M-2 zoned site to bring the existing residence into conformance with zoning code restrictions and to remove the legal nonconforming status designation and the accompanying legal nonconforming restrictions from the site. This downzoning to R-2 is consistent with the adjacent residential neighborhood development and is appropriate to the small size of the lot which makes the provision of adequate on-site parking for commercial or industrial use of the site difficult.

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 me God? (Those persons have been sworn in.)

Ms. Fetters: My name is Sherry Fetters, the petitioner. I currently live at 1463 Crescent Court. That was my home. I almost lost the sale of it because it I found out when there was an offer made, apparently it wasn't zoned residential. That was never caught by any banks. This is becoming a more and more bigger problem throughout the City of Evansville. The ladies at the Commission really helped me out and I appreciate that. But I have made it known to several people sitting here that I think you need to go back through, apparently way back in the 1950's, somebody went through and rezoned all these houses on that block. This is all residential and it is only on the south side of the street. Everything on the other side of the street is all zoned correctly. It is kind of crazy and kind of sad that I find this out whenever the sale of my house in jeopardy. I have also

talked to the Westside Improvement Association that I think they need to take that on because there are a lot west side areas that this is affecting and people are losing the sales of their houses. So I don't know what I am supposed to say other than I am just requesting it go down to residential where it should be in the first place.

Mr. Lockard: I used to work with Sherry and she used to be my supervisor. But nothing I say is dependent on full disclosure. Just for your information, I actually talked to a couple of our legislators out of Indianapolis because Area Plan has agreed that they would love to work out something for rezoning and doing these blanket moves. The problem is the Indiana Code that requires there be legal notice in the paper and the Courier has not seen fit to benefit us by donating the notice and it is not the Area Plan fees. It is the Courier fees. But next session, they encouraged me to bring it up again and maybe we can find a way of letting people give notice on the internet rather than printing it in the paper.

Ms. Fetter: That is true. I went to a lot of extra effort and typed it up and the paper still cost me \$450. This whole rezoning with the filings and letters and everything else, it is going to cost about \$1,000. The thing that upset me was I lived there since 1993, never knew it was zoned that way. One of the things that I am upset about is that if my house would have burned down, I own insurance, but now I can't rebuild that. How many families do you know out there can afford it if their house burns down, now they have to pay a deductible, they have a family to take care of. Now they have to pay \$1,000+ to rezone it. Then to rebuild their house. I started this in May. This process is ridiculously long. There is not many families that can go five months homeless before they can even start rebuilding. You are talking about a family being homeless. To me that is ridiculous, especially since this was something that was done way back in the 1950's.

Mr. Lockard: So when I drive to Indianapolis, Jerry will let you go with me?

Ms. Fetter: We will see. I just think it is something if somebody can take it on that this needs to be fixed for these residents...

Ms. Stevens: I really do think you should go to Indianapolis because you stated it very well. We see this all the time. Are there any questions? Is there a motion for approval? (Motion was made and seconded.) Call the roll.

Ayes: Mr. Jeffers, Mr. Lockard, Ms. Lowe, Mr. Pedtke, Mr. Shetler, Mr. Dunigan, Mr. Herrin, Mr. Jain, Ms. Stevens

Nays: None

Abstention: Mr. Kiefer

There being 9 affirmative votes and 1 abstention, Docket No: R-2007-13 goes forward with a recommendation for approval.

Docket No: 2007-26-PC R-2007-14 Petitioner: City of Evansville Board of Public Works
Address: (Complete legal on file.) 3800 Kratzville Road
Nature of Case: Petitioner requests to rezone from an R-1 zone to an R-4 zone.

Mr. Mills: City of Evansville is requesting a change in zoning from R-1 to R-4 for the property located at 3800 Kratzville Road. This is a 19.21 acre site located on the west side of Kratzville Road, south of Buena Vista Road. This site is in an area of very mixed zonings and uses, with a church to the north, cemetery to the east, and commercial development to the south and west. There are no single-family residential homes immediately adjacent to the site. The vacant site is proposed for multi-family residential development. The Future Land Use Map in the Comprehensive Plan designates this area as park or cemetery, immediately adjacent to residential uses. This 19.2 acre City-owned site has long been associated with the Locust Hill Cemetery property adjacent east across Kratzville Road. This step up in zoning to R-3 for this 19.21 acre site is consistent the Comprehensive Plan. Multi-family development is considered a residential use. Site Review and Subdivision Review Committees will address access and will address compliance with all code requirements upon submission of plans for the development of the site.

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

Mr. Bohleber: My name is Steve Bohleber. I am here substituting for the attorney who initiated this petition. That was the late Kevin Winternheimer. Kevin asked me to finish up quite a bit of his business including this several weeks ago. It is on behalf of the City of Evansville Board of Public Works. It director, Ed Ziemer, is here with me who knows far more about this situation than I do. But the request is to rezone this property because it has become functionally useless to the City. It formerly housed offices and other ancillary uses to the cemetery. Those are no longer of any value to the City. This property was never dedicated for cemetery use, so do not be concerned about that. The City intends to rezone this property so it can be marketed. There is currently no buyer. This would generate a sum of money for the use of the Department of Transportation and Services. That money would be used to directly benefit improvements at the cemetery including a functional office at the site. It is my understanding that Mr. Ziemer has spoken to the adjacent property owners and addressed any concerns they might have. He is here to answer any questions. But we believe this is in the best interest of the taxpaying public. It would allow us to improve the cemetery and also return this vacant and unused parcel to useful service to the community. So we ask for do pass recommendation to the City Council.

Ms. Stevens: Are there any questions?

Mr. Lockard: Just knowing the topography of that area, is there any drainage issues or is everything pretty straight-forward out there?

Mr. Ziemer: There doesn't seem to be any drainage issues at this time.

Mr. Lockard: So it won't affect the homeowners on either side. I know that is where the hill starts down.

Mr. Ziemer: We don't think it will.

Mr. Bohleber: Obviously any developer would have to take those things into consideration.

Mr. Kiefer: I recall a few years ago when there was going to be some development next to a cemetery, it seemed to stir a lot of remonstrations. Have you contacted any of the family members of people that have family buried at the cemetery because if there is some kind of mass involvement there, I could see the same kind of remonstrations or concern.

Mr. Bohleber: I will defer that to Ed. We did talk about that and are aware of the concern where the soccer complex was to be located next to the other cemetery.

Mr. Ziemer: The issue, as I recall at Oak Hill, when they were going to develop that, it had been dedicated and given to the cemetery for cemetery plot usage. This particular area was never intended to be a cemetery, never plotted to have any burials there. So we don't think there would be anybody object to us ridding the piece of property across the road.

Mr. Kiefer: I just wanted to make sure that discussed.

Mr. Bohleber: We did talk about that and it was a little different issue than it was at Oak Hill.

Mr. Shetler: How did the City acquire the property?

Mr. Ziemer: We purchased it from the City of Lamasco. And there were no restrictions placed on it at that time. It was actually purchased to be used as a caretaker's home. That caretaker home is no longer in use.

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

Ayes: Mr. Lockard, Ms. Lowe, Mr. Pedtke, Mr. Shetler, Mr. Dunigan, Mr. Herrin, Mr. Jain, Mr. Jeffers, Ms. Stevens

Nays: None

Abstention: Mr. Kiefer

There being 9 affirmative votes and 1 abstention, Docket No: R-2007-14 goes forward with a recommendation for approval.

Docket No: 2007-27-PC R-2007-15 Petitioner: Evansville Water and Sewer Utility
Address: (Complete legal on file.) 1500 Waterworks Road
Nature of Case: Petitioner requests to rezone from an R-2 zone to an M-1 zone.

Mr. Mills: Evansville Water & Sewer Utility is requesting to rezone the Eastside Wastewater Treatment facilities at 1500 Waterworks Road. The facility is on a 16.29 acre site located on the east side of Waterworks Road, south of Veterans Memorial Parkway. This site is in an area of very mixed zonings and uses, with the City garage facility to the north, Veterans Memorial Parkway to the east, vacant land to the south, and additional Water & Sewer utility facilities to the west across Waterworks Road. There are no single-family residential homes immediately adjacent to the site. This 16.29 acre site is an existing city wastewater treatment facility. This is a request to rezone the existing facility to M-1 to bring the use into conformance with current zoning code requirements and to allow erection of a communications center for the waterworks facility on the site. Rezoning of the site for the existing use conforms with the Comprehensive Plan. There is existing commercial access to this site from Waterworks Road. Any changes to the existing access must be approved by Site Review Committee upon submission of plans for any new or changed use of the site.

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

Ms. Worthington: My name is Maria Worthington. I am here on behalf of the City Water & Sewer Utility on this rezoning. Currently, this property is one of the wastewater treatment facilities in Evansville. The rezoning request before you is to rezone from R-2 to M-1. This is currently a legal-non conforming so they are legal to be there operating as a wastewater treatment facility, but there are a couple of reasons I will go into as to why we are here asking for an M-1 zoning. This is on Waterworks Road, by Veteran's Memorial Parkway. This rezoning is needed for a couple reasons. One of the reasons is because upgrades are needed to a communications tower that is located currently at this site. There is a 37 year old communications tower that provides a critical link between the different wastewater and sewer facility in the city and this main treatment plant. It is the position of our Area Plan Commission that, in order to upgrade that tower to do the job we need it to do, an M-1 zoning is needed. Right now, that tower is 140 feet tall. It is seriously in need of some upgrades, not only because it doesn't have the technological capabilities to do the work, but it is not in very good shape. So we need a much better tower than what we have. Harry Lawson from the Water Department is here. In a few minutes I will ask him to come up and explain the importance of the upgrade project that is landing us here today. It has to do with the disbursement of CSO (combined sewer overflow.) To a lay person like myself, it means that without this improved program, what we would be doing is putting sewage into the Ohio River that shouldn't be going in there. That is a problem for a couple federal agencies. I want to point out that we have some

remonstrators. I only became involved in this project this morning. Turns out there are some remonstrators that are here tonight. Krista Lockyear is here with them. They live in the Harbour's Edge neighborhood which is right near this facility. I don't know if you know where that is. There are some beautiful homes there. I have been down that road. It says no trespassing, but if you see how pretty those homes are you are going to have to go down that road and take a quick look and get out real quick. The site we want to rezone is about 16 acres and it contains all those facilities that you see inside the white perimeter. The legal description that was drawn by the engineering firm limits the zoning request to just that area you can see is pretty much filled with facilities. Sometimes when you have people that remonstrate or are opposed to the higher zoning classification, one of the reasons they might do that is because they fear what might you put in there. One thing you can tell from this site is there is really not room to put anything else other than this facility. So I would say to you that there is really not room to put anything else in. It is pretty much filled by these facilities. In order to upgrade these facilities, if that happens in the future, it looks to me, and I think Mr. Lawson can expound on this a little more, you have to actually take out some of the old facilities and then put the new ones in. So there is really not any place to put anything other than wastewater treatment facilities and related uses in there. So I am hoping that will alleviate that concern that the neighbors have. Another suggestion that has been made by the remonstrators or that I think will be made is that we have a use and development commitment to assure them that this will never be anything other than a wastewater treatment facility. When I think of a use and development commitment, I don't think of a situation like this. I don't think that is the right thing for this property. When I think of that, I think about a new development that is coming to a place where people are already there and a new development is coming in and the people that are already there want to make sure that it is going to be what the developer says it is going to be. It is usually between two private property owners. What we have here is a municipality that has had a wastewater treatment facility here since the 1950's. I think the wastewater treatment facility predates the zoning code. I am pretty sure about that. I asked Janet about that earlier and we didn't get a definitive answer on that. But we are legal-nonconforming. The wastewater treatment facility is legal to be there. A use and development commitment, having the City to promise it won't ever put anything other than a wastewater treatment facility there to me doesn't really seem like the right thing that is needed here. There isn't really room to put anything else there. I want to point out a couple practicalities associated with the idea of putting anything else there. If the City were to decide some day that it wanted to put something other than a wastewater treatment facility there, it would have to remove those old facilities at quite a great expense. I am sure that would be millions of dollars. I have talked to Harry about what he thinks that would cost. Then they would have to replace it at another location. You couldn't just take that out because you wanted to put some other M-1 development in. You would have to put those facilities somewhere else. So I asked had there ever been any studies done on what that would cost and yes, there have been. In the past 10 years, there was a study done about a north facility. The dollars were somewhere in the hundred million dollars to put a new facility in. So that wasn't done. Maybe it will be done some day. But clearly, if we were to take that facility out, we would have to replace it and that would be at a cost of hundreds of millions of dollars. Then, the third thing you would have to do is redirect all the sewers that flow into this facility, you would have to find

somewhere else for them to go. So you would have all the expense of removing all that stuff to put some other M-1 use in. Building a new facility which I think is going to be over one hundred million dollars to put it somewhere else. Then reroute the sewers that go there somewhere else. So I think the practicalities associated with that really take care of the problem and the need for a use and development commitment. Also, the neighbors have a concern about the tower height. Currently the tower is 140 feet and the new one would be 190 feet. At this point, we are not in a position to bind the City to a height restriction because it is not known what is going to be needed in the future. No one can predict what technology is going to be here, what we are going to need to handle the sewer capacities and be able to serve all the people that need sewer services. I will pass out a picture what I think is the view of this tower from Harbour's Edge. I gave a copy of this to Ms. Lockyear earlier. You can see a faint line sticking up. Harry Lawson either took that picture or somebody took that picture at his request, showing that is what the tower looks like from their property. I can hardly see the tower. It kind of looks like a tree limb almost. Then I will pass out what the new tower would look like. This isn't "the" tower. This is a similar tower to what we expect to be going in there. I will pass that out. The tower doesn't look too obtrusive. Maybe Mr. Mills can speak to this if it comes up in a little more depth tonight. My understanding is that we had an ordinance on communications towers in recent years, and there was an exemption in it that municipalities did not have to abide by the restrictions. But then there was a subsequent ordinance I am told where there isn't an exception for cities. It kind of applies across the board and that's the way it is. I think that is a question that Mr. Winterheimer was trying to look at before he left us.

Mr. Mills: There is not an exemption for cities. You have to have the appropriate zoning. You can have the communications tower in an M-1. But a cell tower then would require that it goes through and get a special use. So there is a difference between the two types of towers.

Ms. Worthington: Is this one being treated as a cell tower?

Mr. Mills: No.

Ms. Worthington: We are treating it as a communications tower. In any event, it is my understanding that the Area Plan Commission feels like this rezoning is needed to accommodate this tower. So there really are two reasons why we are making the request. One, I think the Area Plan Commission has determined that this rezoning is needed for this tower improvement. Two, I think it is the Area Plan Commission's desire that even though this is a legal non-conforming, that it would be better to have the zoning map make it an M-1, make it a legal conforming. Any time we can create a legal conforming situation, I think that is the preference. So the Water and Sewer Utility is attempting to accommodate both of those concerns. The project itself is a little bit complex. I don't know how important that is to you insofar as maybe my layperson explanation is enough. We need to have better facilities. In order to do that and meet the requirements of the US Dept. of Justice and the EPA, we have to have a better communications tower. To have a better communications tower, the Area Plan tells us we need better zoning. This rezoning

is not going to change the use of the property. It is already a wastewater treatment facility and it has been since the 1950's. There is already a communications tower there. It is just old and not good enough to serve the people well enough. I have already given the reasons why I don't think the situation lends itself to a use and development commitment. I don't think it either lends itself to a height restriction. With that said, I know we will have a moment to hear from our remonstrators. I am happy to answer any questions. I am sort of new to this project and doing the best I can.

Ms. Stevens: Are there any questions?

Mr. Lockard: What is the time frame for this project to construct a tower? What are you looking for?

Mr. Lawson: The project actually is running behind. We are ready to start construction as soon as possible.

Mr. Lockard: I heard Mr. Mills say this is not going to be treated as a cell tower. It is going to be treated as a communications tower. So it is not going to need a special use, because I am looking through, the closest I could find to a communication tower is a classification in use group #7 for a broadcasting station. I can't find the word communications tower anywhere. Is it going to be a special use or not be a special use?

INAUDIBLE

Ms. Behme: It says that if the property is zoned M-1, it only needs to go through the commercial review process and doesn't need a special use. If it were a C-4 or agricultural, then it would have to have a special use. And it is in the text, not in the chart.

Mr. Lockard: I was unable to find it. Thank you. That makes sense. The last question is, knowing that there are objections from the neighbors, unless this is one broad tower, you don't need to zone 17 acres to put in a communications tower. You could simply rezone that portion of the facility to just put in the communications tower which would potentially eliminate some of the objections of the neighbors. Why can there not be a delay so that you guys could potentially work out or come to an agreement on the objections of the neighbors because I understand what you are saying for the City. You want to rezone it to take care of the legal non-conforming. Nobody is going to cite you. It is going to be there till God knows when. All you need is enough room to build the communications tower. Why not pick a little portion that you need to put the base of the tower in and that is it.

Ms. Worthington: I am told also that the EPA and the DOJ may require other improvements to this facility. I think the neighbors want to know more about that process. And it is my understanding that the Area Plan Commission would want this M-1 zoning to take affect in that whole area if they are going to do more improvements to the treatment facilities themselves. Now, that said, it is my understanding that this wastewater treatment facility has undergone three major improvements in the past. It was built in the

1950's. Wasn't there an improvement in the 1970's? Then another one in the 1990's and that wasn't required. I am not sure I have had a chance to understand why it would be necessary at this juncture for that, but again, we are not trying to lock horns with Area Plan Commission. We are trying to do what they want us to do. It is clearly going to be the case that more improvements are going to be needed. That's why it doesn't make sense just to rezone the base.

Mr. Lockard: I totally respect your comments on outside regulatory agencies. But the two words I keyed in on was they may require it and if we do this.

Ms. Worthington: They are going to be required.

Mr. Lockard: And when that comes around, go for it. But in the meantime, out of respect for those beautiful homes you mentioned down there, maybe there is a way to hopefully resolve this without worrying about the entire 17 acres. Mr. Lawson gets his communications tower and everybody goes away happy.

Ms. Worthington: Let me just say this, what I don't want to do though is, and Ms. Lockyear and I talked about this earlier, I don't want to make people believe that the City can do things they cannot do. I just don't have a feel for what kind of compromise can be made. What I suggested that we try to do is look at that in the 30 day time period that we have between now and City Council. There is a nice window there for us to try to work together. If it comes to pass, if the City feels it is appropriate to enter into a use and development commitment, we could kick it back and come back to the Area Plan process. But I have some serious concerns that that is not really going to be workable because of all the other regulatory agencies that will require improvements. I did talk at length with Mr. Lawson specifically about some of the improvements that will be needed. It is not reasonable to think that a facility that was built in the 1950's isn't going to need improvements. I think he can speak to the improvements that are already going to be needed and I think the Area Plan Commission feels firm that that they want us to get this M-1 zoning in place if we are to do any other improvements. The wastewater treatment facility has been there since the 1950's. These homes are fairly new. So it is not really a big surprise to the people that live there that this facility is here. We should try to work together of course. But it is not one of those situations where we are trying to put a wastewater treatment facility next to their homes. They are kind of stuck with the situation. It would cost millions of dollars to try to move it. We've got to try to balance those homeowners with the rest of the City and people that need good sewer services. We have a lot of people upset about stuff going into the river and wanting good facilities. So we got to balance that.

Mr. Lockard: I would say that an M-1 which is necessary for this, just out of respect for the neighbors, give them that sense of security that allows them to sleep at night, you don't need 222 uses to continue with the operation. You could very easily restrict it to the two uses that you have and everybody goes away happy because you don't need all the uses in an M-1 which is 222. You could do away with that and everybody is happy with the City then.

Ms. Worthington: Well I want to hear what the other commissioners think too. I don't want to lend false hope for the situation if the City is really going to need this kind of flexibility to make the improvements. But I hear what you are saying. Whenever you see me up in front of this Commission, I have usually been through a number of meetings with the neighbors. This situation is a little different. Not that we don't want to work with them, but there may be limitations on what we can do. I just want to be frank about that.

Ms. Stevens: Are there other questions?

Mr. Jeffers: Mr. Mills, can the communications facility be permitted in R-2 under a special use?

Mr. Harrison: No. It can't be in a residential district.

Mr. Jeffers: Which districts can it be in with a special use?

Mr. Harrison: Ag, certain commercial, and you don't need a special use for industrial.

Mr. Lockard: That is special use #15, it is only C-4 and above, Bill, W-R, W-I, M-1,2,3. Then also ag. But nothing in the R's or C-1,2,3.

Mr. Jeffers: Can a sewer treatment plant be allowed in ag with a special use?

Mr. Harrison: I don't know. But the issue here is that it is a legal non-conforming use right now. It is legal where it is. It has been legal for 60 years.

Mr. Jeffers: When you get a non-conforming use, that makes it legal, correct?

Mr. Mills: No. It is a legal non-conforming. So it can remain as long as they don't expand it.

Mr. Jeffers: But if they rezoned it to ag, could they then get a special use?

Mr. Mills: We don't have agricultural in the City of Evansville. Everything that was agricultural, when it came into the city limits, reverts to R-1 automatically.

Ms. Worthington: Is it also the case that the Comprehensive Plan calls for this to go to M-1?

Mr. Mills: We call it for the wastewater treatment facility.

Mr. Jeffers: With regard to Mr. Lockard's question, how much room is needed to be zoned M-1 this year just for the permit to reconstruct the communications facility?

Mr. Mills: I am sure it's not 16 acres. We had requested that they rezone it all at one time so as the wastewater treatment plant does have to upgrade, it does have to improve its facilities, then it meets all its requirements because that can be allowed and can be done in the M-1 zoning classification.

Mr. Jeffers: I understand the intent of asking them to rezone the entire parcel if they are going to make improvements, such as they have already made in the 1990's without having to go through this process. But I understand what the intent is. But right now all they really need is the communications facility. Then that would give time to come back and negotiate all the other use and development commitments and all the other stuff.

Mr. Shetler: If my memory is correct, seems to me that when the north side treatment plant was dropped, there was discussion or one of the arguments the Mayor made was to do an extensive amount of upgrading on the west side and also at this east side facility. So it looks like to me that there will be some plans to upgrade and to modernize this facility in the years to come. I look at this situation very much as the lady that came here a few moments ago off the Ray Becker Parkway in that we are dealing with a situation here that if 20 or 30 years ago bonding and lending institutions didn't really care much about and didn't look at the zonings. But today they are looking at those with very keen eyes. I think that is a problem that could come up. I don't think we need to try to delay this. We have already indicated that we need to get this on a fast track. With the other improvements, as a tax payer, I really don't want to get us in a situation where it is going to cost more tax payer money because we delayed something longer and longer. In a year and a half from now when they get ready to do the improvements that we have to come back here and then try to redo the zoning because someone finds in the fine print that it is a legal non-conforming use and the bond holders would feel more comfortable and give a higher rating on the property on the new millions of dollars if this were rezoned properly. So I personally would just as soon go ahead and get it done correctly. I want to hear what the objections are. I don't mean to be presumptuous here. But I think it is better to do it all at one time than not.

Ms. Stevens: I think it would be helpful to know what their objections are.

Mr. Lockard: We are calling this a government use. Is that what is specified as a public building and public use? I am trying to figure out where is government use in the special use classification?

INAUDIBLE

Mr. Lockard: Alright. So public building, public use, right? That is allowed in every single zoning district we have. Is the wastewater plan non-conforming, or is the communications tower non-conforming? Because as I read through this, every single zoning from ag all the way to whatever, you can put a public building or public use on all of it as long as you have a special use. So my question is, is the wastewater plan out of conformance, or is the communications tower out of conformance?

Mr. Mills: It is a legal non-conforming expanding a legal non-conforming makes it out of conformance then.

Mr. Lockard: Maybe I didn't say it right. How is it non-conforming if you can allow public buildings in every single ...

Mr. Mills: It doesn't have a special use.

Mr. Lockard: Then why can't they just ask for a special use and never mind the rezoning?

Mr. Mills: They could do that as well.

Ms. Stevens: Could they have the tower?

Ms. Worthington: Will you allow the improvements?

Mr. Mills: You could have public buildings with a special use, that is correct. This would allow them with the communications tower was our concern, that it was going to be height problem. We wanted to give the public the opportunity to have an objection and to state their concerns with this.

Mr. Lockard: The final question, is the communications tower a public use device?

Mr. Mills: It would be, yes.

Mr. Lockard: So they don't need a rezoning theoretically. They could ask for the special use for the communications tower and all is well?

Mr. Mills: From your theoretical point of view, that is correct. But not necessarily all the other funding and bonding and all those other issues that were mentioned earlier.

Ms. Worthington: If we did that, will you allow us without treating us as if we are in violation to the necessary improvements to the wastewater treatment facility, or is that going to cause problems with that? I think we are just taking the recommendation.

Mr. Mills: What do you want to do?

Ms. Worthington: If we were to follow the approach that Mr. Lockard suggested, scrap the rezoning, just do a special use, everybody is fine with that. Then is the Area Plan Commission going to be okay with the improvements or are they then going to say we have to go back and do the M-1 again?

Mr. Mills: Our opinion was that an M-1 was the best avenue to go for this improvement. That is still my opinion.

Mr. Jeffers: That was the best approach. But I have my question written down here. I have asked it once and Mr. Lockard asked it the second time. Can it be a special use in R-2?

Mr. Mills: For a government building, it could be. But that wasn't your question earlier. It was for a communications tower.

Mr. Jeffers: Brad, I have my question written right here. Can it be a special use in R-2?

Ms. Stevens: Let's hear the remonstrators. You will have a chance to do the summation.

Ms. Lockyear: Krista Lockyear. I am here on behalf of Harbour's Edge Homeowners' Association. As Maria pointed out, Harbour's Edge is across Waterworks Road from the wastewater treatment facility. I could address a lot of things that have been said. A lot the concerns have been voiced by the Plan Commission members and that is accurate. Let me give you a little bit of history of why we are here and tell you what my clients' concerns are that got us to this point. Obviously, we are neighbors with these folks. We are technically not abutting land owners. So none of my clients that live in Harbour's Edge, and I believe there are 11 homes constructed up there now, none of my clients received notice of this. The yellow sign that is normally the big red flag and Jack and Barbara Cunningham are one of my clients that live up there and I think Barbara would have noticed that the yellow sign wasn't seen by anybody in the subdivision. Part of the problem is Tuesday we find out about this going on, what are you going to an industrial zoning for? What are you planning? Is it an expansion? It is a communications tower on the staff field report. That was about all the information we could get. Barbara called me and I got on the phone to the Utility representative who didn't know all these concerns were going to come up. Then they got Maria Worthington involved and are probably moving in the right direction now. My request to Maria today was can't we have a meeting because I have a lot of neighbors that are really concerned about what is happening here. M-1 has 222 uses. Sure, there is a plant here now. Is it going to be obsolete in 20 years? You put an M-1 zoning in there with no restrictions. The fair thing to do is at least give my clients a chance to talk about those concerns. Not here right before we head into City Council for a final decision. Let us sit down with the water treatment folks and find out what their plans are, what their improvement plans are, does it involve expansion? This tower, could it be larger? As it is right now with an M-1, they could make it into a communications tower. If a cellular company comes in and says they want to locate there, I don't think there is any restriction against doing that. So blanket M-1 is a lot to ask for without a meeting with the neighbors, without notice to the neighbors, granted legally we are not abutting so they didn't have to get a hold of us. But we are really concerned about this. There is some history. I have a letter that was addressed to Mr. Bud Bussing, Jr. in 1990. I will pass one around. There is a history of promises being made. They said they would take care of the odor. They would change their processes to deal with the neighbor's concerns. They said they would be a good governmental entity, good corporate neighbor and work with us. Then here we are again. So I think if you can glance at this letter, you can see that there have been problems ongoing. The lack of trust and the concern my clients have, let's get these promises in writing that it is only

going to be a wastewater treatment facility, that the tower is only going to be so high and so big. We had the same situation earlier today. The method of doing business in this county in rezonings that I have been aware of is if there are concerns, get the two sides together, talk about it and maybe address it. I don't know why a use and development commitment that restricts several industrial uses from this is a bad thing for the city to put in if it gives a peace of mind to many of the neighbors that have to deal with this facility. I don't know if putting in writing that they will restrict the size of the tower, I am sure that EPA has some parameters on these towers, height, etc., that is it not going to offend the EPA if they work with the neighbors in doing their expansion and remodeling. We are asking for communication and for some promises in writing instead of standing up here and saying they are the city and this is what we are going to do and to trust them. We would ask for a continuance or a non favorable recommendation for the rezoning. But we would certainly prefer the continuance. The message we would like to send is to put on a use and development commitment. It is a simple thing. It concerns everybody because of the reluctance to do so.

Mr. Pedtke: Are you saying the project that was mentioned in this letter is not completed?

Ms. Lockyear: I believe that project is completed but over the years, there have been promises. The spraying they had promised to do back in the 1990's to minimize the odor, it happened for awhile and then it stopped. It is not the operations or how they are working now. And we are under a different administration and different people managing the facility now and we understand that. But that is just evidence of why, even though it is a city entity, even though it is for the public good, my clients feel like they need some protection in writing to make sure that it is not carte blanche.

Mr. Lockard: If they did explore with Area Plan rezoning versus a special use, how would your clients potentially feel about that if they just did a special use for the tower?

Ms. Lockyear: If they just did a special use for the tower or the wastewater treatment, we know that is what this is, not 222 possible M-1 uses or anything other than what we have got.

Ms. Worthington: I got involved on this this morning and Krista and I had an opportunity to talk a couple times. I thought what we were going to do was talk during the 30 days between this meeting and the next meeting. Krista then had a chance to talk at more length with her clients and they decided they wanted to go ahead and ask for the continuance. But I was operating under the assumption that that was a workable manner of trying to address their concerns. In other words, we would have this meeting tonight, since it is not a final vote, it is just a recommending body, an important one, but not a final, we could use the 30 days between now and City Council to try to work out any concerns. If it came down to it that a use and development commitment really were appropriate, we would come back. So that is where we left it. I thought everyone was okay with that. Then I got an email back a little before the meeting that they wanted to ask for the continuance. So I hope it doesn't appear to you that we weren't trying to be workable.

We really were. Also, I want to restate and I can talk to the City, but I really don't know if a use and development commitment is appropriate again for this situation. I want to restate my reasons why. I am not sure that makes sense. A use and development is often used where you are wanting to make sure this new development coming in is what they say it is going to be. This is a wastewater treatment facility and it has been since the 1950's. So beyond saying they want us to promise that we are only going to be a wastewater treatment facility, and I understand that, but it has been a wastewater treatment facility for a long time. It would cost hundreds of millions of dollars to make it anything else. I am just trying to be practical when I look at the perimeter area, it is filled with wastewater treatment facilities. There is no room to put anything else in there. There are a lot of uses in the M-1 designation that they may not want, but my goodness, just looking at the aerial, I don't see where they could put one in. You would have to use this as something other than a wastewater treatment facility. You would have to pull out those old facilities, relocate them to another location which we know is over a hundred million dollars. Then you would have to reroute all the sewers that go there to another spot. So that is why I was just saying I'm not sure if we take the time that a use and development commitment is the answer. Maybe the answer is something else. So with that said, the final thing I want to say is that Harry Lawson is here if you have questions about some of the immediate or urgent improvement to our wastewater treatment facilities that will be upcoming in the future, he can speak to those and he has assured me that we are going to need upgrades and we will need them soon. That's why we want to keep this moving forward tonight.

Mr. Herrin: I don't understand why you don't want to make a commitment that this is a wastewater treatment plant only. It is one sheet of paper, probably a secretary typing it up for 30 minutes and an attorney approving it. Other than that, what is it?

Ms. Worthington: Well, that is an interesting question. I got the file this morning. I was asked to come over and bring this petition to you that the Area Plan Commission was requesting. I guess what I am saying to you is honestly, I haven't had a chance to talk with the Mayor's office and everybody that I would need to talk to to make a promise like that. As an attorney, you can't go around making promises or statements if you don't have the authority to do so. That said, I have been before you a few times and I don't know that a use and development commitment does much for anybody here. It is a virtual impossibility to do anything other than be a wastewater treatment facility. But it is a good question. Maybe it does need some looking at by some City folks. But it doesn't seem like it can be anything else. So what do you want in the use and development commitment? I am guessing what they might want is some restrictions on the City about how big, how tall, how smelly? I don't know that we can put those kinds of things in a use and development commitment. It is a wastewater treatment facility. They are dealing with raw sewage. It is going to have some offensive nature to it. So I have a little reluctance about making people feel like, I don't want to give anyone false hope that they could commit to more than they could commit to with the situation they got there. I don't know that there is a lot you can do when you are dealing with raw sewage.

Mr. Lockard: I think everybody is going the same direction that the neighbors are concerned about the rezoning if you put it on one piece of paper wastewater treatment facility; or, when we were talking about the special use, you don't have to put in the special use. It is a public facility and you are done with it. You don't have a rezoning.

Ms. Worthington: Ms. Lockyear and I talked earlier. We have known each other a long time and we were talking about some other ideas on how to skin this cat. My first reaction was I had trouble understanding why I need a rezoning for something we've had since the 1950's? But I don't like to lock horns with the Area Plan Commission/ They have great recommendations. They know this stuff better than I do. So there has to be a good reason why they think this is the best approach. But we talked about how else could we do this? But my assignment is to come up here before you and argue this petition and that is what I am doing.

Mr. Dunigan: Would you be agreeable to a month delay?

Ms. Worthington: What I imagined might happen after I got Krista's email saying they were going to ask for the continuance, I imagined you might suggest that and if it were a strong request on your part, that might be the thing to do. But at the same time, I have a client to serve and they want to keep on a schedule. I understand that you might recommend that over our objection.

Mr. Dunigan: Is that a yes?

Ms. Stevens: My question is, what is the urgency? You said you were already behind on a project. Why wouldn't you be able to do that?

Ms. Worthington: I suppose we could. My understanding is that some of this funding comes from a grant. There is a deadline on it. The outside date is not till spring, maybe early spring. So you would probably still make it. But if you got into a situation where you need two continuances, then you start pushing the envelope a little. It could probably work.

Mr. Jain: I think both sides are saying the same thing. I heard it over and over again that you said that nothing else can be done. So what is the problem of putting on a piece of paper, one line that it is going to be that and eliminate the 221? Rather than spending everybody's time?

Ms. Worthington: I'm glad you asked that question.

Mr. Jain: I don't think anybody is disagreeing with that. We are trying to help you all. But the way it is going, you are not really trying to convince me that you have something else behind, which I can't understand what it is. Though you are not asking to spend a hundred million dollars to INAUDIBLE PORTIONS...so what is the big issue in sitting together and talking it over, come back in 30 days. Spring is still nine months away. So what is the big deal? Let's get it over with.

Ms. Worthington: I have an answer to that.

Mr. Jain: I am sure you do. All I am saying is most of the questions are the same. Why can't you put it in writing that that is what it is.

Ms. Worthington: I'm glad you asked that question because I was going to speak to that point earlier. I guess I am not sure I have a full enough understanding that that is the extent of the question. My concern was that it wasn't just going to be one line, promise we are going to be a wastewater treatment facility, but that there would be other restrictions in it that we wouldn't be able to abide by because of EPA regulations or whatever the DOJ might want us to do. So maybe what we could do before we finish up here, I don't know if Ms. Lockyear is prepared to speak about what they might want in a use and development commitment. If it is a just a piece of paper saying it is just going to be a wastewater treatment facility, that might not be such a big deal. I guess it depends on what else they want in there. So I would like to step aside and see if we could wash that out a little bit.

Mr. Jain: You won't know what else they want until you talk to them.

Ms. Worthington: And we are planning on meeting the week of August 20th.

Mr. Herrin: It is a wastewater treatment facility. If I have one vote and that's what it would be, the wastewater treatment facility has been there for many years before the development went in. The development went in. They knew it was a wastewater treatment facility there. So my vote would be leaning more towards that it will never be anything other than a wastewater treatment facility, that's it.

Mr. Harrison: I think the deadline for amending the use and development commitment to come back next month would be August 20th.

Ms. Worthington: That's a good thing to know because if it were simple, I have to get the City's permission. If it were a simple one that that is all that were in it, I think that could be accomplished. But I think we probably need to know if that is the only request.

Mr. Harrison: Then you may need to meet with Ms. Lockyear before the 20th. Obviously the communications tower issue would probably have to be inserted in there.

Ms. Stevens: Ms. Lockyear, are you prepared to discuss that right now?

Ms. Lockyear: Not entirely. I think we need to sit down and talk, my clients and the Utility, what they are planning on doing, what my clients' concerns are, and certainly eliminating 221 M-1 uses is way up here on my clients' desires. So that may be all we do. We may have just a little discussion so my clients feel warm and fuzzy about the Utility. There may be other things that the Utility can promise my clients. I don't know. But sitting down and having that discussion would go a long way.

Mr. Lockard: Question for Bev. What is the deadline to file for BZA if they go a different route?

Ms. Behme: INAUDIBLE

Mr. Lockard: So if they do go that way, they have all the way till September 4th file for BZA for the October 18th meeting. If it goes before BZA, they are the final stop on that?

Mr. Mills: That is correct. BZA has the authority to establish and set restrictions on that. Mr. Dunigan could expand on that since he's the president of BZA.

Mr. Jeffers: I heard it said that when you look at the perimeter of the legal description that is shown on the photo, there is no room to put anything additional?

Ms. Worthington: To my eye, it does.

Mr. Jeffers: But it was also said that there is going to be upgrades soon. Are the upgrades that are anticipated fit in that parameter, or are we going to see all this again?

Ms. Worthington: I asked Mr. Lawson about that. I asked if the old stuff would have to come out to put the new stuff in? The answer was yes. Why don't I let him speak to that?

Mr. Lawson: The City of Evansville and the Water and Sewer Utility are in negotiations with the Dept. of Justice and USEPA federal government, and this has to do with the combined sewer overflows that we have in Evansville. The east side plant is pivotal in eliminating the CSO's that are currently discharging into the Ohio River. CSO's, that is combined sewage. When we have a rainfall, we have sewage and rainfall that goes into the Ohio. The Ohio has been determined to be a sensitive area. So the City of Evansville is required to stop discharging combined sewer from Dress Plaza all the way to Bee Slough. These negotiations are ongoing. Our next meeting is August 20th. The tower we are trying to put up is one of the issues we have right now and the concern is there are what is called the nine minimum controls for CSO control. This is a USEPA mandate. It is part of the clean water act. We have to be able to give public notification and monitoring, the ability for the public to know when these CSO's are discharging into the river. This tower that we need to put will be able to receive at the CSO's now along the river. We have flow meters. They are transmitting data locally. If we have a rain event, if the CSO is overflowing, it will transfer that data. Right now we can't get that data back to the plant. We need to get it to the plant. Once we do, we have a data center at the east side wastewater plant. It will go on a web site that is already built and read to go. It has a map of the City of Evansville. Any citizen anywhere can go to the Evansville.gov web page and see if the CSO is discharging and whether you should be in that area. So that is one of the big concerns we have. This project is way over, we have had a lot of different issues. We do have a grant that runs through spring. Deig Brothers is the contractor. We are ready to put the tower up and we need to get this information out to the citizens of Evansville. So that is where the Utility is coming from here. As far as the improvements,

we are looking at expanding the plant from 18 mgd to 40 mgd. We are going to leverage and use new technologies that are out there. One is called a bio filter. We are building one at the west plant now. We will be putting in a 40 mgd bio filter. If you see the three larger circular tanks, the tanks that are next to it, the bio filter will eliminate six of those tanks. It will be sitting where those tanks are. That will be a 40 mgd bio filter. We are going to be increasing the capacity that the wastewater treatment plant can handle. We are also going to be putting in a constructed wetland in this area. We are going to be eliminating Bee Slough. It is a concrete cradle. We have CSO's that discharge into Bee Slough. It is a major odor problem. A lot of the odor we have in this area is from Bee Slough. It will no longer be there. It will become a wetland. The Greenway is going to come and run up along that wetland area and on around through the City. There are other upgrades within the treatment plant that will be needed in order to increase the capacity of the plant. But our real concern is that we will be under a consent decree with the USEPA and Dept. of Justice and our concern is staying ahead of all that. That is where we are.

Mr. Jeffers: So the question was, are you going to be able to do all that in the perimeter that is being rezoned?

Mr. Lawson: Yes. We are able to because of the new technologies that are out there. A lot of these technologies that are in Europe, actually the bio filter that we are putting in at the west plant will be the first one in Indiana. They are being used in the U.S. Another technology that we will be using is high rate clarifier, an accuflo clarifier, where you actually add sand to the water. You put in a polymer and a flocculent and in a very small space, you can actually double or triple the treatment process in an area like this. So we are landlocked here. That is the method we will have to use in order to meet the requirements of DOJ and USEPA.

Ms. Lowe: Through all of this, we have heard twice about a grant. I think we should keep in mind that it does expire. We should proceed in such a way that we aren't responsible for hindering the receipt of that grant.

Mr. Jeffers: Okay. After hearing everything I have heard and having observed how things operate between Area Plan and the City Council, my observation is that if we are asked to go ahead and vote on this tonight, we can all ten here vote against it and there will be sufficient votes on the City Council to pass the rezoning. Knowing that, I just don't know why it can't proceed as a special use to avoid that conflict.

Ms. Stevens: I want to make a couple comments. I appreciate your explanation. I think the idea that new technologies are coming on board and there will be better ways to treat sewage, and to that end, the other thing you mentioned that the government is involved, I think that even make more of a concern for the neighbors with 221 other uses because yes, that is a treatment plant right now, and yes it doesn't make any sense practically to move it, but we have all seen technology grow by leaps and bounds in all kinds of area. So I think that it is fair to give the neighbors a chance to find out what is going on, limit the

use. I think it is a little bit irresponsible to give an M-1 with 222 uses with no discussion to the immediate neighbors. I don't know where your yellow sign was.

Mr. Lawson: The sign was up and the sign blew down and we went back and got another one and put it back up.

Ms. Stevens: We have already heard several times tonight that nobody reads the notices. It is the neighbors' responsibility to know what is going on in your neighborhood. But at the same time, things do change. I appreciate what you are saying and the neighbors are probably very happy that the slough is going away. So I think you can get together on this.

Mr. Lawson: Well the improvements are going to reduce the odors. Plus we put odor control in any time we do upgrades in the wastewater plants.

Ms. Stevens: To Ms. Lowe's point, we don't want to delay this. We can go with the special use. We have heard a big mix here. I really need to get a feel for what the Commissioners' pleasure is on this, whether we want to continue it for one month providing that you will all be reasonable, that the City will be reasonable, and that the neighbors be reasonable and that they come together so that we do not delay it again and we could come back with something that really is fair on both sides.

Mr. Dunigan: I would like to make a motion that we continue this petition for a month and waive any fees with regard to it.

Ms. Stevens: Thank you. We have a motion and second. Call the roll.

Mr. Lockard: (During roll call.) I think both sides of the argument have spoken. I think it is responsible for us to continue it to give both sides the opportunity to work on it. I think we have an obligation as Plan Commission members to try to make sure everything fits in the right place at the right time and the right property. I have the utmost respect for Brad and the rest of the Plan Commission staff. So I don't want them to think that I am second guessing them because that would never happen because they are the experts at it. They do it every day. But I have heard a couple attorneys say they could go either way on this. I will vote for a continuance.

Ms. Lowe: (During roll call.) Yes. I am hopeful that they can get this resolved to everyone's satisfaction by the time we have our next meeting.

Mr. Shetler: (During roll call.) Thirty years ago when I sat here as a City Councilman, I had a couple gentlemen that approached me about maybe buying the Water Department and privatizing and that concerns me a little bit because it is not far fetched today. That was 30 years ago and it was far fetched then. I think perhaps that needs to be put together here a little tighter so that in the event that somebody did come along and buy and privatize it and you would be able to say this is all this can be and not turn it into something else. So I will vote for the continuance so we can get it worked out.

Mr. Jain: (During roll call.) Being an engineer, I have heard it over and over again that we are already too late on this project and it is never too late. There is always a right time. No matter how late a project is, it is always done. The other thing I want to mention, the odor issue is still there which is the concern of the neighbors. I don't think I heard that the odor would be taken care of. I think they need to talk about that. So I vote yes to continue it to next month.

Mr. Jeffers: (During roll call.) I am going to vote yes to continue it but continue to encourage staff and petitioner to seek a special use and leave it R-2.

Ms. Stevens: (During roll call.) I vote yes. I just want to finish the thought I had on the government. When we are dealing with outside governments and entities, they can come in with jurisdiction and change things.

Ayes: Mr. Lockard, Ms. Lowe, Mr. Pedtke, Mr. Shetler, Mr. Dunigan, Mr. Herrin, Mr. Jain, Mr. Jeffers, Ms. Stevens

Nays: None

There being 9 affirmative votes, Docket No: R-2007-15 is continued to the September 13, 2007 meeting.

SUBDIVISIONS

Ms. Stevens: The rezoning portion of the meeting is now over and we will now hear the proposed subdivisions that are on our agenda. As stated earlier, the Area Plan Commission is the sole authority on subdivisions. State law and our Subdivision Control Ordinance dictate the issues the Plan Commission can consider when reviewing a subdivision application. Unlike a rezoning, consideration of a subdivision is limited to whether it complies with the standards and requirements in the local Subdivision Control Ordinance. If a subdivision application meets the requirements set forth in the Subdivision Control Ordinance, the Area Plan Commission must approve the primary plat. Indiana Courts have indicated that Plan Commissions have not

Seven affirmative votes are needed to approve a subdivision plat and conversely, seven negative votes are required to deny a plat. In the event that there are not seven votes for or against, this is considered a no action vote and the plat returns to the next APC meeting for consideration.

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

Now let's move on to the subdivisions.

8-S-2007 Boren

Part of Section 19, NW T6S/R11W Perry Township

Location: Located on Hogue Road, south of Upper Mt. Vernon Road.

Mr. Mills: The proposed Boren subdivision is a one-lot residential subdivision proposed to bring this site into compliance with the Subdivision Code. This 4.05-acre site is too small to meet the minimum 5-acre parcelization requirement for minimum parcel size. The site is located on the east side of Hogue Road north of Carmel Court. There is an existing residence on the property. The Subdivision Review Committee reviewed this plat on July 10, 2007. The Boren plat dedicates right-of-way for a proposed cul-de-sac extending east from Hogue Road which will provide access and frontage for the lot. The existing drive is located within this right-of-way. Comments from the County Engineer recommend a note be added to the plat stating that the road will be privately maintained by the owner of Lot 1. On July 24, 2007, preliminary drainage plan approval for the Boren subdivision was granted by the County Drainage Board. No portion of the site lies within the 100-year floodplain. Water is available to the site. The lot has an existing septic system for sewage disposal. Comments from the County Health Department state that a new septic system will be required and a soil analysis will be needed to locate a new system on the site. Staff recommends that the Boren plat be approved with the conditions listed on the staff field report as the plat otherwise complies with the Comprehensive Plan and the requirements of the Subdivision Code.

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

Mr. Farny: My name is Jim Farny. I am here representing Ron Boren who is here with me. Ron purchased this property in hopes of being able to build a new house on it. He only came to realize after he bought the property that it had a small problem in that it did not meet a segment of the subdivision code which required 60 feet of frontage. In an attempt to be able to conform to that code, we came up with a plat and offered a right-of-way that would be able to create the frontage that was required. I think Brad has hit on all the items that were discussed at Sub Review and issues regarding this subdivision. I don't have anything to add but I would be glad to answer any questions.

Ms. Stevens: Are there any questions? Are there any remonstrators? (None.) I would enter a motion for approval, subject to the following conditions: 1. Add a note to the plat stating that the road will be privately maintained by the owner of Lot #1. 2. Provide documentation prior to recording that the health Department has approved the results of the soil test and a location for a new septic system. (Motion was made and seconded.) Call the roll.

Ayes: Ms. Lowe, Mr. Pedtke, Mr. Shetler, Mr. Dunigan, Mr. Herrin, Mr. Jeffers, Ms. Stevens

Nays: None

There being 8 affirmative votes, Docket No: 9-S-2007 is approved.

9-S-2007 Weslake Replat

Part of Section 3, SW T6S/R11W German Township

Location: Located on Kasson Road, east of SR 65.

Mr. Mills: The proposed Weslake Replat is a revision of a five-lot residential subdivision approved for this site by the Area Plan Commission in 1994. This plat reduces the number of lots from 5 to 3. The site is located east of Big Cynthiana Road and south of Kasson Drive off of Royal Oak Drive. There are two existing residences on the site. The third remaining lot is currently undeveloped. The Subdivision Review Committee reviewed this plat on July 10, 2007. The existing Royal Oak Drive is a cul-de-sac that was platted with the original Weslake plat. A portion of the existing drive lies outside of the dedicated right-of-way. The proposed replat dedicates right-of-way to correct this problem so that the street will be totally within the right-of-way. The original Weslake plat also dedicated a much longer Royal Oak Drive than what is shown on the proposed plat. Since this right-of-way is being platted over as lots, it will need to be vacated by the County Commissioners before the proposed plat can be recorded. The Evansville MPO comments are as follows: Access design details and/or location should be in accordance with the Evansville MPO's *Access Management Manual*. No additional access to Kasson Drive should be permitted. All lots must access the interior street only (Royal Oak Drive). A portion of this site lies within the floodplain as identified by the 100-year flood contour shown on the plat. The Building Commission requires that the minimum flood protection grade (FPG) elevations of 472 ft. for structures on Lot 2 and 482 ft. for structures on Lot 3 be shown on the plat. Comments from the County Surveyor indicate that the drainage approval for the original subdivision remains valid for the replat and there is no need to reapprove the plan. Water is available at the site. City sewer is not available. Sewage disposal will be provided by septic systems. Comments from the Water and Sewer Department are as follows: Contact Utility on abandoning water lines. Comments from the Health Department require that that the Utilities statement on the plat be corrected to state that septic systems will be used, as sewers are not available. Soils will also need to be tested on new lots and existing dwellings will need to be dye tested. Staff recommends that the Weslake Replat be approved with the conditions listed on the staff field report as the plat otherwise complies with the Comprehensive Plan and the requirements of the Subdivision Code.

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

Mr. Farny: My name is Jim Farny representing Jack Cook, the petitioner on this project. Unfortunately, he had to go out of town and couldn't be here with us tonight. Where we became involved in this is the fact that Jack Cook decided to buy this property and, as a

part of his due diligence in buying the property, he asked us to perform a boundary survey of the property. In doing so, we came to the realization that the physical road as it was constructed that lead into this subdivision plat was not in line with the right-of-way as it was platted. Therefore, Jack considered this a problem if he ever decided to sell the property in the future. He also engaged his neighbors, Mr. Raymond Gries and Mr. Gordon Hurst, who lives next to the property. They all concurred that they would like to take this opportunity to fix this plat, replat it and get it right so that when there is a future sale of the property, they wouldn't have any problems with the title work. So that is why we are here.

Ms. Stevens: Are there any questions? Are there any remonstrators?

Mr. Olivey: My name is Kevin Olivey. I am at 5050 Kasson Drive, abutting this property. I reviewed the information that Mr. Farny sent and realized the new description on the surveys were a little different from the existing. So if they want to redo this, I would like them to update my deed information on my property since I am tied in with the existing boundaries. Also, there is a fire hydrant just at the top of the lakes there. Will that also be abandoned, or what will happen with that?

Mr. Farny: I don't know how to speak to or answer the first question. If Mr. Olivey would like to engage our services to perform a survey for him, we would be glad to.

Mr. Olivey: I want you to either keep it existing or update the legal description and just file it by law.

Mr. Harrison: You are going to have to hire someone to help you with that.

Mr. Olivey: I want to contest it.

Mr. Harrison: That's fine. You can contest it.

Mr. Olivey: Then that's what we are going to do. There is no sense in doing it if we can't get that updated. It looks like he is taking part of my property.

Mr. Harrison: You will probably need to hire a lawyer to consult with you on that.

Mr. Olivey: Why don't we just get this resolved here legally. It would take what, a half hour of time to redo the plat. You have already surveyed the property. You accessed onto it to do it.

Ms. Stevens: If they are not willing to do that though, like Mr. Harrison said, you will have to retain your own counsel to get that redone.

Mr. Jeffers: Is the remonstrator's property within the subdivision or abutting the subdivision?

Mr. Farny: Abutting the subdivision to the north.

Mr. Jeffers: And to what degree is the discrepancy in the legal description?

Mr. Farny: I'm not sure. I have not seen his legal description. Basically we did a formal boundary survey of the entire property. There were quarter section monuments found at both of the corners that would be the northeast corner of the subdivision and the northwest corner of the subdivision and those were all shot and verified and measured in accordance with the plat.

Mr. Lockard: How much does the remonstrator think it is off?

Mr. Olivey: It may not be off more than a tenth of an acre, but I just want it recorded for any future sales or anything else. I don't want to have a legal description in my deed file and then have a different description on a plat. So which one is going to be legal?

Mr. Farny: I think one thing that Mr. Olivey may be confused about, maybe I can shed a little light on is, all surveys are performed on a basis of bearings. If his concern is there is a bearing difference on the plat, that may really actually mean there is no discrepancy in terms of placement of alignment of the line. Because every survey uses an assumed basis of bearings. So it may be that there is actually no real concern or no overlap or gap that he might be concerned about.

Ms. Stevens: Your comment has been noted. There is nothing this body can do about it and there is nothing we can do to make them do that. But your objection has been noted.

Mr. Farny: One thing Mr. Olivey might want to do is contact Jack Cook and express his concerns to him. If Mr. Olivey would want to ask Mr. Cook if he would want to reimburse us for that, that might be a possibility. But I can't speak for Jack.

Ms. Stevens: Are there other remonstrators? (None.)

Mr. Farny: There is no facilities that will be moved on this project. It is purely a paper correction because of the road. But there is no planned physical construction of anything, no planned relocation of any improvements. So if there is a fire hydrant there, it will remain where it is today.

INAUDIBLE

Mr. Farny: I understand your concern. With the new plat, there is a new right-of-way and there are also new easements presented on the plat. So there will be a new easement on the plat that will capture that fire hydrant.

Ms. Stevens: So it won't be on private property. It will be on an easement.

Mr. Jeffers: Did you not use the same legal description for the boundary of this plat as Billy Nicholson used originally?

Mr. Farny: We did a title 865 retracement survey. So we recovered all the monuments. We surveyed all the monuments. We reported any differences that we found in the measurements as we made them versus what would have originally been platted. We filed that surveyor's report in the Recorder's office. Then as a follow up, and only after that, then we go and repair an actual subdivision plat.

Mr. Jeffers: So what may have happened is that possibly Billy Nicholson recorded the original plat for Weslake and then the monuments were not placed accurately according to the original plat. So when you did the original plat, it showed a discrepancy? And if so, did you note that discrepancy?

Mr. Farny: All the discrepancies in the measurements are recorded as part of the title 865 retracement survey. So if you were a person going to the Recorder's office and you wanted to see or understand what we measured versus what was on the plat, you would need to go there and pull the surveyor's report and there would be a full blown surveyor's report that would explain why we positioned every line exactly the way we did, what monuments we uncovered, which ones we determined to be good monuments, which ones we questioned. For example, one of the monuments at the northwest corner, there are actually three physical monuments at that location. There is a stone and two iron pins. We opted to use the stone because if you go back to the old surveyor's records, the original survey called for a stone. So we used that stone. What was used when whoever surveyed Mr. Olivey's property, I have no idea.

Mr. Jeffers: and the survey that you performed and recorded in accordance with the law, that survey and all the documents that accompany the recorded documents was done in accordance with Indiana State statutes that govern that activity?

Mr. Farny: That is correct. And that survey is on file in the Recorder's office. I need to restate something. I don't know that we recorded it yet. We have 90 days after the survey to record it. So I don't want to misspeak and say it is recorded. If it is not recorded today, it will be recorded within the 90 days.

Ms. Stevens: Thank you.

Mr. Lockard: You have 90 days. If there is disagreement, they could get it worked out before it is recorded?

Ms. Stevens: If Mr. Olivey resurveys it?

Mr. Lockard: Yes.

Mr. Olivey: INAUDIBLE

Mr. Lockard: In no way is this to say that Mr. Farny or his firm or the land owners are responsible for anything. I am just saying if you have a question or disagreement, since it has not been recorded yet, it could potentially be resolved before it is sealed in the Recorder's office.

Ms. Stevens: I would entertain a motion for approval, subject to the following conditions: 1. Prior to recording, add the following flood protection grades to the plat: On Lot 2 – FPG = 472 feet. On Lot 3 – FPG = 482 feet. 2. Correct the Utilities statement on the plat to indicate that septic systems will be used on the lots. Provide documentation that the Health Department has approved the results of the soil and dye tests prior to recording. 3. Correct the Access Note on the plat to read as follows: "Access: All lots must access Royal Oak Drive only. No access allowed to Kasson Drive." 4. Have the platted right-of-way that is being abandoned and platted over as lots in this replat vacated by the County Commissioners prior to recording. (Motion was made and seconded.) Call the roll.

Ayes: Mr. Pedtke, Mr. Shetler, Mr. Dunigan, Mr. Herrin, Mr. Jeffers, Mr. Lockard, Ms. Lowe, Ms. Stevens

Nays: None

There being 8 affirmative votes, Docket No 9-S-2007 is approved.

Meeting adjourned.

Stacy Stevens, President

Attest:

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

Bradley G. Mills, Executive Director

Karen Yokel, Transcriber